

# Code of Practice for the Investigations and Enforcement Team

CAP 1422

A large, abstract graphic composed of overlapping blue and purple shapes, primarily a large circle with a square cutout, occupying the bottom two-thirds of the page.

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## Forward

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The Civil Aviation Authority (CAA) was established by Parliament in 1972 as an independent specialist aviation regulator.

Its sole purpose is to protect the interests of the public and consumers. The CAA supports open reporting systems, but such systems cannot always maintain a safe aviation environment and from time-to-time we have to take action to detect and respond to breaches of civil aviation requirements in order to ensure that the public and consumers can benefit from an aviation industry that is safe and sustainable.

The CAA also has a responsibility to those whom are regulated to be clear about when, how and why action will be taken so that they know what is expected from them and what will happen in response to a breach of rules or regulations.

This Code of Practice sets out the standards that those who come into contact with the CAA, through the Investigations and Enforcement Team, can expect.

# Principles

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The Civil Aviation Act 1982 sets out the objectives and functions of the CAA. Section 20(1A) of that Act provides the CAA with the power to prosecute criminal offences.

The CAA complies with the statutory Regulators' Code, and also adheres to the principles set out in the Enforcement Concordat. This notes that the primary function of the enforcement work is to protect the public, the environment and groups such as consumers and workers. Carrying out enforcement functions helps to promote a thriving national and local economy.

This Code of Practice, in conjunction with the CAA's Regulatory Enforcement Policy (CAP 1326), Safety and Airspace Regulation Enforcement Guidance (CAP 1074) and the CAA Complaints Policy, will ensure that we carry out our investigations into alleged breaches of the law with the highest standards of professionalism and integrity, and in an equitable, practical and consistent manner.

Reference should be made to CAP 1074, referred to above, in connection with other enforcement activity by the CAA which may or may not involve an Investigation Officer. A particular example is where we may take action to suspend, revoke, vary or limit a licence, certificate or approval. This is not an action which is taken to punish the holder, but rather to reduce the possible impact on the safety of the public. Where allegations or investigations reveal a continuing safety risk, holders may be the subject of such licensing action at the same time as being investigated by the Investigations and Enforcement Team.

## About the Investigations and Enforcement Team

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The Investigations and Enforcement Team (IET) is part of the CAA's Office of the General Counsel. Its offices are located at Westferry, Canary Wharf, London and Aviation House, Gatwick.

The IET comprises Investigation Officers (IOs), an Investigations and Enforcement Manager, a Support Officer and a Team Leader.

The IET cannot investigate every report or complaint which it receives. Its priority will be those activities which have given rise to the most serious risks or are detrimental to consumer protection. In deciding how best to employ the CAA's limited investigating resources therefore the IET Manager or Leader will take account of the likely outcome of any investigation and whether it is proportionate to the incident or complaint.

The task of commissioning an investigation is usually that of the head of the CAA section or department responsible for oversight of the area of alleged illegal activity.

IET also provides investigatory advice and assistance to the police, other enforcement agencies and national aviation authorities.

## CAA Investigation Officers (IOs)

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IOs are recruited for their expertise in and knowledge of criminal investigations. They are familiar with the legal requirements, procedures and conditions relating to such investigations.

## The legal framework

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Aviation safety legislation applicable in the UK includes EC Regulations and Directives, the Air Navigation Order 2016 (ANO), the Aviation Security Act 1982, Regulations made under the ANO and its predecessors, such as the Rules of the Air Regulations 2015, and the Air Navigation (Dangerous Goods) Regulations 2002.

Article 265 of the ANO provides that it is a criminal offence to contravene EC Regulations, the ANO or Regulations made under the Order.

There are four categories of offence:

1. The most serious offence is that set out in Part 4 of Schedule 13 ANO for which the maximum penalties are set out in Article 265(8) ANO, namely on summary conviction in England and Wales an unlimited fine, or in Northern Ireland or Scotland a fine not exceeding the statutory maximum (currently £5,000 in Northern Ireland or £10,000 in Scotland). On conviction on indictment the maximum penalty is an unlimited fine and/or imprisonment for five years.
2. The next most serious category of offence is that listed in Part 3 of Schedule 13 ANO. The penalties are set out in Article 265(7) ANO, namely on summary conviction in England and Wales an unlimited fine, or in Northern Ireland or Scotland a fine not exceeding the statutory maximum (currently £5,000 in Northern Ireland or £10,000 in Scotland). On conviction on indictment the maximum penalty is an unlimited fine and/or imprisonment for two years.
3. Next are those offences listed in Part 2 of Schedule 13 ANO. These offences can only be tried in the Magistrates Court in England, Wales or Northern Ireland, or in the Sheriff Court in Scotland. The penalty is at Article 265(6) ANO and the maximum penalty is a fine not exceeding level 4 on the standard scale (currently £2,500).
4. The final category of offence is anything which is listed in Part 1 of Schedule 13 ANO. Again, these can only be tried in the Magistrates Court in England, Wales or Northern Ireland, or in the Sheriff Court in Scotland. For these offences the maximum penalty is at Article 265(5) ANO and is a fine not exceeding level 3 on the standard scale (currently £1,000).

Where a case may be heard in either the Magistrates or the Crown Court, the Magistrates decide whether they feel able to deal with it. The decision is based on the seriousness of the charge, the legal complexity of the case and whether in the event of conviction it is likely that a penalty greater than the maximum available in the Magistrates Court may need to be imposed. A defendant may demand that the case be referred to the Crown Court.

The CAA runs the Air Transport Organisers' Licence (ATOL) holiday financial protection scheme for consumers. It is a criminal offence for a holiday travel organiser to breach the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012.

## General service standards

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IET staff will:

- Be courteous and helpful.
- Respond to calls and correspondence promptly and in any case within 20 working days.
- Prioritise their workload proportionate to the risks as well as in accordance with our statutory and regulatory responsibilities.
- Ensure that our investigative and decision-making actions are appropriately documented and recorded.
- Treat those involved in or subject to such actions (whether individuals or organisations) in a consistent manner.
- Explain clearly the consequences of non-compliance with the IOs' requests and the investigation's requirements.
- Ensure that individuals or organisations under investigation are made aware of the allegations.
- Ensure that individuals or organisations under investigation are given an opportunity to respond to the allegations against them.
- Ensure that witnesses and victims are kept informed of the progress of an investigation.

## Conduct of IOs

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IOs should:

- Reasonably test and verify complaints and reports which they have seen and wherever possible corroborate single reports or complaints with other evidence whether oral or documentary.
- Act impartially and seek to obtain all relevant evidence from witnesses.
- Where evidence will or should be in the hands of a person under investigation, he or she should be requested at an early stage to produce that evidence in accordance with the statutory powers of the CAA acting through the IO.
- Conduct each step of the investigation expeditiously.
- Adhere to the requirements of the IOs' Manual. In particular there should be a review of each investigation after no more than four months from the date when the investigation is opened, and a report submitted at that time to the Team Leader.
- Aim to complete all investigations within six months from the date of the alleged offence. There will be occasions when the complexity of an allegation or resource constraints mean an investigation takes longer than 6 months and in such cases the IO will keep all relevant parties informed of progress.

## Handling the investigation

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Reports and allegations concerning breaches of the law and regulations are sent in to the IET, and other departments in the CAA, by members of the public, the aviation community, internal CAA departments and law enforcement agencies. Such reports are referred to the appropriate department in the CAA (such as flight operations, air traffic management, airworthiness, etc.) for a decision as to whether or not they should be referred to the IET for investigation. On referral of these reports and allegations to IET they are reviewed by the IET Manager or Team Leader. If there is credible and verifiable evidence indicating a breach of regulations which is a serious risk or is detrimental to consumer protection then an IO will be appointed to undertake initial enquiries. These initial enquiries may involve investigation and inquiry with the original complainant to obtain further information and/or documentation.

If the information continues to demonstrate a potential breach of regulation, and the evidence appears reliable, truthful and likely to be substantiated by other evidence, the IO will establish contact with the person under investigation, if he/she has not already done so.

In the course of their investigation IOs will take written witness accounts, secure copies of documents and formally interview alleged offenders.

The provision of information and documentation to the person under investigation will be recorded by the IO in a case file with details as to dates, times, any persons present, etc. In every case the investigating officer will indicate the alleged offence.

## Conduct of interviews

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Interviews are always voluntary, and the individual subject of the interview will always be offered the opportunity to take legal advice at their own cost. Interviews, with some restrictions, can take place anywhere convenient to the person being interviewed. Interviews are always recorded and IOs generally use a digital recording device.

Where the person under investigation may be prosecuted the interview will be conducted under caution and be recorded. The person under investigation will be given adequate opportunity to clarify the nature of the offence and to respond to specific allegations put to him or her. They will also be asked to confirm that he or she has received pre-interview disclosure.

The wording of the caution will be a prelude to any verbal interview. The caution states:

*“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.”*

Details of the date and location of the interview, and persons present will be recorded on the case file. Only in the event of a prosecution will a copy of any recording be provided to the person under investigation or his/her legal adviser.

Where the person under investigation has been interviewed or provided evidence to the IO, it may be that further enquiries by the investigating officer are necessary in order to check and verify evidence provided by the person under investigation.

Once any such further investigations have been completed and if necessary further evidence obtained, this should again be put under caution to the person under investigation in order to receive any further comments from them prior to consideration being given to the outcome.

## Outcome decisions

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Once an investigation is completed, the case file will be sent to a CAA Legal Adviser for an assessment in accordance with the Code for Crown Prosecutors.

The IO, or Support Officer on behalf of the IO, will inform witnesses and the person under investigation when they submit their report for legal analysis. Thereafter, the Legal Adviser is responsible for ensuring that witnesses and the person under investigation are kept informed of progress by the IO.

Having assessed the evidence, the Legal Adviser will recommend a case outcome to the relevant CAA department.

Outcomes include no further action, a warning, a Simple Caution or a Conditional Caution or prosecution. Simple Cautions and Conditional Cautions are given only where a person has admitted the offence(s). They do not amount to a criminal conviction but will remain on a person's CAA record and can be taken into account by the Courts if a person is subsequently convicted for a further offence.

At any time during an investigation, the IET may refer cases to the relevant department within the CAA for licensing action in accordance with the Principles set out above. Such regulatory action is taken independently from any prosecution.

## Further information

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