

**Public Safety and Regulation**

**Enforcement and  
prosecution policy**

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## Enforcement and Prosecution Policy

<b>Procedure title</b>	<b>Enforcement and Prosecution Policy</b>
<b>Procedure owner</b>	<b>Roy Harris</b>
<b>Procedure author</b>	<b>Roy Harris</b>
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### Revisions of this guidance

<b>Version</b>	<b>Date</b>	<b>Reason for change</b>	<b>Nature of amendment(s)</b>
1.0	01/11/2011		Initial document
1.1	01/04/2014	Update	
1.2	11/11/2014	Update to Regulator's Code	Various
1.3	02/01/2018	Update	Amends to sections on cautions, fixed penalties and complaints. New section of ancillary orders.
1.4	07/08/2018	Update	Private sector housing policy
1.5	01/08/2018	Amendment	Section on reprimands and warnings replaced with information on youth cautions and juveniles

## INTRODUCTION

1. The Public Safety and Regulation Division is committed to protecting the health of residents, promoting economic growth and fair trading, and safeguarding the environment, and will exercise enforcement through various pieces of legislation. The service areas covered by this policy include environmental health, licensing and trading standards.
2. The Authority supports and implements the five priority regulatory outcomes for England. These are:
  - support economic growth, especially in small businesses, by ensuring a fair, responsible and competitive trading environment;
  - protect the environment for future generations including tackling the threats and impacts of climate change;
  - improve quality of life and wellbeing by ensuring clean and safe neighbourhoods;
  - help people to live healthier lives by preventing ill health and harm and promoting public health; and
  - ensure a safe, healthy and sustainable food chain for the benefit of consumers and the rural economy.

Guidance on the application of these priorities can be found at the [Office for Product Safety & Standards](#) website (follow link).

3. Under the Local Government Act 1972, local authorities can institute legal proceedings under any legislation, unless the relevant statute specifies otherwise. In many cases the City Council, as a metropolitan district council, is specified by the relevant legislation as the regulator. Investigations will be carried out in accordance with the Police & Criminal Evidence Act 1984, the Criminal Procedure & Investigations Act 1996 and the Regulation of Investigatory Powers Act 2000.
4. In devising this policy, reference has been made to the Crown Prosecution Service's [Code for Crown Prosecutors](#) (follow link), the Statutory Code of Practice for Regulators - "[Regulators' Code](#)" (follow link)), [Guidance on Simple Cautions published by the Ministry of Justice](#) (follow link) on the cautioning of adult offenders and the enforcement and sanctions policy of the [Environment Agency](#) (follow link).
5. It is essential officers comply with this policy and apply its principles in the exercise of any enforcement activity. In *R. v Adaway* [2004] local authorities were reminded that they had to consider cases carefully against the terms of their prosecution policy.
6. The Authority will ensure that its officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.

## SECTOR-SPECIFIC ENFORCEMENT

7. Additional enforcement policies relevant to particular regulated sectors are in force for Food Safety and [Private Sector Housing](#).

## PRINCIPLES OF ENFORCEMENT

8. The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment, to promote and secure compliance with a regulatory system and to ensure offenders may be held to account.
9. Underlying the policy of firm but fair regulation are the five Principles of Good Regulation (defined in section 21 of the Legislative and Regulatory Reform Act 2006):
  - **proportionality** in the application of the law and in securing compliance
  - **accountability** for the enforcement action taken
  - **consistency** of approach
  - **transparency** about how the Authority operates and what those who are regulated can expect from the Authority, and
  - **targeting** of enforcement action.
10. Powers available to officers include:
  - Inspections and visits
  - Providing advice and running educational campaigns
  - Verbal warnings
  - Written warnings
  - Refusal, suspension, amendment of licences, registrations, permits, etc.
  - Enforcement notices (e.g. requiring works or improvements)
  - Abatement notices (in respect of statutory nuisances)
  - Simple cautions (where there has been a criminal offence)
  - Fixed penalty notices (for certain criminal offences)
  - Prosecution (where there has been a criminal offence)
  - Work carried out in default of notice
  - Seizure of items, goods, articles used for crime.
11. The Authority will assist businesses with complying with the law, but take action against those that flout regulations or act irresponsibly, negligently or dangerously, causing unnecessary risk to the public, the environment, consumers and workers, but also undermining the viability of those businesses who comply.

12. When considering the appropriate course of action to ensure compliance we aim to follow the Macrory Penalty Principles. These state that enforcement and sanctions should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

### **Proportionality**

13. Those whom the law protects and those on whom it places duties expect the action taken by enforcing authorities to be proportionate to any risks to public health and to the seriousness of any breach.

14. Some incidents or breaches of regulatory requirements cause, or have the potential to cause, serious environmental damage or harm to human health, or present a danger to the public or employees. Others may interfere with people's enjoyment or rights, or the Authority's ability to function.

15. The enforcement action taken by the Authority will be proportionate to the risks posed to public health and the environment and to the seriousness of any breach of the law.

16. The Authority will consider how regulatory functions may support or enable economic growth for compliant businesses. Enforcement decisions will be taken having considered the negative economic impacts of regulatory activities, and will seek to minimise the costs of compliance for those who are regulated, while encouraging and promoting compliance. It will consider whether the costs of regulatory intervention to business are appropriate to the risk posed.

### **Accountability**

17. Regulators must be able to justify decisions and explain how and why the decision has been made. This should be through compliance with a published policy.

## **Consistency**

18. Consistency means taking a similar approach in similar circumstances to achieve similar ends. Consistency does not mean simple uniformity. Officers need to take account of many variables including the scale of the impact on health or the environment, the attitude and competency of the offender and the history of previous incidents or breaches.
19. There should be effective arrangements for liaison with other enforcement agencies so that the Authority's actions are in proportion and consistent with other regulators.

## **Transparency**

20. Transparency means helping those regulated to understand what is expected of them and what they should expect from the Authority. It also means making clear why an officer intends to, or has taken action.
21. Where the Authority requires action to be taken, it will be clearly explained (in writing, wherever possible) why the action is necessary with a suitable time-scale. Distinctions must be made between legal requirement and good practice. Officers will provide information and advice in plain language, and will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
22. The Authority will make available details on compliance monitoring (such as inspection programmes, sampling visits and test purchases) and the risk assessment framework used to target those checks.

## **Targeting**

23. Targeting means that regulatory effort is directed primarily towards those whose activities give rise to the most serious risks to public health, the environment or legitimate operators, where the risks are least well controlled or against deliberate or organised crime.
24. The Authority will should consider risk at every stage of decision-making processes, including when choosing the most appropriate type of intervention, compliance visits and when taking enforcement action.
25. Officers will identify priority risks and allocate resources where they would be most effective in addressing those priority risks. It will take into account the compliance record of those they regulate, including evidence of relevant external verification.

## LEGAL NOTICES

26. Statutory notices are used for many matters in environmental protection, as a protective response. Many notices relate to matters that are not themselves an offence. Notices can be used to or are directed to be used in the legislation, to ensure, on sanction of prosecution, that preventative, remedial or corrective action is taken.
27. The notice will explain what is wrong, what actions or works are required to be done to put things right and comply, and what the possible consequences are if the notice is not complied with. The officer will explain this to the recipient. If requested, the officer's advice should be confirmed in writing. If the notice is posted, a covering letter should be enclosed. Any method of appealing against a notice or any of its provisions and the time-scale for doing so will be provided in writing at the same time.

## PROSECUTION

28. The use of the criminal justice system is an important part of the regulatory system. It aims to punish wrongdoing, to avoid a recurrence and to act as an effective deterrent to others. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued. The Authority recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences.

### Code for Crown Prosecutors

29. In determining whether to prosecute, the Authority will consider the [Code for Crown Prosecutors](#) (follow link). The Code defines two stages in the decision making process - the evidential test and the public interest test. A prosecution will only be commenced when the case has passed both tests.
30. A prosecution will not be commenced or continued unless there is sufficient, admissible and reliable evidence that a criminal offence has been committed by an identifiable party and that there is a realistic prospect of his/her/its conviction.
31. The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. When deciding the appropriate course of action, officers will take account of:
- Nature and severity of the offence;
  - Foreseeability of the offence or the circumstances leading to it;
  - Intent of the offender;

- History of offending;
- Attitude of the offender;
- Deterrent effect of the prosecution on the offender and others;
- Personal circumstances of the offender.

### **Presumption of prosecution**

32. The Authority will normally prosecute where one (or more) of the circumstances below apply and there is sufficient reliable evidence.

- Incidents with significant adverse consequences for the environment or public health or safety, or have the potential for such consequences.
- The premeditated commission of an offence resulting in pollution, damage or loss of amenity, for the purpose of securing personal or commercial pecuniary advantage.
- Operating, with a view to profit, without the relevant licence, permit, registration, consent or other authorisation, therefore undermining the financial viability of legitimate operators; and the offender is likely to continue to operate and fails to submit an application to be authorised forthwith.
- Failing to comply adequately with formal remedial or protective requirements.
- Failing to supply information when legally required, or knowingly or recklessly supplying false or misleading information.
- Excessive or persistent breaches of regulatory requirements in relation to the same premises or permit and reckless disregard for minimum legal standards of operating.
- Where non-compliance with a legal requirement is related to, contributed to or created the situation leading up to, the commission, by another person, of an offence, which if that person could be identified, would normally result in his prosecution.
- Where offender has a relevant previous conviction or caution for an offence.
- Offences involving deception / fraud where there is a degree of sophistication and/or the offence is committed by an organised team.
- Wilful obstruction of or failure to co-operate with officers, giving false name or address, and/or using violence / threatening behaviour.
- Where a notice of opportunity to pay a fixed penalty notice has been issued and not paid, or where the offer of such a notice has been refused. To ensure the credibility of a fixed penalty scheme, all cases involving non-payment are referred to court.
- Where a caution has been offered and refused.

33. Where a prosecution would be considered appropriate, it will **not** normally be commenced where either of the following apply:

- Depending on the severity of the offence, where there is reason to believe that the defendant was not capable of knowing the consequences of the action, is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health.
- The defendant is a young person. A prosecution may be appropriate when the person has already been involved with the police; the offence shows an adult degree of sophistication; or the offender has previously been warned by the Authority about similar offending.
- The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution.
- Where there has been a long delay between the offence taking place and the date of the trial unless:
  - i. the offence is serious
  - ii. the delay has been caused in part by the offender
  - iii. the offence has only recently come to light
  - iv. the complexity of the offence has meant that there has been a long investigation

## **Charging**

34. It is the Authority's responsibility to select charges it can prosecute successfully and which are consistent with the seriousness of the alleged criminal conduct. Charges laid must reflect adequately the nature and extent of the conduct disclosed by the evidence, provide the court with adequate sentencing powers and enable the case to be presented in a clear and straightforward manner.

35. The Authority has a responsibility to refine its case to avoid laying either duplicitous or multiple charges. There will be occasions where the same act will be prohibited under two separate statutes. In such cases, charges should be laid under one of the offence-creating Acts (Interpretation Act 1978, section 18).

36. Where there is another prosecuting authority involved, the officer in charge of the case will liaise with the other authority to ensure the most appropriate charge(s) are laid.

## **Companies and Individuals**

37. Criminal proceedings will be taken against those persons responsible for the offence. Where a body corporate is involved, it will be usual practice to prosecute the company where the offence resulted from its activities.
38. The Authority will also consider any part played in the offence by directors, managers, company secretary and employees of the company. Action may also be taken against a manager, director or other officer of the company where it can be shown that the offence was committed with their consent, involvement, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it. The attitude, personal awareness, and motive of the company officer will be taken into account. Evidence should be obtained so that the position of the individual in the management structure can be demonstrated.

### **Orders imposed by the court ancillary to prosecution**

39. The Authority may apply for ancillary orders following a conviction. These and can include:
- disqualification as a director;
  - confiscation of assets, under the Proceeds of Crime Act 2002;
  - a criminal behaviour order, under in Part 2 of the Anti-social Behaviour, Crime and Policing Act 2014;
  - forfeiture of equipment or vehicle used to commit the offence;
  - disqualification from driving;
  - compensation order;
  - remediation order.

## **ALTERNATIVES TO PROSECUTION**

### **Simple Cautions**

40. A simple caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. A caution may be issued to an adult for any offence, but should not be used for the more serious breaches of legislation.
41. The Authority will only issue a caution in circumstances consistent with the [Guidance on Simple Cautions](#) for Adult Offenders published by the Ministry of Justice (follow link). A record of the caution will be kept by the Authority and it may influence any decision whether or not to institute proceedings if the same person should offend again. The caution would be produced in court if the offender is later found guilty of a further offence.

42. The benefits of the cautioning system is that it can:
- deal quickly and simply with less serious offences;
  - divert offenders where appropriate from appearing in the criminal courts;
  - record a person's criminal conduct for possible reference in future proceedings; and
  - reduce the likelihood of re-offending.
43. Cautions should not be administered to an offender in circumstances where there can be no reasonable expectation that this will curb a person's offending. It is only in the following circumstances that a second caution should be considered:
- where the current offence is trivial or unrelated to any previous offences; or
  - where there has been a sufficient lapse of time since the first caution to suggest that it had a significant deterrent effect (two years or more).
44. Where the offer of a simple caution is declined, prosecution will be pursued.

### **Youth cautions and juveniles**

45. Simple cautions cannot be issued to persons under 18 years of age.
46. Youth cautions were introduced by section 135 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 amending the Crime and Disorder Act 1998 and abolishing the reprimand and final warning scheme. They are a formal out-of-court disposal that can be used as an alternative to prosecution for young offenders (aged 10 to 17) in certain circumstances. They cannot be issued by the Authority.
47. For some matters where the Authority is the normal prosecutor, it will operate a warning system for offences committed by youths. For example a youth may be prosecuted on a third occasion or issued a fixed penalty notice on a second, depending on the offence and the circumstances in which it was committed. Where such a policy exists, it will be articulated to the youth court. Other young offenders will be referred to the police.
48. In some cases, a youth may directly be referred by officers to a Youth Offending Team diversion programme or considered for an acceptable behaviour agreement where appropriate. Such decisions will be made in discussion with relevant agencies and partners.

### **Written Warning**

49. A notification that, in the Authority's opinion, an offence has been committed. It will be recorded and may be referred to in subsequent proceedings.

## Fixed Penalty Notice

50. Notices of opportunity to pay a fixed penalty or fixed penalty notices (FPNs) can be issued by local authority officers for certain offences where the legislation permits it and where the officer is authorised to do so. Such offences include littering, dog fouling and smoke-free offences and minor fly-tipping. They are typically low-level straightforward offences where prosecution would not normally be an immediate response. Individually such offences have a minor impact, but, cumulatively, over time or within a particular locality, they have a more serious effect on the environment or reduce amenity value.
51. The FPN gives the offender the chance to pay a fixed amount of money within the suspended enforcement period. If the penalty is paid by the set time, the offender is no longer liable for prosecution.
52. Records will be kept of issued FPNs and subsequent offences may result in prosecution.
53. If the FPN is not paid, the presumption is that the offender would be prosecuted for the original offence.
54. Officers authorised to issue FPNs are required to have regard to the relevant [Policy and Operational Guidance](#) (follow link). Criminal fixed penalty notices for local environmental quality offences, noise, dog fouling, minor waste deposits and other waste offences, and civil penalty notices for littering from vehicles will be used as per this Guidance.
55. Civil penalty notices for offences relating to the private rented sector will be covered by the [Private Sector Housing Enforcement Policy](#) (follow link).

## WORKING WITH OTHER REGULATORS

56. In cases where the Authority and another enforcement agency both have the power to prosecute, officers will liaise with that other body to avoid inconsistencies with the policies and actions of the other agency and that any proceedings instituted are for the most appropriate offence.
57. Details of warnings given or investigations should be relayed to any other agency involved in regulating the business in question where the other agency may come across further breaches and the information would assist them in effective regulation. Such an approach will help target resources and activities and minimise duplication.

58. Where a prosecution is taken for a recordable crime, details will be submitted to the Police National Computer as per the requirements of the Birchard Inquiry Report.

### **Appeals and complaints**

59. A complaint about the service provided by an officer may be made through the Council's Corporate Complaints Procedure. This can be done online or in writing. Information on the process can be found by following this link: [make-a-complaint](#).

60. The Corporate Complaints Procedure cannot be used to determine whether or not an offence has been committed and legal proceedings will not normally be suspended whilst a complaint is investigated; the legal process takes precedence.

61. There are appeal procedures within the criminal justice system and a statutory right to be tried for an offence. There are also statutory appeal mechanisms available to recipients of legal notices and some penalty notices.

62. The Local Government and Social Care Ombudsman cannot deal with matters where there is a right to appeal or option to take legal action. In such cases, the complaint should be taken to the appropriate court, tribunal or government minister. This is in accordance with the Local Government Act 1974, section 26(6).