

The Fraud Prosecution Policy

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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 tough stance 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 policy?

The aim of this prosecution policy is to deter fraud against the Council. 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 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 committed fraud against other local authorities or any other agency administering public funds.

Executive Summary

The London Borough of Barking & Dagenham is committed to the protection of public funds through its action against fraud.

In order to reinforce the deterrence message, where fraud and wrong doing is 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, in accordance with this policy. All references to fraud in this document include any other type of fraud related offence – fraud, theft, corruption and bribery as defined in the Counter Fraud policy.

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Fraud Prosecution Policy

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

Where fraud is found to occur, in any form, it will be dealt with rigorously in a controlled manner in accordance with the principles in the Counter Fraud 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 considered 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 it would be in the public interest to proceed

A prosecution will usually be pursued unless there are public interest factors against prosecution which clearly outweigh those tending in favour. To pass the public interest test, the Assurance Group 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.

Fraud Sanctions & Redress

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 with or without police involvement

Where it is decided that a criminal prosecution is to be pursued, the Assurance Group will brief the most appropriate Chief Officer, 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 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 Assurance Group following consultation with the Counter Fraud Manager and Legal Services.

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

The Assurance Group will provide 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 redress, 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 as well as the recovery of losses from pension entitlements where appropriate.

Where the above mechanisms fail to recover any monies owed to the council, following advice from Legal Services, the Assurance Group 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.

Where other fraudulently obtained assets are found, action under Proceeds of Crime legislation will also be considered utilising Accredited Financial Investigator resources.

Publicity

Assurance & Counter Fraud Group officers will seek to publicise successfully prosecuted cases, with the aim to deter others and thereby to prevent further frauds. The final decision to publicise will rest with the Council's Media & Public Relations Team.

Further Support & Guidance

- If there are any questions about these procedures, the Assurance Group can be contacted on 020 8227 2850, 020 8227 2393, 020 8227 2307, caft@lbbd.gov.uk or by visiting our intranet pages.

Appendix 1

Tests the council will apply 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 administration including delay?

The Public Interest Test

In deciding, 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

Appendix C

- 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, is widespread in the area where it was committed