

ANNEX D



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**ANTI FRAUD AND
ANTI CORRUPTION
PROSECUTION
AND SANCTION
POLICY**

1.Introduction

1.1 The Council's Anti-Fraud and Anti-Corruption Policy sets out our aims and objectives with regard to tackling fraud and corruption and includes the Council's Prosecution Policy Statement. It states that we will seek the strongest possible sanction against any individual or organisation that defrauds, or seeks to defraud the Council. The use of prosecution will be governed by the following Policy, and the principles of the Policy shall apply equally to any fraud against the Council, or against funds for which the Council has responsibility.

1.2 The Policy covers all circumstances, or types of fraud against the Council, and / or partner organisations.

1.3 The objective of the Prosecution Policy is to ensure that:

- The Council considers a full range of sanctions, including criminal proceedings, in a just and consistent manner;
- Sanctions are applied in an effective and cost efficient manner;
- The decision to prosecute is robust and transparent.

1.4 This Policy is designed to provide a framework to ensure that the most appropriate resolution to a case is reached. The decision to prosecute will have regard at all times to the Council's Anti-Fraud and Anti-Corruption Policy objectives, the individual circumstances of each person concerned and the overall impact of the punishment to both the individual and the community.

1.5 A range of sanctions are available to the Council. These include:

- Disciplinary action;
- Civil proceedings;
- Criminal proceedings (prosecution);
- Formal caution;
- Administrative penalties, in certain circumstances
- Civil Penalties, in certain circumstances
- Fine, and / or compensation claim.
- Recover the overpayment but take no formal action

For all options, recovery of the debt will be actively pursued.

1.6 In appropriate cases we will take more than one form of action. For example, where Officers have defrauded the Council we may take disciplinary, prosecution and civil recovery action.

1.7 The decision to take disciplinary action will be made with regard to the Council's Disciplinary Policy and Procedure and is independent of any decision to prosecute.

2. Criminal Prosecution

2.1 One sanction available to the Council is criminal prosecution. We recognise that this is a serious step to take and the decision to refer cases for prosecution will not be taken lightly.

2.2 The ultimate decision on prosecution will be taken by the prosecuting body. In some cases this will be the Council's Legal Services. In these cases the decision to refer cases to the prosecuting authority will be taken by the Business Manager, after a recommendation report is made by the Fraud and Investigation Team Manager.

2.3 Benefit Fraud investigations are no longer the responsibility of the Council. All Benefit Fraud prosecutions will be undertaken by the Department for Work and Pensions (DWP) Single Fraud and Investigation Service (SFIS). The Council will authorise SFIS to prosecute Housing Benefit Fraud offences, for as long as the role of administering the benefit retains with the Council. The decision to authorise SFIS to prosecute a Housing Benefit offence will be made by the Benefits Manager or Head of Service in his absence. In circumstance of joint working with SFIS, where the Council are investigating Council Tax Support Fraud, in conjunction with SFIS investigating Housing Benefit or another national welfare benefit, the Council will retain the right to make its own decision re prosecution or other suitable sanction, however all decisions will consider the importance of maintaining a consistent approach to the disposal of the offence.

2.4 Where an investigation has been passed to the Police to investigate, they will liaise with the Crown Prosecution Service to make the ultimate decision on whether or not to prosecute.

2.5 When considering a case for prosecution it is generally accepted that there are two "tests" to be applied - the Evidential Stage test and the Public Interest test. These are currently set out in the Code for Crown Prosecutors 2004. The Evidential Stage test must be considered prior to the Public Interest Test.

3. Evidential Stage Test

3.1 Is there the required level of evidence to support a prosecution? Without this the case cannot go ahead no matter how important the case or how strong the public interest is in favour of prosecution.

3.2 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. In order to ensure that a “realistic prospect of conviction” exists, Officers of the Fraud Investigation Team/Corporate Investigation Team will at all times ensure that investigations are conducted in accordance with relevant legislation and in line with published Codes of Practice and Guidance with regard to evidence gathering, interviewing and rules of disclosure.

3.3 The evidence gathered will be examined in the first instance by the investigator and their Manager. When both are satisfied that sufficient evidence exists to successfully prosecute and that the Public Interest Stage is also satisfied, the case file will be passed on to either the Council’s Legal team, the DWP Solicitor or the Crown Prosecution Service via the Police, with signed authority from a senior officer with delegated authority. All prosecutors will then apply their own inspection of the evidence to ensure that both tests are met.

4. Public Interest Test

4.1 In order to ensure consistency and correctness when considering a case for Sanction/Prosecution, the guidelines applied by the Crown Prosecution Service - as detailed in Section 10 of the Prosecution of Offences Act 1985, will be followed by Officers of the Fraud Investigation Team/Corporate Investigation Team. Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction.

5. Formal Caution

5.1 A Formal Caution is an oral warning given to a person who it is believed has committed an offence, the seriousness and circumstances of which do not appear to be serious enough to warrant Prosecution. This would normally apply to low value fraud, or possibly short term failure to notify changes in circumstances. The Caution is recorded on a national fraud intelligence database. .

5.2 In order to offer a Caution the Council must be satisfied that sufficient evidence exists to justify Criminal Proceedings. The person must have admitted to the offence and must make a written admission of the offence acknowledging that they are willing to receive a Caution. If a person accepts the Caution, the Council will not pursue Criminal Proceedings in respect of that offence.

5.3 If the Caution is not accepted the matter should normally then be referred for prosecution on the basis of the original facts.

6 Administrative Penalty

6.1 For cases of Council Tax Support offences, the Council can consider financial penalties, as an alternative to a Criminal Prosecution, in cases where the criteria for

prosecution have been fulfilled but the offenders personal circumstances indicate that a financial penalty would be a suitable solution.

6.2 The Council will recoup the Administrative Penalty payments in addition to any repayments of the overpaid benefit.

6.3 If the financial penalty is not accepted by the offender as the alternative remedy, then the matter will be referred back for pursuit of a Criminal Prosecution, as will any case where a claimant had agreed to pay an Administrative Penalty, but subsequently withdraws their agreement within a specified time. More detailed information on Formal Cautions and Administrative Penalties can be found in the Council's Counter Fraud Sanction Policy.

7. Details

7.1 Council's Prosecution and Sanction Policy has been developed with the aim of providing a rational and consistent approach to the use of prosecution or formal sanctions. The Council will not discriminate (positively or negatively) against any claimant or group of claimants.

7.2 This Policy is not intended to be prescriptive but refers to criteria relating to the offence, the offender and the value of the fraud that has to be taken into account before considering the sanction that may apply.

7.3 When the Council is able to prove beyond reasonable doubt that a criminal offence has been committed there are a number of options it has to consider, listed earlier in this document. :

7.4 There can be no "blanket" approach, as each case must be considered on its own merits. These guidelines set out what the Council will normally do in a particular situation rather than define an absolute course of action. Relevant matters for consideration should include the following:

- The case passes the public Interest test;
- The case passes the evidential test and there are no serious errors in the administration process or investigation;
- The amount defrauded;
- The offence has continued for some time;
- The offence involved some pre-thought and planning;
- There is evidence of a previous fraud;
- There is evidence of collusion;
- An Authorised Officer has been obstructed in the course of their duties;

- The Perpetrator held a position of trust.

8. The Investigation process

8.1 Conducting a Criminal Investigation

8.2 Whether there is evidence of an offence or information is held which indicates an offence may have been committed, the standards of a criminal investigation will be maintained. The principles of PACE (Police and Criminal Evidence Act), CPIA (Criminal Procedures and Investigations Act), HRA (Human Rights Act), Equality Act, Data Protection and RIPA (Regulation of Investigatory Powers Act) will be adhered to.

8.3 The objective of the investigation is to establish the facts. Where sufficient evidence of an offence or offences is found, the application of a sanction will be considered.

8.4 Interviewing

8.5 Interviews, undertaken by Counter-Fraud Officers, may take place when all the required evidence has been obtained. However, in many instances it could be necessary to interview earlier. In either instance, if an Officer has grounds to suspect an offence (PACE 10.1) the interview must be conducted in accordance with PACE (Police and Criminal Evidence Act) and the interviewee cautioned.

8.6 Where an interview is being conducted, but a caution has not been administered, a caution shall be administered as soon as the interviewing Officer has grounds to suspect an offence (again PACE 10.1 applies).

8.7 Where there are reasons why an interview should not be undertaken i.e. medical grounds, a decision will then be made about whether to proceed with an interview under caution.

8.8 Consideration will be given to the gender, cultural, religious, sexual orientation, age, and disability needs of claimants prior to any interview.

9. The Decision to Sanction or Prosecute

9.1 Once the investigation has been concluded, the investigation Officer will present the case in a written format with a recommendation to the Fraud and Investigation Manager, about whether a sanction is appropriate. The Investigations Manager will apply the evidential test and the public interest test. Should the Manager decide that the case IS suitable for a sanction, it will be passed to the Head of Service who will make the final decision.

9.2 It should be noted that where there has been a decision to prosecute a case, in accordance with the Council's Policy, the final decision regarding whether a case is presented in Court rests with the prosecuting authority.

10. Sanctions

10.1 In all cases prosecution must be the first consideration.

10.2 When considering a case for prosecution there are two tests to be applied – the 'evidential test' and the 'public interest test'. It is only when both of these tests are satisfied that a case can be considered for prosecution.

10.3 The first test to be considered is the "evidential test". If the case does not pass the "evidential test" then it cannot be considered for prosecution regardless of the seriousness of the alleged offence.

10.4 Evidential Test

10.5 In order for the Council to consider sanction action the case must meet the evidential criteria. In other words is there sufficient evidence for a realistic prospect of a conviction?

10.6 In making this decision the following factors must be considered:

- How clear is the evidence, is it reliable and can it be used in Court;
- If there has been any failure in the investigation;
- If there has been any failure in the administration.

10.7 Public Interest Test

10.8 The test of public interest is concerned with balancing the need for prosecution against the individual circumstances surrounding the alleged fraud and the potential outcomes. In making this decision certain factors must be considered which include:

- Medical conditions;
- Social factors.
- Guidance is given in the Code for Crown Prosecutors to ensure consistency and correctness.
- Consideration Factors for a Prosecution
- The amount overpaid, or loss to the Council, is significant
- The defendant was in a position of authority or trust;
- The evidence shows that the individual was instrumental in the offence;

- There is evidence that the offence was premeditated and whereby there was a calculated and deliberate attempt to defraud the Authority;
- The individual's previous convictions, cautions or administrative penalties are relevant to the present offence;
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or the offence, although not serious in itself, is widespread in the area where it was committed;
- The period of time over which the alleged offence took place;
- There has been an attempt to defraud.

10.9 Consideration Factors Against a Prosecution

- A prosecution is likely to have a detrimental effect on the individual's physical or mental health;
- The offence was committed as a result of a genuine mistake or misunderstanding;
- There were unnecessary and unaccountable delays in the investigation. The Courts look very critically at the time it takes to bring cases to Court or the time a customer has been left with the case unresolved;
- Poor administration (either by the Council, or partner organisation)

10.10 Only when the case has met the evidential and public interest test can alternative sanctions be considered.

11 Formal Caution

11.1 A formal caution is an oral warning given to a person who has committed an offence and who is then required to make a written admission to the offence acknowledging that they have received a caution in return for not being prosecuted through the criminal courts.

11.2 In order to offer a caution the individual must have admitted the offence during the interview under caution and the value of loss is not significant. Cautions may be administered in cases where there is no loss but an attempt to defraud the Council has been proven.

11.3 If the caution is not accepted the matter should be referred for prosecution. Where a prosecution is brought, the Court will be informed that the case was before them because the individual refused to accept a formal caution.

12. Administrative Penalties

12.1 The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 allows a financial penalty to be offered to an individual identified as responsible for an offence of Council Tax Support fraud. This is known as an Administrative Penalty. The penalty is calculated as 50% of the excess award calculated on a daily basis from the date of the award until the date the Council could reasonably be aware of the excess award subject to a minimum of £100 and maximum of £1,000.

12.2 In order to offer an Administrative Penalty it is not necessary for the individual to have admitted an offence. If the Administrative Penalty is accepted the individual undertakes to repay the original overpayment and the Administrative Penalty in return for not being prosecuted through the criminal courts. Consideration should be given as to the customer's financial circumstances in deciding the appropriateness of offering an Administrative Penalty.

12.3 If the Administrative Penalty were not accepted the matter should be referred for prosecution. Where a prosecution is brought, the court will be informed that the case was before them because the individual refused to accept an administrative penalty.

13. No Action Taken and Civil Penalties

13.1 Should the value of loss be low the Investigations Manager will consider not issuing a formal sanction (unless intent to defraud has been proven). A warning letter advising the subject of the importance of reporting changes will be issued. The letter should also reinforce the point that future failures could result in prosecution.

13.2 In certain circumstances, the Council has the option to issue a civil penalty instead of taking legal sanction action. This is for irregularities in respect of Council Tax Support and Council Tax Discount.

13.3 A penalty of £70 may also be imposed by an authority on a person who negligently makes an incorrect statement in connection with an application for a CTS or where a person fails to notify a change of circumstances when required to do so under CTS regulations. A penalty of £70 may also be applied for a failure to notify of relevant information in respect of any Council Tax Discount or Exemption.

14. Failure to co-operate

14.1 At least three attempts will be made to invite a suspect into the office to be interviewed. If he or she fails to attend, consideration will be made to approaching Surrey Police, to carry out an arrest, so that the interview can be undertaken at a Police Station. Authorisation to approach the Police will be obtained from the Business Manager, after having taken advice from the Council's Legal Department. Alternatively prosecution action can commence, with the agreement of the Council's solicitor.

15. Closer Working

15.1 The Council will work closely with partner organisations, to ensure that the full scale of an offence is investigated, and unified consistent sanction action is taken. The Council reserves the right to undertake sanction action (including Prosecution) where legislation allows and it is deemed in the interest of the Council, or residents to do so. An example of such action, would be prosecuting for tenancy fraud offences, in relation to a Social Housing provider stock property.

15.2 The Council will support the Department for Work and Pensions (DWP) Single Fraud Investigation Service (SFIS) in taking appropriate sanctions, including prosecution, for proven offence of Housing benefit Fraud. The Council will authorise legal action, and provide all supporting documents required by SFIS. The Council will make decisions on whether to support these actions, following the same guidelines as detailed earlier in this policy (ie Evidential and public Interest Test).

16. Delegation of Authority

16.1 The Council will delegate the power to administer a Caution and Administrative Penalty to an offender to either specific officers or Managers of the Authority.

16.2 The officers with the delegated power will be those in the posts of: -

- Corporate Head of Service

- Service Manager, or Assistant in absence of the Manager

- Fraud and Investigation Manager

- Officers of the DWP delegated to administer caution or Administrative penalty – for HB fraud or joint working cases only.

- Officer of joint working partner, if that officer has powers delegated by own body.

16.3 The Council will delegate the power to prosecute an offender for Local Authority Benefit Fraud to the Crown Prosecution Services (CPS). In cases of other joint working, i.e. with other local authorities, this power can be delegated to a solicitor or the legal department of that other Authority.

17. Overpayment Recovery

17.1 The Council will actively pursue recovery of all overpayments in line with the Redress Statement in the Council's Fraud and Corruption Policy.

18. Prosecution Publicity Strategy

18.1 The Council will seek to maximise publicity as a deterrent to others who might consider defrauding the Authority by issuing press releases to the local media at the conclusion of a successful prosecution. The press release will also feature on the news page of the Mole Valley District Council external website. Details included in press releases will be subject to Human Rights and Data Protection restrictions and be in line with the Council's corporate publicity policy

19. Review

19.1 The Policy will be subject to bi-annual review by the Fraud and Investigation Manager, to ensure that it remains current and effective.