



East Cambridgeshire District Council

CODE OF CONDUCT FOR LEGAL PROCEEDINGS BY EAST CAMBRIDGESHIRE DISTRICT COUNCIL

1. INTRODUCTION

- 1.1 Deciding to take someone to court is a very serious step for the Council to take. It is therefore essential that the Council takes that decision in a fair way, with all the appropriate information - to ensure that effective legal action is taken against the right people for the right reasons.
- 1.2 The Council has a duty, for example, to administer claims for Housing and Council Tax Benefit, including the responsibility to prevent and detect benefit fraud. The authority has undertaken a number of measures to combat fraud including the introduction of the Department for Work and Pensions' (DWP) Verification Framework for its Revenue Services; the wide use of anti-fraud advertising and has set up a dedicated telephone fraud hotline. East Cambridgeshire is also pro-active and committed to joint working with other public bodies such as the Police and DWP.
- 1.3 The Council recognises that prosecution is a serious step and will consider alternative sanctions to prosecution through the Courts.
- 1.4 This Code sets out the agreed basis for all legal proceedings to be carried out by the Council, including criminal proceedings, for example, as regards car parking penalty enforcement, Town and Country Planning or Food Safety prosecutions or Benefit fraud, and civil proceedings, for example, the recovery of debts owed to the Council.

2. CENTRAL PRINCIPLES

- 2.1 Every case must be considered on its own facts but some basic principles apply to all cases. These are:

2.1.1 Unbiased Approach

The Council must ensure that:

- the ethnic or national origin, sex, religious beliefs or political views or sexual preference of a defendant or a witness have no bearing on decisions on enforcement
- no improper or undue pressure from any source, inside or outside the Council, affects those decisions

- all relevant facts in the possession of the Council are given to the court and to the defendant as appropriate.

2.1.2 Consistency of approach

All people coming into contact with the Council have the right to be treated even-handedly.

2.1.3 Proportionality

i.e. the relationship between the incident and the legal action decided on. Court proceedings may not always be appropriate.

- 2.2 In undertaking any legal proceedings, the Council will always have due regard to all relevant legislation and in particular to the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000.

3. THE INVESTIGATION

- 3.1 Before a decision to take formal legal action is taken, the investigating officer will have amassed all the necessary evidence, usually after consultation with the legal department.
- 3.2 The decision on the action to be taken, if any, will be taken by the Executive Director (Legal and Democratic Services), in consultation with the investigating department, following a review of the evidence and all the circumstances.

4. CRIMINAL PROCEEDINGS

4.1 Steps before prosecution

- 4.1.1 There are two stages in the decision to prosecute. The first stage - is there sufficient evidence to prosecute ("the evidential test")? If the case does not pass this test, it must not go ahead no matter how important or serious it may appear to be.
- 4.1.2 If the case does pass this first test, the next decision is whether a prosecution is needed in the public interest or whether a warning or caution would be more appropriate ("the public interest test").
- 4.1.3 The legal department will only start or continue a prosecution where the case has passed both tests.

4.2 The Evidential Test

- 4.2.1 The legal department must be satisfied there is enough usable evidence to provide a realistic prospect of conviction against any defendant in any case. They must consider what the defence case may be and how it is likely to

affect the prosecution case. This means they must believe that a bench of magistrates or a jury would be likely to find the defendant guilty of the alleged offence.

4.2.2 When deciding whether there is enough evidence to prosecute, the legal department will consider whether the evidence is reliable and able to be used. 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 to the investigating officers. The legal department and the instructing department must ask themselves the following questions:

- Can the evidence be used in court?
 - is it likely that the evidence would not be accepted by the court? (e.g. is it hearsay or is it the opinion of someone other than an expert?) Is there enough other evidence for a realistic prospect of conviction?
- Is the evidence reliable?
 - can a confession be used?
 - is there anything about the witness which may weaken the prosecution case, (e.g. their motive in appearing as a witness).
 - is the identity of the defendant clear?

4.2.3 The legal department cannot ignore evidence that they feel cannot be used or is unreliable and they must look closely at all the evidence when deciding there is a realistic prospect of conviction.

4.3 **The public interest test**

4.3.1 The public interest must be considered in every case where there is enough evidence to provide a realistic prospect of conviction. The legal department must balance all of the factors for and against prosecution carefully and fairly. Public interest factors can affect the decision to prosecute because of the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest another course of action would be better.

4.3.2 The more serious the offence the more likely it is that a prosecution would be needed in the public interest, so a prosecution is more likely to be warranted in the following instances:

- a conviction is likely to result in a significant sentence
- a weapon was used or violence was threatened during the commission of the offence
- the defendant was in a position of authority or trust
- the evidence shows that the defendant was the organiser of the offence
- there is evidence that the offence was pre-meditated
- the victim of the offence was vulnerable, had been put in considerable fear or suffered personal attack, damage or disturbance

- the offence was motivated by any form of discrimination against the victims ethnic or national origin, sex, religious beliefs, political views or sexual preference
- there is a marked difference between the actual or mental ages of the defendant and the victim
- if there is any element of corruption
- the defendant's previous convictions or cautions are relevant to the present offence
- the defendant has alleged to have committed the offence while under an order of the court
- there are grounds for believing that the offence is likely to be continued or repeated
- the offence, although not serious in itself, is widespread in the area where it was committed

4.3.3 Some common public interest factors against prosecution are:

- the court is likely to impose a very small or nominal penalty
- the offence was committed as a result of a genuine mistake or misunderstanding (but balance against this the seriousness of the offence)
- the loss or harm can be described as minor and was as a result of a single incident, particularly if it was caused by a mis-judgement
- 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
- a prosecution is likely to have a very bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence
- the defendant is elderly or is or was at the time of the offence suffering from significant mental or physical ill health and there is a real possibility that the offence may be repeated
- the defendant has put right the loss or harm that was caused.

4.4 **Local Authority Cautions**

4.4.1 This is a formal Caution offered as an alternative to prosecution by the Council. The Caution is offered at a formal interview and if it is not accepted then a prosecution must be undertaken. A formal Caution can only be offered when a person has admitted the offence.

4.4.2 The following factors will be considered in the issuing of a Local Authority Caution:

- (a) The offence is relatively minor and any Court sentence is likely to be small.
- (b) Any loss to public funds is small.

- (c) There are no factors that would prevent a prosecution should the Caution be declined.
- (d) The claimant has admitted the offence during an Interview Under Caution.
- (e) Any "Administrative Penalty" (for example for Housing or Council Tax Benefit) is considered unsuitable.
- (f) The person has no unspent previous convictions, cautions or administrative penalties.

4.5 Housing or Council Tax Administrative Penalties

4.5.1 This is a penalty of 30% of the amount of benefit fraudulently obtained, which is offered as an alternative to prosecution by the Council. The administrative penalty payments are recouped in addition to the benefit fraudulently obtained. The penalty is offered at a formal interview and if it is not accepted then a prosecution must be undertaken.

4.5.2 The offering of an Administrative Penalty will be considered if:

- (a) The case is not so serious that prosecution is the only option.
- (b) The claimant has been notified of the Adjudication Officer's decision, overpayment and appeal rights.
- (c) The overpayment is not too small so as to make the penalty negligible nor so large that prosecution should be the first option.
- (d) There are no factors that would prevent a prosecution, should the offer of the penalty be declined.
- (e) The person has no unspent previous convictions, cautions or administrative penalties.

4.6 Which Court?

4.6.1 Once a prosecution has been decided upon, for offences which are triable either in the Magistrates Court or in the Crown Court, the Council will follow the current Guidance for Magistrates who have to decide whether a case should be tried in the Crown Court when the offence gives the option. The legal department will only recommend a Crown Court trial if they are satisfied that the guidelines require them to do so.

4.6.2 Speed must never be the only reason for asking for a case to be in the Magistrates Court. The legal department will, however, consider the effect of any delay of sending a case to the Crown Court.

4.7 Accepting Guilty Pleas

4.7.1 Defendants may want to plead guilty to some but not all of the charges or may want to plead guilty to a lesser offence. The legal department will only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the alleged offence.

5. CIVIL PROCEEDINGS

5.1 Steps before Proceedings

5.1.1 In deciding to begin civil proceedings the Council will firstly consider the evidence available.

5.1.2 We will then consider the range of enforcement options that are available to us in each case.

5.2 The Evidential Test

5.2.1 The legal department must be satisfied there is enough usable evidence for the case to succeed.

5.3 Options other than Court Proceedings

5.3.1 Once the legal department are satisfied that there is sufficient evidence for a case to proceed, they will then consider the range of options available taking into account:

- the possibilities for the matter to be remedied without further action
- the likelihood of, e.g. a debtor having the means to pay
- the length of time between the events giving rise to the case and the decision to take legal action
- the nature of the defendant (their age, health, etc)
- the consequences of the matter for the Council (e.g. the size of the debt)

6. COUNCIL TAX AND NNDR RECOVERY PROCESSES

6.1 Application for Liability Order

6.1.1 Applications for Liability Orders are made at scheduled court hearings by approved officers. The dates are arranged by the court office and the Council is notified of the dates for the forthcoming year each November. They are normally at monthly intervals. The recovery timetable is built around the scheduled court hearings.

6.1.2 For each Liability Order issued by the Magistrates costs of £30.00 are requested.

6.1.3 On the reverse side of the summons are guidance notes and details of the court procedure with the measures that can be taken after the award of a Liability Order.

6.2 14 Day Letter and Means Enquiry

6.2.1 Within 7 days of a Liability Order being issued a 14 day notice and an enquiry letter are sent.

6.2.2 The notice gives 14 days to pay the debt or to contact the office to discuss an arrangement to pay.

6.2.3 The enquiry letter asks for specific financial information: the name and address of their employer, their earnings and details of any income from other sources. It is an offence not to return the means enquiry or to supply false or inaccurate information. Anyone guilty of such an offence could be liable, on summary conviction, to a fine and wording to this effect is included in the letter.

6.2.4 These fines are payable to the Court and not to the Council. However, the Council would have to bear the cost of the action required to enforce the completion of the means enquiry.

6.3 Arrangements

6.3.1 An arrangement to pay will be accepted provided that it is reasonable. It should be paid in addition to keeping any subsequent charges up to date.

6.3.2 Arrangements are automatically monitored, a reminder is sent once an instalment is 14 days late asking that the arrangement be brought up to date. Up to two reminders are issued. If there is a subsequent default each case is looked at individually to determine subsequent action. This may mean an attachment or distress.

6.4 Attachments

6.4.1 From the information provided on the enquiry letter it may be possible to serve an attachment order.

6.4.2 If the debtor is working (and not self employed) the Council may serve an attachment of earnings order and deductions should be made by the employer at a rate specified by Government. (Maximum number of con-current attachments is two)

6.4.3 If the debtor is in receipt of sufficient income support/job seekers allowance to serve an attachment of benefit order then deductions will be made by the DSS and passed to the Council on a regular basis. The rate is set by the Secretary of State.

6.4.4 Both types of attachment are monitored.

6.4.5 If the debtors' circumstances change the type of attachment can be changed or an arrangement considered.

6.5 Distress

6.5.1 If all other attempts to collect a debt fail, it may be necessary to send the Liability Order to the bailiff for collection. The 14 day notice, mentioned in 6.2, also advises that failure to pay will result in the debt being passed to the appropriate bailiff.

6.5.2 If the debtor contacts the Council it may be possible to make another arrangement or to serve an attachment. If no response is received, a revised arrangement not agreed, or an attachment not possible (ie. self employed) the debt will be referred to the bailiff for collection.

6.5.3 The bailiff will advise that they are now collecting the debt on behalf of the Council. It is still possible to make an arrangement at this stage. This would be direct with the bailiff who is contracted to collect the debt within 12 weeks. This period can be extended in certain circumstances.

6.5.4 If it is necessary for the bailiff to visit a debtor with a view to levying distress, costs/fees will be incurred. These are payable to the bailiff.

6.5.5 If an arrangement is made at this stage the bailiff will require it to be backed by a signed walking possession order. This will allow the bailiff to re-enter the property and remove specified goods should the debtor fail to maintain payment as agreed. (Note: tools of the trade and clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and his family are specifically excluded).

6.5.6 There are further charges for removing and storing goods prior to selling them at auction.

6.5.7 Case reports are requested from the bailiffs on a regular basis. These are used for monitoring purposes.

6.5.8 Liability Orders are returned from the bailiffs, together with payments and a detailed report for each case, fortnightly. Bailiff returns fall mainly into three categories:

- (i) Paid in full - no further action required.
- (ii) Gone Away - further tracing instigated by the Council:
 - (a) if successful try arrangement/attachment/distress
 - (b) if unsuccessful submit for write off.
- (iii) If no payments, part payment, no effects on which to levy or no access - send pre-Committal letter.

6.6 Committals

- 6.6.1 A pre-committal threat letter will be sent to all cases returned from the bailiff with an outstanding balance and no obvious means of collection. The letter asks for payment in full. If this is not possible an arrangement will be considered provided the enclosed means enquiry form is completed and returned together with their proposals for payment.
- 6.6.2 Debtors are advised that failure to respond will result in further action being taken through the Magistrates' Courts.
- 6.6.3 Arrangements or attachments made at this stage are monitored as before.
- 6.6.4 The Council must hold a bailiff return endorsed "no effects" or "unable to gain access to levy distress" before an application for committal can be made. These are known as "Nulla Bona" certificates.
- 6.6.5 Cases will be scheduled for Committal based on their age and the size of the debt. All cases are to be dealt with on their merits. Factors that are taken into consideration are as follows:
1. Are they on benefit?
 2. Is it a closed account?
 3. Have they made any payments?
 4. What is their previous payment record? etc.
- 6.6.6 Subsequent years' debts can be taken into account providing the Court are prepared to issue warrants in respect of multiple debts - these must be on separate committal summonses.
- 6.6.7 A list of proposed cases will be passed to the Client for approval before making application for committal summonses. An agreement with the court of Committal cases for each hearing is to be made but sometimes cases could be carried over from previous dates.
- 6.6.8 The summonses are prepared by Capita but issued by the Court. The Court may charge for each application - these costs to be agreed.
- 6.6.9 If a defendant does not attend the hearing application may be made for a warrant, with bail. For this the Court can make further charges.
- 6.6.10 The bailiffs charge for executing this warrant. At the hearing the Council will apply for costs towards these expenses, to be added to the taxpayers' council tax account.
- 6.6.11 If the defendant does not appear when bailed to do so application may be made for a warrant, without bail. For this the Court can make further charges and the bailiffs will also charge to execute it. The Council then applies for costs towards these expenses, to be added to the taxpayers council tax account.

6.6.12 If, at any point during the above action, the defendant's employment details become known it may be prudent to withdraw action and pursue an attachment of earnings order.

6.6.13 Once the defendant is before the court, the arrears will be identified and details of attempts to collect the debt will be explained. The court will conduct a full means enquiry to find whether the nonpayment, between the date of the demand and the date of the liability order, was due to the debtor's culpable neglect or wilful refusal. If neither is found the Magistrates may consider remitting all or part of the outstanding sum in the light of the debtor's current circumstances.

6.6.14 However, if culpable neglect or wilful refusal is found a further means enquiry should be held to find the debtor's ability to pay at the date of the application.

6.6.15 Depending on the facts found and what is considered just and reasonable in the exercise of their discretion the Magistrates have the following options:

- (a) Remit part or the entire sum; the application to commit in respect of any remaining debt must then be dismissed.
- (b) Commit the debtor to immediate custody for a period not exceeding three months.
- (c) Set a term of imprisonment and suspend it upon such terms as they see fit. If the debtor defaults on the terms set a further hearing **must** take place of which **he must be notified**. If he attends court he may inform the court of any change in his circumstances which may have arisen and affected his ability to pay.

6.6.16 These matters should be considered before either:

- (i) committing or
- (ii) further suspending if the circumstances justify this.

6.6.17 It is noted that sometimes, due to the constraints of court time, the number of cases pending committal can exceed the maximum number that can be brought to court. However, the percentage of debit, which is at committal stage, is very low (as endorsed by the general collection rate).

7. RESTARTING PROCEEDINGS

7.1 People must be able to rely on decisions taken by the Council. If the Council tells a defendant there will not be proceedings or the proceedings have been stopped, that is generally the end of the matter and the case should not start again. The only circumstances in which that rule may not apply would be, for example, where the original decision was clearly wrong and should not be allowed to stand or if the case is stopped because of lack of evidence which has now been collected. (In such cases the Council must tell the defendant that the matter is still under investigation).

8. COSTS

- 8.1 The costs of taking proceedings for the Council can often be substantial. The Council will therefore generally - in all but the obtaining of Council Tax and NNDR liability orders - seek to recover the costs of taking court proceedings from the defendant. Repayment of disbursement (e.g. for expert witnesses or Counsel) will always be sought as will any fixed legal fees.
- 8.2 Legal fees not subject to fixed rates will be recharged at no less than the Legal Aid rate fixed at the appropriate time.

9. OTHER VERSIONS OF THIS LEAFLET

- 9.1 If you would like a copy of this guidance leaflet to be provided in another format (e.g. large type, Braille or audio tape) or translated into other languages, please contact the Council's Legal Department on (01353) 616224.

10. COMPLAINTS

- 10.1 If you are unhappy with the outcome of legal proceedings taken against you by the Council, you must seek immediate legal advice.
- 10.2 If your concern is with the way the Council has handled your case, you can complain using the Council's complaints system, by writing – either on the forms available in our Reception or otherwise – to our Chief Executive at the Council Offices, The Grange, Nutholt Lane, Ely, Cambs CB7 4PL. Please remember you should not do this if your concern is over the outcome of the legal proceedings, but should, in that case, seek immediate legal advice.
- 10.3 If your complaint is that you have suffered injustice as a result of maladministration, you can ask for your case to be investigated by the Local Government Ombudsman – forms are available in the Council's Reception.
- 10.4 The Ombudsman cannot set aside a decision of a Council and in rare cases the Council may choose not to implement the Ombudsman's findings. Generally the Ombudsman will expect you to have used the Council's own complaints system before he will look into a complaint.

11. CONCLUSION

- 11.1 This Code is designed to make sure everybody knows the basis on which the Council will investigate alleged offences and take enforcement action.
- 11.2 The "Criminal Prosecutions" section of this Code is based on the Code for Crown Prosecutions adopted by the Crown Prosecution Service (© Crown Copyright) whose kind permission to do so is appreciated and acknowledged.