

Pendle Borough Council

Operational Services

Enforcement Policy

July 2024

Table of Contents

1. Introduction	4.
1.1 Purpose	4.
1.2 Aims of the Compliance and Enforcement Policy	5.
1.3 Scope of the Environmental Health Service	5.
1.4 Joint Working	5.
2. Competence of Enforcement Officers	6.
3. Comparing with Others	6.
4. Charging for Enforcement Action	6.
5. Equality	6.
6. Conduct of Investigations	7.
7. Principles of Enforcement	7.
8. Regulators Compliance Code	8.
9. General Enforcement Options	9.
9.1 Informal Action	9.
9.1.1 Voluntary Undertakings	10.
9.2 Written Warnings	10.
9.3 Statutory Notices	10.
9.4 Simple Caution	11.
9.5 Prosecution	12.
9.5.1 Publicity	13.
9.5.2 Proceeds of Crime	14.
9.6 Work in Default	14.
9.7 Fixed Penalty Notices	14.
9.8 Forfeiture Proceedings	14.
9.9 Seizure of goods/equipment	15.
9.10 Refusal, Suspension and Revocation of Licences and Permits	15.
10. Enforcement in relation to specific legislation	15.
10.1 Section 215 of the Town and Country Planning Act 1990	15.
10.2 Section 46 Environmental Protection Act 1990	15.
10.3 Section 79 Public Health Act 1936	15.
10.4 Section 34 Environmental Protection Act (1990) Business Duty of Care	16.
10.5 Section 33 Environmental Protection Act 1990 (depositing of waste)	16.
10.6 Section 80 Environmental Protection Act 1990	16.
10.7 Section 87&88 Environmental Protection Act 1990 (Littering)	16.
10.8 Antisocial Behaviour, Crime and Policy Act 2014	17.
10.9 Public Space Protection Orders	17.
10.10 Refuse Disposal Community Act 1978 (Abandoned Vehicle)	17.
11. Complaints of non-compliance	17.
12. Review	17.
13. Comments and Complaints	17.

List of Appendices.....	18.
Appendix A: Legislation, Guidance and Codes that Influence the Preparation of the Compliance and Enforcement Policy.....	19.
Appendix B: Conduct of Investigations.....	22.
Appendix C: Factors to be considered when taking enforcement action.....	23.
Appendix D: Deciding what enforcement action to take.....	24.
Appendix E: Guidance on informal enforcement action	25.
Appendix F: Guidance on Serving Formal Notices	26.
Appendix G: Guidance on Administering a Simple Caution.....	27.
Appendix H: The Evidential Test.....	28.
Appendix I: The Public Interest Test.....	29.

1.Introduction

1.1 Purpose

Pendle Borough Council is required by the Legislative and Regulatory Reform Act 2006 and subsequent Regulators' Code to publish a policy setting out its approach to compliance and enforcement. It is important for regulators, in meeting their responsibility under the statutory principles of good regulation, to be accountable, open, fair and transparent about their activities.

The Council aims to support businesses in achieving compliance and encouraging economic growth. The outcomes of this will be safer and cleaner environment for all within the district, with a more vibrant and sustainable community.

Pendle Borough Council's Operational Services, Enforcement Team enforces 10 pieces of legislation related to both businesses and individuals.

The main areas of enforcement are:

- ☐ Littering
- ☐ Failure to clear fouling
- ☐ Abandoned vehicles
- ☐ Fly-tipping
- ☐ Clearance of waste on private land
- ☐ Clearance of noxious waste
- ☐ Environmental Crime

1.2 Aims of the Compliance and Enforcement Policy

The functions undertaken by the Council's Enforcement Officers assist the Council in achieving its priorities. It strives to accomplish these by undertaking its duties in a fair and equitable manner by requiring individuals, businesses and organisations to fulfil their legal responsibilities. The policy includes what factors are taken into account, what individuals and businesses can expect from us and what efforts will be made to ensure that everyone receives fair and equal treatment, based on reducing the risk to both public and individual health, safety and well-being.

By enforcing the legislation available the Enforcement Team supports the following corporate priorities;

- ❑ Working with Partners and the Community to provide a High-Quality Service
- ❑ Encourage and foster community pride for a safer, cleaner and greener environment.
- ❑ Protect our parks and local environment by taking pride in our green spaces and surroundings

1.3 Scope of Operational Services

Operational Services is committed to enforcing legislation fairly and consistently to ensure all members of our community can enjoy the beauty of our Borough without being impacted upon by illegal activities.

The effectiveness of legislation in protecting residents depends on the compliance of those regulated. We will take care to offer assistance to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who disregard their obligations under the law or act irresponsibly putting residents' health at risk.

1.4 Joint Working

Operational Services will normally take action consistent with the approach that other local authorities would use. When the Authorised Officer is taking enforcement action contrary to the advice of the Home, Originating or Lead Authority, the authorised officer will discuss the action with the relevant Authority before finalising an enforcement approach.

Where a Primary Authority has been established under the provisions of the Regulatory Enforcement and Sanctions Act 2008, the Officer will consult and cooperate with the Primary Authority where appropriate.

Pendle Borough Council will also cooperate and work with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement, for example the Police and Fire Service, Environment Agency, other local authorities and statutory undertakers.

The Authorised Officer will work with our internal and external partners to achieve compliance with legislation so that resources are pooled which adds value for the customer.

In particular we will work closely with other agencies dealing with the wider aspects of Anti-Social Behaviour. To that end the service will share data with the Police provided that the customer has agreed.

2. Competence of Enforcement Officers

The Council recognises that only appropriately competent, authorised personnel may undertake certain aspects of environmental health and licensing law enforcement. The Council's constitution provides for such authorisation of officers through its published scheme of delegation.

The criteria used to assess the competence of enforcement officers will be those detailed in the specific requirements demanded by the Statutory Codes of Practice and any other considerations which are believed to be relevant to the case.

Competency of officers will be maintained through appropriate continuing professional development.

3. Comparing with Others

The Council is committed to comparing its services with those of others and in particular with better performing authorities. To achieve this, the Council will take part in benchmarking (including Inter Authority Auditing) where it is believed the resources needed to do this will be justified by the improvements which are secured as a result.

4. Charging for Enforcement Action

Some legislation, such as the Section 215 of the Town and Country Planning Act 1990 gives Local Authorities the power to make a charge if enforcement action is necessary. The service will make use of these powers and will make a charge to ensure that where the legislation allows, the Council recovers the full costs of enforcement. Where possible fees will be set and reviewed as part of the fees and charges review process.

5. Equality

The Council fully recognises and endorses the rights of individuals and will ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984, the Human Rights Act 1984, the Regulation of Investigatory Powers Act 2000 and other relevant legislation and guidance.

Action taken against an individual, business or organisation will be consistent with the Council's commitment to equality and diversity when taking a decision to take enforcement action, the Council aims to ensure that there is no discrimination against an individual with protected characteristics.

We recognise that some individuals need additional support or information in different formats to provide equal access to our service. Where the proprietor of a business does not speak or read English, they will be encouraged to arrange their

own translations. If this is not possible then the Council will provide this service.

Mental capacity issues are assessed in each case to ensure that the individual the Council is taking enforcement action against understands the consequences of their actions and is able to make informed decisions.

6. Conduct of Investigations

All investigations will be carried out in accordance with any associated guidance or codes of practice, in so far as they relate to Pendle Borough Council.

Covert surveillance will form part of some investigations. If for any reason the service needs to carry out any covert surveillance, the relevant guidance will be followed.

Covert surveillance may be used as a last resort and where this is the case the relevant guidance will be followed.

7. Principles of Enforcement

We will ensure that any action required is proportionate to the risks. Where the law allows, when considering what action to take we will take account of the circumstances of the case and the attitude of the individual.

8. Regulators Compliance Code

The Legislative and Regulatory Reform Act 2006 set out the approach regulators should take when carrying out their enforcement functions. The purpose of the legislation is to remove unnecessary burdens from businesses. These burdens are described as;

- (a) A financial cost;
- (b) An administrative inconvenience;
- (c) An obstacle to efficiency, productivity or profitability; or
- (d) A sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

This legislation also enabled Ministers to develop regulations, and Codes of Practice which Local Authorities are required to follow when taking enforcement decisions. The Regulator can deviate from the Code of Practice if they conclude, on the basis of material evidence, that following the code would not be best option. The decision should be documented.

In 2012 a revised code was published by the Better Regulation Delivery Office. This *Regulators Code* provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated bodies. The main principles are;

- a) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
- b) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
- c) Regulators should base their regulatory activities on risk.
- d) Regulators should share information about compliance and risk.
- e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- f) Regulators should ensure that their approach to their regulatory activities is transparent. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases.

The Code sets out two tests:

Evidential Test - is there enough evidence against the defendant?

Public Interest Test - is it in the public interest for the case to be brought to court?

Authorised officers must seek to ensure compliance with legislation. Officers will offer information, advice and support where necessary. However, they may also use formal enforcement options to ensure compliance.

We ensure that enforcement decisions are consistent, fair, balanced and proportionate, but that actions taken by the service are flexible enough to support economic growth.

In making a decision as to the most appropriate action to take the following should be considered:

- ☐ The nature of the alleged offence.
- ☐ The seriousness of the alleged offence(s) or conditions.
- ☐ The risk posed to the public, employees, welfare of animals or the environment.
- ☐ The individual or business's previous history and confidence in management (where appropriate).
- ☐ The requirement of the legislation.
- ☐ The consequences of not complying.
- ☐ The likelihood of effectiveness of the various enforcement options.
- ☐ Likelihood of a due diligence defence (where appropriate).
- ☐ Relevant information provided by the home/primary authority for the business, where appropriate.
- ☐ Cooperation of witnesses (where appropriate).
- ☐ Willingness to prevent a recurrence.
- ☐ Public benefit.
- ☐ Any explanation offered.
- ☐ Whether a caution is appropriate (Ministry of Justice: Simple Caution for Adult Offenders guidance dated 13th April 2015, or any guidance which replaces it.).
- ☐ The effect on the environment of the alleged offence, where appropriate.

9. General Enforcement Options

The Council recognises the following enforcement options;

- I.** Informal Action
- II.** Written Warnings
- III.** Statutory Notices
- IV.** Simple Cautions
- V.** Prosecution
- VI.** Work in default
- VII.** Fixed Penalty Notices
- VIII.** Forfeiture Proceedings

9.1 Informal Action

The purpose of informal action is to help businesses and an individual comply with legislation and is taken at the discretion of an Authorised Officer. Informal action can be through advice, information or education and can be verbal or written. This action would also include an inspection report

Informal action should be considered when any of the following applies –

- a) The contravention is not serious enough to warrant formal action.
- b) The risk of non-compliance is low.
- c) There is a previous history of compliance.
- d) Confidence in the organisation or individual is high.

9.1.1 Voluntary Undertakings

Pendle Borough Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

9.2 Written Warnings

The purpose of a warning is to address contraventions where the immediate risk is not so serious as to warrant more formal action, or to prevent such a breach where the Authorised Officer has reasonable evidence to suggest it may occur.

Written warnings will include clear statements that:

- ☐ The Council believes or has evidence that an offence has been committed.
- ☐ No action is to be taken by the Authority if the matter is rectified within the time specified.
- ☐ Legal proceedings could result if the matter is not rectified or the offence occurs again.
- ☐ A written warning will also state what must be done to put right the alleged offence and or details of the situation that should be rectified.

9.3 Statutory Notices

An enforcement option under many Environmental Health and Planning legislation is to serve a statutory notice. Statutory notices can require businesses or individuals to;

- ☐ Stop a process
- ☐ Stop using equipment
- ☐ Close the premises
- ☐ Carry out remedial work
- ☐ Carry out tests
- ☐ Stop causing a nuisance.

There are specific rules and appeal periods for different legislation but the following general rules will apply:

- a) A statutory notice will be issued when one or more of the following apply:
 - ☐ There are significant contraventions of environmental health or

planning legislation.

- ☐ We are not confident that the person or business will respond to an informal approach.
 - ☐ There is a history of non-compliance.
 - ☐ Standards are generally poor and the management has little awareness of requirements.
 - ☐ The consequences of non-compliance could be potentially serious to public health.
 - ☐ Effective action needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating.
 - ☐ Where the legislation states that a Notice must be served.
- b)** Statutory notices will relate to the risk to health, safety and public protection and will not be issued for minor, technical contraventions, unless an informal approach is unlikely to achieve compliance.
- c)** Statutory notices will be issued only by officers who have been authorised to do so.
- d)** Where the legislation stipulates statutory notices will be signed only by an authorised officer who has personally witnessed the contravention.
- e)** Authorised Officers will follow any relevant Codes of Practice and guidance on the use of statutory notices.
- f)** Authorised Officers will place realistic time limits on statutory notices. Where possible, these will be agreed with the person or business concerned, although the final decision will rest with the officer.
- g)** The Authorised Officer will discuss with the person or representative of the business the works that will be specified in the Notice and will explain fully the options which are available.
- h)** Failure to comply with a statutory notice will, in general, result in court proceedings.
- i)** Other bodies will be notified of any formal action taken, where it is considered appropriate to do so. Where appropriate, notification will include the outcome of any action.

9.4 Simple Caution

The purpose of a simple caution is to offer an alternative to prosecution that will:

- ☐ deal quickly and simply with less serious offences
- ☐ divert such cases from unnecessary appearances in the criminal court
- ☐ reduce the chances of re-offending

The Council recognises that issuing a simple caution is legislative action in its own right and will not be used as an easy option to prosecution, but as a genuine option to achieve the above aims.

A simple caution will be issued when the circumstances of the offence meet the criteria identified in the Ministry of Justice: Simple Caution for Adult

Offenders guidance dated 13th April 2015, or any guidance which replaces it.

The Council aims to ensure that all the following conditions are met before a simple caution is administered;

- ☐ There is sufficient evidence to give a realistic prospect of prosecution
- ☐ The alleged offender admits the offence
- ☐ The alleged offender understands the significance of a Simple Caution
- ☐ The alleged offender gives formal consent to being cautioned.

9.5 Prosecution

The Council has the discretion whether or not to prosecute for an offence and the decision to prosecute is not taken lightly and is based on the circumstances of each case laid out in the policy below.

A breach of legislation will not automatically result in the institution of legal proceedings. The circumstances, which are likely to warrant prosecution, may be characterised by one or more of the following criteria:

- a) There is a flagrant breach of law such that the occupants or the public health, safety or wellbeing is put at risk, or there is a serious offence under environmental health legislation.
- b) The offender has failed to accept a formal caution.
- c) A failure by the offender to correct an identified serious potential risk to safety after having been given a reasonable opportunity to do so.
- d) Where there have been repeated breaches of legal requirements in a premises and it appears, management is either unwilling or unable to deal adequately with them.
- e) A failure to comply in full or part with a statutory notice, licensing or registration.
- f) There is a history of similar offences.
- g) A formal caution has previously been issued for a similar offence.

Additionally, due regard must be given to guidance and advice from Government Departments, Advisory Bodies, Local Authority Associations and Professional and or Technical Bodies.

Before a prosecution proceeds, the appropriate officer will be satisfied that the case is in the public interest and is supported by sufficient relevant evidence which is:-

- a) Admissible
- b) Substantial
- c) Reliable

The guidance contained in the Code for Crown Prosecutors will be followed and all

the following factors taken into account:

- a) The seriousness of the alleged offence.
- b) The previous history of the party concerned.
- c) The likelihood that a defence can be established.
- d) Whether important witnesses are willing and able to co-operate.
- e) Willingness of the party to prevent the problem recurring.
- f) Whether prosecution would be of public benefit.
- g) Whether a formal caution might be more appropriate.
- h) Any explanation offered by the party concerned
- i) The victim's views.

The decision to institute legal proceedings does not preclude the issue of statutory notices or other enforcement action as well.

Investigation and decision-making will not be unduly prolonged or delayed. It will be in accordance with principles laid out in the:

- ☐ Human Rights Act 1998
- ☐ Police and Criminal Evidence Act 1984
- ☐ Regulation of Investigatory Powers Act 2000

The Environmental Health Team will keep witnesses, complainants or other parties informed as to the progress of the case.

9.5.1 Publicity

In 2011 the Government updated its guidance Publicising Sentencing Outcomes. This document states that;

- ☐ Verdicts and sentences in criminal cases are given out in open court and are a matter of public record.
- ☐ There should be a presumption in favour of the police, local authorities and other relevant criminal justice agencies publicising outcomes of criminal cases and basic personal information about convicted offenders so as to:
 - ☐ reassure the public;
 - ☐ increase trust and confidence in the Criminal Justice System (CJS);
 - ☐ improve the effectiveness of the CJS;
 - ☐ discourage offending and/or re-offending.

The Health and Safety Executive (HSE) requires enforcing authorities in England and Wales to make arrangements for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. They should also have arrangements for making publicly available information on these convictions and on improvement and prohibition notices, which have been issued.

9.5.2 Proceeds of Crime

The Council either through its own officers or in co-operation with the Police may make an application under the Proceeds of Crime Act 2002 to restrain or confiscate the assets of the offender. The purpose of any such actions would be to recover any financial benefit that the offender has obtained from his criminal conduct.

9.6 Work in default

The local authority has the discretion whether or not to carry out work if a statutory notice has not been complied with. Non-compliance with a notice will not automatically result in the instigation of works in default. If it becomes necessary to carry out default work consideration should always be given to whether a prosecution is appropriate in addition to or as well as carrying out the work.

The decision is not taken lightly and is based on the circumstances of each case. The circumstances, which are likely to warrant works in default may be characterised by one or more of the following criteria:

- a) The conditions are such that the occupants or the public health, safety or well being is put at risk
- b) The person responsible either cannot be found or has not responded to requests to contact the EHT.
- c) A failure by the offender to correct an identified serious potential risk to safety after having been given a reasonable opportunity to do so.

Work in default work will be subject to the approval of a Manager with authority to spend up to the estimated costs of the work. It is the Council's duty to spend public money in a responsible way and to recover any costs. Depending on the legislation a local land charge will be applied and/or an invoice raised for the full costs including officer time and other relevant expenses.

9.7 Fixed Penalty Notices

Some legislation allows local authorities to offer a Fixed Penalty Notice (FPN) as a way of discharging their liability for the offence.

In circumstances where a person or body corporate fails to accept or pay a FPN, we will consider an escalation of enforcement action, in order to maintain the integrity of these legislative regimes.

9.8 Foreiture Proceedings

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them being used to cause a further problem. In appropriate circumstances, an application for forfeiture to the Magistrates Courts will be made.

9.9 Seizure of Good and equipment

Certain legislation enables authorised officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, or any goods that may be required as evidence for possible future court proceedings. An appropriate receipt will be issued when goods are

seized.

9.10 Refusal, Suspension and Revocation of Licences and Permits

Where there is a requirement for a business to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application.

Some legislation requires any appeals or representations to be heard at the Licensing Committee or sub committee. The Committee can decide to grant, grant with conditions, or refuse the licence application.

Where the Licensing Committee does not form part of the licensing process, an applicant can use the complaints procedure to have the decision looked at again.

Licences and permits may be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public safety and/or animal welfare.

10.Enforcement in relation to specific legislation

10.1 Section 215 of the Town and Country Planning Act 1990

Section 215 of the Town and Country Planning Act 1990 allows a local authority to serve a notice on the owners and occupiers of land, requiring the site to be tidied up if the condition of any land is in such a state as to adversely affect the amenity of the neighbourhood.

10.2 Section 46 Environmental Protection Act 1990

Section 46 of the Environmental Protection Act (EPA) 1990 allows a waste collection authority to specify how waste is presented for collection, i.e. require an occupier to place waste for collection in receptacles of a kind and number specified. This is used to enforce separation of waste for recycling and also for the removal of containers from the public highway following the scheduled collection of waste.

10.3 Section 79 Public Health Act 1936

Section 79 of the Public Health Act 1936 allows a Local Authority to serve notice where the owner of the land / property has accumulated noxious matter i.e. food waste and the notice gives the owner 24 hours to remove the waste. On failure to act upon the Notice the Local Authority can remove the waste and recover the expenses of any actions taken.

10.4 Section 34 Environmental Protection Act (1990) Business Duty of Care

The Council has the authority to check businesses to ensure that they are complying with their Duty of Care obligations.

An Officer can visit premises and ask to see the Controlled Waste Transfer Note and to check that waste is being securely stored and correctly disposed of.

An Officer can serve a notice on a business, to ask for copies of their Waste Transfer Notes, receipts and for a description of the waste being produced.

Failure to comply with this notice can lead to prosecution and a Fixed Penalty Notice.

10.5 Section 33 Environmental Protection Act 1990 (depositing of waste)

Pendle Borough Council will take enforcement action against the perpetrators of flytipping, on public land, where there is enough evidence.

Fixed Penalty notices may be issued by enforcement officers as an alternative to prosecution in respect of certain offences. Fixed Penalty Notices (FPN) can be issued for environmental offences such as

- littering (including food waste, cigarette butts or chewing gum)
- not cleaning up after your dog
- putting up posters without permission ('fly-posting')
- graffiti
- Breach of Public Space Protection Order

10.6 Section 80 Environmental Protection Act 1990

Section 80 of the Environmental Protection Act 1990 allows a local authority to serve a notice on the occupiers of land, requiring the site to be tidied up if the condition of any land is in such a state as to adversely affect the amenity of the neighbourhood.

10.7 Section 87&88 Environmental Protection Act 1990 (Littering)

Fixed Penalty notices may be issued by enforcement officers as an alternative to prosecution in respect of certain offences. Fixed Penalty Notices (FPN) can be issued for environmental offences such as

- littering (including food waste, cigarette butts or chewing gum)
- not cleaning up after your dog
- putting up posters without permission ('fly-posting')
- graffiti
- Breach of Public Space Protection Order

10.8 Antisocial Behaviour, Crime and Policing Act 2014

CPN's can be used by the Council to target those responsible for specific ongoing problems or nuisance which negatively affects the quality of life in a community. Examples of behaviour covered by CPN's include owners allowing dogs to persistently stray and or cause a nuisance, owners of dogs persistently allowing dogs to foul without then removing the waste and vehicle repair garages parking vehicles for repair on residential streets.

10.9 Public Space Protection Orders

The Council can introduce an order on a specific public area, when activities that have taken place or will take place have a detrimental effect on the quality of life of those in the locality, and that this effect is or is likely to be persistent and unreasonable.

10.10 Refuse Disposal Amenity Act 1978 (Abandoned Vehicle)

The Refuse Disposal Amenity Act 1978 gives the Council the authority to remove a vehicle from the highway that an Enforcement Officer deems to be abandoned.

11.Complaints of non-compliance

Where Operational Services receive complaints of non-compliance, the Council will review the quantity and quality of the intelligence received and determine the most appropriate cause of action. Consideration will be given to:

- ❑ the relevant legislation
- ❑ the nature and seriousness of the alleged offence(s).
- ❑ the enforcement options outlined in this policy.
- ❑ any information gained from internal or external partner organisations.

Where enforcement action is not taken, then the complainant will be told that this is the case and given an explanation of the reasoning behind such a decision.

12.Review

This policy will be reviewed every three years to ensure that it stays relevant to current guidance.

13.Comments and Complaints

If you wish to make a comment or raise an issue regarding enforcement or the enforcement policy itself, please contact waste.services@pendle.gov.uk at Pendle Borough Council.

List of Appendices

Appendix	A	Legislation, Guidance and Codes that Influenced the Preparation of the Compliance and Enforcement Policy
Appendix	B	Conduct of Investigations
Appendix	C	Factors to be considered when taking enforcement action
Appendix	D	Deciding what enforcement action to take
Appendix	E	Guidance on Informal Enforcement Action
Appendix	F	Guidance on serving Formal Notices
Appendix	G	Guidance on Administering a Simple Caution
Appendix	H	The Evidential Test
Appendix	I	The Public Interest Test

Appendix A: Legislation, Guidance and Codes that Influence the Preparation of the Compliance and Enforcement Policy

A. Principles of Good Regulation

The [Legislative and Regulatory Reform Act 2006](#), Part 2, requires Pendle Borough Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function¹. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

B. Regulators Compliance Code (BERR, 2007)

Pendle Borough Council has had regard to the [Regulators Compliance Code](#) in the preparation of this policy. 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.

C. Enforcement Concordat (Cabinet Office, 1998)

Pendle Borough Council has adopted the Enforcement Concordat and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency.

D. Human Rights Act 1998

Pendle Borough Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

1. Specified by the [Legislative and Regulatory Reform \(Regulatory Functions\) Order 2007](#)

E. Data Protection Act 2018. General Data Protection Regulation

Where there is a need for Pendle Borough Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 2018. Under the Data Protection Act 2018, you have the right to find out what information the government and other organisations store about you.

F. The Code for Crown Prosecutors

When deciding whether to prosecute Pendle Borough Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?
When deciding whether there is enough evidence to prosecute, Pendle Borough Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.
- b. Public Interest Test - is it in the public interest for the case to be brought to court?
Pendle Borough Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available.

G. Equalities Act 2010

The Act legally protects people from discrimination in the workplace or wider society. It replaced previous anti discrimination laws with a single Act, making the law easier to understand and strengthening protection in some situations.

H. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The [Regulatory Enforcement and Sanctions Act 2008](#) established the [Local Better Regulation Office](#) (LBRO), which produces guidance for local authority regulatory services. We are committed to following guidance produced by LBRO and will have regard to any list of enforcement priorities published by LBRO.

The Act also established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a registered Primary Authority partnership.

Appendix B: Conduct of Investigations

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Pendle Borough Council:

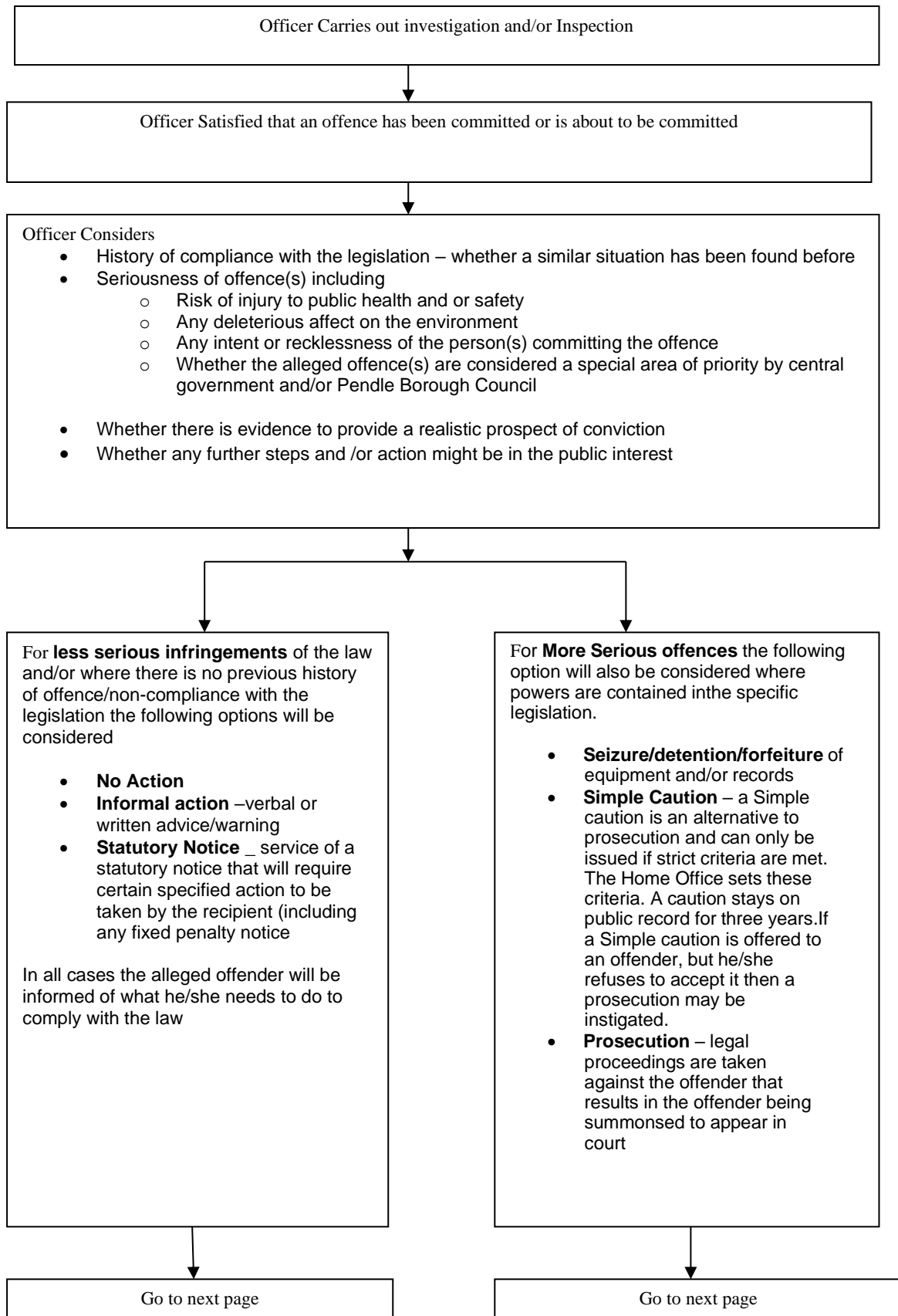
- ☐ the [Police and Criminal Evidence Act 1984](#)
- ☐ the [Criminal Procedure and Investigations Act 1996](#)
- ☐ the [Regulation of Investigatory Powers Act 2000](#)
- ☐ the [Criminal Justice and Police Act 2001](#)
- ☐ the [Human Rights Act 1998](#)
- ☐

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

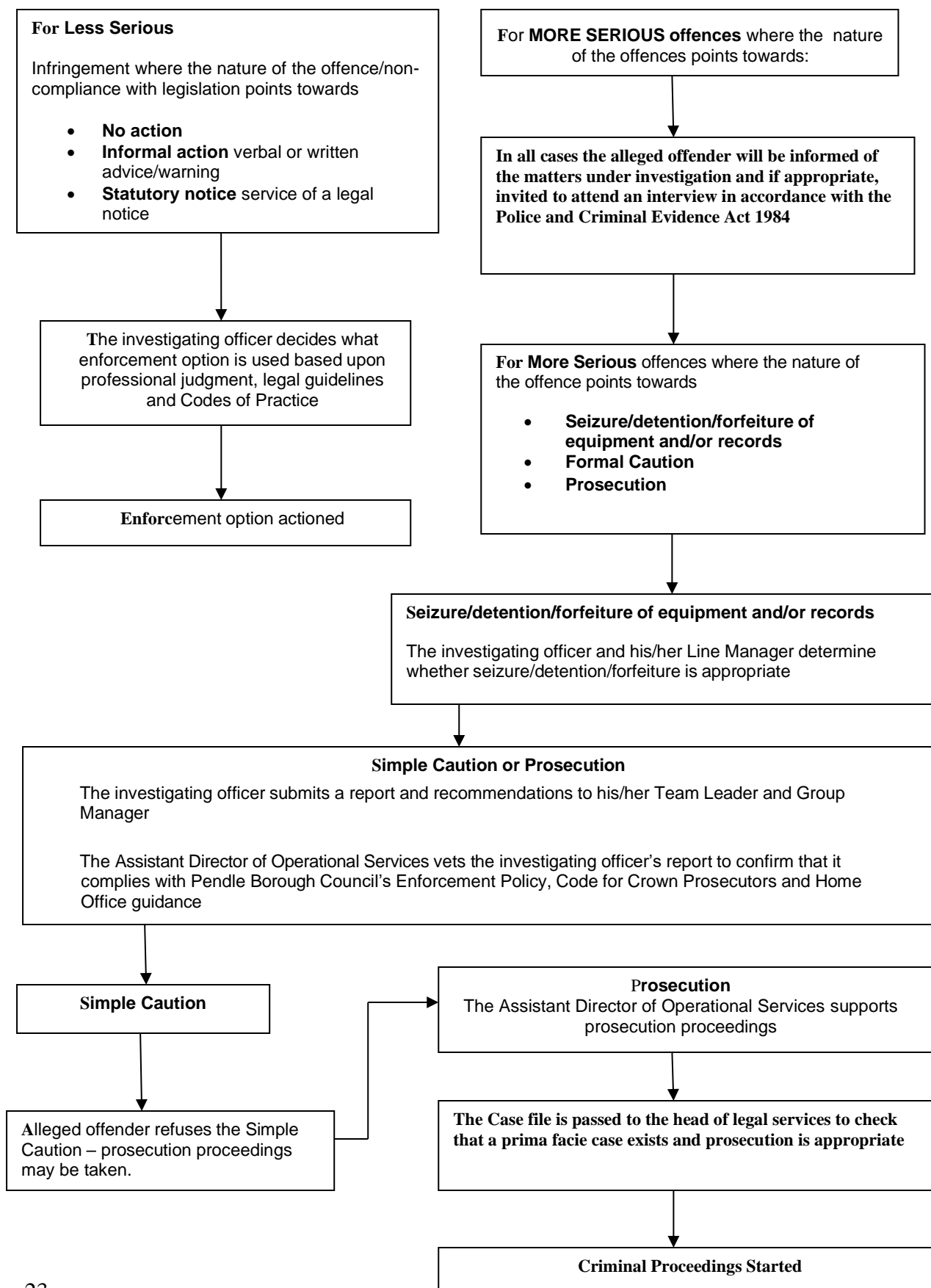
Appendix C: Factors to be considered when taking enforcement action

This diagram summarises the decision making process that officers will follow in all cases.



Appendix D: Deciding what enforcement action to take

The summary Diagram continues with the decision making of appropriate action



Appendix E: Guidance on informal enforcement action

Procedural Guidance

The following guidance will be applied in all cases except where the 'Exceptions to Policy' clause applies.

1. The specific requirements of any policies and procedures will be met, where they apply to informal actions.
2. All verbal warnings, advice and requests for actions which are made at the time of the inspection (or as the result of subsequent conversations, meetings or visits that raise additional matters) will be noted in the Authorised Officer's notebook and/or the file for the individual business concerned AND will be confirmed to the person(s) concerned in writing.
3. All written documentation produced as a result of informal action will contain all information necessary to –
 - understand the work that is required
 - understand the reason it is required
 - indicate the legislation contravened
 - understand the difference between a recommendation of good practice and a legal requirement
4. In giving any oral advice or information the officer(s) will make clear what is a recommendation of good practice and what is a legal requirement.
5. Where an inspection or investigation reveals full compliance with the relevant Environmental Health or Planning codes of Practice, no further action may be required, although a post inspection report or other advisory information may be provided. Details of the fact that the inspection or investigation revealed no action was required will be recorded on the premises file.

Appendix F: Guidance on Serving Formal Notices

Procedural Guidance

1. The following guidance will be applied in all cases except where the 'Exceptions to Policy' clause applies.
2. The specific requirements of any policies and procedures will be met, where they apply to serving notices.
3. The specific requirements of the relevant Codes of Practice and Guidance on the use of statutory notices will be met.
4. This will include any good practice guidelines that are available for the issuing of Fixed Penalty Notices and the use of Closed Circuit Television.
5. The Authorised Officer will normally discuss with the parties involved any works that will be specified in the Notice and will consider fully and then explain the options which are available.
6. The Authorised Officer will have regard to the most appropriate language to be used for a Notice and will seek to meet this need where it can be done without unduly prolonging any risk to public health and/or safety.
7. Other bodies will be notified of any formal action taken, or intend to take, where it is believed it is appropriate to do so. Such bodies may include other enforcement agencies and the Office of Fair Trading. Where appropriate, notification will include the outcome of any action.

Appendix G: Guidance on Administering a Simple Caution

Procedural Guidance

The following guidance will be applied in all cases where legislation offers a Simple Caution as an enforcement option, except where the 'Exceptions to Policy' clause applies:

1. The specific requirements of the policies and procedures will be met, where they apply to Simple Cautions.
2. The specific requirements of government guidance on the administering of a Simple Cautions and LACORS guidance will be followed.
3. As there is no legal obligation for a person to accept a Simple Caution, when explaining their significance no officer shall apply pressure to that person to accept one. However, where the offer of a Simple Caution is refused, a prosecution should normally be pursued.
4. The Simple Caution will be administered by an officer who has been designated as a 'cautioning officer' as contained in the Council's constitution.
5. Normally, the caution will be administered in person by the cautioning officer, although in exceptional circumstances it may be administered by post.
6. The offender will be informed in writing, using the appropriate forms when the issuing of a Simple Caution is proposed.
7. All Simple Cautions will be issued in writing using the appropriate forms identified in the Guidance.
8. Two copies of the caution will be signed, first by the person receiving and second by the person administering the caution. One of these copies will then be handed to the person receiving the caution.
9. Should the offender refuse to accept a caution or fail to return the signed copies within 14 days, legal proceedings in all case will be pursued.
10. Details of the offence will be recorded in the specific premises file and in the Simple Caution file.
11. As soon as possible after issuing the caution, the relevant body will be notified which is detailed in the Guidance in relation to notification of offences.
13. If there is a Home Authority for the business in question, they will be notified of the details of the caution.
14. Where the Simple Caution was issued as a result of an investigation begun by a complaint made by a third party, the complainant will be informed that the caution has been issued.
15. The time limits for issuing a caution (and subsequent prosecution) will be observed should clause (10) apply.

Appendix H: The Evidential Test

The investigating officer(s) together with their Team Leader & Service Manager will satisfy themselves that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, 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 jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt.

When deciding whether there is enough evidence to prosecute the investigating officer(s) together with their Team Leader and Group Manager will also consider whether the evidence can be used and is reliable.

Appendix I: The Public Interest Test

The public interest will be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors put to the court for consideration when sentence is being passed.

The investigating officer (s) together with the Line Manager will 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 include some common public interest factors, both for and against prosecution. These are not exhaustive and the factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution

- ☐ a conviction is likely to result in a significant sentence;
- ☐ the evidence shows that the defendant was a ringleader or an organiser of the offence;
- ☐ there is evidence that the offence was premeditated;
- ☐ the victim of the offence was vulnerable has been put in considerable fear, or suffered personal damage or disturbance;
- ☐ the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- ☐ 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.
- ☐ the defendant's previous convictions or cautions are relevant to the present offence.
- ☐ there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

Some common public interest factors against prosecution

- ☐ the court is likely to impose a nominal penalty;
- ☐ 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;
- ☐ the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- ☐ the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.

- ☐ 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 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, unless the offence is serious or there is a real possibility that it may be repeated.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Investigating Officer(s), their Team Leader, Service Manager and legal representative must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.