

Internal Audit

**The Fraud Prosecution
Policy**
(Incorporating Housing Benefit Fraud)
17 January 2012

The Council's commitment to the Prosecution Policy

The London Borough of Barking & Dagenham is committed to the protection of public funds through its action against fraud and has adopted a zero tolerance approach to fraud and wrong doing perpetrated against it. The Council will seek application of the strongest possible sanctions against those found to have perpetrated fraud against it.

What are the aims and requirements of the legislation?

The aim of this prosecution policy is to deter fraud against the Council including fraudulent benefit claims.

This policy sets out the range of sanctions that may be applied where fraud and wrongdoing is identified and the circumstances relevant to their application.

Who is governed by this Policy?

This policy applies to claimants of Housing or Council Tax benefit, council employees, contractors and members of the public found to have committed fraud and other wrongdoing against the Council.

Disciplinary action will also be taken against Council employees found to have made fraudulent benefit claims.

Executive Summary

The London Borough of Barking & Dagenham is committed to the protection of public funds through its action against fraud. Where a claimant of Housing Benefit or Council Tax benefit has been accused of committing a fraud against the Council and the Fraud Investigation Team have enough evidence to sustain prosecution the Council will employ any or all of three sanctions available to it.

Where other types of fraud and wrong doing are identified the Council will employ disciplinary action in (the case of Staff), civil action or criminal sanctions or a combination of all three in parallel.

Contents

<u>Title</u>	<u>Page No.</u>
Fraud Prosecution Policy	4
General Fraud Sanctions & Redress	5
Housing Benefit Fraud Sanctions & Redress	6
Further support, tools and guidance	8
Appendix 1	9

Fraud Prosecution Policy

The London Borough of Barking and Dagenham is committed to preventing fraud and corruption wherever possible. All allegations of fraud and corruption will be taken seriously.

Where fraud and corruption is found to occur, in any form, it will be dealt with rigorously in a controlled manner in accordance with the principles in the fraud and corruption strategy. It will be investigated fully and the London Borough of Barking and Dagenham will prosecute all offenders where appropriate including Members, employees, contractors and external partners, in accordance with this policy.

This procedure will be operated in conjunction with the London Borough of Barking and Dagenham's disciplinary procedures and all employees will be subject to disciplinary action as well as any prosecution process.

Where there is clear evidence that a fraudulent or corrupt act has been committed, the following will be taken into account before a case is considered for prosecution.

- The seriousness of the case
- The level of evidence available
- The level of money or misappropriated assets involved
- Whether the public interest will be served

In assessing a case for prosecution, the following tests will be applied:

- **The Evidential Test:** To ensure sufficiency of evidence to provide a realistic prospect of conviction
- **The Public Interest Test:** To determine whether or not it would be in the public interest to proceed

A prosecution will usually be pursued unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. To pass the public interest test, Fraud Investigators will balance carefully and fairly the public interest criteria as detailed in 'The Crown Prosecution Service's Code for Crown Prosecutors 2010' against the seriousness of the offence.

The public interest criterion includes:

- The likely sentence (if convicted)
- Whether the offence was committed as a result of genuine mistake or misunderstanding
- Any previous convictions **and the conduct of the defendant**

The Council will in most instances prosecute where the fraud perpetrated:

- was not a first offence
- was planned
- was undertaken by an officer in a position of authority or trust and he or she took advantage of this, or
- involved more than one person

The full tests the council will apply in considering a case for prosecution are set out in Appendix 1.

Applicable sanctions differ between general fraud and benefit fraud in accordance with legislation, as follows.

With respect to a prima facie case of fraud, an appropriate combination of the following three sanctions may be applied.

- **Disciplinary Action** - Application of this sanction is normally internal disciplinary action but may involve a referral to the relevant professional organisation from which professional disciplinary action could ensue
- **Civil Action** – to recover money, interest and costs where it is cost effective and desirable for the purpose of deterrence, it may be decided that civil redress is the most appropriate course of action. In such instances the council's legal services team will utilise civil law to recover any losses
- **Criminal Sanction** - fines, imprisonment, and compensation orders

Where it is decided that a criminal prosecution is to be pursued, the Divisional Director Assurance & Risk will be consulted and will brief the Director of Finance & Resources and Chief Executive as appropriate. However, the option to prosecute may also be determined by the police in some instances.

Managers should not notify the police directly, except in an emergency in order to prevent further loss, or where it is necessary for the police to examine an area before it is disturbed by staff or members of the public.

In instances where an investigation reveals either;

- numerous cases of fraudulent activity
- significant value, or
- breaches of the employee code of conduct and/or disciplinary rules

The option of pursuing a series of sanctions (parallel sanctions) may be chosen.

The individual or parallel sanctions that are to be applied will be the decision of the Corporate Anti-Fraud Team following consultation with the Divisional Director Assurance and Risk.

In instances where parallel sanctions are applied, for example, internal disciplinary and criminal sanctions, the Corporate Anti-Fraud Team will carry out an investigation with a view to criminal prosecution, whilst simultaneously conducting an internal investigation under the Disciplinary Procedure.

The Corporate Anti-Fraud team will provide sufficient evidence to Human Resources in order that an internal investigation and disciplinary hearing can be taken forward with respect to the evidence given. The advantage of this approach is that all appropriate action is taken at the earliest opportunity.

The Council believes fair and effective prosecution is essential in order to protect public funds and deter fraudulent activity.

Irrespective of the sanctions pursued for general fraud, the council will use all measures available to it to recover any money lost due to fraudulent activity.

In respect to criminal sanctions, this will be sought through the application for a Compensation Order to the Courts. This Order will not only outline the losses sustained by the council through fraud but also the investigation costs.

In respect of Internal Disciplinary, the council has a responsibility following the outcome of its investigation, to initiate an appropriate procedure aimed at recovering all monies identified as being lost or misappropriated through fraud.

The mechanism by which misappropriated monies are to be repaid will normally be established and agreed prior to any sanction being applied, and may be managed through utilisation of procedures such as deduction from salary or debtor invoicing.

Where the above mechanisms fails to recover any monies owed to the council, following advice from Legal Services, the Corporate Anti-Fraud Team will consider the option of civil redress.

Civil redress is available to the council in all instances where initial attempts to recover the loss, such as deduction from salary or debtor invoicing, have failed. In such instances, if considered appropriate, Legal Services will make an application either to the Small Claims or County Court - depending on the value to be recovered.

Other Redress - the council will also seek recovery of losses from pension entitlements where appropriate.

Housing Benefit Fraud Sanctions & Redress

The Council has the power to impose three forms of sanction on those whom it believes have committed benefits offences. Prosecutions will be reserved for those cases which in the opinion of the Council are the most serious. These will be followed by Administrative Penalties and Local Authority Formal Cautions.

Factors Influencing Sanctions for:

- Closure of the case with No further Action
- A Formal Caution
- An Administrative Penalty
- Prosecution

Closure of the Case with No Further Action

The Authority would consider using its discretion to close the case with no further action being taken by an Investigation Officer, although any overpayment would still be recovered if the circumstances in which the fraud arose are relatively minor, e.g.

- to the best of the council's knowledge the claimant has never previously offended and
- there was no planning involved in the process and
- there was no other person involved in the fraud and
- the overpayment is low

A Formal Caution

If the circumstances in which the fraud arose are more serious, e.g.

- it is known the claimant had previously offended, but no Formal Caution has been previously recorded or 14 months have elapsed since the last Formal Caution
- Mitigating factors determine the need to consider a Formal Caution Penalty
- there was little or no planning involved in the process
- there were no other persons involved in the fraud
- An admission has been made

the Authority would consider issuing a Formal Caution.

What a Formal Caution is

Unlike the administrative penalty, a caution can only be issued when a customer has admitted an offence. It cannot be issued if the customer refutes or denies the charge. The case should again be at prosecution standard if a caution is to be issued. If a caution is refused the Authority will refer to Prosecution Tests and decide upon suitability and cost effectiveness to prosecute.

To reflect the seriousness the Authority places on this course of action, a Caution will be administered by an Officer of no less seniority than a Senior Investigation Officer

An Administrative Penalty

If the circumstances in which the fraud arose are fairly serious, e.g.

- to the best of the Council's knowledge the claimant had never previously offended
- the person had not previously been issued with a Formal Caution or Administrative penalty in the last 14 months
- Mitigating factors determine the need to consider an Administrative Penalty
- The Penalty amount does not usually exceed £ 3000

the Authority would normally consider issuing an Administrative Penalty.

What an Administrative Penalty is

Section 115A of the Social Security Administration Act 1992, as amended by Section 15 of the Social Security Fraud Act 1997, allows an Authority to apply a penalty equal to 30% of the total overpayment. The claimant has 28 days in which to change their decision. If a penalty is not accepted or is withdrawn, the Authority may consider prosecution. The Authority will refer to the prosecution tests and decide upon the suitability and cost effectiveness to prosecute. Consequently, all cases considered for penalties, must be at prosecution standard.

The offer of a penalty should happen at a special interview.

NOTE: Officers involved in the Interview under Caution, will not conduct the Administrative Penalty interview.

Prosecution

If the circumstances in which the fraud arose are very serious, e.g.

- it is known the claimant had previously offended or a Formal Caution/Administrative Penalty has been recorded in the last 14 months
- there was planning involved in the process
- there were other persons involved in the fraud

- the overpayment is of a high amount

the Authority would normally consider referring the case for prosecution.

It may still be appropriate to prosecute someone who has not been paid any benefit but where the attempt to defraud was so serious as to justify a prosecution.

Publicity

Anti-Fraud officers will seek to publicise cases identified for prosecution, with the aim to deter others and thereby to prevent further frauds. The final decision to publicise will rest with the Council's Press and Publicity Section.

Further Support, Tools & Guidance

The latest version of the Fraud Prosecution Policy and all of our documents can be obtained from either contacting the Group Manager – Internal Audit directly or by visiting our intranet pages:

[Hyperlink?](#)

If you have any comments or feedback to do with this document, we would like to hear from you, so please get in touch and email us at the following address:

david.greenfield@lbbd.gov.uk

Tests the council will apply in considering a case for prosecution: to be applied in considering a case for prosecution.

The Evidential Test

In deciding whether to refer a case for prosecution, the following tests will be considered:

- Is there sufficient evidence for a realistic prospect of a prosecution?
- Can the evidence be used in court?
- Could the evidence be excluded by the court e.g. because of the way it was gathered or the rule about hearsay?
- Is the evidence reliable?
- Is its reliability affected by such factors as the defendant's age, intelligence or level of understanding?
- What explanation has the defendant given? Is the court likely to find it credible in the light of the evidence as a whole?
- Is the witness's background likely to weaken the prosecution case? e.g. does the witness have any motive that may affect his or her attitude to the case?
- Are there any concerns over the accuracy or credibility of a witness?
- How clear is the evidence?
- Has there been any failure in investigation?
- Has there been any failure in benefit administration including delay?
- Is prosecution in the public interest?

The Public Interest test

In making a decision, the following factors should also be considered:

- Whether a conviction is likely to result in a significant sentence or a nominal penalty
- Whether the offence was committed as a result of genuine mistake or misunderstanding
- Cost effectiveness of taking the case to court
- Any abuse of position or privilege i.e. a member of staff or Councillor
- Whether the claimant is suffering from either significant mental or physical ill health
- Any social factors
- Any voluntary disclosure
- Any previous incidences of fraud
- The evidence shows that the defendant was a ringleader or an organiser of the offence
- There is evidence that the offence was premeditated i.e. the claim was false from inception
- There are grounds for believing that the offence is likely to be continued or repeated, e.g. by a history of recurring conduct
- The offence, although not serious in itself, is widespread in the area where it was committed