



Leicester
City Council

PROSECUTIONS POLICY

A Guide for those who may be involved in decisions about criminal prosecutions.

A separate Guide deals with Investigations by the Council (under enforcement powers, or for possible abuse of its facilities). These are regulated by statute and an investigation may not be lawful unless it is specifically authorised.

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This Guide was updated in January 2002.

PART A: PROSECUTIONS BY THE COUNCIL

1. Power to Prosecute and Enforcement Policies

- 1.1 The Council's powers to prosecute are wide in connection with its enforcement responsibilities (such as those for Trading Standards, housing benefit and council tax fraud, statutory nuisance and non-attendance of children at school). Every prosecution must be under a specific statutory provision.
- 1.2 There is no specific power for the Council to prosecute for assaults on staff or service users, or for misuse of Council facilities by anyone. Where appropriate, these matters need to be referred to the Police (in accordance with Part B).
- 1.3 The Council in prosecuting does so in accordance with the overriding principles relating to it as a public authority set out in the Human Rights Act 1998.
- 1.4 This policy in terms of authorisations to prosecute must be read in accordance with the Council's Constitution. As part of the Constitution, the Council operates a Scheme of Delegation giving power to the Council, Cabinet committees and officers.
- 1.5 Where applicable, Council departments have prepared enforcement policies in respect of legislation enforced by them. At present enforcement policies are in place in relation to the Town Clerk's Department (fraudulent claims in respect of housing and council tax benefits) and the Environment and Development Department. These are contained at Appendix 2. The Education Department is currently working on an enforcement policy in relation to Education welfare prosecutions. In respect of all other Council Departments, where a request is made to the Council's Head of Legal Services, in accordance with the Council's Constitution, by those departments for a prosecution to be instituted, he will review the file submitted against the provisions of this policy.
- 1.6 For each enforcement regime, the Department responsible must ensure that all necessary management arrangements are in place, including:
 - Appropriately skilled and capable specialist officers.
 - An Enforcement Policy to guide individual prosecution decisions and ensure that decisions are consistent over time.
 - For each proposed prosecution, a file for the Head of Legal Services with such information as he may require to advise on the matter.
 - Records of the reasons for each prosecution decision in relation to the Enforcement Policy.
 - Information specified by the Head of Legal Services for monitoring and reviewing prosecutions overall.

2. Who Decides to Prosecute?

2.1 The following officers are authorised to take a decision to prosecute (under the Council's Constitution, after appropriate consultation):

- The Town Clerk) acting as appropriate through internal/
- The Head of Legal Services) external solicitors or duly authorised legal) officers
- The Chief Financial Officer (for matters defined in Finance Procedure Rules).
- Such other Officer as the Town Clerk may nominate.

2.2 The Officers nominated at the time this Guide was updated are listed in *Appendix 1*. At the time of consideration of this policy by Cabinet the list of authorised officers was still in the course of being finalised.

3. Tests for Deciding Whether to Prosecute

3.1 Each case is unique and must be decided on its own facts and merits. The decision must be made fairly, independently and objectively, without being influenced by personal views or improper pressure from any source. All the circumstance of the suspect, the victim and the events must be taken into account, to determine what is in the overriding interests of justice.

3.2 Two tests (based on the Code for Crown Prosecutions) must be applied, in this order:

- **The Evidential Test:** is there sufficient evidence to justify prosecution?
- **The Public Interest Test:** is it in the overall public interests to prosecute?

3.3 The Evidential Test

- There must be enough evidence to provide "*a realistic prospect of conviction against each defendant on each charge*".
- There is a "*realistic prospect*" if a properly directed jury or Court would be more likely to convict than to acquit.
- Evidence must be admissible in Court (be relevant and properly obtained) and reliable (taking account of each witness's circumstances, background and motives).

3.4 The Public Interest Test

All the circumstances of the suspected offence, the suspected offender (including age) and the victim must be considered to determine whether prosecution is in the overall public interest. A single factor alone is unlikely to determine the matter. Some examples are shown in the table.

| <i>Factors Which Favour Prosecution</i> | <i>Factors Which Lean Against Prosecution</i> |
|---|--|
| <ul style="list-style-type: none"> • The likely sentence is significant | <ul style="list-style-type: none"> • The likely sentence is nominal |
| <ul style="list-style-type: none"> • The defendant was in a position of trust | <ul style="list-style-type: none"> • An alternative to prosecution would be sufficient (eg a caution in accordance with the Enforcement Policy). |
| <ul style="list-style-type: none"> • The motivation was racial or another form of discrimination | <ul style="list-style-type: none"> • The offence resulted from a genuine mistake (depending on its seriousness). |
| <ul style="list-style-type: none"> • Relevant previous convictions, penalties, cautions or current Court order | <ul style="list-style-type: none"> • The loss or harm was minor or has been remedied. |
| <ul style="list-style-type: none"> • The offence is likely to be continued or repeated. | <ul style="list-style-type: none"> • Long delay since the offence (depending on its seriousness). |
| <ul style="list-style-type: none"> • The offence is prevalent in the area. | <ul style="list-style-type: none"> • The defendant would find it difficult to go through the prosecution, in view of being young or elderly or suffering from significant mental or physical ill-health (unless offence is serious or there is a real possibility that it may be repeated). |
| <ul style="list-style-type: none"> • Associated publicity would be a deterrent to others. | <ul style="list-style-type: none"> • The victim's physical or mental health is likely to suffer seriously. |

4. Additional Considerations

City Council prosecutions will also involve careful consideration of individual departmental enforcement policies contained in Appendix 2.

5. Cautions

A caution may be administered (under Home Office guidelines) as an alternative to prosecution. This is the most common alternative to a Court appearance for a person who is prepared to admit an offence. The decision to caution is taken in accordance with the above tests. The caution is administered by the enforcing Department, the Head of Legal Services being available for advice.

6. Charges

6.1 The prosecutor must select a charge which:

- Reflects the seriousness of the offence;
- Gives the Court adequate sentencing powers; and
- Enables the case to be presented clearly and straightforwardly.

6.2 A guilty plea to a lesser charge or fewer charges should only be accepted by the prosecutor if the Court will still be able to pass a sentence which matches the seriousness of the offence. Convenience alone does not justify the acceptance of a guilty plea.

7. Publicity

Subject to compliance with Court Rules, no information will be given by any Council officer to the media that might prejudice any court proceedings. Once a prosecution has been instituted, any media comment will be subject to approval by the Head of Legal Services. At the conclusion of prosecution proceedings the Council, through the relevant departmental Director, will take advice from the Head of Legal Services in terms of what, if any, media statement should be made. Reports on prosecutions to Elected Members will be governed by the access to information arrangements contained in the Local Government Act 1972, as amended. Any media or other comment by Elected Members in relation to any Council prosecution will only be made after advice from the Town Clerk or Head of Legal Services, in consultation with the appropriate Director, and will comply with the Council's Conventions.

PART B: REFERRING MATTERS FOR POLICE INVESTIGATION

1. Authority to Refer to the Police

1.1 There is no specific power for the Council to prosecute for assaults on staff or service users, or for misuse of Council facilities by anyone. Where appropriate, these matters need to be referred to the Police for their investigation. The Police then decide whether to refer the matter to the Crown Prosecution Service with a view to prosecution.

1.2 The following people may refer a matter to the Police:

- **Offence against the person or property of an individual** (employee, Member or service user): The victim decides. (With the victim's agreement the referral may be done by or with the support of a manager.) In the case of a vulnerable victim, his/her advocate will decide.
- **Offence against Council property or facilities:** the Town Clerk, Head of Legal Services, Chief Finance Officer, Head of Audit or a person nominated by the Town Clerk decides, in consultation with the relevant departmental Director, in accordance with the Council's Constitution.
- **Offence of which a Member is suspected:** the Town Clerk or Head of Legal Services decides.

2. Factors in Deciding Whether to Refer to the Police

2.1 With the victim's agreement (or his/her advocate's agreement in the case of a vulnerable victim) suspected offences against an individual's person or property will be automatically referred.

2.2 All relevant factors will be taken into account in deciding whether to refer an offence against Council property or facilities, including:

- The nature and seriousness of the suspected offence;
- The nature of the suspect's duties and degree of trust required (for example, financial responsibilities, care of vulnerable service users).
- The extent of the loss or cost to the Council;
- The period of the suspected wrong-doing;
- The risk of further harm;
- Mitigating factors (for example, repayment of loss, co-operation with inquiries).

Special attention will be given in the Social Services departmental context with regard to certain types of service-user, eg, children in care and other vulnerable service users.

3. Procedure for Suspected Offences Against Council Property or Misuse of Facilities

- 3.1 Suspected offences in relation to financial irregularities as regards Council property and/or misuse of facilities should be referred to Internal Audit for investigation. The requirements of the Council's Finance Procedure Rules must be observed. In respect of other offences, for example, criminal damage, advice should be taken from the Head of Legal Services or one of his legal officers on whether the Director should arrange an investigation or the matter should be referred for Police investigation.
- 3.2 Investigations must comply with the Regulation of Investigatory Powers Act 2000 and the Council's procedure (see separate Guide).
- 3.3 Internal Audit will keep the referring manager informed of progress with their investigation, its outcome and the progress and outcome of any subsequent Police investigation or prosecution. Where a Member is suspected, or the matter is politically sensitive, the Town Clerk will also be kept informed.
- 3.4 The relevant Directors and the Town Clerk or head of Legal Services will be consulted before referral to the Police. Reasons for the decision to refer will be documented.
- 3.5 Internal Audit will be the Council's point of contact for Police investigations.
- 3.6 The Town Clerk will inform the Standards Committee of the referral of a Member to the Police.
- 3.7 All concerned are expected to take all reasonable steps to bring an investigation to the speediest possible conclusion. In particular:
- Internal Audit will within one week of receiving a matter, provide to the referring manager (copied where politically sensitive to the Town Clerk), an assessment of:
 - Whether the matter is likely to be concluded internally, or whether a Police referral is possible.
 - An estimate of when the internal investigation will be completed (with milestones for major investigations).
 - An estimate of when a referral to the Police might be expected.
 - Internal Audit will provide written progress reports in relation to this assessment, and update it as necessary.
 - Referral to the Police will be presumed as soon as the evidence is sufficient and the relevant factors warrant it, or if lack of co-operation frustrates internal investigation. This may mean that an internal investigation is taken part way only, or is not started at all. It may sometimes mean that a joint approach to investigation is agreed with the Police.

- Internal Audit will aim to develop a protocol with the Police for communicating the progress of matters referred by the Council or where the Police are investigating a matter which significantly affects a Member or Council interest. This will include termination of a prosecution before trial.

OFFICERS AUTHORISED TO DECIDE COUNCIL PROSECTIONS

(See Article 14.3 of the Council's Constitution.)

The previous authorisation continues in relation to:

The Director of Environment and Development through his/her authorised officers, in consultation with the Head of Legal Services, in the case of the institution of proceedings under the Trademarks Act 1992.

ENFORCEMENT POLICY**FRAUDULENT CLAIMS FOR
HOUSING AND COUNCIL TAX BENEFITS****Factors Determining Prosecution**

1. Audit staff will prepare files for prosecution in the light of the Evidential Test and the Public Interest Test. They will also have specific regard to:

Evidence

- Reliability of evidence;
- How clear cut the evidence is;
- Delay in the investigation not attributable to the suspect.

Public Interest

- Social factors;
- The amount of money fraudulently obtained and the period of fraudulent claims;
- Any previous fraudulent claim;
- Deficiency in the way the Council has administered the benefit.

Prosecution, Caution or Administrative Penalty

2. The Principal Investigations Officer will decide how to proceed in accordance with this Policy:
 - A caution may be appropriate where the amount of overpayment exceeds £250 and the period of overpayment exceeds 8 weeks. Where a caution has been refused, the matter will be referred to the Head of Legal Services for prosecution.
 - An administrative penalty may be appropriate (under the Social Security (Administration) Act 1997 and guidance from the Department of Social Security) where the amount of overpayment exceeds £400 and the period of overpayment exceeds 8 weeks. If the suspect refuses a penalty offered, the matter will be referred for prosecution.
 - Prosecution will not normally be pursued where the amount of fraudulent claim is less than £1,500 and the period of fraudulent claim is less than 8 weeks.

3. Joint prosecutions with the Benefits Agency / Benefits Agency prosecutions:

- The Head of Audit or his/her nominee will be the Council's point of contact in respect of joint prosecutions where the Benefits Agency takes the lead, or in respect of Benefits Agency prosecutions that relate to the City Council, eg, element of housing benefit / council tax fraud. This will be to ensure that if any assistance is needed from the City Council it can be provided swiftly so as not to delay matters.

