



Fraud Prosecution Policy

1. Introduction

- 1.1 Huntingdonshire District Council (the Council) is committed to providing good quality services delivered by people who put the customer first and provide value for money services 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 people who have committed fraud. It will serve as a policy statement that is supported by Members of the Council who have endorsed the Anti-Fraud and Corruption Strategy, and as an operational guide for Investigating Officers.
- 1.6 A range of sanctions are available to the Council. These include disciplinary action, civil proceedings, criminal proceedings, official cautions and penalties. In appropriate cases we will take more than one form of action. For example, where staff have defrauded the Council we may take disciplinary, prosecution and civil recovery action.
- 1.7 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 the alleged offending.
- 1.8 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 Act 1990 (CMA)
 - 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)
- The Council Tax Reduction Scheme (Fraud & Enforcement) England 2013

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, Human Rights Act, Regulatory Investigatory Powers Act 2000 and the relevant primary legislation listed in 1.8. All evidence gathering will comply with the Data Protection Act 1998.
- 2.2 Each case is unique and must be considered on its own facts and merits. Investigators must be fair, independent and objective. They must not let any political or personal views about ethnic or national origin, sex, religious beliefs, or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.
- 2.3 It is the duty of the Council to make sure that the right person is prosecuted for the right offence. In doing so, the Council must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 2.4 Where necessary the Council will work in co-operation with other organisations such as the Police, Department for Work and Pensions, Home Office, Her Majesty's Revenue and Customs, other Local Authorities, Registered Social Landlords and departments within Huntingdonshire District Council.
- 2.5 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

3. The Evidential Test

- 3.1 The Evidential Test must be applied in all cases regardless of the method of sanction chosen.
- 3.2 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.

4. The Public Interest Test

- 4.1 Where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.2 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.

- 4.3 The Council's officers will refer to the latest Crown Prosecution Service guidance and Best Practice when considering the public interest test.
- 4.4 The more serious the offence, the more likely it is that prosecution will be required in the public interest.
- 4.5 Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction.

5. Officer Fraud and Corruption.

- 5.1 In all cases of fraud, theft, financial misconduct, serious and intentional breach of financial regulations and corruption committed by officers we will seek disciplinary action. The normal recommendation would be "gross Misconduct".
- 5.2 Where a financial loss has been identified the Council will always seek to recover this loss through civil or criminal process.
- 5.3 Where appropriate, we will refer cases to the relevant prosecuting authority for criminal prosecution.

6. Tenancy Fraud

- 6.1 The Council's Corporate Fraud Team support the work of the Council's Housing Needs and Options Team and registered Social Landlords and will investigate suspicions of Tenancy Fraud.
- 6.2 This includes:
 - Unauthorised sub-letting
 - Abandonment
 - False succession applications
 - Right to buy
 - General Tenancy breaches
- 6.3 In all cases of tenancy fraud the Council will seek repossession of the property and recovery of any financial losses. The Council's view is that one property lost to fraud is one less property available to use for genuine applicants.
- 6.4 Tenancy Fraud will also be considered for criminal prosecution. The factors that will affect our decision to prosecute will be based on the evidential and public interest test.
- 6.5 The Prevention of Social Housing Fraud Act is used to prosecute offenders.

7. Council Tax Support

- 7.1 The legislation governing the use of a financial penalty as an alternative to prosecution where a person has fraudulently claimed Council Tax Support is contained in section 14C of the Local

Government Finance Act 1992. The conditions by which a penalty might be used are described in regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

- 7.2 Penalties may be offered as an alternative to prosecution when a fraudulent claim has caused excess Council Tax Support to be awarded or could have caused excess Council Tax Support to be awarded.
- 7.3 In accordance with the legislation a penalty offered as an alternative to prosecution will be a minimum of £100.00 or 50% of the fraudulent excess Council Tax Support claimed by the offender (rounded down to the nearest penny) whichever figure is greater. A penalty should not exceed £1000.00. A person does not have to accept the penalty, however if they refuse consideration should be taken depending on the individual merits of the case and the public interest test to prosecute.

8. Single Person Discount

- 8.1 In all cases of this type of fraud the discount will be recovered and depending on the individual merits of each case a £70.00 per year penalty may be applied or the case may be considered for prosecution.

9. Other Fraud

- 9.1 In the event of “other Frauds” against the Council, not specifically mentioned above, the Council will also consider criminal prosecution. The factors that will affect our decision to prosecute will be based on the evidential and the public interest test. This will also include cases of attempted fraud i.e. false applications for services.
- 9.2 In cases where the Council suffers a financial loss, we will always seek recovery.
- 9.3 Where an organisation is involved in the fraud, the Council will also make referrals to the relevant governing body, i.e. Charities Commission, Registrar of Companies, Law Society.
- 9.4 For the purpose of this policy “Other fraud” includes, but is not limited to: Council Tax discounts, Business Rates, Renovation Grants, and any other areas of risk and fraud identified by the Council.

10. Warning letters

- 10.1 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.
- 10.2 In any cases where a minor failure/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.
- 10.3 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.

11. Publicity

- 11.1 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.