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**Castle Point Borough
Council's
Prosecution Policy and
Charging Code.**

First Edition

27/02/2020

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1. About this policy

1.1 The decision to prosecute or not to prosecute is a serious step. However, fair and effective enforcement is essential to the maintenance of law and order.

1.2 Castle Point Borough Council, "The Council," recognises that a prosecution has serious implications for all involved and have developed this policy so that we can make fair and consistent decisions in all cases.

1.3 In formulating this policy, account has been taken of the Code for Crown Prosecutors, Castle Point Borough Council's Counter-Fraud, Bribery and Corruption policy and Castle Point Borough Council's draft Environmental Health Service Statement of Enforcement. Where there is conflict between this policy and any other Council policies relating to prosecutions, this policy will take precedence.

2. What offences can be prosecuted by local authorities?

2.1 Under section 222 of the Local Government Act 1972, a local authority has the power to prosecute (or defend) legal proceedings. Section 222(1) states that where a local authority considers it expedient for the promotion or protection of the interests of those who live within a local authority:

- The Local Authority may prosecute or defend or appear in any legal proceedings.
- The Local Authority may, in their own name, make representations in the interests of the inhabitants at any public inquiry.

2.2 Although the Code for Crown Prosecutors was primarily written for Crown Prosecution Service prosecutors, it must be followed by all prosecutors, including local authorities.

2.3 In addition to the code test, local authority prosecutors must be satisfied that a prosecution is expedient for the promotion or protection of the interests of those who live within a local authority.

3. General Principles

3.1 The Council's constitution states (at paragraph 12.3, Legal Proceedings) that the Chief Executive or Strategic Director (such title shall include Head of Law (and by definition the Solicitor to the Council/ Head of Legal Services) is authorised to institute, defend or participate in any case where such action is necessary to give effect to decisions of the Council, or in any case where they consider such action is necessary to protect the

Council's interests. For the purposes of this policy, the authorised person is the "prosecutor" and shall be referred to throughout this policy as either, "The Council" or the "prosecutor" where clarification of roles and responsibilities is required.

3.2 The function of the Council in making the decision to prosecute is not to decide whether a person is guilty of a criminal offence, but to make assessments about whether it is appropriate to present charges for the criminal court to consider. The assessment of any case is not in any sense a finding of, or implication of, any guilt or criminal conduct. A finding of guilt can only be made by a court.

3.3 Similarly, a decision not to bring criminal charges does not necessarily mean that an individual has not been a victim of crime. It is not the role of the Council to make such determinations.

3.4 The decision to prosecute or to recommend an out-of-court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care.

3.5 It is the duty of the Council to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Decisions are taken fairly, impartially and with integrity to help secure justice for victims, witnesses, suspects, defendants and the wider public served by the Council. The Council must ensure that the law is properly applied, that relevant evidence is put before the court and that obligations of disclosure are complied with.

3.6 Although each case must be considered on its own facts and on its own merits, there are general principles that apply in every case.

3.7 When making decisions, the Council must be fair and objective and must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity of the suspect, defendant, victim or any witness influence their decisions. Neither must they be motivated by political considerations. The Council must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

3.8 Castle Point Borough Council, as a public authority is bound by the relevant equality legislation. The Council must also apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. In addition, the Council must also comply with the Criminal Procedure Rules and Criminal Practice Directions and have regard to the Sentencing Council Guidelines and the obligations arising from international conventions.

3.9 The Council prosecutes individuals on behalf of the Council's relevant departments and as such, the Council will have regard to any relevant enforcement policies of those departments.

4. The Decision Whether to Prosecute

4.1 In more serious or complex cases, the Council may refer cases to the Crown Prosecution Service (CPS) to decide whether a person should be charged with a criminal offence and, if so, what that the offences should be. Cases that have particular importance nationally should be referred to the CPS as it is in the public interest that major prosecutions or prosecutions having a national interest are handled by the single prosecuting agency established by statute to conduct them.

4.2 The Council is responsible for localised issues and any decision to investigate and prosecute is based on this fundamental responsibility subject to the considerations above.

4.3 The Council's departments are responsible for conducting enquiries and investigations into alleged crime committed in the Council's areas of responsibility and employs or may employ external investigators to carry out these functions. This includes decisions to start or continue an investigation as well as decide on the scope of the investigation. Departmental officers responsible for enforcement and or investigations decide on possible reasonable lines of inquiry, evidential requirements, pre-charge procedures, disclosure management and the overall investigation strategy. This can include decisions to refine or narrow the scope of the criminal conduct and the number of suspects under investigation. The prosecutor, following receipt of a file from a Council department may ask investigators to conduct such other enquiries or investigations that are considered to be a reasonable line of enquiry and within a reasonable period so as to build the most effective prosecution case.

4.4 Council departments may refer investigations to the prosecutor for advice during the course of an investigation, commonly referred to as Early Investigative Advice (EIA) and the prosecutor may give an opinion when deciding whether the application of the Full Code Test should be deferred or whether the test is likely to be met at all.

4.5 The prosecutor will review every case received from Council departments. The review is a continuing process and the prosecutor must take account of any change in circumstances that occurs as the case develops. This includes what becomes known of the defence case, any further reasonable lines of inquiry that should be pursued, and receipt of any unused material that may undermine the prosecution case or assist the defence case, to the extent that charges should be altered or discontinued, or the prosecution should not proceed. The prosecutor will consult the Council department referring the case and its investigators when considering changing the charges or stopping the case.

4.6 Final responsibility for the decision whether to prosecute or not, deciding on the nature and number of any charges, whether to make any relevant post charge applications, apply for relevant orders pre or post-conviction or make such other applications in the criminal court's rests solely with the prosecutor who exercises this function both separately and independently of Council departments and investigators.

4.7 Once a case has been charged and is proceeding before the courts the conduct of the case is the sole responsibility of the prosecutor who will conduct the proceedings on behalf of the Council as he sees fit. Any decisions made in relation to those proceedings by the prosecutor is final.

5. The Full Code Test

5.1 Decision stages

There are two (2) stages in the decision to prosecute:

Stage 1: the evidential test

If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does pass the evidential test, the Council must then decide if a prosecution is needed in the public interest.

Stage 2: the public interest test

The Council will only start or continue a prosecution when the case has passed both tests.

5.2 The evidential test

The Council must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each potential defendant on each charge. Consideration must be given to 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', properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

When deciding whether there is enough evidence to prosecute, the Council must consider whether the evidence can be used, is relevant and 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. The Council must the following questions:

- can the evidence be used in court?
- 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, if it is likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence. If so, is there enough other evidence for a realistic prospect of conviction?
- is the evidence reliable?
- is it likely that an admission or confession is unreliable, for example, because of the potential defendants' age, intelligence or lack of understanding?
- is the witness's background likely to weaken the prosecution case? For example, does the witness have any dubious motive that may affect their attitude to the case or a relevant previous conviction?
- if the identity of the potential defendant is likely to be questioned, is the evidence about this strong enough?

The Council must not ignore evidence because there are doubts about whether it can be used or is reliable but must look closely at it when deciding if there is a realistic prospect of conviction.

5.3 The public interest test

In every case where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, the prosecutor must go on to consider whether a prosecution is required in the public interest.

By considering the factors listed below and applying them to the circumstances of an investigation, it should be possible to form an opinion as to how best a case might be dealt with.

However, the factors are not necessarily in order of importance and it is not necessary to score a minimum number of them before recommending a prosecution.

Indeed, it may be the case, for example, that a potential defendant has acted so fraudulently that this alone indicates that a prosecution is the only way to proceed:

a. How serious is the offence committed?

- The more serious the offence, the more likely it is that a prosecution is required.
- What is the suspects culpability and the harm caused?

b. What is the level of culpability of the suspect?

- The greater the suspect's culpability, the more likely it is that a prosecution is required.
- Culpability is likely to be determined by:
 - i. the suspect's level of involvement;
 - ii. the extent to which the offending was premeditated and/or planned;
 - iii. the extent to which the suspect has benefitted from criminal conduct;
 - iv. whether the suspect has previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order;
 - v. whether the offending was or is likely to be continued, repeated or escalated;
 - vi. the suspect's age and maturity (see paragraph below).
- A suspect is likely to have a much lower level of culpability if the suspect has been compelled, coerced or exploited, particularly if they are the victim of a crime that is linked to their offending.
- Prosecutors should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons.

c. What are the circumstances of and the harm caused to the victim or to the local community?

- The circumstances of the victim are highly relevant. The more vulnerable the victim's situation, or the greater the perceived vulnerability of the victim, the more likely it is that a prosecution is required. Similar regard should be given to the effect on the local community and whether the offences affected vulnerable groups in the local community as well as individuals.
- A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.
- It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics. Similarly, if a community group has been targeted for similar reasons.
- Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special measures and the possibility of a prosecution without the participation of the victim.

- Prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

d. What was the suspect's age and maturity at the time of the offence?

- Prosecutors should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties.
- As a starting point, the younger the suspect, the less likely it is that a prosecution is required.
- However, there may be circumstances which mean that, notwithstanding the fact that the suspect is under 18 or lacks maturity, a prosecution is in the public interest. These include where:
 - i. the offence committed is serious;
 - ii. the suspect's past record suggests that there are no suitable alternatives to prosecution; and
 - iii. the absence of an admission means that out-of-court disposals that might have addressed the offending behaviour are not available.

e. What is the impact on the community?

- The greater the impact of the offending on the community, the more likely it is that a prosecution is required.
- The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offending.
- Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.
- Evidence of impact on a community may be obtained by way of a Community Impact Statement.

f. Is prosecution a proportionate response?

- In considering whether prosecution is proportionate to the likely outcome, the following may be relevant:
 - i. The cost to the Council, especially where it could be regarded as excessive when weighed against any likely penalty. The Prosecutor should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs above, but cost can be a relevant factor when making an overall assessment of the public interest.

g. Do sources of information require protecting?

- In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be

made public that could harm sources of information, ongoing investigations, international relations or national security. It is essential that such cases are kept under continuing review.

6. Selection of Charges

6.1 The Prosecutor should select charges which:

- reflect the seriousness and extent of the offending;
- give the court adequate powers to sentence and impose appropriate post-conviction orders;
- allow a confiscation order to be made in appropriate cases, where a defendant has benefitted from criminal conduct; and
- enable the case to be presented in a clear and simple way.
- This means that the prosecutor may not always choose or continue with the most serious charge where there is a choice and the interests of justice are met by selecting the lesser charge.
- The prosecutor should never proceed with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never proceed with a more serious charge just to encourage a defendant to plead guilty to a less serious one.
- The Prosecutor should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.
- The prosecutor must take account of any relevant change in circumstances as the case progresses after charge.

7. Out-of-Court Disposals

7.1 An out-of-court disposal may take the place of a prosecution if it is an appropriate response to the offender and/or the seriousness and consequences of the offending.

7.2 The prosecutor must follow any relevant guidance when asked to advise on or authorise an out-of-court disposal, including any appropriate regulatory proceedings, a punitive or civil penalty, or other disposal. The prosecutor should ensure that the appropriate evidential standard for the specific out-of-court disposal is met including, where required, a clear admission of guilt, and that the public interest and wider community would be properly served by such a disposal.

8. Court Venue

8.1 The prosecutor must have regard to the guidelines on sentencing and allocation when making submissions to the magistrates' court about where the defendant should be tried.

8.2 Speed must never be the only reason for asking for a case to stay in the magistrates' court. But the prosecutor should consider the effect of any likely delay if a case is sent to the Crown Court, including the possible effect on any victim or witness.

8.3 The prosecutor should bear in mind that if confiscation proceedings are required, these may only take place in the Crown Court. Summary proceedings may be committed for that purpose, where appropriate.

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 admitting only part of the crime.

9.2 The prosecutor should only accept the defendant's plea if:

- a. the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features;
- b. it enables the court to make a confiscation order in appropriate cases, where a defendant has benefitted from criminal conduct;
- c. it provides the court with adequate powers to impose other ancillary orders, bearing in mind that these can be made with some offences but not with others.

9.3 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence.

9.4 The prosecutors must never accept a guilty plea just because it is convenient.

9.5 In considering whether the pleas offered are acceptable, the prosecutor should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor.

9.6 It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the charges but on the basis

of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

9.7 Where a defendant has previously indicated that they will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence at court, prosecutors will consider whether a prosecution is required for that offence. Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review, in consultation with the police or other investigators wherever possible.

10. Reconsidering a Prosecution Decision

10.1 People should be able to rely on decisions taken by the Council. Normally, if the Council tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, the case will not start again. But occasionally there are cases where the Council will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious.

These cases include:

- cases where a further review of the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system and wider local community, a prosecution should be brought despite the earlier decision;
- cases which are stopped so that further anticipated evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the prosecutor will tell the defendant that the prosecution may well start again;
- cases which are not prosecuted or are stopped because of a lack of evidence but where more significant evidence is discovered later.

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