

Appendix 1b: Prosecution Guidelines

1. Purpose

- 1.1 To ensure that recommendations and decisions about prosecutions are made in a consistent and fair manner.
- 1.2 These guidelines are intended to act as a guide to Officers in taking enforcement action. These guidelines are not intended to limit or fetter an Officer's Discretion.

2. Application

- 2.1 These guidelines are to be read in the context of the enforcement policy, relevant legislation and case law and in accordance with national guidelines. In particular:
 - 2.1.1 The Code for Crown Prosecutors issued by the CPS (February 2010) http://www.cps.gov.uk/publications/code_for_crown_prosecutors/
 - 2.1.2 Regulators' Compliance Code – Statutory Code of Practice for Regulators issued by the Department for Business, Enterprise and Regulatory Reform (BERR) (17 December 2007). <http://www.bis.gov.uk/files/file45019.pdf>

3. Making the Decision to Recommend Prosecution

- 3.1 Prosecution should take place when:
 - 3.1.1 It is in the public interest to prosecute the offender for the charges chosen; and
 - 3.1.2 There is sufficient evidence, capable of being admitted as evidence in Court, to support the prosecution.

4. The Public Interest Test

- 4.1 In deciding whether it is in the public interest to prosecute an offender under clause 3.1.1 above, regard must be had to all relevant public interest considerations that weigh in favour of, and against, prosecution proceeding. Annex 1 to these guidelines is a checklist of factors that, if relevant, the Officer ought to turn his or her mind to in deciding whether or not it is in the public interest to proceed with criminal charges.
- 4.2 The factors listed do not form a test. They are intended as a guide to help focus the decision-maker's mind on matters of relevance in determining whether the prosecution is in the public interest. The number of factors in favour of, or against, prosecution is not necessarily relevant as to whether or not prosecution is recommended.

5. The Evidential Sufficiency Test

- 5.1 In determining whether there is sufficient evidence under clause 3.1.2 above, the Officer must be satisfied that there is sufficient admissible evidence to provide a “realistic prospect of conviction” against each proposed defendant on every charge.
- 5.2 The Officer must be satisfied that the evidence to be relied on will not be excluded by the Court under any enactment or rule of law. In particular:
 - 5.2.1 All interviews, confessions and other formal statements of the proposed defendant have been recorded and obtained in accordance with Police and Criminal Evidence Act (PACE).
 - 5.2.2 All information resulting from investigations has been obtained in accordance with the provisions of Regulation of Investigatory Powers Act where applicable.
 - 5.2.3 All searches have been undertaken by the persons with the required powers and have been conducted in accordance with PACE, its codes of practice, or the particular legislation that governs that search.
 - 5.2.4 The evidence relied on will not be excluded for being hearsay or documentary hearsay.
 - 5.2.5 The evidence must also be reliable. In determining whether the evidence is sufficiently reliable to be accepted by the Court, regard must be given to:
 - 5.2.5.1 Where reliance is being placed on a confession, whether that confession is affected by the defendant’s age, intelligence, level of understanding or the circumstances in which the confession was made.
 - 5.2.5.2 Any explanation given by the defendant. Is the explanation credible and likely to be accepted by the Court? If so, does the explanation constitute a defence to the charges?
 - 5.2.5.3 The identity of the defendant when this is put in issue by the defence. Do eyewitnesses suitably identify the defendant?
 - 5.2.5.4 Is there any unused evidence obtained in the investigation, which is disclosable to the defence, that may undermine the prosecution in any way?
 - 5.2.5.5 The credibility and accuracy of prosecution witnesses. In the event of a conflict of evidence between the

defendant and the prosecution witness, is the prosecution witness's evidence likely to be believed?

5.2.6 Evidence that may not be reliable ought not to be discarded. Its reliability must, however, be considered in determining whether there is a realistic prospect of conviction.

6. **Selecting and Recommending Charges**

- 6.1 After considering the factors listed above in part 3.1, Officers may exercise their discretion in the following ways:
 - 6.1.1 Issuing an informal caution either orally or in writing;
 - 6.1.2 Deciding to recommend a Simple Caution; or
 - 6.1.3 Deciding to recommend a formal prosecution.
- 6.2 An informal caution ought only be recommended if the officer is satisfied that:
 - 6.2.1 An informal caution is likely to be an effective deterrent to the offender; and
 - 6.2.2 The caution is appropriate for the type of offence, the gravity of the offending and the circumstances and history of the offender.
- 6.3 A simple caution must be recommended in accordance with Home Office Circular 30/2005.
- 6.4 If prosecution is recommended, then charges ought to be selected that reflect the seriousness and extent of the offending and provide the Court with sufficient power to sentence the defendant adequately.
- 6.5 Where numerous offences appear to have been committed, consideration ought to be given to proceeding with specimen charges and having the remaining offences taken into consideration by the Court upon sentencing.
- 6.6 Charges should not be selected solely for the purpose of negotiation, with a view to dropping them in return for a guilty plea on other charges. Each charge must fulfil the criteria detailed in clause 3.1.
- 6.7 Recommendations shall be made in a timely manner, bearing in mind any time limits for bringing a prosecution, the need for adequate time for legal services to prepare and issue summonses and the reluctance of the Courts to entertain cases where there has been unnecessary delay.

7. Accepting Guilty Pleas

- 7.1 In certain circumstances a defendant may wish to plead guilty to some but not all of the charges. Prosecuting Officers should only accept the guilty pleas in such cases if they are of the opinion that the Court is able to pass a sentence which matches the seriousness of the offences. Officers must never accept a guilty plea because it is convenient.

**ANNEX A:
QUESTIONS TO BE ADDRESSED IN CONSIDERING WHETHER IT IS IN THE
PUBLIC INTEREST TO PROSECUTE**

Questions potentially in favour of prosecution.	Relevant	Irrelevant	Comments
---	----------	------------	----------

Regarding the offence

Is conviction likely to result in more than a nominal penalty?			
Was the defendant the ringleader or organiser of the offence?			
Was the offence premeditated?			

Regarding the victim

Was the victim vulnerable?			
Did the victim suffer fear, damage, disturbance?			
Could the alleged offence have cause, or did it actually, cause pain, distress or suffering to animals?			
Has the victim made a personal statement and, if so, does it support any particular enforcement action?			

Motivation and Intention

Was the offence motivated by discrimination?			
Did the offence involve deliberate misrepresentation or fraud?			
Did the offence occur because the defendant neglected or failed to take due diligence?			

Further Policy considerations

Are there relevant previous convictions / cautions?			
Is the offence likely to be continued or repeated?			
Is the offence, although not serious, widespread?			
Was the offence committed whilst on bail or on a conditional discharge?			
Is there is an element of public risk / danger to health?			
The case would have precedent value or deterrent effect.			
Is there a possibility of significant economic disadvantage to consumers or businesses?			

Questions potentially against prosecution.	Relevant	Irrelevant	Comments.
Has there been a failure to comply with enforcement notices?			
Could the alleged offence have caused, or did it actually cause, harm to human health including injury?			
What is the attitude of the offender? Is there a desire to compensate?			
Is another entity better suited to prosecute?			
Was the offence a genuine mistake?			
Will there be a long delay between the commission of the offence and the first Court date?			
Would a prosecution be detrimental to the victim's health?			
Is the defendant elderly or suffering from significant mental or physical ill health?			
The offender has been, or is being, sentenced for similar offending and the prosecution would add little further.			
The offender is under 18			

Other issues not otherwise considered:

Note: This checklist is not intended to be a test. It is to be used as a guide to direct consideration of relevant issues in determining whether prosecution is in the public interest. It is not exhaustive. Any other factors of relevance that are not included on this list must be taken into account as well.