

Appendix 4 - Statement of Principles for Prosecutions and Simple Cautions

PROSECUTION

Gloucester City Council will use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can sometimes promote compliance with legislation more effectively. However, where the circumstances warrant it, prosecution without warning and recourse to alternative sanctions may be appropriate. Most of the offences investigated by the private sector housing service are summary only offences. This is where an offence is usually tried in the Magistrates' Court. Some offences are 'either way' which means they can be heard by either the Magistrates or Crown Court. Where the Council take proceedings under the Proceeds of Crime Act 2002, sentencing for a summary only offence may take place in the Crown Court.

Each case will be treated as unique and considered on its own facts and merits with due consideration to the Equalities Act 2010 and the Human Rights Act 1998. All the circumstances surrounding the case will be considered including the social benefits and costs associated with bringing the matter to the attention of the Courts.

The prosecution of offenders will be used judiciously but, without hesitation, against those businesses or individuals where the law is broken and the health, safety, well-being or amenity of the public, employees and consumers are subject to risk.

Legal advice will be taken to ensure that only those cases presenting a realistic prospect of conviction will be pursued. Gloucester City Council will have due regard to the availability of any defences and to any explanation, apology or other issue referred to by the suspect by way of mitigation.

The decision to prosecute will consider the criteria set down in the Code for Crown Prosecutors, issued by the Crown Prosecution Service and the points below.

The Evidential Test

There must be enough evidence to provide a realistic prospect of conviction and the evidence must be admissible and reliable.

In determining the sufficiency of evidence, consideration should be given to the following factors:

- Availability of Essential Evidence
- Credibility of witnesses – are they likely to be credible witnesses and whether they are likely to be consistent and fail under cross-examination? – are they willing to attend as witnesses? Could they be 'hostile' witnesses?

- Where the case depends in part on admissions or confessions, regard should be had to their admissibility;
- Where two or more defendants are summonsed together, the sufficiency and admissibility of evidence available against each defendant, if separate trials are ordered.

In determining the admissibility of evidence, regard should be given to the requirements of the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996 and associated Codes of Practice.

The Public Interest Test

When satisfied that sufficient evidence is available, consideration must be given to whether the public interest requires a prosecution.

The following considerations should apply:

- Seriousness of the offence – the degree of detriment or potential detriment to consumers, employees or the environment. Current public attitudes to the particular breach of law should be considered.
- The age of the offence – less regard will be paid to this if the length of time could be attributable to the defendant themselves, the complexity of the case or the particular characteristics of the offence that have contributed to the delay in its coming to light.
- The age, circumstances or mental state of the offender – less regard to this is given if there is a real possibility of repetition or the offence is of a serious nature. Whether the defendant is likely to be fit enough to attend Court should also be considered.
- The willingness of the offender to prevent a recurrence of the problem. If the circumstances that give rise to the offence have subsequently been rectified and there is little likelihood of a recurrence, then the case may be dealt with more appropriately by other means.
- The ‘newness’ of the legislation transgressed may be a consideration, especially where the offence is of a technical nature, and future compliance may be obtained by less formal means.
- Important but uncertain legal points that may have to be tested by way of prosecution.

Simple Cautions

A Simple Caution may be used as an alternative to prosecution. The aim of a Simple Caution is to deal quickly and simply with offences, save Court time and reduce the likelihood of re-offending.

A decision to offer a Simple Caution must be made having regard to: Home Office circular 30/2005 Cautioning of Offenders.

Guidance to Police Officers and Crown Prosecutors issued by the Director of Public Prosecutions.

LACORS Guidance on Cautioning of Offenders.

Following the offer of a Simple Caution, the individual or company concerned will be required to confirm acceptance within 14 days.

When considering whether to offer a Simple Caution, the following will be considered:

- Whether a Simple Caution is appropriate to the offence and the offender.
- Whether a Simple Caution is likely to be effective.

Public Interest Considerations

- The views of the victim and the nature of any harm or loss;
- Whether the offender has made any form of reparation or paid any compensation;
- Any known records of previous convictions or Simple Cautions relating to the offender.

A Simple Caution cannot be given where the offence is indictable only or where the offender is under 18 years of age. It may only be offered where the offence has been fully admitted by the offender.

The person administering the Caution will be an appropriate Service Manager employed within Gloucester City Council.

If the offender fails to admit the offence or does not agree to the Simple Caution, the case will be considered for prosecution.