



**TONBRIDGE & MALLING
BOROUGH COUNCIL**



**Environmental Health
and Housing Services**



Enforcement Policy

May 2008



INVESTOR IN PEOPLE

TONBRIDGE AND MALLING BOROUGH COUNCIL**Environmental Health and Housing Services Enforcement Policy****May 2008****Contents**

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INTRODUCTION

1. Our aim is to protect and improve public health, the environment and quality of life for everyone who lives, works or visits Tonbridge and Malling.
2. Environmental Health and Housing Services are responsible for enforcing legislation relating to aspects of:-

animal welfare	housing standards
environmental protection	pest control
food safety	pollution prevention and control
health and safety at work	public health
housing provision	waste management
3. This policy sets out the general principles we intend to follow in relation to enforcement. We will monitor its implementation and effectiveness, and where necessary make changes.
4. This policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes and encourage economic growth without imposing unnecessary burdens. This accords with the Regulators' Compliance Code (**Annex 1**) which implements the Hampton Principles. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
5. The Council has also adopted the Enforcement Concordat, which was developed jointly by the Cabinet Office and the Local Government Association and will continue to apply to enforcement activity that is not covered by the Regulators' Compliance Code. This policy is consistent with the principles of good enforcement set out in the Enforcement Concordat.
6. We are committed to the promotion of equal opportunities in all of our activities. Every effort will be made to ensure that everyone is treated equitably and fairly, regardless of race, nationality, gender, sexuality, marital status, colour, religion, disability or age.
7. The Human Rights Act 1998 has incorporated the rights and freedoms guaranteed under the European Convention on Human Rights into UK law. Those that are of relevance to our enforcement activities are:
 - the right to a fair hearing (Article 6);
 - the right to respect for private and family life (Article 8); and
 - the protection of property (Protocol 1, Article 1).

There is a hierarchy of convention rights; some are absolute, some can be limited and some are qualified.

The right to respect for private and family life cannot be interfered with by a public authority **except** in accordance with the law and if it is necessary in a democratic society in the interests of, for example, public safety, prevention of disorder or crime, for the protection of health or morals, for the protection of the rights and freedom of others. The right to peaceful enjoyment of possessions can only be interfered with in the public interest and subject to the conditions provided for by law.

In carrying out enforcement, officers will be mindful of human rights so that any action that could interfere with a Convention right is legitimate, appropriate and proportionate to the intended objective.

We also recognise that people who contact us about an environmental health or housing problem can sometime feel vulnerable and uncertain. We will provide appropriate information and support for complainants, victims and witnesses.

PURPOSE AND METHOD OF ENFORCEMENT

8. The primary concern of officers of Environmental Health and Housing Services is to prevent harm to human health or damage to the environment, and to improve living/working conditions. We recognise that most individuals and organisations are anxious to comply with the law and in these cases the officers' role will often be to educate, guide and support. We regard prevention as better than cure. We offer information and advice to those we regulate and seek to secure co-operation while avoiding bureaucracy or excessive costs.
9. If enforcement officers find evidence that the law is being broken they can respond in various ways. Having considered all relevant information and evidence, the choices for enforcement action are:-
 - to take no action
 - to take informal action - this includes
 - offering advice
 - verbal warnings and requests for action
 - sending a letter
 - issuing an inspection report
 - to use statutory notices
 - to issue fixed penalty notices
 - to close premises or seize goods
 - to use cautions - see **Annex 4**
 - to prosecute - see **Annexes 2 and 3**.
10. The Council has a range of enforcement mechanisms at its disposal and while informal action will sometimes be undertaken in the first instance, it may not always be appropriate to adopt an informal approach. For example, there may be a risk to human health from a hazard the nature of which requires prompt formal enforcement action or there may be evidence of previous non-compliance with statutory obligations imposed under legislation relating to environmental health and housing. The Council also promotes good standards of compliance and practice through award schemes, for example the Clean Food Award.
11. Where appropriate we will seek the cooperation of the police to make arrests pursuant to part 3 of the Serious Organised Crime and Police Act 2005.

PRINCIPLES OF ENFORCEMENT

12. We believe in firm but fair regulation. Underlying this are the principles of: *proportionality* in the application of the law and in securing compliance; *consistency* of approach, *transparency* about how we operate and what those regulated may expect from us and *targeting* of enforcement action.

Proportionality

13. The concept of proportionality is included in much of the regulatory system through the balance of action to protect the public and the environment against risks and costs. Some incidents or breaches of regulatory requirements cause or have the potential to cause serious harm to health or environmental damage. Others may interfere with people's enjoyment or rights. The enforcement action taken will be proportionate to the risks posed to health or the environment and to the seriousness of any breach of the law.
14. Informal action is normally appropriate when:
- the act or omission is not serious enough to warrant formal action
 - from the individual's/enterprise's past history, it can be reasonably expected that informal action will achieve compliance
 - confidence in the individual's/enterprise's management involvement is high
 - the consequences of non-compliance will not pose a significant risk to public health or the environment
 - even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach - for example, voluntary organisations.

Consistency

12. Consistency means taking a similar approach in similar circumstances to achieve similar ends. We aim to achieve consistency in advice tendered, our response to incidents, the use of powers, and decisions on whether to prosecute. However, we recognise that consistency does not mean simple uniformity. Officers need to take account of many variables:
- the risk to health
 - the scale of environmental impact
 - the attitude and actions of management
 - the confidence we have in management
 - the likely effectiveness of the various enforcement options
 - the history of previous incidents or breaches.
13. Decisions on enforcement action are a matter of professional judgement and the exercise of discretion. We will ensure consistency of enforcement standards by:-
- ensuring officers are aware of this policy and have adequate training and competency in all relevant aspects of enforcement
 - having regard to national and local co-ordination arrangements for example:
 - statutory Codes of Practice/Guidance
 - guidance from the Local Better Regulation Office
 - Health and Safety Executive guidance
 - LACORS (Local Authorities Co-ordinators of Regulatory Services) guidance
 - Chartered Institute of Environmental Health/Chartered Institute of Housing - Professional Practice Notes
 - Kent Chief Officer Groups - guidance/practice notes
 - locally adopted standards, for example the Council's standards relating to Houses in Multiple Occupation
 - liaison with "Lead" and "Home" Authorities, where appointed
 - publication and dissemination of our standards and policies
 - a commitment to cross-boundary auditing of enforcement procedures and practices.

Transparency

14. Transparency is important in maintaining public confidence in our ability to regulate. It means helping those regulated, and others, to understand what is expected of them and what they should expect from us. It also means making clear why an officer intends to, or has taken enforcement action.
15. Transparency is an integral part of our role. We will 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 best practice advice and legal requirements
 - an opportunity is provided to discuss with the enforcement officer or his manager what is required to comply with the law before formal enforcement action is taken, *unless* urgent action is required, for example, to protect health, the environment 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 written explanation is given on any rights of appeal against formal enforcement action at the time the action is taken.
16. We will use Plain English in all our written communications. We will provide a translation of any written communication into an alternative language and provide a translator for face to face discussions on enforcement issues.

Targeting

17. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the greatest risks. We will use nationally and locally agreed risk assessment rules to assist in targeting our efforts.
18. We have systems for prioritising regulatory effort. They include the response to complaints from the public, the assessments of the risk posed by different types of activity and the gathering and acting on intelligence about illegal activity.

PROSECUTION

19. The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish serious wrongdoing, to avoid recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring the operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.
20. However we recognise that the institution of a prosecution is a serious matter that should only be taken after full consideration of all the implications and consequences. Further information relating to prosecution is in **Annex 2**.

WORKING WITH OTHER REGULATORS

21. Where the Council and another enforcement body both have enforcement responsibilities, we will liaise with that other body to ensure effective co-ordination and to avoid inconsistencies.

MISCELLANEOUS

22. Where we carry out remedial works in default we will normally seek to recover the full costs, including administration costs, incurred from those responsible.
23. Dissatisfaction with any actions or decisions can be taken up with the Director of Health and Housing through the Council's complaints procedure which is explained in the leaflet *"How to: Complain about, Comment on, or Compliment Tonbridge and Malling Borough Council"*.
24. This Policy will be reviewed annually.

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REGULATORS COMPLIANCE CODE

Statutory Code of Practice for Regulators

17 DECEMBER 2007

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Minister of State, Department for Business, Enterprise
and Regulatory Reform (BERR)

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Foreword

The Regulators' Compliance Code is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

Our expectation is that as regulators integrate the Code's standards into their regulatory culture and processes, they will become more efficient and effective in their work. They will be able to use their resources in a way that gets the most value out of the effort that they make, whilst delivering significant benefits to low risk and compliant businesses through better-focused inspection activity, increased use of advice for businesses, and lower compliance costs.

The Compliance Code has been issued with parliamentary approval, following a wide and lengthy consultation process, and comes into force on 6 April 2008 by virtue of the Legislative and Regulatory Reform Code of Practice (Appointed Day) Order 2007.

I believe that the application of the Code can make a difference on the ground to the regulators, those they regulate, and society in general.

Pat McFadden MP

Minister of State

Department for Business, Enterprise and Regulatory Reform (BERR)

Part 1

General introduction

1. Purpose of the Code

1.1 Effective and well-targeted regulation is essential in promoting fairness and protection from harm. However, the Government believes that, in achieving these and other legitimate objectives, regulation and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress.

1.2 This Code supports the Government's better regulation agenda and is based on the recommendations in the Hampton Report¹. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes² without imposing unnecessary burdens on business, the Third Sector³ and other regulated entities⁴.

1.3 The Code stresses the need for regulators⁵ to adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches.

1.4 The Code supports regulators' responsibility to deliver desirable regulatory outcomes. This includes having effective policies to deal proportionately with criminal behaviour which would have a damaging effect on legitimate businesses and desirable regulatory outcomes. The Code does not relieve regulated entities of their responsibility to comply with their obligations under the law.

¹ *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton, March 2005.

² Throughout this Code, the term 'regulatory outcomes' means the 'end purpose' of regulatory activity (for example, reduction in accidents/disease, less pollution).

³ This is defined as non-governmental organisations that include voluntary and community organisations, charities, social enterprises, cooperatives and mutuals.

⁴ Throughout this Code, the term 'regulated entities' includes businesses, public sector bodies, charities and voluntary sector organisations that are subject to regulation.

⁵ The term 'regulator' is used in this code to refer to any organisation that exercises a regulatory function.

2. Background and scope

2.1 This Code has been laid before Parliament by the Minister for the Cabinet Office and has been approved by both Houses of Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"), after having consulted persons appearing to him to be representative of persons exercising regulatory functions and such other persons as he considered appropriate. In preparing the draft, the Minister has sought to secure that the Code is consistent with the Principles of Good Regulation specified in section 21(2) of the Act.⁶

2.2 The Minister issues the Code under section 22(1) of the Act on 17 December 2007.

2.3 The Code only applies to those regulatory functions specified by order made under section 24(2) of the Act. Any regulator whose functions are so specified **must have regard to** this Code:

- (a) when determining any general policy or principles about the exercise of those specified functions (section 22(2)); or
- (b) when exercising a specified regulatory function which is itself a function of setting standards or giving general guidance about other regulatory functions (whether their own functions or someone else's functions) (section 22(3)).

2.4 The duties to have regard to the Code under section 22(2) and (3) of the Act **do not** apply to the exercise by a regulator or its staff of any specified regulatory function in individual cases. This means, for example, that while an inspector or investigator should operate in accordance with a regulator's general policy or guidance on inspections, investigations and enforcement activities, the Code does not apply directly to the work of that inspector or investigator in carrying out any of these activities in individual cases.

2.5 The duty on a regulator to “have regard to” the Code means that the regulator **must** take into account the Code’s provisions and give them due weight in developing their policies or principles or in setting standards or giving guidance.

2.6 The regulator is not bound to follow a provision of the Code if they *properly* conclude that the provision is either not relevant or is outweighed by another relevant consideration. They should ensure that any decision to depart from any provision of the Code is properly reasoned and based on material evidence. Where there are no such relevant considerations, regulators should follow the Code.

2.7 Section 22(4) of the Act provides that the duty to have regard to the Code is subject to any other legal requirement affecting the exercise of the regulatory function, including EC law obligations.

2.8 In accordance with section 24(3) of the Act, this Code does not apply to:

- regulatory functions so far as exercisable in Scotland to the extent that the functions relate to matters which are not reserved matters;
- regulatory functions so far as exercisable in Northern Ireland to the extent that the functions relate to transferred matters; or
- regulatory functions exercisable only in or as regards Wales.

6 These principles are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and that regulatory activities should be targeted only at cases in which action is needed.

Part 2

Specific obligations of the Code

This part outlines the Hampton Principles on which this Code is based, and sets out the specific provisions that elaborate these principles. The Hampton Principles and the italicised statement at the start of each numbered section do not form part of the Code’s requirements, but set the context in which the specific obligations set out in the numbered paragraphs should be interpreted.

3. Economic progress

Hampton Principle: *Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.*

Good regulation and its enforcement act as an enabler to economic activity. However, regulation that imposes unnecessary burdens can stifle enterprise and undermine economic progress. To allow or encourage economic progress, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.

3.1 Regulators should consider the impact that their regulatory interventions may have on economic progress, including through consideration of the costs, effectiveness and perceptions of fairness of regulation. They should only adopt a particular approach if the benefits justify the costs⁷ and it entails the minimum burden compatible with achieving their objectives.

3.2 Regulators should keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

3.3 Regulators should consider the impact that their regulatory interventions may have on small regulated entities, using reasonable endeavours to ensure that the burdens of their interventions fall fairly and proportionately on such entities, by giving consideration to the size of the regulated entities and the nature of their activities.

3.4 When regulators set standards or give guidance in relation to the exercise of their own or other regulatory functions (including the functions of local authorities), they should allow for reasonable variations to meet local government priorities, as well as those of the devolved administrations.

7 Costs and benefits include economic, social and environmental costs and benefits.

4. Risk Assessment

Hampton Principle: *Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.*

Risk assessment involves the identification and measurement of capacity to harm and, if such capacity exists, an evaluation of the likelihood of the occurrence of the harm. By basing their regulatory work on an assessment of the risks to regulatory outcomes, regulators are able to target their resources where they will be most effective and where risk is highest. As such, in order to carry out comprehensive and effective risk assessment, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.

4.1 Regulators should ensure that the allocation of their regulatory efforts and resources is targeted where they would be most effective by assessing the risks to their regulatory outcomes. They should also ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including:

- data collection and other information requirements;
- inspection programmes;
- advice and support programmes; and
- enforcement and sanctions.

4.2 Risk assessment should be based on all available relevant and good-quality data⁸. It should include explicit consideration of the combined effect of:

- the potential impact of non-compliance on regulatory outcomes; and
- the likelihood of non-compliance.

4.3 In evaluating the likelihood of non-compliance, regulators should give consideration to all relevant factors, including:

- past compliance records and potential future risks;
- the existence of good systems for managing risks, in particular within regulated entities or sites
- evidence of recognised external accreditation; and
- management competence and willingness to comply.

4.4 Regulators should consult and involve regulated entities and other interested parties in designing their risk methodologies, and publish details of the methodologies.

4.5 Regulators should regularly review and, where appropriate, improve their risk methodologies. In doing so, they should take into account feedback and other information from regulated entities and other interested parties.

⁸ An example of risk methodology, which the Hampton Review recognised as “best practice” (see *Hampton Report*, at page 32) is the Environmental Protection – Operator & Pollution Risk Appraisal scheme (EP OPRA).

5. Advice and Guidance

Hampton Principle: *Regulators should provide authoritative, accessible advice easily and cheaply.*

Without knowing or understanding relevant legal requirements, regulated entities will find it difficult to comply. Regulators can, however, improve compliance through greater focus on support and advice. Regulators must, therefore, have regard to the following requirements when determining general policies or principles or when setting standards or giving general guidance on advice and information services.

5.1 Regulators should ensure that all legal requirements relating to their regulatory activities, as well as changes to those legal requirements⁹, are promptly communicated or otherwise made available to relevant regulated entities.

5.2 Regulators should provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations. Such information, advice and guidance should be provided in clear, concise and accessible language, using a range of appropriate formats and media¹⁰.

5.3 Regulators should involve regulated entities in developing both the content and style of regulatory guidance. They should assess the effectiveness of their information and support services by monitoring regulated entities' awareness and understanding of legal requirements, including the extent to which those entities incur additional costs obtaining external advice in order to understand and comply with legal requirements.

5.4 Regulators should provide targeted and practical advice that meets the needs of regulated entities. Such advice may be provided in a range of formats, such as through face-to-face interactions, telephone helpline and online guidance. In determining the appropriate formats, regulators should seek to maximise the reach, accessibility and effectiveness of advice while ensuring efficient use of resources. There may remain a need for regulated entities with particularly complex practices to use specialist or professional advisors as appropriate.

5.5 When offering compliance advice, regulators should distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice should be confirmed in writing, if requested.

5.6 Regulators should provide appropriate means to ensure that regulated entities can reasonably seek and access advice from the regulator without directly triggering an enforcement action. In responding to such an approach, the regulator should seek primarily to provide the advice and guidance necessary to help ensure compliance.

5.7 Advice services should generally be provided free of charge, but it may be appropriate for regulators to charge a reasonable fee for services beyond basic advice and guidance necessary to help ensure compliance. Regulators should, however, take account of the needs and circumstances of smaller regulated entities and others in need of help and support.

⁹ This includes when a regulatory requirement has been removed and considered no longer relevant or applicable.

¹⁰ A good example of online advice is the Environment Agency's NetRegs (www.netregs.gov.uk) an internet based plain language guidance system for business.

6. Inspections and other visits

Hampton Principle: *No inspection should take place without a reason.*

Inspections can be an effective approach to achieving compliance, but are likely to be most effective when they are justified and targeted on the basis of an assessment of risk. In order to ensure the effectiveness of their inspection programmes, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on inspections.

6.1 Regulators should ensure that inspections and other visits, such as compliance or advice visits, to regulated entities only occur in accordance with a risk assessment methodology (see paragraphs 4.2. and 4.3), except where visits are requested by regulated entities, or where a regulator acts on relevant intelligence.

6.2 Regulators should use only a small element of random inspection in their programme to test their risk methodologies or the effectiveness of their interventions.

6.3 Regulators should focus their **greatest** inspection effort on regulated entities where risk assessment shows that both:

- a compliance breach or breaches would pose a serious risk to a regulatory outcome; and
- there is high likelihood of non-compliance by regulated entities.

6.4 Where regulators visit or carry out inspections of regulated entities, they should give positive feedback to the regulated entities to encourage and reinforce good practices. Regulators should also share amongst regulated entities, and with other regulators, information about good practice.

6.5 Where two or more inspectors, whether from the same or different regulators, undertake planned inspections of the same regulated entity, regulators should have arrangements for collaboration to minimise burdens on the regulated entity, for example, through joint or coordinated inspections and data sharing.

7. Information requirements

Hampton Principle: *Businesses should not have to give unnecessary information or give the same piece of information twice.*

Effective regulatory work, including risk assessment, requires accurate information. However, there are costs to its collection both to the regulator and to regulated entities. It is important to balance the need for information with the burdens that entails for regulated entities. As such, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on data requirements.

7.1 When determining which data they may require, regulators should undertake an analysis of the costs and benefits of data requests to regulated entities. Regulators should give explicit consideration to reducing costs to regulated entities through:

- varying data requests according to risk, as set out in paragraph 4.3;
- limiting collection to specific regulated entities sectors/sub-sectors;
- reducing the frequency of data collection;
- obtaining data from other sources;
- allowing electronic submission; and
- requesting only data which is justified by risk assessment.

7.2 If two or more regulators require the same information from the same regulated entities, they should share data to avoid duplication of collection where this is practicable, beneficial and cost effective. Regulators should note the content of the Information Commissioner's letter¹¹ when applying the Data Protection Act 1998¹² in order to avoid unnecessarily restricting the sharing of data.

7.3 Regulators should involve regulated entities in vetting data requirements and form design for clarity and simplification. They should seek to collect data in a way that is compatible with the processes of regulated entities and those of other regulators who collect similar data.

¹¹ A letter from the Information Commissioner (22/01/07) giving advice on "data protection and the sharing of regulatory data on businesses" is available at: <http://bre.berr.gov.uk/regulation/documents/data/pdf/letter.pdf>

¹² 1998 c 29.

8. Compliance and enforcement actions

Hampton Principle: *The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.*

By facilitating compliance through a positive and proactive approach, regulators can achieve higher compliance rates and reduce the need for reactive enforcement actions. However, regulators should be able to target those who deliberately or persistently breach the law. To ensure that they respond proportionately to regulatory breaches, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on the exercise of compliance and enforcement functions.

8.1 Regulators should seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, such as lighter inspections and reporting requirements where risk assessment justifies this. Regulators should also take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance.

8.2 When considering formal enforcement action, regulators should, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

8.3 Regulators should ensure that their sanctions and penalties policies are consistent with the principles set out in the Macrory Review¹³. This means that their sanctions and penalties policies should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate;
- and
- aim to deter future non-compliance.

8.4 In accordance with the Macrory characteristics, regulators should also:

- publish an enforcement policy;
- measure outcomes not just outputs;
- justify their choice of enforcement actions year on year to interested parties;
- follow-up enforcement actions where appropriate;
- enforce in a transparent manner;
- be transparent in the way in which they apply and determine penalties; and
- avoid perverse incentives that might influence the choice of sanctioning response.

8.5 Regulators should ensure that clear reasons for any formal enforcement action are given to the person or entity against whom any enforcement action is being taken at the time the action is taken. These reasons should be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress should also be explained at the same time.

8.6 Regulators should enable inspectors and enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. Regulators should also ensure that their own inspectors and enforcement staff interpret and apply their legal requirements and enforcement policies consistently and fairly.

¹³ The report of the Macrory Review, which the Government has accepted, is available at: http://bre.berr.gov.uk/REGULATION/reviewing_regulation/penalties/index.asp.

9. Accountability

Hampton Principle: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

By establishing effective accountability and transparency structures regulators will make their activities accessible and open to scrutiny. This should increase the legitimacy of regulatory activities and enable regulators and regulated entities to work together to achieve regulatory compliance. Regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on the exercise of regulatory functions.

9.1 Regulators should create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties.

9.2 Regulators should identify and explain the principal risks against which they are acting. They should, in consultation with regulated entities and other interested parties, set and publish clear standards and targets for their service and performance. These standards should include:

- regulatory outcomes¹⁴ (capturing the principal risks);
- costs to regulated entities of regulatory interventions; and
- perceptions of regulated entities and other interested parties about the proportionality and effectiveness of regulatory approach and costs.

9.3 Regulators should measure their performance against the standards in paragraph 9.2 and regularly publish the results. To aid understanding, regulators should also explain how they measure their performance.

9.4 Local authorities and fire and rescue authorities are exempt from the requirements of paragraphs 9.2 and 9.3.

9.5 Regulators should ensure that their employees provide courteous and efficient services to regulated entities and others. They should take account of comments from regulated entities and other interested parties regarding the behaviour and activity of inspectors and other enforcement staff.

9.6 Regulators should provide effective and timely complaints procedures (including for matters in this Code) that are easily accessible to regulated entities and other interested parties. They should publicise their complaints procedures, with details of the process and likely timescale for resolution.

9.7 Complaints procedures should include a final stage to an independent, external, person. Where there is a relevant Ombudsman or Tribunal with powers to decide on matters in this Code, the final stage should allow referral to that body. However, where no such person exists, a regulator should, in consultation with interested parties, provide for further complaint or appeal to another independent person, for example, an independent professional body.

¹⁴ As defined in footnote 2 above.

TONBRIDGE AND MALLING BOROUGH COUNCIL

Environmental Health and Housing Services Enforcement Policy

Guidance on Prosecution

Introduction

1. In considering whether prosecution is the appropriate enforcement action, we will have regard to the "*Code for Crown Prosecutors*" which is reproduced at **Annex 3** and the following factors.

Sufficiency of Evidence

2. A prosecution will not be commenced or continued unless we are satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction.

Public Interest

3. A prosecution will not be commenced or continued unless it is in the public interest to do so.

Companies and Individuals

4. Criminal proceedings will be taken against those persons responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, we will also consider any part played in the offence by the officers of the Company, including Directors, Managers and the Company Secretary. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it.

Choice of Court

5. In cases of sufficient gravity, for example serious damage to health, consideration will be given to making an application for the case to be heard in the Crown Court. The same factors as listed in paragraph 8 (below) will be used, but including consideration of the sentencing powers of the Magistrates Court.

Penalties

6. The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. Examples of penalties presently available to the courts are:
 - Magistrates Courts: up to 6 months imprisonment and/or £20,000 fine
 - Crown Court: up to 5 years imprisonment and/or an unlimited fine
7. We will always seek to recover the costs of investigation and Court proceedings.

Factors Relating to Prosecution

8. We will consider the following factors in deciding whether or not to prosecute:

- **nature of the offence**
- **effect** of the offence
- **foreseeability** of the offence or the circumstances leading to it
- **intent** of the offender, individually and/or corporately
- **history** of offending
- **attitude** of the offender
- **deterrent effect** of a prosecution, on the offender and others.

9. The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. This does not mean that all factors must be in favour of prosecution, rather that the balance is in favour.

Presumption of Prosecution

10. Where there is sufficient evidence, we will normally prosecute in the following circumstances:

- **incidents of breaches which have significant consequences for public health and the environment.** We take seriously such incidents and those with potential for significant consequences.
- **carrying out operations without a relevant licence.** It is a pre-requisite to successful regulation that those that are required to be regulated come within the appropriate licensing system.
- **excessive or persistent breaches of regulatory requirements** in relation to the same premises or by the same person.
- **failure to comply or to comply adequately with formal remedial requirements, for example statutory notices.** It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply.
- **reckless disregard for management or quality standards.** It is in the interests of all that irresponsible operators are brought into compliance or cease operations.
- **failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.** It is essential that lawful requests for information by the Council are complied with and that accurate information is always supplied to enable informed regulation to be exercised.
- **obstruction of Council staff** in carrying out their duties. The Council regards the obstruction of or assaults on its staff while lawfully carrying out their duties as a serious matter.

Alternatives to Prosecution

11. In some cases where a prosecution is not the most appropriate course of action, the alternatives of a statutory caution or warning will be considered, the choice depending on the factors referred to above. A caution is a written acceptance by an offender that they have committed an offence. It will be brought to the Court's attention if the offender is convicted of a subsequent offence. As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a caution or warning.

The Code for Crown Prosecutors

The Crown Prosecution Service is the principal public prosecuting authority for England and Wales and is headed by the Director of Public Prosecutions. The Attorney General is accountable to Parliament for the Service.

The Crown Prosecution Service is a national organisation consisting of 42 Areas. Each Area is headed by a Chief Crown Prosecutor and corresponds to a single police force area, with one for London. It was set up in 1986 to prosecute cases investigated by the police.

Although the Crown Prosecution Service works closely with the police, it is independent of them. The independence of Crown Prosecutors is of fundamental constitutional importance. Casework decisions taken with fairness, impartiality and integrity help deliver justice for victims, witnesses, defendants and the public.

The Crown Prosecution Service co-operates with the investigating and prosecuting agencies of other jurisdictions.

The Director of Public Prosecutions is responsible for issuing a Code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985, giving guidance on the general principles to be applied when making decisions about prosecutions. This is the fifth edition of the Code and replaces all earlier versions. For the purpose of this Code, 'Crown Prosecutor' includes members of staff in the Crown Prosecution Service who are designated by the Director of Public Prosecutions under section 7A of the Act and are exercising powers under that section.

1 INTRODUCTION

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 Crown Prosecution Service applies the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions.

1.2 The Code helps the Crown Prosecution Service to play its part in making sure that justice is done. It contains information that is important to police officers and others who work in the criminal justice system and to the general public. Police officers should apply the provisions of this Code whenever they are responsible for deciding whether to charge a person with an offence.

1.3 The Code is also designed to make sure that everyone knows the principles that the Crown Prosecution Service applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims, witnesses and defendants fairly, while prosecuting cases effectively.

2 GENERAL PRINCIPLES

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 Crown Prosecutors must approach every case.

2.2 Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, disability, 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.

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

2.4 Crown Prosecutors should provide guidance and advice to investigators throughout the investigative and prosecuting process. This may include lines of inquiry, evidential requirements and assistance in any pre-charge procedures. Crown Prosecutors will be proactive in identifying and, where possible, rectifying evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation.

2.5 It is the duty of Crown Prosecutors 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.

2.6 The Crown Prosecution Service is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.

3 THE DECISION TO PROSECUTE

3.1 In most cases, Crown Prosecutors are responsible for deciding whether a person should be charged with a criminal offence, and if so, what that offence should be. Crown Prosecutors make these decisions in accordance with this Code and the Director's Guidance on Charging. In those cases where the police determine the charge, which are usually more minor and routine cases, they apply the same provisions.

3.2 Crown Prosecutors make charging decisions in accordance with the Full Code Test (see section 5 below), other than in those limited circumstances where the Threshold Test applies (see section 6 below).

3.3 The Threshold Test applies where the case is one in which it is proposed to keep the suspect in custody after charge, but the evidence required to apply the Full Code Test is not yet available.

3.4 Where a Crown Prosecutor makes a charging decision in accordance with the Threshold Test, the case must be reviewed in accordance with the Full Code Test as soon as reasonably practicable, taking into account the progress of the investigation.

4 REVIEW

4.1 Each case the Crown Prosecution Service receives from the police is reviewed to make sure that it is right to proceed with a prosecution. Unless the Threshold Test applies, the Crown Prosecution Service will only start or continue with a prosecution when the case has passed both stages of the Full Code Test.

4.2 Review is a continuing process and Crown Prosecutors must take account of any change in circumstances. Wherever possible, they should talk to the police first if they are thinking about changing the charges or stopping the case. Crown Prosecutors should also tell the police if they believe that some additional evidence may strengthen the case. This gives the police the chance to provide more information that may affect the decision.

4.3 The Crown Prosecution Service and the police work closely together, but the final responsibility for the decision whether or not a charge or a case should go ahead rests with the Crown Prosecution Service.

5 THE FULL CODE TEST

5.1 The Full Code Test has two stages. The first stage is consideration of the evidence. If the case does not pass the evidential stage it must not go ahead no matter how important or serious it may be. If the case does pass the evidential stage, Crown Prosecutors must proceed to the second stage and decide if a prosecution is needed in the public interest. The evidential and public interest stages are explained below.

THE EVIDENTIAL STAGE

5.2 Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

5.3 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of a defendant's guilt.

5.4 When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider 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. Crown Prosecutors must ask themselves the following questions:

Can the evidence be used in court?

a Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, is there enough other evidence for a realistic prospect of conviction?

Is the evidence reliable?

b Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?

c What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?

d If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?

e Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?

f Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

5.5 Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

THE PUBLIC INTEREST STAGE

5.6 In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: "It has never been the rule in this country — I hope it never will be — that suspected criminal offences must automatically be the subject of prosecution". (House of Commons Debates, volume 483, column 681, 29 January 1951.)

5.7 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution (see section 8 below).

5.8 Crown Prosecutors 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 suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

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.

Some common public interest factors in favour of prosecution.

5.9 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- a** a conviction is likely to result in a significant sentence;
- b** a conviction is likely to result in a confiscation or any other order;
- c** a weapon was used or violence was threatened during the commission of the offence;
- d** the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);
- e** the defendant was in a position of authority or trust;
- f** the evidence shows that the defendant was a ringleader or an organiser of the offence;
- g** there is evidence that the offence was premeditated;
- h** there is evidence that the offence was carried out by a group;
- i** the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- j** the offence was committed in the presence of, or in close proximity to, a child;
- k** the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- l** there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- m** the defendant's previous convictions or cautions are relevant to the present offence;
- n** the defendant is alleged to have committed the offence while under an order of the court;
- o** there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- p** the offence, although not serious in itself, is widespread in the area where it was committed;
- or
- q** a prosecution would have a significant positive impact on maintaining community confidence.

Some common public interest factors against prosecution

5.10 A prosecution is less likely to be needed if:

- a** the court is likely to impose a nominal penalty;
- b** the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing;
- c** the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- d** the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;

e there has been a long delay between the offence taking place and the date of the trial, unless:

- the offence is serious;
- the delay has been caused in part by the defendant;
- the offence has only recently come to light; or
- the complexity of the offence has meant that there has been a long investigation;

f a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;

g 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 real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;

h the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation); or

i details may be made public that could harm sources of information, international relations or national security.

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

The relationship between the victim and the public interest

5.12 The Crown Prosecution Service does not act for victims or the families of victims in the same way as solicitors act for their clients. Crown Prosecutors act on behalf of the public and not just in the interests of any particular individual. However, when considering the public interest, Crown Prosecutors should always take into account the consequences for the victim of whether or not to prosecute, and any views expressed by the victim or the victim's family.

5.13 It is important that a victim is told about a decision which makes a significant difference to the case in which they are involved. Crown Prosecutors should ensure that they follow any agreed procedures.

6 THE THRESHOLD TEST

6.1 The Threshold Test requires Crown Prosecutors to decide whether there is at least a reasonable suspicion that the suspect has committed an offence, and if there is, whether it is in the public interest to charge that suspect.

6.2 The Threshold Test is applied to those cases in which it would not be appropriate to release a suspect on bail after charge, but the evidence to apply the Full Code Test is not yet available.

6.3 There are statutory limits that restrict the time a suspect may remain in police custody before a decision has to be made whether to charge or release the suspect. There will be cases where the suspect in custody presents a substantial bail risk if released, but much of the evidence may not be available at the time the charging decision has to be made. Crown Prosecutors will apply the Threshold Test to such cases for a limited period.

6.4 The evidential decision in each case will require consideration of a number of factors including:

- the evidence available at the time;
- the likelihood and nature of further evidence being obtained;
- the reasonableness for believing that evidence will become available;
- the time it will take to gather that evidence and the steps being taken to do so;
- the impact the expected evidence will have on the case;
- the charges that the evidence will support.

6.5 The public interest means the same as under the Full Code Test, but will be based on the information available at the time of charge which will often be limited.

6.6 A decision to charge and withhold bail must be kept under review. The evidence gathered must be regularly assessed to ensure the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as reasonably practicable.

7 SELECTION OF CHARGES

7.1 Crown Prosecutors should select charges which:

- a** reflect the seriousness and extent of the offending;
- b** give the court adequate powers to sentence and impose appropriate post-conviction orders; and
- c** enable the case to be presented in a clear and simple way.

This means that Crown Prosecutors may not always choose or continue with the most serious charge where there is a choice.

7.2 Crown Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

7.3 Crown Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.

8 DIVERSION FROM PROSECUTION

ADULTS

8.1 When deciding whether a case should be prosecuted in the courts, Crown Prosecutors should consider the alternatives to prosecution. Where appropriate, the availability of suitable rehabilitative, reparative or restorative justice processes can be considered.

8.2 Alternatives to prosecution for adult suspects include a simple caution and a conditional caution.

Simple caution

8.3 A simple caution should only be given if the public interest justifies it and in accordance with Home Office guidelines. Where it is felt that such a caution is appropriate, Crown Prosecutors must inform the police so they can caution the suspect. If the caution is not administered, because the suspect refuses to accept it, a Crown Prosecutor may review the case again.

Conditional caution

8.4 A conditional caution may be appropriate where a Crown Prosecutor considers that while the public interest justifies a prosecution, the interests of the suspect, victim and community may be better served by the suspect complying with suitable conditions aimed at rehabilitation or reparation. These may include restorative processes.

8.5 Crown Prosecutors must be satisfied that there is sufficient evidence for a realistic prospect of conviction and that the public interest would justify a prosecution should the offer of a conditional caution be refused or the offender fail to comply with the agreed conditions of the caution.

8.6 In reaching their decision, Crown Prosecutors should follow the Conditional Cautions Code of Practice and any guidance on conditional cautioning issued or approved by the Director of Public Prosecutions.

8.7 Where Crown Prosecutors consider a conditional caution to be appropriate, they must inform the police, or other authority responsible for administering the conditional caution, as well as providing an indication of the appropriate conditions so that the conditional caution can be administered.

YOUTHS

8.8 Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However Crown Prosecutors should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the youth's past behaviour is very important.

8.9 Cases involving youths are usually only referred to the Crown Prosecution Service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither of these were appropriate or the youth does not admit committing the offence. Reprimands and final warnings are intended to prevent re-offending and the fact that a further offence has occurred indicates that attempts to divert the youth from the court system have not been effective. So the public interest will usually require a prosecution in such cases, unless there are clear public interest factors against prosecution.

9 MODE OF TRIAL

9.1 The Crown Prosecution Service applies the current guidelines for magistrates who have to decide whether cases should be tried in the Crown Court when the offence gives the option and the defendant does not indicate a guilty plea. Crown Prosecutors should recommend Crown Court trial when they are satisfied that the guidelines require them to do so.

9.2 Speed must never be the only reason for asking for a case to stay in the magistrates' courts. But Crown Prosecutors should consider the effect of any likely delay if they send a case to the Crown Court, and any possible stress on victims and witnesses if the case is delayed.

10 ACCEPTING GUILTY PLEAS

10.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime. Crown Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Crown Prosecutors must never accept a guilty plea just because it is convenient.

10.2 In considering whether the pleas offered are acceptable, Crown Prosecutors should ensure that the interests of the victim and, where possible, any views expressed by the victim or victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the Crown Prosecutor.

10.3 It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

10.4 Where a defendant has previously indicated that he or she will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence at court, Crown Prosecutors will consider whether a prosecution is required for that offence. Crown Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review.

10.5 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, Crown Prosecutors must bear in mind the fact that ancillary orders can be made with some offences but not with others.

11 PROSECUTORS' ROLE IN SENTENCING

11.1 Crown Prosecutors should draw the court's attention to:

- any aggravating or mitigating factors disclosed by the prosecution case;
- any victim personal statement;
- where appropriate, evidence of the impact of the offending on a community;
- any statutory provisions or sentencing guidelines which may assist;
- any relevant statutory provisions relating to ancillary orders (such as anti-social behaviour orders).

11.2 The Crown Prosecutor should challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory. If the defence persist in the assertion, and it appears relevant to the sentence, the court should be invited to hear evidence to determine the facts and sentence accordingly.

12 RE-STARTING A PROSECUTION

12.1 People should be able to rely on decisions taken by the Crown Prosecution Service.

Normally, if the Crown Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why the Crown Prosecution Service will re-start the prosecution, particularly if the case is serious.

12.2 These reasons include:

a rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand;

b cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the Crown Prosecutor will tell the defendant that the prosecution may well start again; and

c cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

12.3 There may also be exceptional cases in which, following an acquittal of a serious offence, the Crown Prosecutor may, with the written consent of the Director of Public Prosecutions, apply to the Court of Appeal for an order quashing the acquittal and requiring the defendant to be retried, in accordance with Part 10 of the Criminal Justice Act 2003.

**SIMPLE CAUTIONING OF ADULT OFFENDERS: KEY POINTS – HOME
OFFICE CIRCULAR 30/2005**

This highlights the key points of the process for quick reference. It should be read in conjunction with the full circular, which provides additional important detail.

1. Criteria for a Simple Caution

- Is there sufficient evidence of the suspect's guilt to meet the Threshold Test (as outlined in the Director's Guidance on statutory charging)? If the offence is indictable only (and the available evidence meets the Threshold Test) then the disposal option may only be considered by a Crown Prosecutor.
- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)?
- Is it in the public interest to use a Simple Caution as the appropriate means of disposal?
- Is the suspect 18 years or over?

If all of the above requirements are met, the officer must consider whether the seriousness of the offence makes it appropriate for disposal by a Simple Caution. The Gravity Factors Matrix is available to assist officers in considering aggravating and mitigating factors when assessing seriousness.

2. The victim

The views of the victim must be considered when deciding whether a Simple Caution is the most appropriate course of action. However it must be made clear to the victim that the decision rests with the police and CPS.

3. Further considerations

Does the suspect have any other cautions for similar offences?

- National and local records must be checked. If 'yes,' then a Simple Caution should not normally be considered, unless a two year period has passed with no further convictions or cautions, or unless the offence is trivial or unrelated. If the suspect has previously received a Reprimand or Final Warning, a period of two years should also be allowed to elapse before administering a Simple Caution.

Has the suspect been made aware of the significance of a Simple Caution?

- If a Simple Caution is being considered, then the full implications and consequences must be explained to the suspect. Under no circumstances should suspects be pressed to admit offences in order to receive a Simple Caution as an alternative to being charged. Be aware of additional consequences for those receiving a Simple Caution for sexual offences or who are employed in notifiable occupations.

Has the suspect given informed consent to being cautioned?

- If they do not consent, then police may choose to continue with a prosecution. The suspect should not be pressed to make an instant decision on whether to accept the Simple Caution. They should be allowed to consider the matter, and if need be, take independent advice.

4. Approval

If the offence is suitable for disposal by means of a Simple Caution, then it should be referred for approval to an officer who is unrelated to the investigation of the offence and is of at least Sergeant rank (they may or may not be a Custody Officer).

Once the approving officer is satisfied that the requirements for administering a Simple Caution have been met, they will need to consider:

- if it is appropriate to the offence and offender; and
- if it is in the public interest to deal with the offence in this way.

When the approving officer has reached a decision in favour of issuing a Simple Caution, they should sign the custody record or other suitable documentation to say that they have approved this as the appropriate method of disposal.

5. Administering the Simple Caution

After the Simple Caution has been approved, it should be administered by someone who is suitably trained for this purpose and to whom the relevant authority has been delegated. If a suitable person is not immediately available an officer of Inspector rank or above may determine an appropriate person to deliver the Simple Caution.

Once the Simple Caution has been administered, the offender should sign a form accepting the terms of the caution and should be given a copy of the acceptance pro-forma to take away.

Ensure the details of the Simple Caution are accurately recorded on PNC (if administered for a recordable offence) and any relevant local records.