



COUNTER FRAUD
SANCTION & PROSECUTION
POLICY
January 2023

1. Introduction

- 1.1 The Executive Director of Resources has a statutory responsibility under section 151 of the Local Government Act 1972 to make arrangements for the proper administration of the Council's financial affairs. These include the prevention, detection and investigation of fraud and, where appropriate, the prosecution of offenders. The Council is focused on strong prevention and deterrence of fraud through its anti-fraud activities
- 1.2 The Council also has a duty under section 17 of the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder.
- 1.3 This policy for prosecution, other sanctions and recovery complements the Council's Counter Fraud Strategy & Operating Plan; together these documents provide the guidelines and rules to be applied wherever the Council has investigated a criminal offence relating to fraud and corruption.
- 1.4 This policy has been developed with the aim of providing a framework to ensure a fair and consistent approach to the use of formal sanctions. Whenever fraud is proven, the Council will consider the merits of each case in determining whether to pursue formal action against the perpetrator.
- 1.5 This policy applies to all Council workers, including:
 - members and employees of the Council;
 - agency workers and consultants engaged by the Council;
 - the Council's agents, partners, suppliers and contractors supplying goods or services to the Council or performing work and/or delivering services on behalf of the Council;
 - maintained schools' employees, agency workers, partners, suppliers and contractors supplying goods or services to the school or performing work and/or delivering services on behalf of the school.
- 1.6 This policy has been written with due regard to the Crown Prosecution Service Code of Practice, it's Guidelines on Streamlined Process; the Bribery Act 2010 Joint Prosecution Guidance of the Director of the Serious Fraud Office and the Director of Public Prosecutions; and the Ministry of Justice Guidance on the Bribery Act 2010.
- 1.7 Approval of this policy is delegated to the Director of Law & Governance. This policy will be referred annually to the General Purposes Committee for its consideration and comment.

2 Legislative Framework

2.1 A person involved in committing fraud against the Council may commit offences contrary to a number of acts of parliament and statutory regulations. Primarily, these include:

- Theft Acts 1968 and 1978
- Criminal Attempts Act 1981
- Forgery and Counterfeiting Act 1981
- Criminal Justice Act 1987
- Fraud Act 2006
- Proceeds of Crime Act 2002
- Housing Act 1984
- Prevention of Social Housing Fraud Act (2013)
- Disabled Persons Parking Badges Act 2013
- The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) Regulations 2013
- The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017).

The Crown Prosecution Service (CPS) and/or the Council may prosecute offences covered by this legislation.

2.2 In addition, Council employees, the Council's agents or any person with whom the Council does business may commit a corrupt act. These offences would be contrary to the Prevention of Corruption Acts 1906 and 1916, or the Bribery Act 2010. Only the Crown Prosecution Service can prosecute these offences.

2.3 There are also fraud offences that are contrary to the Representation of the People Acts that cannot be prosecuted by the Council and have to be referred to the Police for investigation and subsequent prosecution by the Crown Prosecution Service.

2.4 In addition, offences may be committed against the Council as a social landlord that are covered by the Housing Acts. All offences covered by the Housing Acts are civil offences. However, the Prevention of Social Housing Fraud Act 2013, makes subletting the whole of a social rented dwelling a criminal offence for which proceedings can be brought by the landlord (Council).

3 Legislation

3.1 All investigations will be undertaken in accordance with current legislation, including:

- The Police and Criminal Evidence Act (1984)
- The Human Rights Act (1998)

- The Criminal Procedures and Investigations Act (1996)
- The Criminal Procedures and Investigations Act (1996) (Code of Practice) Order 2015
- The Data Protection Act (2018)
- The Regulation of Investigatory Powers Act 2000
- The Public Interest Disclosure Act (1998)
- Equality Act 2010
- Protection of Freedoms Act 2012
- Care Act 2014

3.2 The investigating officers will also act in accordance with the Council's policies and procedures, in particular the employee code of conduct, whistleblowing policy, financial regulations and contract procedure rules.

4 Relevant Factors to Take into Consideration

4.1 The Council will consider each case on its individual merits. This policy sets out what principles will be applied, rather than attempting to define an absolute course of action.

Relevant matters for consideration include the following:

- a) The full code test (see section 5);
- b) The value of offences through actual loss to the Council or possible gain to an individual;
- c) The factors surrounding the alleged offence, including the duration and seriousness of the alleged offence;
- d) Factors relating to the alleged offender, including their age and state of health;
- e) No potential abuse of process has occurred;
- f) The sensitivity of the case has been considered.

5 The Full Code Test

5.1 All cases must meet the full code test before an investigations officer can recommend a prosecution. The full code test has two stages, being the evidential test followed by the public interest test (see sections 6 and 7).

6 Evidential Test

- 6.1 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. The evidence must be acquired in a form which can be used by the court and be admissible; and there must be enough evidence to form a realistic prospect of conviction.
- 6.2 In order to ensure that a “realistic prospect of conviction” exists, Counter Fraud Team officers and prosecutors will at all times ensure that investigations are conducted in accordance with all relevant legislation and Codes of Practice with regard to evidence gathering, interviewing and rules of disclosure

7 Public Interest Test

- 7.1 A prosecution will not usually take place unless the prosecutor is sure that it is in the public interest to do so, and that any appropriate out-of-court disposals have been considered. However, where the offence committed is of a more serious nature, or the offender has a record of previous criminal behaviour, then it is deemed more likely that a prosecution will be pursued.
- 7.2 Aggravating and mitigating factors, such as the offender’s mental health and personal circumstances, will be taken into consideration when deciding on the appropriate sanction as set out in the Code for Crown Prosecutors.

8 Recommendations and Approval for Prosecutions or Alternative Sanctions.

- 8.1 Fraud referrals and investigations that do not progress to sanctions or prosecution will only be closed with the approval of either the Counter Fraud Manager or Senior Investigator.
- 8.2 In cases involving sanctions, the investigating officer will complete a detailed Sanction Referral Report (a template is included at **Annex A**). Sanction approval is a two-step process; usually, a senior investigator will assess the report and make a sanction recommendation for the Counter Fraud Manager to consider and authorise, if appropriate. Ordinarily the Head of Internal Audit and Risk Management can authorise cases to be referred for prosecution; however, if the case involves a Council employee then it will require authorisation by the Director of Law and Governance.

9 Potential Charges

- 9.1 When considering which potential charges may apply, investigators must consider whether such charges:
- Reflect the seriousness and extent of the crime as supported by the evidence;
 - Enable the case to be presented clearly and simply;
 - Allow the court adequate powers for sentencing or conviction orders.
- 9.2 Where there are a number of offences or there are possible alternative charges, the prosecutions officer may conclude that it is not the most serious charges which a suspect is eventually charged with.
- 9.3 In addition, charges against a suspect may be later changed to reflect changes in the suspect's circumstances.
- 9.4 In the main, cases progressed using in-house resources will relate to offences contained within the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, Disabled Persons Parking Badges Act 2013 (Section 7), the Forgery and Counterfeiting Act 1981, the Fraud Act 2006 or the Theft Act 1968 depending on when all elements of the offence occurred. However, there may also be charges for associated offences or multiple types of fraud which have been committed.
- 9.5 Charges under the Fraud Act 2006 could include:
- Fraud by false representation (section 2 of the Act);
 - Fraud by failing to disclose information (section 3 of the Act);
 - Fraud by abuse of position (section 4 of the Act).
- 9.6 The Theft Act 1968 was substantially repealed by the Fraud Act 2006 although there are some charges which still remain on the statute books. These charges include:
- Obtaining property by deception (section 1 of the Act);
 - Fraudulent obtaining of money by transfer (section 15A of the Act);
 - Obtaining a pecuniary advantage (section 16 of the Act);

- False accounting (section 17 of the Act);
 - Dishonestly retaining wrongful credits to accounts (section 24A of the Act).
- 9.7 Charges under the Prevention of Social Housing Fraud Act 2013 include:
- Knowingly subletting or parting with possession of a property let under a secure tenancy (section 1(1));
 - Dishonestly subletting or parting with possession of a property let under a secure tenancy (section 1(2)).
- 9.8 The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 were implemented following the abolition of council tax benefit. Charges under this legislation can include:
- False representation for obtaining a reduction (regulation 7)
 - Failing to notify a change of circumstances (regulation 8)
- 9.9 A Joint Working Initiative with the Department for Work and Pensions (DWP) for cases which involve allegations of State Benefit and Housing Benefit offences and Council Tax Reduction Scheme offences came into effect from 28 January 2019. Consideration for prosecution or sanction on these joint working cases will be in-line with the DWP National Guidance applicable at the time and referred to the CPS where appropriate.
- 9.10 The Disabled Persons Parking Badges Act 2013, which came into force on 8 October 2013 assists local authorities in addressing blue badge abuse. The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2013 allow for enforcement officers to inspect and retain blue badges without a police presence. Offences under other primary legislation include:
- Misusing a real badge or use of fake/altered badge while the vehicle is being driven (section 21(4B) of the Chronically Sick and Disabled Persons Act 1970)
 - Misusing a real badge or use of fake/altered badge while the vehicle is parked (offences under sections 115 or 117 of the Road Traffic Regulation Act 1984)
 - Dishonesty or deception committed in relation to the badge (Fraud Act 2006, Theft Act 1968, Forgery and Counterfeiting Act 1981)

- Failing to produce a badge when required to do so without reasonable excuse (section 21 (4BD) of the Chronically Sick and Disabled Persons Act 1970).

9.11 Prosecutions of private sector landlords, or managing agents, will render them 'a not fit and proper person' under the licensing terms of the Council's Private Sector Housing Enforcement Policy.

9.12 Social housing fraud falls into the following categories:

- a) Illegal subletting of a social housing property for financial gain - for these cases the Council will take civil proceedings to recover the property from the registered tenant, and to evict the illegal occupier of the property. The Council may also seek restitution in the form of an Unjust Enrichment order to recover the proceeds acquired by the registered tenant from the illegal subletting of the property. In addition, where there is sufficient evidence to support a case under the Prevention of Social Housing Fraud Act 2013, the Council may seek to prosecute the registered tenant.
- b) Obtaining social housing with no recourse to public funds –the Council will take civil proceedings to recover the property from the tenant.
- c) False applications for social housing –the Council will remove the person from the housing register and will consider prosecution.
- d) Falsely claiming succession or assignment rights to a social housing property - the Council will take civil proceedings to recover the property from the tenant and will consider prosecution.
- e) Fraudulent right to buy application for a social housing property - for these cases the Council may seek to prosecute the person that has applied for or purchased the social housing property through the Right to Buy Scheme. The Council may also take legal action to seek restitution such as a confiscation granted by the Courts under the Proceeds of Crime Act

10 Alternative or Parallel Sanctions

10.1 There are alternatives to prosecution which may be deemed more appropriate than prosecution or may be undertaken in parallel to a criminal investigation. These could be for example a simple caution, disciplinary or management investigation and/or reporting to a professional body. There will be others associated to specific types of

employment or legislation.

- 10.2 It should be noted that for some cases disciplinary action is undertaken before recommendation for prosecution has been made and formally considered. The same may also be true for reporting to professional bodies. In cases where such action has already taken place, and is then recommended for prosecution or alternative sanction, the investigations officer needs to include the full details and outcome of any such action.
- 10.3 The criminal investigation may be given precedence over the disciplinary investigation if there is a risk of serious prejudice to the former from running the two processes concurrently. However, there may be a compelling public interest in suspending or removing an individual from his/her post before the conclusion of the criminal case; in this situation, a case conference should be held to discuss the circumstances and relevant disclosure issues.
- 10.4 The criminal process may determine the actions and timing of related disciplinary investigations, particularly where there is a risk of prejudice to the criminal case. However, there may be other circumstances where sanctions are pursued concurrently, so that the public interest is protected, and disciplinary proceedings are heard in a just and timely way.
- 10.5 Cases in which the management or disciplinary process is followed adhere to the Code of Conduct for Employees and Members, ACAS Code of Practice on Disciplinary and Grievance Procedures and relevant employment law.
- 10.6 If an employee chooses to resign following the commencement of an investigation concerning their conduct, every effort will be made to conclude the proceedings during the employee's period of notice, particularly if the matters under consideration would warrant dismissal on the grounds of gross misconduct.
- 10.7 There may be evidence obtained via a criminal investigation which may not be shared with a parallel civil or disciplinary case. For example, the transcript of an interview under caution would not be made available for either a civil case, such as a housing matter, or a disciplinary investigation as the information was obtained specifically for use in a criminal case.
- 10.8 There are alternative sanctions within the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 which are two levels of possible fines, as follows:
 - The council can impose a penalty of £70 where the person has negligently made an incorrect statement or representation or failed to promptly notify of a change of circumstances.

- Where there is evidence that the liable party has had a reduction which is greater than the amount of the reduction to which they were entitled, the council may invite the liable party to agree to pay a penalty, which is set at 50 per cent of the amount of the excess reduction subject to a minimum amount of £100, and a maximum amount of £1,000.

There are 14 days within which the liable party can choose to withdraw their agreement.

Whilst the public interest factors including impact on the offender must be considered, the offender's ability to pay the penalty should not be a consideration as a factor on its own.

11 Recovery Action

- 11.1 Recovery of losses should be sought for all investigations and these could be via voluntary reparation by the suspects, through pension benefits for employees (either voluntarily or via a forfeiture certificate), civil recovery through the courts, or financial and asset recovery under the Proceeds of Crime Act 2002.
- 11.2 In proven cases of subletting, the Prevention of Social Housing Fraud Act 2013 makes allowance for the Council to apply for civil or criminal profit orders and where sufficient evidence exists, the referral instructions will include an application for a profit order to be made to the court.
- 11.3 The Council may seek confiscation hearings under the Proceeds of Crime Act 2002 or Criminal Justice Act 1988 with a view to requesting confiscation orders for criminal or particular benefit resulting from fraudulent activities.
- 11.4 In addition, the recovery of legal costs and investigations costs should be sought in all cases, where appropriate.
- 11.5 All recovery options must be notified to the prosecuting lawyer including the agreement/action, compliance and any recovered amounts throughout the prosecution.
- 11.6 Financial investigations under the Proceeds of Crime Act 2002 must have begun prior to prosecution and full details disclosed to the prosecutions officer as representation is made to the court at the point of any conviction for the recovery process to begin.
- 11.7 It should be noted that recovery, whether voluntary or otherwise, will not prevent prosecution consideration.

12 Appealing Against Decisions and Complaints

- 12.1 Where there are rights of representation, or appeal mechanisms, against enforcement action these will be communicated in accordance with the relevant statutory obligations. In the absence of such obligations these will be communicated at the same time as the action is taken, or, if that is not possible as soon as is reasonably practicable afterwards.
- 12.2 If anyone is dissatisfied with the conduct of Council officers or believes there has been a failure to follow this policy, related codes, or to meet service standards, they may complain using the Council's complaints procedure.
- 12.3 Details of the Council's complaints procedure can be found on the Council's website.

13 Publicising Prosecution Actions

- 13.1 Prosecution actions will be considered for publication in all instances, in consultation with the Council's Communications Team. The Council's Legal Team will be made aware of such publicity by the Counter Fraud Manager where particular persons or businesses are identified.

**Sanction & Prosecution Policy
Annex A - Sanction Referral Form**

Sanction Referral Form

Surname		Forename(s)					
Aliases		Reference					
Address							
D.O.B.		NI No.					
No. of Dependants		Occupation					
IUC Date		Interpreter Required	<table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">Yes</td> <td style="width: 25%;"></td> <td style="width: 25%;">No</td> <td style="width: 25%;"></td> </tr> </table>	Yes		No	
Yes		No					
Language used by interpreter							
Defence Solicitor							
Firm and address							

Alleged Offence(s)

Case Summary

Period of Fraudulent Excess Reduction			
	From	To	Total
Benefit type			
		Total	

Previous Convictions / CRO Checks

Mitigating Circumstances and Observations

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Investigating Officer

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Signed

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Dated

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To be completed by Senior Officer:		
Usability of Evidence	Yes	No
Is the evidence obtained useable in court?		
Has the evidence been gathered correctly?		
Is there sufficient evidence to support a prosecution?		
Evidential Test	Yes	No
Is there evidence to support the reliability of a confession?		
Will the court find the confession credible?		
Are witnesses of a good character?		
Is the evidence clear?		
Have there been any delays?		
Have there been any failures in the benefit administration?		
Public Interest Test	Yes	No
Will a conviction result in a significant sentence?		
Is the financial loss above the prosecution threshold?		
Were the offences committed over a substantial period of time?		
Has there been an abuse of position or trust?		
Has the claimant suffered from any mental health issues?		
Is the claimant elderly or vulnerable?		
Was there any voluntary disclosure prior to investigating?		
Did the claimant admit the offence and make an offer to repay?		
Has there been any repayment of the overpaid benefit?		
Are there any previous incidents of fraud?		
Were there others involved in committing the offence?		
Was the offence planned?		
Was the offence committed from the outset?		
Is it likely that the offence will be repeated?		
Is the offence widespread within the local community?		

First Level Approval notes

I have reviewed this case fully and having considered all factors relating to the alleged offence(s), and with due regard to the London Borough of Enfield's sanction policy, I recommend that in this particular case, authorisation be given to proceed by way of:

Caution / Financial Penalty / Prosecution

Signed: _____

Position: _____

Date: _____

Authorising Officer Notes

I agree with the recommendations made by the team leader on this case and authorise the suggested sanction.

Signed: _____

Position: _____

Date: _____