



**CORPORATE SERVICES SCRUTINY REVIEW
BOARD
1 October 2020**

ITEM 05

Report sponsor: Emily Feenan, Director of
Legal, Procurement and Democratic Services
Report author: Olu Idowu, Head of Legal
Services

Local Authority Prosecutions

Purpose

- 1.1 To inform the Board of the scope and considerations for use of the Council's statutory powers to prosecute for offences.

Recommendations

- 2.1 To note the report.
- 2.2 To make any further comments or recommendations following consideration of the report.

Reasons

- 3.1 To inform the Board about the range of statutory prosecution powers which the Council has available to it.
- 3.2 To enable the Board understand the criteria that applies whenever prosecution of offenders is appropriate and/or is under consideration.

Supporting information

- 4.1 As a public authority, the Council is the enforcing regulatory body for a large number of statutory functions which the various enabling statutes create a duty or a power for it to enforce.
- 4.2 The duty or power to enforce does not automatically translate into an obligation to prosecute, in every case. As a prosecuting authority, the Council must abide by the regulators code, a set of principles which require regulators, in every case, to be proportionate in their approach to prosecuting offenders. The code majors on the provision of advice and education as a means to driving up regulatory awareness and standards within society, with prosecution to be regarded as a last resort measure only.

4.3 As such, there are a range of different factors that have to be considered prior to prosecution being deemed an appropriate measure, such as whether the subject of enforcement has a known antecedence (for the same or other relevant criminality), whether the issue under consideration is a first offence by the subject, whether a lesser sanction such as a caution would be more appropriate, the extent to which the subject has cooperated with the authority during the investigation stage, the severity of the offence, the impact of the offence (particularly on victims) as well as consideration of the the public interest. This list is not exhaustive.

4.4 The Code for Crown Prosecutors also needs to be factored in. The code requires that for every offence being considered for prosecution, a two-part test has to be conducted in every case in order to determine whether or not it is appropriate to proceed with prosecution. Namely, these are:

- (a) a public interest test; and
- (b) an evidential test

The former is usually undertaken by a lawyer in consultation with the lead client officer and effectively, is a test of merit to assess whether prosecution serves the public interest taking account of the known facts. The latter is undertaken solely by the lawyer as a matter of professional judgment. Only if both parts of the test are met will a matter proceed to prosecution.

4.5 Local authority prosecutions are all either summary only or either way in nature. They do not extend to indictable offences. Summary offences are those which can only be tried in a magistrates' court. Either way offences are those where one of the parties, or the magistrates', may elect for the matter to be tried either in the magistrates' or the crown court. Indictable offences can only be tried in the crown court.

4.6 A snapshot of regulatory provisions providing the Council with a power or duty to prosecute include:

- Planning (Town & Country Planning Act 1990 and complementary legislation such as the Planning (Listed Buildings & Conservation Areas) Act 1990
- Highways (Highways Act 1980 (and complementary legislation)
- Education (school truancy)
- Environmental Protection Act 1990 (enviro-crime, statutory nuisance, etc. and complementary legislation)
- Food safety
- Council tax
- Taxi licensing
- Housing standards
- Housing fraud
- Liquor licensing
- Street trading
- Trading standards

- 4.7 While this report addresses the Council's corporate enforcement and prosecution powers, for context it may be helpful to quickly mention the distinction between such powers (which are criminal and/or regulatory in nature) and pursuing or defending civil claims (which are civil in nature).
- 4.8 As set out earlier, criminal powers all derive from statute. Civil rights however derive from common law (e.g. land use rights such as easements and restrictive covenants), tort (e.g. negligence) or contract. Where public authorities are concerned, failures by them in the discharge of their corporate duties may also give rise to administrative law rights which may be brought by their stakeholders, notably injunctions and judicial review.
- 4.9 The key distinction in the judicial sense between criminal and civil law cases is that while in order to secure a conviction in the former, the prosecuting body must adduce evidence to satisfy the court of the merit of its case 'beyond reasonable doubt', with the latter the quality/amount of evidence need only satisfy the court 'on the balance of probabilities'. This distinction is known as the evidential threshold, which is set much lower for civil claims than it is for criminal matters.
- 4.10 Criminal matters are typically heard in the magistrates' and crown courts while civil matters are heard in the county and high courts.

Public/stakeholder engagement

- 5.1 None required.

Other options

- 6.1 Not relevant to the report.

Financial and value for money issues

- 7.1 None arising from the report.

Legal implications

- 8.1 None other than as set out within the report.

Other significant implications

- 9.1 None

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu	18/8/2020
Finance	Toni Nash	18/8/2020
Service Director(s)	Emily Feenan	02/9/2020
Report sponsor	Emily Feenan	02/9/2020
Other(s)	N/A	

Background papers: None

List of appendices: None