



Policy document

# Enforcement Policy





## **Wyre Council Enforcement Policy**

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<b>1.</b>	<b>Introduction</b>
	<p>The Enforcement policy has been produced by Consulting with all the regulation services provided by Wyre Council.</p> <p>It is the aim of Wyre Council Enforcement Policy to protect the public and the environment, promote health, safety and welfare and enhance the quality of life of all residents, workers and visitors to the Borough. Much of this will be achieved through education, by providing advice and by regulating the activities of others. Whilst securing compliance with regulatory requirements using enforcement powers plays an important part in achieving this aim, it will be undertaken in an equitable, proportionate, practical and consistent manner, having reference to current legislation, guidance and codes of practice referred to in <b>Appendix A</b>.</p> <p>Wyre Council staff work with Central Government and other Regulators to help ensure coherent regulation. They may also work with voluntary or community groups and non-governmental organisations in order to achieve common goals.</p> <p>It is recognised that fair and effective enforcement is essential to protect the health, safety and amenity interests of the residents, visitors and businesses of Wyre Borough. Even in a small case a decision about enforcement action has serious implications for all involved; the general public, businesses, tenants, landlords, victims, witnesses and defendants. Wyre Council will apply this policy so that it can make fair and consistent decisions about enforcement.</p> <p>Wyre Council regards prevention as better than cure. It offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy, ensuring efficient compliance with legislation whilst, at the same time, minimising the burden on businesses, individuals, organisations and the Council itself.</p> <p>This Policy sets out the general principles, which Wyre Council intends to follow, in relation to enforcement and prosecution.</p> <p>The Policy will be available to those being regulated on the Councils Web Page.</p>
<b>2.</b>	<b>Purpose of the Enforcement Policy</b>
	<p>The Enforcement Policy provides guidance to all officers involved in regulatory enforcement work at Wyre Council, and all stakeholders regulated by Wyre Council on the approach that will be adopted to non-compliance.</p>
<b>3.</b>	<b>Scope of the Policy</b>
	<p>The regulatory services delivered by Wyre Council include food safety, health and safety, pollution control, street scene, infectious disease control, housing,</p>

	car parking, engineering, waste management, environmental pollution, highways, car park management licensing, planning, building control and community safety.
<b>4.</b>	<b>Wyre Council Approach to dealing with non-compliance</b>
<b>4.1</b>	<b>General Approach</b>
	<p>The aim of Wyre Council is to carry out its regulatory inspection and enforcement duties to improve regulatory outcomes without imposing unnecessary burdens on individuals, businesses, the voluntary sector or other regulators, and where appropriate encourages economic progress.</p> <p>We will endeavour to carry out our regulatory activities in an open and transparent way.</p> <p>Where remedial action is required, Wyre Council will clearly explain (and confirm in writing, if requested) why the action is necessary and when it must be carried out; a clear distinction will always be made between legal requirements and best practice advice.</p> <p>Opportunity will be provided to discuss the circumstances of the case, clarify what is required to comply with the law and if possible, resolve any points of difference, before formal enforcement action is taken, unless urgent action is required, for example, to protect serious harm or to prevent evidence being destroyed.</p> <p>Where urgent action is required, a written explanation of the reasons will be provided as soon as practicable after the event.</p> <p>A Written explanation will be given of any rights of appeal against formal enforcement action at the time the action is taken. This will explain the appeal procedure, where and when an appeal may be made as well as confirming the grounds on which it may be brought. It will make clear where action will be suspended pending the outcome of the appeal.</p> <p>All Regulatory work undertaken by Wyre Council will be carried out by an authorised officer in accordance with the Council's Scheme of Delegation as set out in its Constitution. A link to the scheme of delegation is provided below.</p> <p><a href="http://www.wyre.gov.uk/site/scripts/google_results.php?q=scheme+of+delegati+on">http://www.wyre.gov.uk/site/scripts/google_results.php?q=scheme+of+delegati+on</a></p> <p>Regulating officers will have freedom to investigate establishments and activities operated by Wyre Council. If a dispute arises the matter will be reported to the Management team in order to arbitrate the situation.</p> <p>In all enforcement action Wyre Council will be objective to ensure that our decisions are not influenced by the gender, ethnic origin, religious or political beliefs, disability or sexual preferences of any alleged offender. The council</p>

	<p>will comply with the legislation and codes of practice listed in <b>Appendix A</b>.</p> <p>Wyre Council is a public authority for the purposes of the Human Rights Act 1998. Wyre Council staff will therefore apply the principles of the European Convention on Human Rights in accordance with the Act.</p> <p>Wyre Council will, where possible, following a successful prosecution, name companies and individuals that have been convicted in the previous 12 months of breaking the law. Media attention will, where appropriate, be drawn to any impending prosecution or any successful prosecution to draw attention to the need to comply with specific legal requirements, or deter anyone tempted to disregard their duties and responsibilities.</p> <p>Wyre Council supports national enforcement campaigns such as the Food Standard Agency – National Food Hygiene Rating scheme.</p>
<b>4.2</b>	<b>Appropriate Enforcement Response</b>
	<p>Any businesses or individuals that deliberately and persistently contravene regulations or other statutory controls will be identified and will face meaningful and proportionate sanctions. In the case of the majority of businesses which do not fall within this category, other means of ensuring compliance will be considered.</p> <p>Wyre Council recognises the difficulties organisations and individuals have in easily obtaining authoritative, accessible advice on regulatory requirements. Wyre Council will generally put advice and guidance before enforcement, at least in the first instance.</p> <p>Advice and guidance will be available by any or all of the following means:-</p> <ul style="list-style-type: none"> <li>• face to face interactions;</li> <li>• telephone enquiries;</li> <li>• leaflets and guidance notes;</li> <li>• on-line guidance via the Councils website</li> <li>• referral to other on-line resources; and</li> <li>• referral to external stakeholders</li> </ul>
<b>4.3</b>	<b>Factors that Influence the Response</b>
	<p><u>Economic progress</u></p> <p>Wyre Council recognise that a key element of their activity will be to allow, or even encourage, economic progress. Before deciding on a particular regulatory regime Wyre Council will consider the costs, effectiveness and perceptions of fairness of regulation. We will only adopt a particular approach when the intended results justify the costs and it entails the minimum burden compatible with achieving our objectives.</p>

### Risk Assessment

Wyre Council will use risk assessment to concentrate resources into the areas that need them most. Risk assessment involves a measurement of the capacity to do harm, and an evaluation of the likelihood of the occurrence of that harm. By basing the regulatory work of a service on the risks to regulatory outcomes, we can target our resources where they will be most effective. This principle will be applied to:-

- inspection programmes;
- advice and support programmes; and
- enforcement and sanctions.

The Risk assessment will be based on the best available information and will explicitly consider the combined effect of:-

- the potential impact of non-compliance on regulatory outcomes; and
- the likelihood of non-compliance.

### Primary Authority.

The purpose of all these initiatives is to improve consistency of enforcement for those businesses that operate in more than one local authority area. They involve the formation of a relationship with a single local authority who can audit the company as a whole and offer advice which should be taken into account by other local authorities when carrying out enforcement at branches of that company situated within their areas.

Where a business has entered into a primary authority agreement with a local authority it is a statutory requirement that the primary authority be informed of any proposed enforcement action. This is to give them an opportunity to object if the action is contrary to advice properly given by them to the company. If a justifiable objection is made the enforcement action cannot take place. Also in accordance with the statutory requirements, Wyre Council will notify any business with a primary authority agreement of our intentions prior to take enforcement action. Any businesses will then have 10 days to object to Local Better Regulation Office (LBRO) that the advice is contrary to advice they have been given by the primary authority. If the LBRO agree that this is the case the proposed enforcement action cannot take place.

At present, Primary Authority partnerships will not be considered as part of any **Planning Application Process.**

### Non Compliance.

The risk assessment process within each service will guide the need for further action. Further action will only be taken where the continuing non-compliance is significantly detrimental and there is a high risk of continuing non-conformance.

	<p><u>Non Compliance referred to Wyre Council by another Agency.</u></p> <p>Wyre Council are committed to partnership working and will endeavour to investigate all relevant complaints and inform the partner agency of the outcome of that investigation.</p>
<b>4.4</b>	<b>Complaints</b>
	Wyre Council will investigate all complaints about legal non-compliance received and inform the complainant of the outcome of that investigation.
<b>5</b>	<b>Conduct of Investigations</b>
<b>5.1</b>	<b>Investigating alleged breaches</b>
	<p>All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Wyre Council;</p> <ul style="list-style-type: none"> <li>• the Police and Criminal Evidence Act 1984</li> <li>• the Criminal Procedure and Investigations Act 1996</li> <li>• the Regulation of Investigatory Powers Act 2000</li> <li>• the Criminal Justice and Police Act 2001</li> <li>• the Human Rights Act 1998</li> </ul> <p>These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.</p> <p>Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.</p> <p>Access to premises is normally achieved by informal means by the consent of the occupier (often by appointment). If, however, there is a need to enter a premises and prior notice would be counterproductive or impracticable, a visit will be made to the property without giving prior notice.</p> <p>In appropriate circumstances, a Notice of Entry will be served or an application made to the Magistrates' Court for a warrant, e.g. if access is refused, or the premises are vacant, or giving prior notice would be counterproductive or impracticable.</p> <p>Where an authorised officer is obstructed in undertaking their statutory duties Wyre Council reserve the right to pursue formal action against the individual concerned.</p> <p>Where a Wyre Council authorised officer investigates non-compliance within an establishment, which has a Primary Authority relationship, they will communicate their concerns to the Primary Authority as soon as is reasonably possible.</p>

	<p>Certain legislation enables authorised officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or counterfeit goods or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.</p> <p>Where an offence of non-compliance is being investigated, Wyre Council reserve the right to interview witnesses under caution. In some cases the interviews will be undertaken at the civic centre and recorded for evidential purposes.</p> <p>All investigations will be undertaken within the statutory limits of the breach being investigated.</p> <p>The Head of Service for the relevant investigation will review any case prior to any formal prosecution being instigated.</p>
<b>5.2</b>	<b>Communication with Offenders &amp; Witnesses</b>
	Offenders and witnesses will be informed of the progress of investigations.
<b>6.</b>	<b>Decisions on enforcement action</b>
<b>6.1</b>	<b>Range of Actions</b>
	<p><b>A. Compliance Advice, Guidance and Support</b></p> <p>Wyre Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an ‘informal caution’) will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.</p> <p>Wyre Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and Wyre Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.</p> <p>Where more formal enforcement action is taken, such as a simple caution or prosecution, Wyre Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.</p>



## **B. Voluntary Undertakings**

Where persistent non-compliance is identified, defendants may be invited to the civic centre to meet the relevant Head of Service.

On such occasions Wyre Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Wyre Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

## **C. Statutory (Legal) Notices**

In respect of many breaches Wyre Council has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises. Where the requirement of the notice is not remedied the Authority may carry out the work in default and/or instigate legal proceedings. Where work is carried out in default, officer time and the cost of remedying the non-compliance will be registered as a local land charge on the premises.

## **D. Financial penalties**

Wyre Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, Wyre Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach, Wyre Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Wyre Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Wyre Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

### **E. Injunctive Actions, Enforcement Orders etc.**

In some circumstances Wyre Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

Wyre Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, Wyre Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

### **F. Simple Caution**

Wyre Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, Wyre Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how Wyre Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

### **G. Prosecution**

Wyre Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute Wyre Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Wyre Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s). Before deciding that prosecution is appropriate, Wyre Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria. **(See Appendix B)**

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have

	<p>resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.</p> <p><b>H. Refusal/Suspension/Revocation of Licences</b></p> <p>Wyre Council issues a number of licences and permits. Wyre Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.</p> <p>When considering future licence applications, Wyre Council may take previous breaches and enforcement action into account.</p>
<b>6.2</b>	<b>How Decisions are made on Enforcement Action</b>
	<p>The procedure adopted by Wyre Council in making Enforcement decisions is outlined in <b>Appendix C</b>.</p> <p>In respect of Health &amp; Safety enforcement the Authority will have regard to HSE – Enforcement Management Model.</p> <p>Any enforcement action undertaken by Wyre Council will seek to:-</p> <ul style="list-style-type: none"> <li>• aim to change the behaviour of the offender;</li> <li>• aim to eliminate any financial gain or benefit from non-compliance;</li> <li>• 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;</li> <li>• be proportionate to the nature of the offence and the harm caused;</li> <li>• aim to resolve the harm caused;</li> <li>• aim to restore the norm caused by regulatory non-compliance, where appropriate;</li> <li>• aim to deter future non-compliance.</li> </ul> <p>In making a decision on enforcement action Wyre Council will consider the risk the breach poses, the evidence and whether it is in the Public interest.</p> <p>The Authority will consult with relevant organisations when considering enforcement action for example the Statutory requirement to inform a Primary Authority.</p> <p>Where prosecution is being considered, all cases will be reviewed by the relevant Head of Service.</p>

<b>6.3</b>	<b>Communication of enforcement decision to those affected</b>
	Wyre Council recognises that it is important to advise the victim about a decision that makes a significant difference to the case in which they are involved.
<b>7.</b>	<b>Review of the Policy</b>
	The Policy will be reviewed every three years or after a Council restructure.
<b>8.</b>	<b>Comments, Complaints &amp; Appeals</b>
<b>8.1</b>	<b>Summary of procedure</b>
	<p>Wyre Council has a corporate system for dealing with complaints. Where a business or other member of the public makes a complaint or expresses dissatisfaction with a service provided, or any action taken, the offer receiving the complaint is recorded on the corporate feedback system.</p> <p>The complaints procedure can be viewed on the Councils web site using the following web link.</p> <p><a href="http://www.wyre.gov.uk/info/200025/complaints_and_compliments/63/complaints_procedure">http://www.wyre.gov.uk/info/200025/complaints_and_compliments/63/complaints_procedure</a></p> <p>Complaints and expressions of dissatisfaction are seen as opportunities to identify possible weaknesses in service delivery and as a step towards making improvements. Information obtained from the investigation of complaints will be used to examine possible action to improve service provision.</p>

## **Appendix A Legislation, Guidance and Codes that Influenced the Preparation of the Enforcement Policy**

**A. Principles of Good Regulation** The Legislative and Regulatory Reform Act 2006, Part 2, requires Wyre Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function<sup>1</sup>. For local authorities, the specified functions include those carried out by our Environmental Health and Community Safety, Street Scene, Planning, Housing and Building Control.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

### **B. Regulators' Code**

Wyre Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

### **C. Human Rights Act 1998**

Wyre Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

### **D. Data Protection Act 1998**

Where there is a need for Wyre Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

### **E. The Code for Crown Prosecutors**

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<sup>1</sup> Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

When deciding whether to prosecute Wyre Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, Wyre Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

- b. Public Interest Test - is it in the public interest for the case to be brought to court?

Wyre Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits.

### **Regulatory Enforcement and Sanctions Act 2008** ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

## Code of Crown Prosecutors The Full Code Test

The Full Code Test has two stages. The first stage is consideration of the evidence. If the case does not pass the evidential stage it must not go ahead no matter how important or serious it may be. If the case does pass the evidential stage, Crown Prosecutors must proceed to the second stage and decide if a prosecution is needed in the public interest. The evidential and public interest stages are explained below.

### The Evidential Stage

Crown Prosecution must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

A realistic prospect of conviction is an objective test. It means that a jury or 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. This is a separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of a defendant's guilt.

When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

#### **Can the evidence be used in court?**

- (a) Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, is there enough other evidence for a realistic prospect of conviction?

#### **Is the evidence reliable?**

- (b) Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?

- (c) What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?
- (d) If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?
- (e) Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?
- (f) Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

### **The Public Interest Stage**

In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: "It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution". (House of Commons Debates, volume 483, column 681, 29 January 1951.)

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 the person from prosecution.

Crown Prosecutors must 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 offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.



**The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.**

### **Some common public interest factors in favour of prosecution**

The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- (a) a conviction is likely to result in a significant sentence;
- (b) a conviction is likely to result in a confiscation or any other order;
- (c) a weapon was used or violence was threatened during the commission of the offence;
- (d) the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);
- (e) the defendant was in a position of authority or trust;
- (f) the evidence shows that the defendant was a ringleader or an organiser of the offence;
- (g) there is evidence that the offence was premeditated;
- (h) there is evidence that the offence was carried out by a group;
- (i) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- (j) the offence was committed in the presence of, or in close proximity to, a child;
- (k) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- (l) there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- (m) the defendant's previous convictions or cautions are relevant to the present offence;

- (n) the defendant is alleged to have committed the offence while under an order of the court;
- (o) there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- (p) the offence, although not serious in itself, is widespread in the area where it was committed; or
- (q) a prosecution would have a significant positive impact on maintaining community confidence.

### **Some common public interest factors against prosecution**

A prosecution is less likely to be needed if:

- (a) the court is likely to impose a nominal penalty;
- (b) 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 or the defendant withdraws consent to have an offence taken in to consideration;
- (c) the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- (d) 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;
- (e) 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;
- (f) a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;

- (g) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;
- (h) 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); or
- (i) details may be made public that could harm sources of information, international relations or national security.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

### **The relationship between the victim and the public interest**

The Crown Prosecution Services does not act for victims or the families of victims in the same way as solicitors act for their clients. Crown Prosecution act on behalf of the public and not just in the interests of any particular individual. However, when considering the public interest, Crown Prosecutions should always take into account the consequences for the victim of whether or not to prosecute, and any views expressed by the victim or the victim's family.

It is important that a victim is told about a decision that makes a significant difference to the case in which they are involved. Crown Prosecutors should ensure that they follow any agreed procedures.

**Wyre Council  
Enforcement Decision Sheet**



