

HUNTINGDONSHIRE DISTRICT COUNCIL

Fraud Prosecution Policy

1. Introduction

- 1.1 Huntingdonshire District Council (the Council) is committed to delivering the highest standards of service and value for money to the local community in accordance with its corporate plan.
- 1.2 The Council also has a duty to protect from abuse the public funds, resources and assets it administers and be aware of the risks within its financial and delivery systems for fraud, error or other irregularity. In carrying out this duty, the authority may use information provided to it for the purpose of the prevention and detection of fraud. It may also share this information with other bodies administering public funds solely for these purposes.
- 1.3 The Council will wherever possible incorporate effective internal controls to minimise the risk of fraud occurring. However, despite this fraud can be perpetrated and appropriate procedures need to be in place.
- 1.4 The Council understands that some people (including customers, staff, elected Members or contractors) may attempt to obtain financial or some other advantage from Council services to which they are not entitled and sometimes this is done deliberately. Where an investigation has revealed this to be the case the Council will consider the individual circumstances of the case and where appropriate will consider whether a criminal prosecution, or alternative disposal such as financial penalties or Caution, should be applied.
- 1.5 This policy outlines the procedures to be followed with regard to the prosecution of benefit claimants, landlords, employees and Members who have committed benefit fraud. It will serve as a policy statement that is supported by members of the Council who have endorsed the Fraud and Corruption Strategy, and as an operational guide for Investigating Officers.
- 1.6 The council will always have regard to the circumstances of the individual it is dealing with when considering any case of alleged fraud. Every case will be treated on its own merits and it will abide with its duties contained in the Equality Act 2010. The council will, however, have regard to any extenuating and relevant circumstances of the individual including age, disability, learning or language difficulties which may have contributed to alleged offending.
- 1.7 The term Sanction refers to any penalty or criminal prosecution that can be imposed by the council, and allowed by legislation, where offending contrary to any of the following appears, in the Councils opinion, to have occurred.
 - Theft Acts 1968/ 1978 (TA)
 - Forgery and Counterfeiting Act 1987 (FCA)
 - Computer Misuse Use Act 1990 (CMA)
 - Social Security Administration Act 1992 (SSAA)
 - Local Government Finance Act 1992 (LFGA)
 - Data Protection Act 1998 (DPA)
 - Identity Card Act 2006 (ICA)
 - Fraud Act 2006 (FA)

- The Bribery Act 2010 (TBA)
- Welfare Reform Act 2012 (WRA)
- The Prevention of Social Housing Fraud Act 2013. (PSHFA)

2. The Policy

- 2.1 All investigations conducted by the Council must adhere, at all times, to the requirements of the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigations Act 1996 and the relevant primary legislation listed in 1.7.
- 2.2 All cases that result in an act of dishonesty, fraud, theft, misrepresentation, or reckless/wilful failure being identified, regardless of the level of any alleged offending, will be passed to the Councils Fraud Manager who will decide whether a prosecution or some other disposal is appropriate, and recommend the type of disposal with reasons to the appropriate Head of Service.

Where a sanction/penalty, of any type is to be considered, a recommendation will be made to the appropriate Head of Service for their approval. The Head of Service will convene a panel including an officer from the Councils legal Department, relevant Activity Manager and Fraud Manager so that welfare, legal and policy advice is available as each case is dealt with.

- As a general rule a financial threshold for sanction or prosecution should be considered. The Department for Work and Pensions (DWP) operate financial thresholds for sanction activity and these will be considered by the Council when decisions are made about Benefit Fraud cases.
 - Any prosecution is referred to the most appropriate organisation, i.e. where the primary fraud appears to have been perpetrated. This could be the DWP, the Police, the Councils Legal Department, The Councils Fraud Team or any other body deemed appropriate including external partners.
 - Offering financial penalties, as permitted by legislation, as an alternative to prosecution. (This could include Administrative Penalties allowed under the SSAA 1992 or one off penalties to Council Tax accounts permitted by the LGFA 1992)
 - Offering a formal caution (this can only be offered where there are sufficient grounds to prosecute and the offence has been admitted).
 - Closure of the case without action, if it would not be in the public interest to pursue the particular case. However, the reasons should be fully documented and authorised by the appropriate Head of Service.
 - In all cases the Council will always seek to recover the full value of the fraud whether this is overpaid benefits, underpaid council tax liabilities, over claimed pay or reward, or any other financial gain that the offender has benefitted from.
 - The Council will seek to recover the cost of investigation and any sanction imposed or the cost of recovery from the offender wherever this is possible.
- 2.3 Where any case is to be considered for prosecution or a penalty the Code for Crown Prosecutors requires that every case is considered fairly and objectively and that principles around the standard of evidence and the public interest are considered and that only where these tests are passed should a case be considered for prosecution

2.4 The Evidential Test.

To be considered in all cases regardless of the method of sanction chosen.

The Code for Crown Prosecutors, revised in January 2013, lays out how this test must be applied. 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.

2.5 The Public Interest Test

To be considered in all cases regardless of the method of sanction chosen.

The Code for Crown Prosecutors lays out the public interest factors which can increase the need to prosecute or may suggest an alternative course of action. The factors will vary from case to case. Not all the factors will apply to each case and there is no obligation to restrict consideration to the factors listed. In making a decision to prosecute all available information must be carefully considered.

The Councils officers will refer to the latest CPS guidance and Best Practice when considering the public interest test.

3. Alternatives to Prosecution

- 3.1 Only cases that qualify for court on both the strength of evidence and the public interest factors can be considered for an alternative to prosecution. In essence, this means that the collated evidence must be sufficient to enable criminal proceedings to be initiated. If the evidence is insufficient then no alternative should be considered. In addition to strong independent evidence, there must be an admission of guilt at interview or subsequent written admissions for a formal caution to be considered. Investigations, which fail to meet the above criteria, must be closed without any sanction.
- 3.2 The defendant must give his informed consent to the alternative procedure to prosecution being offered. If the offer is declined the Council must always be in a position to commence criminal proceedings should it wish to do so. This means that an investigation must have been undertaken as if it was the intention to prosecute if the case is proved. It would be a serious abuse of process to offer an alternative to prosecution in any case where a prosecution would be unlikely to succeed in court.
- 3.3 As a general rule the following cases should not normally be considered for an alternative to prosecution:
 - a) The defendant is a council Member, employee or an employee of another welfare organisation or public body.
 - b) The defendant has declined to accept or has withdrawn from their agreement to accept an administrative penalty.
 - c) The defendant has declined a formal caution.

- d) The defendant has already received a financial penalty or caution for a previous offence.
- e) The defendant is subject to a prosecution by another agency for a similar offence.
- f) The defendant has previous convictions for similar offences.
- g) Where there is evidence that the defendant has used alias/es or false identities to commit the fraud.

4. Formal Caution

- 4.1 A formal caution is an oral or written warning given to a person who has committed an offence as an alternative to prosecution. In any case selected for caution there must be evidence to prove the offence, admission at an interview under caution and the person being cautioned must give informed consent. Where a caution has been declined the case must then be considered for criminal proceedings.
- 4.2 The Fraud Manager, or other appropriately authorised officer, after agreement from the Head of Service will offer a formal caution in appropriate cases. These will include:
 - a) A first offence that was disclosed by the person at the first opportunity.
 - b) A first offence where the fraudulent act resulted in no financial gain or very limited gain (unless there are exceptional circumstances. In such circumstances the agreement of the Head of Service must be sought before such a sanction is offered.
 - c) Where a genuine mistake or oversight contributed to the offence.

5. Administrative Penalties

- 5.1 Section 115a of the SSAA and Section 11 Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, introduced financial/administrative penalties as alternatives to prosecution. The legislation which now has several variants allows for various financial penalties amounting to between 30% & 50% of the gross adjudicated overpayment can be offered if the following conditions are met:
 - a) There is a recoverable overpayment or excess award of benefit/reduction as defined by the relevant legislation
 - b) The cause of the overpayment is attributed to an act or omission on the part of the defendant, and
 - c) There are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which a penalty is based.
 - d) The person offered such a penalty has the ability to repay it within a reasonable timescale and the imposition of such a penalty will not over-burden them if they have existing priority debts.
 - e) Penalties should normally only be offered where the overpayment does not exceed £2000 (DWP Guidance for National Benefits only) unless there are exceptional circumstances. In such circumstances the agreement of the Head of Service must be sought before such a penalty is offered.

- 5.2 If the offender declines the offer of a penalty or the offender withdraws his agreement to pay the penalty the case should be considered for prosecution. Where the person signs the agreement but then defaults on repayment of the Penalty this will also be treated as a withdrawal of the agreement by that person.
- 5.3 The Fraud Manager or other appropriately authorised officer, after agreement from the Head of Service, will offer a financial Penalty in appropriate cases. These will include:
- a) An offence where the overpayment is significant enough to consider that the claimant be prosecuted, but also dependant on the length of time over which the overpayment arose.
 - b) Whether or not there has been an admission at an interview under caution.
 - c) Any action the Department of Social Security is taking in relation to the benefit it administers.

6. Penalties for non-criminal matters

- 6.1 The LGFA, the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 and the SSAA (as amended by the WRA) all permit Councils to impose financial penalties where a person fails to report a material fact.
- 6.2 Each Act lays out its own requirement for such a penalty to be imposed but essentially they all require:
- As a general rule the penalties are fixed one-off 'fines' to be added to a persons liability to pay.
 - They can only be offered where a person fails to report a material fact or is negligent in some way and that failure resulted in an overpayment of benefit or reduction in Council Tax liability.
 - These penalties can only be imposed where no criminal charges or other administrative penalties are offered.
 - The person receiving the penalty can appeal against the imposition of it if/as permitted by the relevant legislation.
- 6.3 Although these penalties could arise from fraud investigations they relate to non-criminal outcomes. They would still need the relevant Head of Service to authorise them and the penalty would be added to an existing liability for collection by the relevant service.

7 Warning letters

- 7.1 Encouraging people who use the Councils services to act honestly at all times should be paramount to any policy that considers criminal/civil penalties for those people that fail in their responsibilities. Warning letters/notices can be used to ensure future compliance, where a minor failure/offence, has been identified to reinforce the individuals knowledge.
- 7.2 In any cases where a minor offence has occurred or there are serious mitigating circumstances or even where to bring action might put the Council at risk of disrepute, a

warning letter can be issued to a person to remind them of their duty/ responsibilities and the implications of a future failure to comply with Council policies/ procedures or relevant legislation.

- 7.3 Such a letter would not be recorded as a criminal disposal but would be kept on record for reference if further matters come to light about the same person in future.

8. Recording Sanctions and Prosecutions

- 7.4 For an effective regime of sanctions to be successful it is a requirement that accurate records of all convictions, penalties and cautions are maintained. This will enable the correct decisions to be made taking full account of the offenders background and antecedent history. Therefore, it is important that a record of each is maintained.
- 7.5 All sanctions must be recorded by the Council and copies of all documents used to consider and issue the sanction retained, in accordance with the Council's Retention Policy, by the Fraud Team and the affected service . Relevant paperwork must also be sent to the DWP (in benefit fraud cases) and in the case of prosecution to the Police National Computer (PNC) Bureau at Cambridgeshire Constabulary to update the central databases on sanction activity.

9 Publicity

- 9.1 It is the Council's intention to positively promote this policy as well as the outcome of any prosecutions, which will deter others from fraudulent activity.

10 Reporting and Review

- 10.1 Summary information on cases and action taken will be reported to the Head of Customer Services and the Executive Councillor on a quarterly basis.
- 10.2 An annual report will be produced for the Head of Service, Senior Management Team and Corporate Governance Panel on all cases where sanctions or prosecutions have resulted from investigations conducted by Council Officers.
- 10.3 This policy will be reviewed annually or when changes in legislation require it.