

PROSECUTION POLICY

1. INTRODUCTION

- 1.1 This policy is a public declaration of the principles upon which Buckinghamshire County Council (“the Council”) exercises its judgment in cases which give rise to potential criminal proceedings, with the exception of those cases instigated by the Council’s Trading Standards Service.
- 1.2 The decision to prosecute an individual or a company is a serious step. The Council shall apply this Policy so as to ensure that its decisions about prosecution are fair, consistent and efficient.

2. GENERAL PRINCIPLES

- 2.1 The decision to commence a prosecution has been delegated under the Buckinghamshire County Council Constitution to the Head of Legal and Democratic Services.
- 2.2 Each case is unique and should be considered on its own facts and merits. However, there are general principles that apply to the way in which the Head of Legal and Democratic Services should approach each case.
- 2.3 In considering whether to commence a prosecution, the Head of Legal and Democratic Services should be fair, independent and objective. She should not let any personal views about ethnic or national origin, disability, sex, religious beliefs, political views or the sexual orientation of the proposed defendant or witness influence her decisions.

- 2.4 In considering whether to commence a prosecution, the Head of Legal and Democratic Services must not be affected by improper or undue pressure from any source, be it from within or from outside the Council.
- 2.5 The Head of Legal and Democratic Services will review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that the obligations of disclosure are complied with.
- 2.6 The Council is a public authority for the purposes of the Human Rights Act 1998. The Council will therefore apply the principles of the European Convention on Human Rights in accordance with the 1998 Act.

3. THE TEST TO BE APPLIED WHEN CONSIDERING WHETHER TO PROSECUTE

- 3.1 In determining whether the Council should proceed with a prosecution, the Head of Legal and Democratic Services should apply the following two criteria:
- (a) Is there sufficient evidence for the prosecution to proceed?
 - (b) Is the prosecution in the public interest?
- 3.2 If the case does not pass the first stage, namely whether there is sufficient evidence for the prosecution to proceed, it must not go ahead no matter how important or serious it may be. If the case does pass the evidential stage, the Head of Legal and Democratic Services should proceed to the second stage and determine if a prosecution is needed in the public interest.
- 3.3 A prosecution should proceed only where both criteria are fulfilled.

4. THE EVIDENTIAL SUFFICIENCY TEST

- 4.1 The Head of Legal Services must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. She should consider what the defence case may be and how that is likely to affect the prosecution case.
- 4.2 A realistic prospect of conviction is an objective test. It means that a jury or a bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
- 4.3 A prosecution should not be commenced by the Council unless there is admissible, substantial and reliable evidence that can be placed before the court. There will be many cases in which the evidence does not give any cause for concern. But there may also be cases in which the evidence may not be as strong as it first appears. In such cases, the Head of Democratic and Legal Services should have particular regard to the following facts and matters:
- (a) The Head of Legal and Democratic Services should have regard to whether or not all of the evidence is likely to be admissible. If some of the evidence is likely to be excluded by the court, the Head of Legal and Democratic Services should consider whether enough evidence exists which is admissible for a realistic prospect of conviction.
 - (b) If the case depends on admissions by the proposed defendant, the Head of Legal and Services should have regard to any evidence which supports or detracts from the reliability of the confession.
 - (c) The Head of Legal and Democratic Services should have regard to any explanation given by the proposed defendant and should consider whether a court is likely to find it credible in the light of the evidence as a whole.

(d) If the identity of the proposed defendant is likely to be questioned, the Head of Legal and Democratic Services should have regard to the strength of this evidence.

4.4 The Head of Legal and Democratic Services must not ignore evidence because she is not sure that it can be used or is reliable. She must look at it closely when deciding if there is a realistic prospect of conviction.

5. THE PUBLIC INTEREST STAGE

5.1 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert from prosecution.

5.2 The Head of Legal and Democratic Services should balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offences or the circumstances of the proposed defendant. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

5.3 Factors that may weigh in favour of prosecution include the following:

(a) That a conviction is likely to result in a significant sentence;

(b) The evidence shows that the defendant was in a position of authority or trust;

- (c) The evidence shows that the defendant was a ringleader or an organiser of the offence;
- (d) There is evidence that the offence was premeditated;
- (e) There is evidence that the offence was carried out by a group;
- (f) The defendant's previous convictions or cautions are relevant to the present offence;
- (g) The defendant is alleged to have committed the offence whilst under an order of the court;
- (h) There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- (i) The offence, although not serious in itself, is widespread in the area in which it was committed;
- (j) There is an element of public risk or danger to health or harm or detriment to the environment and safety of the public.

5.4 Factors that may weigh against a prosecution include the following:

- (a) The court is likely to impose a nominal penalty.
- (b) The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- (c) The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.

(d) There has been a long delay between the offence taking place and the date of the trial, unless:

- The offence is serious;
- The delay has been caused in part by the defendant;
- The offence has only recently come to light; or
- The complexity of the offence has meant that there has been a long investigation.

(e) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless that offence is serious or there is real possibility that it may be repeated.

(f) The defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation).

5.5 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Head of Legal and Democratic Services will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

6. SELECTION OF CHARGES

6.1 The Head of Legal and Democratic Services should select charges which:

- (a) reflect the seriousness and extent of the offending;
- (b) give the court adequate powers to sentence and impose appropriate post-conviction orders; and

(c) enable the case to be presented in a clear and simple way.

6.2 This means that the Head of Legal and Democratic Services may not always choose or continue with the most serious charge where there is a choice.

6.3 The Head of Legal and Democratic Services should not proceed with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, she should not proceed with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

7. DIVERSION FROM PROSECUTION

7.1 When deciding whether a case should be prosecuted in the courts, the Head of Legal and Democratic Services should consider whether the case is an appropriate one in which to offer a caution.

7.2 A caution is a serious matter. It is an admission by an individual that offence has been committed. The Head of Legal Services should only offer a caution when she is satisfied that there is sufficient evidence for a realistic prospect of conviction and that the public interest would justify a prosecution should the offer of a caution be refused.

7.3 In reaching her decision, the Head of Legal and Democratic Services should make her decision in accordance with Home Office guidelines.

8. MODE OF TRIAL

8.1 The Head of Legal and Democratic Services applies the current guidelines for magistrates who have to decide whether the cases should be tried in the Crown Court when the offence gives the option and the defendant does not indicate a guilty plea.

8.2 Speed must never be the only reason for asking for a case to stay in the magistrates' court. The Head of Legal Services should, however, consider the effect of any likely delay if a case is sent to the Crown Court, and any possible stress on witnesses if the case is delayed.

9. ACCEPTING GUILTY PLEAS

9.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are only admitting part of the crime. The Head of Legal and Democratic Services should only accept the defendant's plea if she thinks that the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features.