



Fermanagh & Omagh
District Council

Comhairle Ceantair
Fhear Manach agus na hÓmaí

ENFORCEMENT AND REGULATION PROCEDURE

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SECTION 1

Introduction

The Council is the enforcing authority for a wide range of legislation including local by-laws. The areas covered by enforcement include the following

Building Control
Cleansing and Waste management
Environmental Health
Animal Welfare and Dog Control
Licensing
Planning
Housing
Off Street Car Parking

In general, the enforcement role has been delegated to Senior Officers of the above departments though some enforcement decisions may be made by the Council in accordance with the Council's Scheme of Delegation.

The Council's aim is to provide a better environment for its citizens both for the present and the future. It will achieve much of this through education by providing advice and regulating the activities of others however, securing compliance with regulatory requirements using enforcement powers, including prosecution, can play an important role in achieving this aim.

Aim and Scope of the Procedure

This procedure sets out the principles and approach which the Council and its officers will follow so as to provide an effective and fair service, and to ensure consistent and open enforcement. It is written for the guidance of the Council and its officers and will be made available to any business representatives or members of the public who enquire about our procedures. It applies to all dealings whether formal or informal between businesses and members of the public with officers of the Council in relation to regulation and enforcement matters.

In addition to this generic procedure, officers have been issued with a range of more specific enforcement guidelines and procedural documentation to support them in making enforcement decisions.

When applying this procedure the Council recognises its duty to act in accordance with its statutory responsibilities including:

- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000,
- The Criminal Procedure and Investigations Act 1996
- The Police and Criminal Evidence (NI) Order 1989
- The Data Protection Act 1998 and

- All associated Codes of Practice.

The Council is committed to fulfilling its responsibilities under Section 75 of the Northern Ireland Act 1998. Therefore any decision regarding enforcement will be impartial and shall not be influenced by the religious beliefs, political opinion, racial group, age, gender, marital status or sexual orientation of any alleged offender, complainant or witness.

SECTION 2

Principles of Enforcement

The Council believes in effective but fair regulation and supports the NI Better Regulation Strategy and the Principles of Better Regulation which include **proportionality** in application of the law and in securing compliance; **targeting** of enforcement action; **consistency** of approach, **transparency** about how the Council operates and what those regulated may expect from the Council, and **accountability** for the Council's actions.

Proportionality

In relation to enforcement actions, proportionate means that where a person or business has failed to comply with a statutory requirement, the Council will take into account the risk posed by the failure and the cost which would be incurred in securing compliance with the law.

Where possible the Council will minimise the costs of compliance by ensuring that any action it requires is proportionate to the risks detected. As far as the law allows, the Council will take account of the circumstances of the case including

- risk to the public or the environment
- seriousness and consequences of the breach
- attitude and actions of the offenders, and
- history of any previous incidents or breaches of the law.

The Council will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency

The Council will aim to be consistent in its response to all incidents and complaints, in the advice Officers give and in using its enforcement powers, including when deciding whether to prosecute. Where appropriate, it will liaise with other enforcement bodies and organisations, including the Local Authority Better Regulation Office, to ensure that its activities are consistent with other enforcers regionally and nationally.

The Council, however, recognises that consistency does not simply mean uniformity and Officers must be able to exercise their professional judgement in individual cases.

Whilst the Council will try to achieve consistency internally and with other enforcing authorities, it alone will determine whether a prosecution or other enforcement action is appropriate having considered the circumstances of the case and any prevailing legal requirements.

Decisions on enforcement action are a matter of professional judgement and the Council, through its Officers, should exercise discretion. The Council will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

Transparency

The Council will be transparent and open in all its activities. It will provide information and advice in plain language on the rules that it applies and will disseminate this as widely as possible. It will be open about how it sets about its work, including any charges that it sets. It will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Transparency is an integral part of the role of council officers and the council continues to train its staff and to develop its procedures to ensure that:-

- Where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a distinction being made between legal requirements and advice on best practice.
- Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to prevent serious illness/injury or to prevent evidence being destroyed.
- Where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.
- A clear written explanation is given of all rights of appeal against formal enforcement action at the time the action is taken. (Whenever possible this advice will be issued with the enforcement notice.)

Having due regard to legal constraints and requirements, keep all other relevant parties informed during investigations and with respect to enforcement decisions.

Targeting

The Council shall ensure that regulatory efforts are directed primarily towards those whose activities give rise to the greatest risk of social, economic and environmental impacts. Action will be primarily focused on law-breakers or those directly responsible for the risk and who are best placed to control it.

Accountability

The Council fully recognises that they are accountable to the public for their actions. Consequently policies and standards have been put in place against which the Council's actions can be judged and procedures exist for dealing with comments and handling complaints.

Complaints about service

In the event that a "customer" is dissatisfied with the service provided, there are a number of forms of recourse available as outlined in Section 6, which Officers will ensure the customer is made aware of. The exact procedure followed in any particular case will depend not only upon the nature of the grievance itself but also the course of action the complainant wishes to pursue.

The Council will provide well publicised, effective and timely complaints procedures easily accessible to individuals and organisations. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Helpfulness

The Council believes that prevention is better than cure and that its role, therefore, involves actively advising on and assisting with compliance. It will provide a courteous and efficient service and its staff will identify themselves by name. It will provide a contact point and telephone number for further reference and it will encourage individuals and organisations to seek advice/information.

SECTION 3

Arrangements for Enforcement

The Council shall make adequate arrangements to provide effective enforcement services by ensuring that

- Sufficient numbers of enforcement Officers are employed who are adequately qualified, trained, experienced and competent to carry out their duties.
- All enforcement actions are taken by Officers who have been specifically authorised in accordance with the relevant legislation and the Council's Scheme of Delegation
- All investigations are carried out in compliance with the Police and Criminal Evidence (NI) Order 1989, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and relevant codes of practice

Where necessary, specific enforcement guidelines, procedures and documentation has been and will continue to be developed to support officers making enforcement decisions and to ensure compliance with all relevant statutory codes of practice and official guidelines.

Working with other Regulators and the Courts

Where the Council and other enforcement bodies have the power to prosecute, the Council will liaise with that other body to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence. The Council will also consult with other local authorities acting as Lead/Home/Primary Authorities as appropriate. The Council will, when appropriate and when requested to, seek to raise the awareness of the courts of the gravity of certain offences and the full extent of their sentencing powers. In certain cases it may also be appropriate to draw the attention of the courts and/or the DPP to the fact that disqualification of a director may arise under relevant legislation.

SECTION 4

Enforcement Action

Officers will determine what, if any, enforcement action is appropriate, in accordance with the aforementioned principles, from the following informal and formal options:

Types of Enforcement Actions

Where offences are observed, the actions and sanctions taken by Officers should aim to:

- secure compliance
- change the behaviour of the offender
- be responsive and consider what is appropriate for the particular offender
- be proportionate
- deter further non-compliance
- ensure that action is in the public interest

Where an offence has occurred the Council expects that providing advice or guidance will be all that is required in the majority of cases. However, where such methods have been, or are likely to be, unsuccessful or where the breach is of a serious nature then formal enforcement action will be taken. In addition, formal enforcement action may be taken where offences are not serious in isolation but are likely to have a cumulative effect.

There are a wide range of actions available to the Council in dealing with offences. The following describes the main types of actions available. In determining the most appropriate action to take, Officers will consider the circumstances of the incident and this procedure.

Action Available	Explanation	Circumstances
Informal Advice	Verbal or written advice identifying non compliance and remedial measures. No Follow-up action	Where the offence is minor and the risk from non-compliance is low
Informal warnings	Verbal or written warning requiring remedial measures within a defined period of time. Will be followed up to ensure compliance	Where non-compliance is not posing a serious risk and it is expected, from what is known of the offender, that informal action will achieve compliance.
Enforcement Letters	Warning that a recurrence or continuation of an infringement will result in legal action or service of a statutory notice	Where non-compliance is not posing a serious risk and it is expected that the offender will achieve compliance, however the offence itself is significant, recurring or longstanding.
Statutory Notices	Where available under specific legislation, usually requires persons to take action or prohibits certain activities. Serving a notice does not preclude prosecution. Failure to comply is often an offence and prosecution will normally follow. Some notices require emergency action.	There are significant contraventions of legislation and/or a lack of confidence in the proprietor/individual or enterprise to respond to an informal approach

Fixed Penalty Notices	Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low level enforcement tool and enable a defendant to avoid a criminal record.	Where a person or business fails to accept or pay a fixed penalty notice, the Council will consider escalation of enforcement action. This may include consideration of a prosecution for the original offence under the primary legislation. Where a written/fixed penalty notice has been issued on a previous occasion, and a further offence is committed, for the same contravention, on a separate occasion, the Council may then consider prosecution if appropriate.
Formal Caution	A formal caution may be issued to an individual or business where there is an admission of guilt, and extenuating circumstances exist which make prosecution inappropriate. A formal caution is a written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. The acceptance of a formal caution will be noted locally and brought to the Courts attention if the offender is convicted of a subsequent offence.	The Council will take account of current Home Office guidelines when considering whether to offer a formal warning. Where a person declines such an offer the Council will consider taking alternative enforcement action, which will usually take the form of a prosecution. The Council recognises that other bodies such as home and originating authorities will require to be advised of the formal cautions issued by the Council and their outcome.
Revocation, suspension or variation of permits, approvals and licenses	Revoking or suspending a licence, approval or permit is a serious decision that will normally only be taken by elected members, in line with the Council's scheme of delegation.	A licence, permit or approval may be revoked or suspended if any condition attached to the licence is breached or where an activity presents a serious risk.
Works in default	this action is permitted under certain legislation and is reserved for those cases where there is an imminent danger to persons or property and the legal process would not provide adequate remedy	In cases where work in default is carried out, the Council will make every effort to recover the costs of the works from the relevant party.
ASBO	The Council can apply to the Magistrates Court for an antisocial behaviour Order which will prohibit a person from acting in an antisocial manner or from carrying out an act which contributes to anti-social behaviour	Where there has been persistent, relatively low level offending or more serious matters that cause harassment, alarm or distress to others. An order is necessary to protect people from that type of behaviour in the future. An ASBO may be sought upon conviction but may also be sought where a person has not been convicted, or even charged, with an offence, provided there is sufficient evidence that an ASBO is necessary.
Injunctive proceedings	May be sought to require a party to either do a specific act or refrain from doing a specific act or acts	This will be considered in instances where the use of other enforcement powers would not be a sufficient remedy, e.g. where a person repeatedly fails to comply with the law or where there is an imminent risk to public health or public safety
Prosecution (Section 5)	Prosecution is an important part of enforcement. It aims to punish wrongdoing to avoid a recurrence, and to act as a deterrent to others	A prosecution will not be commenced by the council unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction.

SECTION 5

Prosecution

The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing to avoid a recurrence, and to act as a deterrent to others. It follows that it may be appropriate to use prosecution to ensure certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.

The Council recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of the Public Prosecution Service Code for Prosecutors.

A prosecution will not be commenced by the council unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead. Where there is sufficient evidence, a prosecution will not be commenced or continued by the council unless it is in the public interest to do so.

The Council's Prosecution Procedure and decision mechanism for considering prosecution will be followed in all cases where prosecution is being considered by officers as part of the Council's Scheme of Delegation.

Offences by a Person Under the Age of 18 Years

When a minor is alleged to have committed an offence the name, address, age and date of birth of the suspected offender should be obtained, together with the name and address of their parent or legal guardian. Once the age of the offender has been ascertained, the correct course of action can then be followed. Authorised Officers will operate in accordance with the DOE Guidance and associated Council procedures and avoid criminalising minors in all but the most exceptional of cases.

A person under the age of 18 is deemed a minor by the courts and is normally prosecuted in the Youth Court. The Council does not normally prosecute minors and will instead use one of the other enforcement actions detailed in this procedure. However, where an offence is truly exceptional and the circumstances are straightforward and 'clear cut' and no alternative sanction is appropriate, consultation with the Youth Justice Agency will take place prior to the service of any fixed penalty notice/or prosecution. A formal interview will also take place before such action is taken.

A young person's parents or legal guardian should be informed at the earliest opportunity, ideally by letter, explaining the action to be taken, and to give the opportunity to discuss the case with the relevant officer of the council and to be present at any formal interview.

For persistent offenders aged 17 years old or those who behave aggressively towards an Enforcement Officer, a Fixed Penalty Notice can be issued using the same procedure as for adults.

Vulnerable Adults

If there is any doubt in the Authorised Officer's mind that the person who has committed the offence is not capable of understanding what they have done, have significant learning disabilities, or otherwise, formal action would not be in the public interest, hence education should be considered. This could include asking the person to rectify their actions, or explaining the consequence of their actions. In any event, the evidence should be discussed with the line manager before a decision on formal action including issuing a fixed penalty is made.

Death at Work

Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter.

The PSNI are responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the Director of Public Prosecutions (DPP) to consider possible manslaughter charges. If in the course of a health & safety investigation evidence indicating that manslaughter may have been committed, the Council will work to the principles of the Northern Ireland Agreement for Liaison (Investigation of work related Deaths) and ensure matters are properly co-ordinated with both the PSNI and DPP.

SECTION 6

Complaints Related to Enforcement Action Decisions

Appeals

If a person wants to appeal against any enforcement action taken it is recommended that legal advice should be sought. However, the following information will be made available by the council;

- Officers will advise persons against whom any enforcement action has been taken of their right to make representation to the Officer's Head of Service.
- If the Council serve a notice and the legislation used has a statutory appeal provision, details of that right of appeal and how it should be lodged will be served upon the recipient at the same time as the notice.

SECTION 7

General Provisions

Public Access to Information

This procedure will be made freely available to all members of the public on request and a copy will be posted on the Council website.

Officers will adhere to the restrictions placed on them by legislation in relation to the release of any information to a third party, obtained by them in the course of their duties. When convictions have been obtained however, the Council will, in addition to reporting the details to the appropriate authorities, consider alerting the media and making the details of the conviction public. Such action will serve to draw the attention of a wider audience to the need to comply with legal requirements and deter others tempted to disregard their legal duties.

In accordance with the Environment and Safety Information Order, the Council will keep and make available, a public register of statutory notices.

Revision

This procedure will be reviewed every two years or as necessary to ensure that it satisfies legal requirements and our customers' expectations of the service.

Comments

The Council welcomes comments on this procedure and on how we can improve services. Comments can be in the following ways:

- In person
- By telephone 0300 303 1777
- In writing Townhall The Grange
 2 Townhall Street Mountjoy Road
 Enniskillen Omagh
 Co. Fermanagh Co Tyrone
 BT74 7BA BT79 7BL
- By email info@fermanaghomagh.com
- Via our website www.fermanaghomagh.com



Fermanagh & Omagh
District Council

Comhairle Ceantair
Fhear Manach agus na hÓmaí

PROSECUTION PROCEDURE

Date: APRIL 2015

FERMANAGH AND OMAGH DISTRICT COUNCIL PROSECUTION PROCEDURE

1. INTRODUCTION

This procedure sets out the principles upon which the Council exercises its judgement in all cases which give rise to potential criminal proceedings. Its purpose is to promote efficient, consistent and fair decision making so as to develop and maintain public confidence in the Council's performance of this aspect of its duties.

Officers responsible for recommending that a prosecution should take place have the opportunity to exercise discretion at various stages of the enforcement and prosecution process. Officers must use that discretion to serve in the interests of justice, the public, victims, witnesses and offenders in accordance with the Principles of Better Regulation, which the Council has adopted.

The Council recognises that the prosecution of individuals or businesses is a serious matter. Fair and effective prosecution is essential to the maintenance of law and order whilst prosecution has serious implications for all concerned, be they victims, witnesses or offenders. This procedure has been devised so that officers of the Council can make fair and consistent decisions concerning the recommendation and decision to prosecute.

2. THE DUTIES OF OFFICERS

The investigating officer and Head of Service/Director involved in recommending/deciding to prosecute must take an independent view of the evidence in any prosecution. When applying this procedure the Council recognises its duty to act in accordance with its statutory responsibilities including:

- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000,
- The Criminal Procedure and Investigations Act 1996
- The Police and Criminal Evidence (NI) Order 1989
- The Data Protection Act 1998 and
- All associated Codes of Practice.

The Council is committed to fulfilling its responsibilities under Section 75 of the Northern Ireland Act 1998. Therefore any decision regarding prosecution will be impartial and shall not be influenced by the religious beliefs, political opinion, racial group, age, gender, marital status or sexual orientation of any alleged offender, complainant or witness.

3. THE CRITERIA TO BE APPLIED TO EACH PROSECUTION

(See further specific information in the attached Appendix 1)

Each case is unique and must be considered on its own merits, but there are general principles that apply in all cases. There are two stages in the decision to prosecute. The first stage is the **evidential test**. If the case passes the evidential test, consideration must be given as to whether a prosecution is needed in the public interest.

The second stage is the **public interest test**. The Head of Service/Director will only consider prosecution when the case has passed both tests.

3.1 THE EVIDENTIAL TEST

The Head of Service/Director must be satisfied that there is enough evidence to provide a realistic prospect of conviction against the defendant.

Consideration must be given as 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 the court, 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, consideration must be given as to 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.

3.2 THE PUBLIC INTEREST TEST

The public interest must be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. In serious cases, a prosecution will usually take place unless there are public interest factors against prosecution which clearly outweigh those in favour. Although there may be public interest factors against prosecution in a particular case, quite often the prosecution should go ahead and those factors should be put to the court when sentence is being passed. Consideration must also be given to the probable public benefit of a prosecution and the importance of the case e.g. whether it might establish a legal precedent.

The Head of Service/Director must balance factors for and against prosecution carefully and fairly having regard to any explanation offered by a potential defendant and also the previous history of the party concerned. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute, but others may suggest that another course of action would be better.

4.0 RECOMMENDATION OF FORMAL ACTION BY THE HEAD OF SERVICE/DIRECTOR

The investigating officer will usually be the person in possession of the facts of the case and will make a recommendation to prosecute using the appropriate pro forma to the Head of Service/Director who will consider all the facts of the case and the criteria outlined in this procedure. The Head of Service/Director will in turn sanction the recommendation to prosecute or otherwise and this decision will be recorded on the same pro forma (Appendix 2).

5.0 CHARGING PROCEDURE AND PRACTICE

When the Head of Service/Director has made the decision to prosecute an offender, the investigating officer will consult with the Council Solicitor on charges to be brought against an accused person and for what offence he/she will be prosecuted. Officers will exercise that discretion using the following principles:-

- Charges will be brought which reflect the seriousness of the offence.
- Regard will be had to the Courts sentencing powers.
- The charges will be selected in such a way so that the case can be presented in a clear and straightforward manner.
- Efforts should be made to keep the charges to a minimum. Numerous charges can impose an unnecessary burden upon the Courts and numerous charges can disguise the essential features of a case and make such a case unwieldy.
- Multiplicity of charges should never be used in order to obtain guilty pleas or to seek an increased penalty against the defendant.

6.0 REVIEW AND DISCONTINUANCE

All prosecutions must be reviewed continuously from the instigation of proceedings.

Reviews are important especially when new evidence is found, or as details of the defence case emerges.

The officer must be resolute when made aware of new evidence or information and should not hesitate to recommend discontinuance of proceedings in appropriate cases e.g. where a summons has been issued for non payment of a FPN and the defendant pays the FPN and all associated legal costs incurred, prior to the court hearing, then it may be appropriate to discontinue legal proceedings.

The officer should also take into account that it may be considered an abuse of the process of the Court if, for example, the prosecution concerned a failure to do some act and the act is subsequently carried out by the accused and the prosecution was discontinued as a result. In such cases the prosecution should normally be continued, although regard should be had to any contra-indications given by the Court (e.g. suggesting a Caution be given).

7.0 ACCEPTING GUILTY PLEAS

In certain instances defendants may wish to plead guilty to some but not all of the charges. Officers in consultation with the Council's Solicitor should only agree to accept the guilty pleas and to discontinue prosecution of the other charges if they are of the opinion that the Court is able to pass a sentence which matches the seriousness of the offences. A guilty plea must never be accepted merely because it is convenient.

8.0 CONCLUSION

The factors mentioned in the procedure are not conclusive. Each case will depend on its own facts, circumstances and merits. However, this procedure will give officers guidance and assistance in the exercise of their discretions. This procedure largely follows the Public Prosecution Service Code for Prosecutors where applicable, and the Principles of Better Regulation.

THE EVIDENTIAL SUFFICIENCY TEST

The Head of Service/Director considering the case must be satisfied that there is sufficient evidence to provide a “realistic prospect of conviction” against every defendant on every charge.

The prosecution should not therefore be commenced unless there is admissible, substantial and reliable evidence that can be placed before the Court. Inadmissible evidence is evidence that would be excluded by the Court, such as improperly gathered evidence obtained in breach of, for example, the Police and Criminal Evidence Act (PACE), the Regulation of Investigatory Powers Act (RIPA), or the Data Protection Act. The evidence must be substantial, i.e. it can be proved beyond reasonable doubt. The evidence must also be reliable in that it should be able to stand up to scrutiny in any potential cross-examination by the Defence.

The officer responsible for investigating the case must have regard to the following matters:-

- Any statutory requirements relating to the conduct of investigations and interviews, or codes of practice made thereunder.
- If the case depends on admissions by the accused the officer must have regard to any evidence which supports or detracts from the reliability of the confession.
- Consideration should be given to the age, intelligence, understanding or other circumstances of the accused.
- If the accused gives an explanation, regard must be had to whether or not it is considered credible in the light of the evidence as a whole.
- Officers must also consider any possible defence, e.g. due diligence or best practical means.
- If the identity of the accused is likely to be an issue, how strong is the evidence and have the correct procedures with regards to identification and recognition been applied?
- Are there any reasons to suggest that a witness may be unreliable? For instance, is his/her memory impaired, or is he/she either friendly or hostile to the accused, or has he/she some other motive for forwarding their version of events.
- Are there matters which can be put to the witness by the Defence to attack his/her credibility?
- Is there a conflict between the evidence of witnesses?
- Officers must not ignore evidence. They should consider all available evidence in deciding whether to prosecute, whether it supports a prosecution or not.

THE PUBLIC INTEREST TEST

The rationale here is that the accused should not automatically be subject to prosecution proceedings. A prosecution should only be instigated if the public interest factors in favour of prosecution outweigh those against.

Factors that should weigh in favour of prosecution include the following:-

- Any conviction is likely to result in a significant sentence.
- A weapon or violence has been used or threatened during the commission of the offence.
- The accused was in a position of authority or trust, e.g. a public servant or a trustee.
- The accused was an organiser of the offence, where the offence was committed by a group of persons.
- There are grounds for believing that the offence is likely to be continued or repeated.
- The accused has allegedly committed the offence whilst under an order of the Court.
- The offence was motivated by any form of discrimination against the victim.
- The accused has been cautioned or has been convicted for similar or like offences in the past.
- The alleged offence, whilst not of itself serious, is being widely committed.
- There is an element of public risk or danger to health or harm or detriment to the environment and safety of the public.
- Any victim of the offence was particularly vulnerable or has suffered as a result of the alleged offence.
- The importance of the case itself, i.e. whether it would set a legal precedent.

The factors that weigh against the prosecution and may lead officers to consider other methods of enforcement, such as formal cautions or a formal warning,

- The offence is relatively minor.
- The Court is likely to impose a mere nominal penalty, such as a discharge or a small fine.
- The accused has already been convicted and sentenced by the Courts for a similar offence, and the further conviction is unlikely to result in the imposition of an additional sentence unless the matter is so serious that it requires further prosecution.
- The offence has been committed as a consequence of a genuine misunderstanding.
- The accused's positive attitude and willingness to prevent any recurrence
- The offence is "stale", i.e. there has been some considerable delay between the offence taking place and the commencement of a prosecution. The Courts have the power in all cases to dismiss a case if there has been

undue delay by the prosecution (even if commenced within statutory time limits). However if:-

- (a) the offence is serious, or
 - (b) the delay has been caused or substantially caused by the accused, or
 - (c) the offence has only recently been found, or
 - (d) the offence is complex which has resulted in a long investigation then serious consideration should be given to prosecuting the matter.
- The age, illness or infirmity of the accused. However, officers must always be aware of the seriousness of the offence.
 - The accused is a Vulnerable Adult who is not capable of understanding what they have done or has significant learning disabilities.
 - The accused has rectified the loss or harm that he/she has caused. This should not be the sole reason not to prosecute.
 - Any undertaking and/or valid explanation offered by the Defendant.
 - Any prosecution could harm the interest of any informants. Usually all witnesses must provide evidence in open Court.

The Victim

In certain cases there are clearly identifiable victims, e.g. noise nuisance cases where the person has to bear the nuisance. In such cases officers should always take into account the consequences to each person and any view expressed by him/her or his/her family before reaching a decision concerning whether to prosecute or not. However, the decision is that of the Council, not of the victim. Victims should always be informed about any decision which affects them.

Offences by a Person Under the Age of 18 Years

Providing a person has reached the age of criminal responsibility, officers should not avoid prosecuting a person merely because of their age. The seriousness of the offence and the youth's past behaviour are important factors.

Use of Formal Caution. A formal caution may be used as an alternative to prosecution in certain instances. The formal caution is a serious matter. It involves an admission by the offender that he/she has committed an offence. The caution may influence a Council to instigate proceedings in the event of a future offence and may be cited in court proceedings within a period of three years from the date of caution. Officers charged with investigating offences have discretion whether to recommend a formal caution instead of prosecuting an offender and in arriving at such a decision must consider:

- a. Whether the formal caution is likely to be effective
- b. Whether the caution is appropriate to the offence.

Before the formal caution is recommended the officer must be satisfied that there is sufficient evidence to provide a reasonable prospect of a conviction if the offender refuses to accept the caution. Decisions to offer a formal caution must be made on the basis that the case shall proceed to prosecution if the formal caution is rejected.

FERMANAGH AND OMAGH DISTRICT COUNCIL

Decision for Consideration of Formal Action

File Reference No. _____

Legislation _____

Details of Offence _____

Issues to be Considered for Recommendation of Prosecution	Brief Detail of Case and determination of Recommendation
The gravity of the offence, together the seriousness of any actual or potential harm	
Serious failures in management	
Whether it is appropriate in order to draw general attention to the need for compliance	
General record and approach of offender	
Reckless disregard of requirements	
Repeated breaches or persistent poor compliance	
Failure to comply with a written warning or notice served	
Willingness of offender to prevent a reoccurrence	
Likelihood of a successful due diligence or other defence	
Explanation offered by the offender	
Ability of witnesses to co-operate	
Would alternative action (e.g. caution, works in default, notice be preferable)	

Head of Service/Director Decision:	
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Under the Public Prosecution Service Code for Prosecutors does the case meet:

- (a) Evidential Test No Yes
- (b) Public Interest Test No Yes

Signature: _____

Date: _____

Head of Service/Director

DIRECTOR OF CORPORATE
SERVICES AND GOVERNANCE

CHIEF EXECUTIVE

DATE: APRIL 2015