

OADBY & WIGSTON BOROUGH COUNCIL CORPORATE ENFORCEMENT AND PROSECUTION POLICY July 2014

Committee approval	Policy Finance and Development Committee – 22 July 2014
Author	Crystal Andrade, Corporate Resources
EIA	30 June 2014



Contents

1. Introduction.....	3
2. Scope of Enforcement.....	3
3. Roles and Responsibilities.....	4
4. Objectives of the Corporate Enforcement and Prosecution policy.....	5
5. Legal Provisions.....	6
6. Enforcement Principles.....	6
7. Appropriate Enforcement procedures.....	8
8. The Decision to Prosecute.....	9
9. The Process.....	9
10. Obstruction of Officers and Powers of Entry	16
11. Use of this Policy and review.....	16
12. Protection of Human rights and Equalities.....	17

Appendix A – Prosecution Report

Appendix B – Basic Procedural Flowchart

Appendix C – Form NPA01

PART 1: INTRODUCTION

Oadby & Wigston Borough Council (“the Council”) has a statutory duty to monitor and ensure compliance with a number of regulated activities which relate to Local Government enforcement within the Borough. The primary function of Local Government enforcement is to ensure that the public, the environment and groups such as residents, visitors, tenants, workers and businesses are adequately protected wherever there is regulatory activity.

It is crucial that these enforcement functions are carried out in an equitable, practical and consistent manner, and that those individuals or businesses subject to regulation, as well as those on whose behalf enforcement is carried out, are aware of the Council’s Corporate Enforcement and Prosecution Policy (“the policy”).

This policy has been produced with the intention of streamlining the approach taken when dealing with enforcement and prosecution. At all times, a non-discriminative and equality based approach to enforcement and prosecutions is to be undertaken. The aim of the policy is to unify the enforcement process and promote joint thinking and cross service area action (where appropriate) by the Corporate Enforcement Team.

PART 2: SCOPE OF ENFORCEMENT

This policy applies to all legislation and regulations that may be in force from time to time, which may be enforced by a local authority.

Enforcement includes any action taken by Officers aimed at ensuring that individuals or businesses comply with regulatory law. This is not limited to formal enforcement action such as prosecution; it also includes, for example, the inspection of premises for the purpose of checking compliance with Acts of Parliament or regulations.

All enforcement activities, including investigations and formal actions, must always be conducted in compliance with the Council’s statutory obligations.

Officers should act within the scope of their delegated authority and with due regard to all relevant legislation, such as the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, the Criminal Justice and Police Act 2001, the Legislative and Regulatory Reform Act 2006 and any other legislation designed to tackle discrimination and promote equality.

Officers should have due regard to any relevant formal procedures and codes of practice made under such legislation and will be guided in their work by the principles laid down in legislation and underpinning this policy.

PART 3: ROLES & RESPONSIBILITIES

Officers	<p>Any Officer with a regulatory function may be responsible for commencing enforcement action, whether formal or informal.</p> <p>All Officers with this responsibility must ensure that they act in accordance with this policy at all times and further ensure that action is only ever taken where it is expedient, reasonable and proportionate to do so.</p>
Investigating Officer	<p>In all cases, the Investigating Officer will be required to conduct a fair and impartial investigation, which may include Interviews Under Caution, evidence gathering, liaising with third party agencies, etc.</p> <p>The Investigating Officer is responsible for preparing a report which sets out their findings and conclusions and making recommendations accordingly.</p> <p>Where the decision is made to take further legal action, it is the responsibility of the Investigating Officer to prepare the Prosecution Report in full and pass this to the Legal Team for review.</p>
Disclosure Officer	<p>The Disclosure Officer is ordinarily the Investigating Officer in the case.</p> <p>They are responsible for examining materials retained during the investigation, revealing its existence to the prosecutor during the investigation and disclosing material to the accused at the request of the prosecutor.</p>
Corporate Enforcement Officer	<p>The Corporate Enforcement Officer is responsible for leading the Corporate Enforcement Team jointly with the Solicitor.</p>
Solicitor	<p>The Solicitor is responsible for leading the Corporate Enforcement Team jointly with the Corporate Enforcement Officer.</p> <p>The Solicitor is also responsible for providing general advice as indicated in this policy; however, it is not the responsibility of the Solicitor to prepare the Prosecution Report on behalf of the Investigating Officer.</p> <p>Once an investigation has been concluded and it has been agreed that prosecution is necessary, the Solicitor will be responsible for taking the matter to court and representing the Council in any action.</p>
Head of Corporate Resources	<p>The Head of Corporate Resources, in liaison with the Corporate Enforcement Team and, in particular, the Solicitor, will be responsible for determining whether formal action including prosecution should be taken.</p> <p>The Head of Corporate Resources will also monitor the use of this policy by all Investigating Officers to ensure fair, reasonable and consistent approach.</p>
Corporate Enforcement Team	<p>The Corporate Enforcement Team shall be made up of representatives from all those service areas and teams whose responsibilities include a regulatory function.</p>

	The Corporate Enforcement Team meetings will be a platform to discuss and share information on current enforcement matters and also potential future enforcement matters. This will prevent silo working and will ensure a “one Council, one Team” approach.
--	--

PART 4: OBJECTIVES OF THE CORPORATE ENFORCEMENT AND PROSECUTION POLICY

A clear policy on corporate enforcement and prosecution will ensure that:

- All those that visit, live and work in Oadby & Wigston are able to have a clear understanding of the Policy covering the Council's enforcement functions.
- All statutory notices issued by the Council are issued by an Officer who will be satisfied of the suitability of the notice as well as its legal validity and who is satisfied that the content and technical information set out in the notice is appropriate.
- Any information given to a business, landlord or individual, whether written or verbal, clearly identifies those requirements which are mandatory and those which are advisory.
- Any enforcement action is proportionate to the risks involved.
- Officers follow a consistent approach to enforcement across all regulatory service areas.

The Corporate Enforcement Team will be led by the Council Solicitor and the Corporate Enforcement Officer who should aim to hold meetings once every 6 weeks with a representative from each regulatory service area within the Council.

The Corporate Enforcement Team meetings will be a platform to discuss and share information on enforcement issues and potential formal enforcement action. This approach embraces the “one Council, one Team” ethos and ensures that consistent and cohesive action is considered. The Council will ensure that, wherever practicable, its enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

The representatives will be from any regulatory team within the Council, for example the following:

- Legal
- Licensing
- Planning
- Environmental Health
- Building Control
- Housing
- Revenues and Benefits
- Operational Services

There will also be the opportunity to raise particular issues with external agencies via the Joint Action Group and the Community Safety Partnership and a coordinated approach with Supporting Leicestershire Families.

Other Council policies relevant to regulatory concerns and activities may be used alongside this policy for guidance when appropriate, such as the Noise Nuisance Investigation Policy 2014 and the Anti-Social Behaviour policy (due to be reviewed in 2014).

PART 5: LEGAL PROVISIONS

The following legislation and guidance may be taken into account wherever appropriate, in carrying out the enforcement activities of the Council:

- The Enforcement Concordat
- Regulator's Compliance Code 2007
- Legislative and Regulatory Reform Act 2006
- Regulatory Enforcement and Sanctions Act 2008
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984
- Criminal Proceedings and Investigation Act 1996
- Licensing Act 2003
- Freedom of Information Act 2000
- Data Protection Act 1998
- Environmental Information Regulations 2004
- Human Rights Act 1998
- Local Government Acts 1972 / 2000 / 2003 etc
- Equality Act 2010
- Crime and Disorder Act 1998
- Other relevant Acts e.g. Public Health Acts, Housing Acts, Anti-Social Behaviour Act 2003, Criminal Justice and Public Order Act 1994, Clean Neighbourhoods and Environment Act 2005, Proceeds of Crime Act 2002, Localism Act 2011 etc.
- The Code for Crown Prosecutors 2013
- Fraud Act 2006
- Guidance from the Office of Surveillance and the Home Office

The above is not inclusive and any other relevant Governmental guidance or professional advice may be taken into account when relevant to any particular matter, which will be decided on a case by case basis.

PART 6: ENFORCEMENT PRINCIPLES

Officers are expected to exercise judgement in individual cases and to treat each case on its own facts. However this does not obviate the need to ensure consistency wherever possible. There are a

number of general principles that should apply to the way each case is approached, which are outlined below:

Standards: set clear standards for the level of service and performance which the public and businesses can expect to receive

Helpfulness: actively work with businesses and individuals, especially small and medium sized businesses, to advise on and assist with compliance; and provide an opportunity for discussion and for compliance before formal enforcement action is taken.

Proportionality: minimise the costs of compliance for businesses by ensuring any enforcement required is proportionate to the actual or potential risk to health, the risk to the environment, or the risk of economic disadvantage to the citizen or business, including whether such disadvantage or risk is, in the view of the Investigating Officer, significant.

Consistency: carry out duties in a fair, equitable and consistent manner. This does not mean uniformity, as there are always a number of different factors applicable in each particular case, which will weigh on deciding a course of action.

Openness: provide information and advice in plain language on the legislation and rules the Council applies, and disseminate this as widely as possible

Fairness: to ensure a fair and even handed approach ensuring that decisions are not adversely influenced by any of the protected characteristics as defined by the Equality Act 2010, of any individual, involved in the case.

Transparency: to ensure that any enforcement action taken is easily understood by residents and businesses, and in addition that anyone making an allegation or subject to an allegation will be kept as well informed of the progress of any investigation as is reasonably possible.

If another agency or authority is the enforcing authority for a particular activity, Officers will inform them of any contraventions they observe during the performance of their duties. When appropriate, enforcement issues will be referred to other agencies.

For example, although this list is not exhaustive, the primary agencies with whom the Council would routinely liaise with are:

- Health and Safety Executive
- Department for Works and Pensions
- Pension Service
- Emergency Services
- Severn Trent Water
- Royal Society for the Prevention of Cruelty to Animals
- Other Local Authorities
- The Environment Agency, Department of Environment, Food and Rural Affairs
- The UK Border Agency
- Any other Government Departments and Agencies.

Confidentiality, data protection and information sharing are covered in detail in separate Council policies with reference to the Data Protection Act 1998 and Freedom of Information Act 2000, and the Environmental Information Regulations 2004 and should be reviewed by Officers when necessary.

PART 7: APPROPRIATE ENFORCEMENT PROCEDURES

Compliance should normally be achieved through informal action such as issuing warning letters or giving advice. Informal action may include:

- Educational courses / training
- Giving advice
- Visits to check
- Warning letters
- Consideration Notices
- Undertakings
- Administrative Penalty
- Acceptable Behaviour Contracts

Where steps to deal with a matter informally does not result in compliance, or in more serious cases, formal enforcement action will be considered, e.g. issuing a statutory notice, fixed penalty notice, offering a formal caution, or prosecution. Formal action may include:

- Fixed Penalty Notices
- Notice of Intention
- Works Notices
- Abatement Notices
- Improvement Notices
- Works in default
- Prohibition Notices
- Control orders
- Closing Orders
- Seizure and Detention
- Simple cautions
- Enforcement Notices and other Notices under the Town and Country Planning Acts
- Injunction
- Revocation of licence
- Fixed Penalty Notices
- Anti-Social Behaviour Orders
- Criminal Anti-Social behaviour Orders
- Prosecution

PART 8: THE DECISION TO PROSECUTE

The Code for Crown Prosecutors will be taken into account, among other factors, in deciding whether a prosecution is appropriate with the final decision being made by the Solicitor within the Corporate Enforcement Team and the Head of Corporate Resources.

Each case will be determined on its own facts however, two primary tests will be applied as a bare minimum in all cases:

The Evidential Test: Is there enough evidence against the Accused?

The Public Interest Test: Is it in the public interest for the case to be brought to court?

There should be a realistic prospect of conviction in order for the evidential test to be met and before proceeding to determine whether prosecution is in the public interest.

If, in the view of the Head of Corporate Resources, either the evidential or public interest test is not met, a prosecution will not be pursued.

PART 9: THE PROCESS

Resolution without informal / formal action

Officers should always consider whether it is appropriate to discuss the circumstances of the case with the alleged offender and, if possible, resolve points of difference prior to informal or formal action being taken.

An exception to this principle will be where immediate action is necessary and proportionate to the issues of each particular case, for example, where there is a need to intervene in order to avoid imminent harm to health and safety.

Whether a simple discussion about a case is appropriate will be determined by the facts of each case. A record should always be retained on the file by the Officer concerned.

Informal Action – Advice & / or Warning

Minor incidents are frequently dealt with by means of informal action and would involve the Officer drawing the matter to the attention of the individual or to the owner of the business or to an appropriate employee, and giving appropriate guidance.

This will be accompanied by a report, to be left with the individual or business within 5 working days of the visit or contained within a written letter of advice or warning, which will again be sent within 5 working days of the visit.

Very rarely will a minor or technical infringement result in more formal action being taken, particularly if it is capable of immediate rectification. A follow-up visit should be made, where circumstances demand, to ensure minor matters have been rectified.

If previous discussions / advice or informal action has been ignored, or if there is another factor that warrants a formal response, an Officer may choose to treat the incident in a formal way.

Formal Enforcement Action

If a matter cannot be dealt with and resolved without formal action, Officers will ensure that allegations are properly investigated. Officers have a range of investigatory powers given by law that may be deployed in their investigations.

At the conclusion of an Officer's enquiries, a decision will be made as to whether or not it is believed that an offence has in fact been committed, and, if this is the case, whether to deal with the matter informally, or whether to pursue a more formal course of action.

Where there are statutory rights of appeal against formal action, information about those appeal rights will be given, either with the Notice governing the action taken or, where this is not appropriate or practicable, in a letter following the action to be sent as soon as reasonably practicable. The letter should either be hand delivered or sent by first class recorded delivery no later than 5 working days after the formal action has been taken.

Formal Action – Statutory Notice

Depending on the powers of the Officer under the applicable legislation, and the remedy that best protects the public from harm, the Officer may issue a Statutory Notice requiring that certain actions should be carried out within a given timescale.

Formal Action – Investigation and Report

In all cases, the Investigating Officer will conduct a fair and impartial investigation and interview persons where there is just cause to do so by way of an Interview under Caution. A report will always be prepared, following the investigation, which shall set out the Investigating Officer's findings and conclusion and recommended action.

The Investigation Process

It is important to ensure that investigations are undertaken only when there are sufficient grounds to warrant an investigation of an offence.

Investigating Officers should always evaluate the quantity/quality of the complaints and consider whether there may be a malicious motive, e.g. racial, harassment campaign etc.

There is no duty to notify a person that an investigation is under way, however, Investigating Officers should to inform a person charged with an offence about the specific details of the offence so that they can respond to the same, if they wish.

Records of all decisions taken in relation to investigations should be kept on file. Where possible Officers should set out the reasoning behind the decisions taken.

An Investigating Officer should always consider the issue of proportionality under Human Rights Act 1998 as well as alternatives to prosecution.

Proving the Offence

Investigating Officers should set out the offences being investigated and try to determine the evidence that is required to prove each element of the offence under consideration.

Irrelevant material should be eliminated at an early stage, but Investigating Officers should be prepared to re-consider this at every stage. Investigating Officers should always consider if information can be obtained from other bodies such as the Police, Health and Safety Executive etc.

If the Investigating Officer is in any doubt as to what is required to prove an offence, the Solicitor in Corporate Resources should be contacted for advice.

Preparing the case for Prosecution

The Criminal Procedure and Investigations Act 1996 and the Code of Practice made thereunder, provides a statutory framework for issues relating to disclosure of material. Non compliance with the provisions of the Act or the Code may result in:

- The acquittal of the accused
- Evidence being excluded
- The accused being wrongly convicted
- A conviction being overturned on appeal.

The Code of Practice identifies and defines the roles of various individuals involved in an investigation process.

1. The **Investigating Officer** is the person involved in the conduct of an investigation. All investigators have a responsibility for carrying out the duties imposed on them by the Code of Practice including, in particular, recording and retaining information and other material.
2. The **Officer in Charge** of an investigation is the person responsible for directing an investigation. He or she is usually the Investigating Officers and will also be responsible for ensuring that procedures are in place for:-
 - (i) recording information;
 - (ii) retaining records of information and other material, in the investigation.
3. The **Disclosure Officer** is the person responsible for:-

- (i) examining material retained during an investigation;
- (ii) revealing its existence to the prosecutor during the investigation and any criminal proceedings arising from it;
- (iii) certifying that (i) and (ii) have been done; and
- (iv) at the request of the prosecutor, disclosing material to the accused.

The Disclosure Officer will usually also be the Investigating Officer.

Schedule of Material Relevant for Prosecution

When preparing a prosecution file, a schedule detailing the material relevant for prosecution must be attached (see **Appendix A**). This applies to all cases recommended for prosecution.

Schedule of Unused Non-Sensitive Material

- Unused material which the Disclosure Officer does not believe is sensitive must be listed on a schedule of non-sensitive material.
- The schedule must include a statement stating that the Disclosure Officer does not believe the material is sensitive.
- For a sample schedule please see **Appendix A**.
- See chart in **Appendix A**, for circumstances in which a schedule of non-sensitive material should be prepared.

Schedule of Unused Sensitive Material

- This schedule should contain material which the Disclosure Officer believes to be sensitive. (i.e. which is not in the public interest to disclose).
- The schedule must contain a statement stating that the Disclosure Officer believes the material is sensitive.

Examples of sensitive material include:

- material given in confidence
- material relating to the identity of informants who may be in danger if their identities are revealed
- material revealing the location of premises used for the purpose of surveillance.

For further examples of sensitive information please see Code of Practice under Part II – Criminal Procedure and Investigations Act 1996.

- For a sample schedule please see **Appendix A**
- See **Appendix A** for circumstances in which a schedule of non-sensitive material should be prepared.

How should material be listed on the Schedules

The Disclosure Officer should ensure that each item of material is listed separately on the Schedule and is numbered consecutively. The description of each item should make clear the nature of the item and should contain sufficient detail to enable the Prosecutor to decide whether he needs to inspect the material before deciding whether or not it should be disclosed.

It may not be practicable to list each item of material separately, as there may be many items of a similar or repetitive nature. Such items can be listed in block and described by quantity.

Any items that the Disclosure Officer thinks might meet the test for primary disclosure must be listed and described individually.

Primary disclosure (Section 3 Criminal Procedure and Investigation Act 1996)

The Prosecutor must, in certain situations, disclose to the Accused, prosecution material which has not previously been disclosed to the Accused which may undermine the prosecution case.

Where the Disclosure Officer has passed a Schedule of Non Sensitive Material to the Prosecutor, this should be forwarded to the accused with Section 3 disclosure.

Where there is no disclosable material, the Prosecutor must advise the defence of this in writing.

Suspected offenders will always be allowed the opportunity to give an explanation of the circumstances surrounding the commission of any alleged offence including, where provided for by the legislation, any statutory defences. Officers may decide to do this by inviting the suspect to attend a formal interview, which will take the form of a question and answer discussion.

Any formal interview about offences will be conducted having regard to the Codes issued under the Police and Criminal Evidence Act 1984 (PACE) and an appropriate record will be made. Suspected offenders will given the opportunity to seek legal advice prior to such interview taking place and may be accompanied by a legal representative at the interview itself.

Once an investigation has concluded, the Investigating Officer will prepare a report for the Solicitor in the Corporate Enforcement Team in order that an appropriate course of action may be considered.

Formal Action - Criteria for Assessing Action on Suspected Offences

The Council will take care to ensure an independent and consistent approach is taken to prosecution decisions. In all cases where the Investigating Officer recommends prosecution the Solicitor within the Corporate Enforcement Team in conjunction with the Head of Corporate Resources will make the decision whether or not to begin such proceedings.

In all cases the appropriate course of action to take will be decided having regard to relevant policies and the Code for Crown Prosecutors, with reference to the evidential and public interest tests outlined above in this policy. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. Where there is likely to be a significant positive impact on

maintaining community confidence as a result of a prosecution, it is likely that such course of action will be pursued.

The eventual course of action following investigation may include the following: -

- No action
- Verbal or Written Advice or Warning
- Simple caution in accordance with current Home Office guidance
- Prosecution

Factors which will make a prosecution more likely include:

- the infringement / offence is alleged to be fraudulent,
- there has been a deliberate or persistent breach of legal obligation in circumstances which caused or was likely to cause substantial loss or prejudice to others through negligence or gross carelessness;
- there has been a serious endangerment of the health safety and well being (including mental well being) of members of the public, Officers or elected members, or of animals or the environment;
- there has been an obstruction of an Officer in carrying out his or her duties under this policy;
- there has already been a caution or administrative penalty for the type of alleged offence / infringement now being considered;
- it is generally considered that it would be in the public interest to prosecute, given the nature of the alleged infringement / offence.

The above is not exhaustive and other factors may be relevant to a decision taken to prosecute by the Council, depending on the circumstances of each case.

Caution

In appropriate circumstances, where a prosecution would otherwise be justified, a simple caution may be issued, with the agreement of the Accused. This will be done in accordance with Home Office guidelines.

The purpose of a caution is to avoid unnecessary court action, also to prevent an individual or business from re-offending but can only be used where the Accused fully admits the offence and agrees to it being dealt with by way of a simple caution.

Cautions are recorded by the Council and can be cited in court should a future infringement occur. This may include an infringement prosecuted by the Police or another body. As indicated above, the Council will usually share relevant information (such as the fact that a simple caution has been given)

with other investigators where satisfied that this will help in the prevention and detection of crime. No court proceedings are involved in the giving of a simple caution.

A simple caution will be issued in accordance with the guidance in Home Office Circular 016/2008. There is no legal obligation for any person to accept the offer of a simple caution and no pressure will be applied to that person to accept. If a formal caution is declined, a prosecution may follow.

A caution or administrative penalty may be used as an alternative to prosecution.

A caution or administrative penalty will only be issued if there is evidence an individual is guilty, they are over 18 years of age and they admit to committing the offence by signing a declaration. Under no circumstances will a caution or administrative penalty be issued without first conducting a PACE interview in accordance with relevant legislation.

A caution or administrative penalty is not a criminal conviction. The caution or administrative penalty will remain on the Council's record for at least 2 years and may influence a decision to prosecute should the individual re-offend. The Accused must be notified of this in writing.

In all cases, a prosecution case file must be laid out in a consistent and uniformed way to assist the Council Solicitor when taking the case to Court. An example of the way in which a case may be presented by an Officer for prosecution is attached at **Appendix A** and this should be followed at all times, where possible.

Appendix B sets out a basic flow chart displaying a summary of the routes that are available to deal with enforcement matters.

Arrest Summons Number (ASN)

A number of the offences investigated by the Council will be recordable, requiring the results to be recorded on the Police National Computer (PNC). There is a requirement for previous convictions of an Accused to be presented at subsequent court proceedings. This is vitally important as the PNC is the only national database open to law enforcement where details of known criminals and their convictions are recorded and made available for the prevention and detection of crime

A recordable offence is one in which a term of imprisonment is available as a sentence. If there is any doubt as to whether an ASN is required, advice should be sought from the Legal Team.

The ASN can be obtained by completing a Form NPA01 and submitting it to the relevant police force. This can be done by email at the following address: npa.prosecutions@leicestershire.pnn.police.uk

A copy of a blank Form NPA01 can be found at **Appendix C**.

The ASN number will be needed before the Legal Team can arrange to lay information and obtain a summons.

In all cases, prior to passing the file to the Solicitor for laying information, Investigating Officers should contact the PNC Bureau of the relevant police force and obtain an Arrest Summons Number (ASN).

PART 10: OBSTRUCTION OF OFFICERS AND POWER OF ENTRY

Enforcement and Investigating Officers have a wide variety of duties, many of which need them to act as investigators similar to tax inspectors, revenue and customs officers and police officers. To enable them to act effectively, the various enactments have given Officers strong powers of entry, seizure and inspection.

If individuals or companies obstruct Officers or do not provide the requested information, they commit an offence that may result in legal action being taken. Officers rarely have to use these powers, but for them to be effective the Council will continue to uphold and support them.

Officers will use their powers of entry only when necessary to effect an inspection of the premises or in the process of an investigation. The Council will always actively support Officers acting in good faith, including prosecuting those individuals who obstruct or assault Officers during investigations or inspections.

When the legislation allows, an Officer may examine premises and articles, take photographs, remove articles, take samples or require information and may in some instances be accompanied by other authorised persons. In appropriate cases an Officer may seek a warrant from a Magistrates' court to gain entry into premises.

An Officer will be expected to explain both the justification and the legal basis for the above actions upon demand and a contemporaneous written record should in the majority of cases always be kept on the case file. If the circumstances of a case are such that this can not be done immediately then it must be recorded and placed on file as the first available opportunity, following the use of such powers. This may be applicable for example, where there has been a need to act urgently, in order to avoid imminent harm to health and safety.

PART 11: USE OF THIS POLICY AND REVIEW

The content of this document must be well known, understood and applied by Officers in any of the regulatory service areas within the Council, particularly when related to enforcement or prosecution. Application of this policy may be monitored through audits carried out by the Head of Corporate Resources or the Council's Solicitor conducted on a sample of completed case files, complaint forms and letters of caution. This process will be a positive aid to improving the quality of the service provided by the Council.

This policy will be reviewed biennially or when there have been significant changes in regulatory legislation.

This document will be available on the Council website oadby-wigston.gov.uk.

PART 12: PROTECTION OF HUMAN RIGHTS AND EQUALITIES

This policy and all associated enforcement decisions will take account of the Human Rights Act 1998 and the Equalities Act 2010. Oadby and Wigston Borough Council is committed to promoting a just society that gives everyone an equal chance to learn, work and live, free from discrimination and prejudice.

APPENDIX A - PROSECUTION REPORT

Investigating Officer:	.....	Ext	.....
Officer in Charge:	.....	
Disclosure Officer:	.....	

Alleged Offence(s):	.....	
.....			
Contrary to:	.....	
.....			

Date of Offence(s) committed:	.....	
.....			
Date of any Time Limit to prosecution	.....	

Accused:	.....	
Address:	.....	

Details of property ownership:	.....	
.....			

EVIDENCE

Details of all potential prosecution witnesses *(please include Council employees details if applicable)*

Name	Address	Are they willing to act as Prosecution witness	Please indicate if S9 witness statements enclosed
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

Details of other evidence relied upon i.e. exhibits/records of interviews

The following Schedules are enclosed: *(please tick or cross)*

1 Schedule of material relevant for prosecution

.

2 Schedule of unused non-sensitive material

.

3 Schedule of unused sensitive material

.

} These schedules will
} only be required in a
} summary offence
} when a 'not guilty'
} plea is entered.
} Please
} enclose if a 'not guilty'
} plea is anticipated

Any other information:

.....
.....
.....

Summary of facts *(any documents referred to should be enclosed and labelled for easy reference)*

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

.....

.....

.....

.....

.....

Any mitigating circumstances/likely defences:

.....

.....

.....

Any relevant case law:

.....

.....

Has any other service area been involved or likely to be involved with this matter? If so, please give details

.....

.....

.....

.....

Accused's relevant previous convictions or cautions (*if known*)

.....
.....

Please indicate whether personal service of the summons is possible *(please tick)*

Yes No

Details of Officer time and hourly rate

.....
.....

Delegated Powers *(please tick)* Yes No
(Enclose copy of Officers authority and standing order)

If no, please give details of Committee Authority:

.....

Investigating Officer..... Date.....

I confirm that, having reviewed the evidence, I agree with the Investigating Officer, that this matter should now proceed to prosecution

Enforcement Officer..... Date

For use by Legal only:

Date Received:

File Reference:

Response to be sent
by:

Statute Time Bar Date

SCHEDULE OF MATERIAL RELEVANT FOR PROSECUTION

OADBY & WIGSTON BOROUGH COUNCIL

V

.....

No of

Item Number	Description of Item	Tick if attached

**SCHEDULE OF UNUSED NON-SENSITIVE MATERIAL
OADBY & WIGSTON BOROUGH COUNCIL**

V

.....

No of

Item No.	Description of Item	Location	*Disclosure

<p>I, (name) as Disclosure Officer, believe that none of the above material is sensitive</p> <p>Signed Date</p>	<p>Prosecutor name:</p> <p>Signed</p> <p>Date</p>
---	---

* For Prosecutor use: 'C' = copy to defence

SCHEDULE OF SENSITIVE MATERIAL

OADBY & WIGSTON BOROUGH COUNCIL

V

.....

No..... of

Item No.	Description of Item	Location	*Disclosure

<p>I, (name) as Disclosure Officer, believe that the above material is sensitive</p> <p>Signed Date</p>	<p>Prosecutor name:</p> <p>Signed</p> <p>Date</p>
---	---

* For Prosecutor use: 'C' = copy to defence

SCHEDULES AND DISCLOSURE RULES

SCHEDULES AND DISCLOSURE	INDICTABLE OFFENCES	EITHER WAY OFFENCES			SUMMARY OFFENCES	
		Tried on Indictment (i.e. Crown Court)	Tried summarily (i.e. Magistrates Court – not guilty)	Magistrates Court – guilty plea	Not guilty plea	Guilty plea
Schedule of material relevant for prosecution	Yes	Yes	Yes	Yes	Yes	Yes
Schedule of non-sensitive material	Yes	Yes	Yes	No	Yes	No
Schedule of sensitive material	Yes	Yes	Yes	No	Yes	No
Primary Disclosure	Yes	Yes	Yes	No	Yes	No
Section 5 Defence Statement	Yes, if primary disclosure has taken place	Yes, if primary disclosure has taken place	Yes, if primary disclosure has taken place	No	Yes, if primary disclosure has taken place	No
Secondary Disclosure	Yes, once defence statement has been provided	Yes, once defence statement has been provided	Yes, once defence statement has been provided	No	Yes, once defence statement has been provided	No

CERTIFICATE OF SERVICE

(MC Rules 1981, r 67)

I,

of Oadby and Wigston Borough Council, Council Offices, Station Road, Wigston, Leicestershire, LE18 2DR,

hereby certify that I served
with the following document(s):

- (1) Summons
- (2) Statement of ABC together with exhibits
- (3) Statement of DEF together with exhibits
- (4) Statement of GHI together with exhibits
- (5) Statement of Facts
- (6) Notice to Accused: Plea of guilty in absence procedure, Plea and Mitigation Form and Means Enquiry Form (S12 MCA 1980)
- (7) Notice to Accused: Proof By Written Statement and Reply Form (R70 MCR 1981)
- (8) Notice to Accused of Costs Application and Schedule of Prosecutors Costs

of which this is a true copy/ these are true copies, by delivering the said document(s) to him/her personally/ by leaving them at Leicester, being his/her usual place of abode.

atam/pm on theday of20

Dated day of 20

Signed

PREPARATION OF WITNESS STATEMENTS

A statement is a written record of the information a person can give concerning a matter under investigation. A "witness" is anyone other than the Accused, who may be called to give evidence in any subsequent court hearing.

In criminal proceedings the statement must conform with the requirements of Section 9 of the Criminal Justice Act 1967 (the Magistrates Courts Act 1980 and the Magistrates Courts Rules 1981). Section 9 requires that

1. The statement purports to be signed by the person who made it.
2. The statement contains a declaration by that person that it is true to the best of their knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.
3. If the statement is made by a person under 21, it shall give his or her age.
4. If the statement is made by person who cannot read it shall be read to him before he signs it and shall be accompanied by a declaration by the person who read the statement that it was so read.

A pro forma witness statement may be obtained from the Legal Team and an example is set out in this Appendix. The statement should be in chronological order and each paragraph should be numbered.

Statements made by Officers

These should contain the following information:

1. Name and job title
2. Brief description of main duties
3. Authority to act – either general or specific committee authority in relation to matter (see prosecution report). Attach authority as exhibit.
4. Chronology of events prior to offence if relevant to show course of conduct. Details of any cautions.
5. Details of any inspections/visits/telephone calls.
6. Details of offence. Refer to relevant statute
7. Attach copies of any correspondence/notices/photographs if relevant. Photographs need to be accompanied by certificate of processing.
8. Concluding paragraph explaining why reached decision to prosecute.

Statements made by third parties

These should contain the following information:

1. Name and address (not telephone numbers)
2. Involvement in matter – i.e. neighbour or complainant
3. Chronology if relevant to show course of conduct and details of the offence from their perspective.
4. Exhibit any letters/diary sheets/other relevant documents.

Taking a statement from a third party

An Officer taking the statement should follow the following practices:

1. The statement should not be taken in the presence of another witness.
2. The witness should be allowed to say all he knows. Questions may be necessary to bring out all the essential points, clarify the contents and arrange the information into information in a logical, chronological sequence.
3. The events should be recorded in the witness's own words, providing they make sense. Technical or official jargon should be avoided.
4. The statement should be written in blue or black ink or be typed.
5. Before the witness signs the statement he should be given the opportunity to read it and make any alterations. The witness should initial any alterations.
6. Each page of the statement must be signed and dated. Where the witness is unable to read or write the appropriate declaration must be signed and dated by the Officer.

After taking the statement from a third party, the witness may be given a copy of the statement. He or she should be advised that he might have to attend court to give evidence and that giving a statement is not necessarily an alternative to a court appearance.

The home and work telephone numbers of the witness should be kept separately on the file.

The statement is likely to be seen by the Accused. Should the witness fear reprisals, their name and address can be omitted from the statement. Again an Officer should keep these details on the file.

The Hearsay Rule

Subject to certain exceptions a witness can only give evidence of matters within his or her personal knowledge. One of the exceptions to the rule against hearsay enables a witness to

give evidence from documentary records such as trade or business records. The record should be attached as an exhibit and the appropriate declaration included at the end of the statement (Corporate Resources (Legal team) will provide the wording of declaration).

A witness can also give evidence of the contents of a document produced by computer. A responsible person with knowledge of the operations and functions of the computer should give this kind of evidence. The witness should identify and describe how the document was produced, exhibit it and include the relevant declaration (Corporate Resources (Legal team) will provide the wording of the declaration).

Exhibits

Exhibits should be attached to the statement and be prefaced by a front sheet (this appendix sets out an example of the format of a front sheet). Exhibits should be referred to at the relevant point in the body of the statement using the initials of person making the statement and number of exhibit referred to, sequentially, for example as follows, for a witness named Joe Bloggs:

“I refer to the letter/document/photograph marked “**Exhibit JB1**” and annexed hereto”



BOROUGH OF OADBY AND WIGSTON

**Witness Statement
(Criminal Justice Act 1967 s9; Magistrates Court Act 1980
ss.5A(3)(a) & 5B; Criminal Procedure Rules r27.1)**

STATEMENT OF :

Date of Birth : (if over 18, write "Over 18")

Occupation :

This statement, consisting of _____ pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated

Signed.....

My name is

Signed:

(print name)

Witnessed by.....

(print name)



BOROUGH OF OADBY AND WIGSTON

**Witness Statement
(Criminal Justice Act 1967 s9; Magistrates Court Act 1980
ss.5A(3)(a) & 5B; Criminal Procedure Rules r27.1)**

STATEMENT OF :

Continuation sheet number

Signed:

(print name)

Witnessed by

(print name)

Exhibit Label

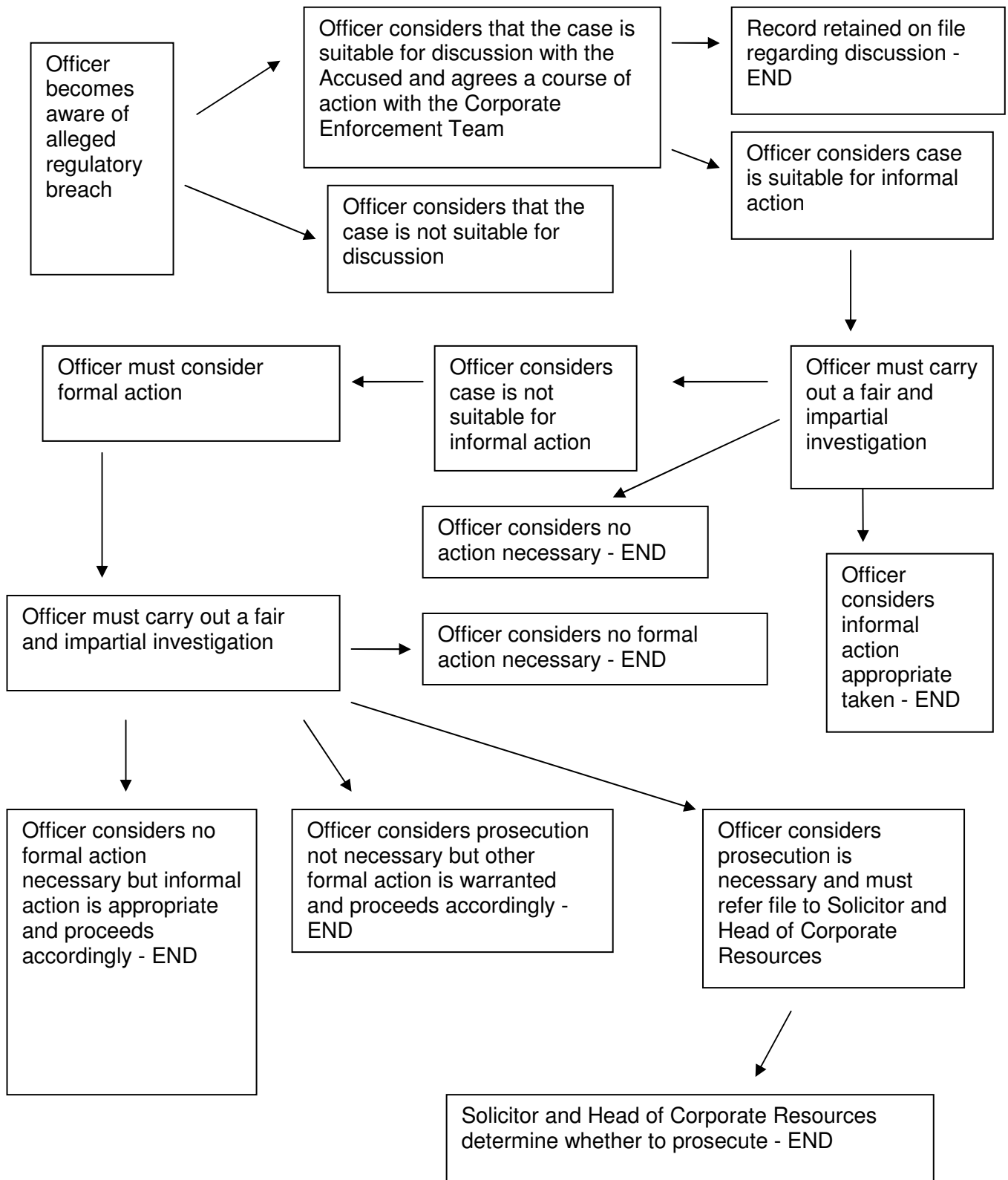
Description of Exhibit:
Letter dated 00/00/000 from Oadby & Wigston Borough Council to the Accused

I identify this as **“EXHIBIT JB/1”**

Signed(Joe Bloggs)

Dated.....

Appendix B – Basic Procedural Flowchart*



*** Note to Officers – this flowchart is an aide memoire only and does not obviate the need to be aware of and abide by the complete policy at all times –**

All anticipated actions will be discussed where appropriate before such action is taken, within the Corporate Enforcement Team Meetings

APPENDIX C – FORM NPA01

NON - POLICE AGENCIES			
(Notification of Proceedings to Police)			
Agency Name		Agency Ref	
Address		Tel Number	
Officer In Charge		Signature	
For Police Use Only			
A/S Ref Number		PNC Court Case Ref	
PNC ID		CRO Number	
Entered on PNC by		Date	dd/mm/yyyy
Name Charged / Summoned			
Surname		Forename(s)	
Alias	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Nickname	
Sex		Date of Birth	dd/mm/yyyy
Height	(Feet/Inches)	(cms)	
Nationality		Place of Birth	
NI Number		Colour	
Occupation		Driver Number	
Home Address		Other ID Number	
		Post Code	
		Address Type	Select Address
Other Address		Post Code	
		Type of Address	Select Address

Description						
					<input type="checkbox"/> Euro	<input type="checkbox"/> UK
Ethnic Appearance		Build		Shoe Size	size	
Eye Colour (s)	(Left)		(Right)		Glasses	
Hair	Type	Colour 1	Dyed/Greying	Colour 2	Features	
Facial Hair	<input type="checkbox"/> Left <input type="checkbox"/> Right <input type="checkbox"/> Ambidextrous	Colour 1	Dyed/Greying	Colour 2	Features	
Handed		Accent				
Marks / Scars / Abnormalties	Description	Positioning	Body part	(State further description here)		
Marks / Scars / Abnormalties	Description	Positioning	Body part	(State further description here)		
Habitual Dress		Habits/Mannerisms				
Special Skills		Jewellery Worn		(State here if worn permantly)		

Offence Information									
Process Stage		Date		Time	hh:mm				
Photograph		Fingerprints		CRO Number					
DNA Sample	<input type="radio"/> 1	If Taken	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	DNA Barcode	<input type="radio"/> 7	<input type="radio"/> 8	
Total number of offences									
Offence	In plain language, include Act and Section of Offence								
ACPO Offence Code									
Offence Start Date	dd/mm/yyyy	Time	hh:mm	Offence End Date	dd/mm/yyyy	Time	hh:mm		
Address/Location of Offence If home/other address as stated above please select adjacent									
								Post Code	
Method Used in Offence Show as much information as possible especially in regards to words spoken/ weapons used/ means of entry/ exit and part									
played by any ACCOMPLICE showing name and address where known									
Charged/Summoned on Date	dd/mm/yyyy	Court Date	dd/mm/yyyy	Time	hh:mm				
Court Name									
Cautioned on Date		Cautioning Officer		Rank					
Surname Cautioned				Forename(s) Cautioned					