



# VCA Prosecution Policy Document

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# VCA Prosecution Policy Document.

Please note that this Policy primarily addresses procedural processes for England and Wales. Regional changes are considered for Scotland and Northern Ireland.

## Enforcement Activities

The VCA is empowered to enforce elements of the following Regulations:

- The Waste Electrical and Electronic Equipment (WEEE) Regulations 2006. Statutory Instrument 2006/3289.
- Waste Batteries and Accumulators Regulations 2009
- Road Vehicles (Construction and Use) (Amendment) Regulations 2010 and Motor Vehicles (Designation of Approval Marks) (Amendment) Regulations 2010
- The Motor Vehicles Regulations 2009 Statutory Instrument 2009/1899 (Replacement of Catalytic Converters and Diesel Particulate Filters)
- The Motor Cycle Regulations 2009 Statutory Instrument 2009/1896 (Replacement of Catalytic Converters and Diesel Particulate Filters)
- Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999 Statutory Instrument 1999/1053.
- Noise Emission in the Environment by Equipment for use outdoors Regulations 2001. Statutory Instrument 2001/1701.
- The End-of-Life Vehicles Regulations 2003 Statutory Instrument 2003/2635.
- Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001

## 1.0 The Decision to Prosecute and the Alternatives to Prosecution

1.1 The decision to prosecute an individual or company 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 VCA and its solicitor(s) will apply the Code for Crown Prosecutors (CP Code) so that it can make fair and consistent decisions about prosecutions.

1.2 The Code helps the VCA and its solicitor(s) make sure that justice is done. It contains information that is important to enforcement officers, others who work in the criminal justice system and the public. Enforcement officers should apply the provisions of the CP code whenever they are responsible for deciding whether to summons a person or company with an offence.



**You must consider whether a prosecution is in the public interest and whether any action other than a prosecution would be sufficient.** A “VCA board member” usually takes the decision.

## 2.0 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 the VCA and its solicitor(s) must approach every case, subject to the legal peculiarities of England, Wales Scotland and Northern Ireland.

2.2 The VCA believes in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of: **proportionality** in the application of the law and in ensuring compliance; **consistency** of approach, **transparency** about how the VCA operates and what those regulated may expect from the VCA, and **targeting** of enforcement action.

2.3 **Proportionality.** In general, the concept of proportionality is included in much of the regulatory system through the balance of action to protect the environment against risks and costs.

2.4 Some incidents or breaches of regulatory requirements cause or have the potential to cause serious environmental damage. Others may interfere with people’s enjoyment or rights.

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

2.6 **Consistency.** Consistency means taking a similar approach in similar circumstances to achieve similar ends. The VCA aims to achieve consistency in, advice tendered, the use of powers and decisions on whether to prosecute.

2.7 VCA must be fair, independent and objective. They must not be affected by improper or undue pressure from any source.

2.8 The VCA and its solicitor(s) 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.

2.9 It is the duty of the VCA and its solicitor(s) 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 the CP code.

2.10 The VCA and its solicitor(s) should ensure that the Human Rights Act 1998 is followed and must apply the principles of the European Convention on Human Rights in accordance with the Act.



**2.11 Transparency.** Transparency is important in maintaining public confidence in the VCA's ability to regulate. It means helping those regulated, and others, to understand what is expected of them and what they should expect from the VCA. It also means making clear why an officer intends to, or has taken, enforcement action.

2.12 VCA continues to train its staff and to develop its procedures to ensure that the following points are provided:

- Where remedial action is required, it is clearly explained (in writing) why the action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements.
- Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken.
- Where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the initial meeting.
- Written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.

**2.13 Targeting.** Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to, or risk, environmental damage. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by a breach of regulation and the gathering and acting on intelligence about illegal activity from a variety of sources.

## **3.0 The Decision to Prosecute**

3.1 In most cases, the VCA Head of Branch is responsible for deciding whether a person should be summonsed with an offence, and if so, what that offence should be. This decision must be made in accordance with the Prosecution policy.

## **4.0 Review**

4.1 Each case the VCA solicitor(s) receives from the VCA is reviewed to make sure that it is right to proceed with a prosecution. Unless the Threshold Test applies, the VCA solicitor(s) 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 the VCA and its solicitor(s) must take account of any change in circumstances and if additional evidence may effect the decision.

4.3 **Decision.** The VCA solicitor(s) and the VCA work closely together, but the final responsibility for the decision whether or not a summons or a case should go ahead rests with the VCA Head of Branch.



## 5.0 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 it must only proceed to the second stage if a prosecution is needed in the public interest.

### **Alternatives to Prosecution.**

When deciding whether a case should be prosecuted in the courts, the VCA Head of Branch should consider the alternatives to prosecution.

There are four alternatives to consider:

Caution.

Seize and detention of equipment (for appropriate Regulations).

Suspension of sales (for appropriate Regulations).

Regulation Notices (for appropriate Regulations).

### **Summary:**

For further guidance or clarification on these issues please refer to <http://www.vca.gov.uk/enforcement/index.asp> and then go to the appropriate sub site.