



Essex County
Fire & Rescue Service

Prosecution and Caution Policy



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Introduction

1.1 The decision to prosecute is a serious step. Fair and effective prosecution forms a legitimate element of the Police Fire and Crime Commissioner Fire and Rescue Authority's (the Authority) strategy to reduce the risk of death and injury in the workplace by enforcing fire safety law. Any prosecution has serious implications for all involved - the person prosecuted, casualties, witnesses and Authority personnel. Inspectors should apply the guidance in this document so that the Authority can make fair and consistent decisions about prosecutions.

1.2 In deciding to proceed with a prosecution, the charges that are brought against a defendant should reflect the seriousness of the offences and give the court adequate sentencing powers.

1.3 The 'Code for Crown Prosecutors' gives guidance to Authorities as Public Prosecutors to ensure that justice is done, the correct person is prosecuted, the trial is carried out in a fair and just manner and in the first instance whether it is in the public interest to proceed with the prosecution.

1.4 When preparing a case for prosecution, inspectors should follow the guidance of the 'Code for Crown Prosecutors'.

1.5 A case file should be produced whenever prosecution is being considered. The file should be compiled so that all evidence is gathered and placed in designated sections, to ensure consistency.

1.6 Each case considered for prosecution should be reviewed by a senior member of fire safety management to confirm the case is suitable to be considered for prosecution. At this stage preliminary advice from the Authority's legal advisors should be considered, however the decision to instruct the Legal Department to formally advise on a prosecution or other enforcement action must be authorised in accordance with policy.

1.7 Having decided to proceed with a prosecution, the evidence should be gathered, the case prepared, and the case laid before the court within a prescribed time period.

The Code for Crown Prosecutors

Introduction

2.1.1 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case a prosecution has serious implications for all involved - victims, witnesses and defendants. The Authority will apply the Code.

2.1.2 The Code will assist the Authority to play its part in making sure that justice is done. It contains information that is important to inspectors, who should take account of the Code when they are deciding whether to charge a person with an offence.

2.1.3 The Code is also designed to make sure that everyone knows the principles that the Authority applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims fairly and to prosecute fairly but effectively

General Principles

2.2.1 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which the Authority must approach every case.

2.2.2 Authorities must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect; victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.

2.2.3 It is the duty of the Authority to make sure that the right person is prosecuted for the right offence. In doing so, Authorities must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

2.2.4 It is the duty of Authorities to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.

2.2.5 The Authority is a public authority for the purposes of the Human Rights Act 1998 and must apply the principles of the European Convention on Human Rights in accordance with the Act.

Review

2.3.1 Before starting a prosecution, each case should be reviewed to make sure it meets the evidential and public interest tests set out in the Code. Then the Authority may decide to continue with the original charges, to change the charges, or to stop the case.

2.3.2 Review is a continuing process and Authorities must take account of any change in circumstances, which provides more information that may affect the decision. The final responsibility for the decision rests with the Authority.

Code Tests

2.4.1 There are two stages in the decision to prosecute. The first stage is ‘the evidential test’. If the case does not pass the evidential test, it must not go ahead.

2.4.2 This second stage is ‘the public interest test’. The Authority will only start or continue with a prosecution when the case has passed both tests.

The Evidential Test

2.5.1 There must be enough evidence to provide a ‘realistic prospect of conviction’ against each defendant.

2.5.2 A realistic prospect of conviction is an objective test. It means that a court, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

2.5.3 When deciding whether there is enough evidence to prosecute, Authorities must also consider whether the evidence is reliable and admissible.

2.5.4 Consideration should be given to what the defence case may be, and its likely effect on the prosecution case.

The Public Interest Test

2.6.1 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. In cases of any seriousness a prosecution should usually be considered unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour.

2.6.2 Authorities must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest that another course of action would be better e.g. Formal Caution.

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

Public Interest Factors in Favour of Prosecution

2.7.1 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. The seriousness of the offence should be judged on the basis of its potential to cause death or injury.

2.7.2 A prosecution is likely to be needed if:

- A conviction is likely to result in a significant fine/sentence.
- The defendant was in a position of authority or trust.
- There is evidence that the offence was caused by an act or omission that should have been foreseeable to the responsible person.
- The offence has resulted in death, injury or near miss.
- The offence caused a significant risk of death or injury to the vulnerable. In this context 'vulnerable' particularly relates to persons who have little or no control of the act or omission that has endangered them.
- There is a history of previous conviction, cautions or contravention's, particularly in relation to the same defendant.
- There are grounds for believing that the offence is likely to be continued or repeated. The offence, although not serious in itself, is regarded as a widespread problem by the Authority in a particular geographical area or type of premises.

Public Interest Factors Against Prosecution

2.8.1 A prosecution is less likely to be needed if:

- The court is likely to impose a nominal penalty.
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- The offence can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- There has been an undue delay on behalf of the Authority in progressing the matter, unless the offence is very serious, the delay has been caused in part by the defendant, or the complexity of the case has meant that there has been a long investigation.
- The defendant is elderly, or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.
- The defendant has acted quickly and co-operated to put right the offence.

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

Case File Compilation

Procedure

3.1.1 To ensure consistency, all case files (legal bundles) should be compiled and administered in the same manner.

3.1.2 Generally, the case file should consist of six sections:

- The report.
- “Friskies Schedule” (See Annex A)
- Statements.
- Copy of contemporaneous note(s)
- Exhibits, including photographs and interview records.
- Unused material.

Sections of The Report

3.2.1 Section 1 - Report

This section should consist of:

- The report; which should begin with a list of the actual offences proposed, i.e., a draft of the actual offences quoting the relevant statutory provision.
- The risks resulting from the contraventions to persons on the premises and in the vicinity.
- A plan or sketch marked “Not to scale” if a plan cannot be obtained. The offences should be numbered and circled in their respective locations on the plan/sketch. These numbers should be cross-referenced with the numbers in the aforementioned list of offences, and with photographs taken.
- The relevant fire precautions law that applies to the case.
- Any additional comments relevant to any action taken either by the inspector or responsible person on the premises.
- A diary of events.
- Copies of any relevant correspondence and file notes.

3.2.2 Section 2 - “Friskies Schedule” (See Appx A)

This section should consist of:

A schedule detailing the aggravating and mitigating factors of the case.

Note: In R. v FRISKIES PETCARE UK LTD. Court of Appeal Criminal Division, 10 March 2000, Case no 99/5226/W5 .

HH Judge Walsh recommended that:-

"... when the Health and Safety Executive commence proceedings, it should list in writing for the assistance of the court not merely the facts of the case, but the aggravating features, as set out in the Howe case (well-known principles set out initially in the judgment of Scott Baker J in R v Howe Engineering [1999] 2 All ER 249,) which it

says exist in the particular case. That document can be served upon the Court and upon the defendants for the latter to consider".

3.2.3 Section 3 – Statements; this section should consist of:

- Index of statements
- Statements, including statements relating to the taking and developing of photographs.

3.2.4 Section 4 – Exhibits; this section should consist of:

- Index of exhibits, which will include photographs and interview records, other than those in notebooks.
- Exhibits (exhibit labels and form) shall be completed and accompany each exhibit.)

3.2.5 Contemporaneous Notes

3.25 A copy of the contemporaneous notes should be provided, and the original notes kept in readiness for inspection by the Authority's lawyers and the defence.

3.2.6 Section 6 - Unused material; this section should consist of:

- Index of unused material
- All unused material generated during the course of the investigation, which might assist the defence or undermine the case for the prosecution, not included in sections 2 and 3. Unused material is subject to the rule of Disclosure.

Note: When all information has been gathered, a file completed and paginated, it is usually referred to as the bundle. Unused material should be separated from the case file to form a separate bundle.

Time to lay information

It is a matter of professionalism that offences are investigated with as little delay as possible. The aim should be to lay the information as quickly as possible from the date of the offence and within a prescribed time period set by the relevant law.

Formal Caution

5.1 The Authority may decide to issue a formal caution rather than take a case forward for prosecution.

5.2 In making this decision it must be understood that sufficient grounds to institute legal proceedings must be available, and in the event that the caution is not accepted criminal proceedings should be commenced.

5.3 It is wholly inappropriate to try and seek to obtain a caution in circumstances where there is no realistic prospect of proceedings. The issue of a formal caution is subject to the persons agreement and admission of the alleged offence.

5.4 The existence of the caution may influence future decisions to prosecute in the

event of any subsequent infringements. In addition, the caution may be cited should the signatory be found guilty of any future offence by a Court of Law.

5.5 A caution will be kept on file for 3 years and if the responsible person is convicted for a further offence in that period, it will be introduced to the court.

Informal Caution

6. Where contraventions of fire safety legislation are identified and the Authority, having carefully considered the circumstances of the case, determine that no further action will be taken, an informal caution letter may be sent to the responsible person. The caution will inform the responsible person of the fact and that the details will be recorded and taken into consideration in the event of any similar occurrence in the future.

Enforcement Management

7. All staff that take enforcement decisions will be required to follow the principles and guidance in the 'Enforcement Management Model' issued by the Health and Safety Commission.

Annex A

EXAMPLE OF A “FRISKIES” SCHEDULE IN THE COURT:

**FIRE AND RESCUE AUTHORITY -
v-**

SCHEDULE OF AGGRAVATING AND MITIGATING FEATURES

The draft schedule below attempts to deal the features of this case which the Court may consider to aggravate or mitigate the offence in respect of which sentence may be passed. This document is drafted in accordance with the principles laid down on 10 March 2000 by the Court of Appeal on R -v- Friskies Petcare UK Limited [2000] 2 Cr App R (s) 401.

The Defence is invited to consider to which, if any, of the features identified below it objects, to consider what, if any, further features the Defence would wish to put before the Court, and to notify the prosecution in advance accordingly. The Defence is reminded that if financial circumstances are to be put forward in mitigation a set of accounts and details of that mitigation would be made available to the Crown at the earliest opportunity, R v F. Howe and Sons (Engineers) Ltd [1999] 2 All ER 250.

Dated.....	On Behalf of Prosecutor.....
Aggravating Factors	Mitigating Factors
1. The notice under section 10 Fire Precautions Act 1971, dated, which restricted use of the premises to the ground floor and was in force on, was served after a fire in which a person died.	
2. Profit was put before safety, in that the first floor of the premises were occupied by tenants on, while the restriction notice was in force.	
3. The fire alarm did not properly function when the fatal fire occurred on The fire alarm serving the premises was again not operating on The alarm was not wired properly and the batteries were defective	On an electrical certificate for the fire alarm was submitted, indicating it operated effectively, and after an inspection, the restriction notice served onwas lifted.

4. The staircase leading from the ground floor to the first floor of the premises contained storage of cardboard boxes. These were combustible and created a fire risk in the means of escape itself.	
5. On the first floor of the premises the landing contained boxes of books. These were combustible and created a fire risk in the means of escape itself. The landing constituted part of the internal escape route and should have been kept clear of items.	
6. The first-floor landing also contained, at the top of the staircase, an upholstered chair. This was combustible and created a fire risk in the means of escape itself.	
7. The staircase leading to the second floor contained two piles of old clothes. These were combustible and created a fire risk in the means of escape itself.	The premises contained adequate signage

**Fire Protection Department
SHQ, Kelvedon Park**



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