

## Prosecution, Sanctions and Redress Policy

### 1. Introduction

- 1.1 The Corporate Audit, Fraud & Risk service has a responsibility to protect public funds through its work against fraud. The work consists of investigation, detection and prevention of fraud and corruption within and against the London Borough of Waltham Forest. Seeking appropriate sanction and/or redress is pivotal to this. Prosecution or other appropriate sanction will only be sought where it is in the public interest to do so.
- 1.2 The purpose of a prosecution is to establish the guilt, or otherwise, of the accused. If a conviction is secured it is for the court to decide on an appropriate punishment, which can act as a deterrent to others.
- 1.3 The purpose of this policy is to ensure that the decision to sanction/prosecute can be justified as fair, reasonable and consistent.

### 2. Levels of Authorisation

- 2.1 Cases for Caution or Administrative penalty can be authorised at **Group Manager** level. All prosecution cases must be authorised **by the Head of Audit, Fraud & Risk**. This includes cases where a caution or administrative penalty has been refused.
- 2.2 The final decision to prosecute will be taken once the case papers have been examined by Legal Services.
- 2.3 Larger or more complex cases may need to be referred to the Police. Referrals to the Police **must** be authorised by the Head of Audit, Fraud & Risk. However, those cases involving staff or other LBWF representatives must be sanctioned by the S151 Officer [Director of Finance].

### 3. General Policy

- 3.1 In all cases the following will be considered when deciding whether to prosecute. In Housing Benefit / Council Tax Benefit cases the guidelines outlined in 3 must also be considered.

Issue	Points to consider
Quality of available evidence	Is there sufficient evidence to satisfy a court? Is all the evidence admissible? Has all the evidence been obtained appropriately?
Degree of criminality	How was the fraud perpetrated? Was it opportunist? How much planning went into the fraud? How long did it continue?
Persistent offender	Have they previously committed fraud? Have they received sanction previously?
Position of Trust	Is the perpetrator a council employee, representative or contractor? Are they a Member of the council?
Duration of the fraud	How long did the fraud continue?
Loss to Public Funds	It would be unlikely for a fraud with a value of less than <b>£500</b> to be prosecuted but it should not be ruled out. All of the other issues in this list need to be considered as well.
Voluntary disclosure	Was the fraud admitted prior to investigation?
Widespread offence	Is the offence part of a local trend? The offence might not be particularly serious but may be particularly prevalent in a specific area.
Social/Medical factors	Are there any mitigating circumstances? Are there any mental or physical disabilities? Is the perpetrator fit to stand trial? Social/medical factors should not automatically preclude prosecution but they must be considered.
Public Interest	What gain is there for the Council and/or general public?

## 4. Housing Benefit and Council Tax Benefit Cases

- 4.1 The following factors need to be considered along with those in point 2.1. Social Security legislation allows local authorities to sanction claimants by way of cautions and administrative penalties as well as by prosecution. Local Authorities can also seek redress by way of overpayment recovery.

Each case **will** be considered on its merits and a blanket policy will not be applied.

## **Local Authority Caution**

### **4.2 The Authority may consider issuing a caution in the following circumstances:**

- The claimant has never previously offended
- There was no planning involved in the fraud
- There was no other person involved in the fraud
- Penalty action is not appropriate
- The offence is minor
- The amount of overpayment is relatively low or the fraud has taken place over a relatively short period of time
- The offence was admitted during an interview under caution (IUC)
- The persons has expressed remorse or regret
- It may not be in the public interest to prosecute, i.e there might be social or medical factors to consider
- There is a strong likelihood of the full amount being repaid.

### **4.3 If the person refuses the caution the case will normally be referred for prosecution.**

## **Administrative Penalty**

### **4.4 The penalty is the equivalent of a fine - amounting to 30% of the overpaid benefit (S115a of the Social Security Administration Act 1992). The amount is not negotiable with the claimant.**

### **4.5 The Authority may consider issuing an Administrative Penalty in the following circumstances:**

- The claimant has never previously offended
- There was no planning involved in the fraud
- There was no other person involved in the fraud
- A caution is not appropriate
- The offence is minor
- The amount of overpayment is relatively low or the fraud has taken place over a relatively short period of time
- The offence was not admitted during the IUC (interview under caution)
- It may not be in the public interest to prosecute i.e. there might be social or medical factors to consider.

### **4.6 If the person refuses the Administrative Penalty the case will normally be referred for prosecution.**

## Prosecution

- 4.7 Cases involving **significant** large overpayments, protracted, or highly organised fraud, should always be considered for prosecution. Officers must consider all the issues addressed in point 2.1 prior to recommending prosecution.

## 5. Internal Fraud

- 5.1 The Head of Audit, Fraud & Risk will liaise with the Head of Service and Executive Directors if prosecution is to take place against a member of staff. Occasionally, this may be out of the Council's control, if an external body (e.g. DWP or Police) is bringing the case.
- 5.2 Disciplinary proceedings may also be taken against members of staff and these are not subject to a criminal burden of proof, but 'balance of probabilities'

## 6. Redress

- 6.1 Redress for the Anti-Fraud Team can be defined as the recovery or attempted recovery of assets lost or defrauded. This would include any type of financial recompense for the fraud.
- 6.2 Where possible, the Council would expect to follow cases through to this point. Whilst the Council aims to progress to sanctions, it must also attempt to recover any loss. The recovery process is not part of the remit of the Anti Fraud Team, but instruction and help will be given where possible to facilitate recovery.

## Types of redress and recovery

6.3

Case Type	Method of Redress/Recovery
Housing	Instigating recovery of property Removal from Housing Register Cancellation of Temporary Accommodation Disallowed from Right to Buy (RTB) Sue for loss of rent or RTB/portable discount
Benefits	Tracing of address for recovery of overpayment from Landlord or Tenant
Asylum Seekers	Tracing of address for recovery of overpayment from Landlord or Tenant

Case Type	Method of Redress/Recovery
Internal and General	Charges on property Third Party (Garnishee) Attachment of earnings Freezing Injunctions Insurance Claims (fidelity guarantee) Pursuing debts via legal proceedings Confiscation orders Compensation Restitution Orders Use of the criminal assets recovery agency (in the future).

## 7. Publicity

- 7.1 Having consideration to the appropriate council policies regarding publicity the Anti Fraud Team will seek to publicise each case successfully prosecuted.
- 7.2 Publicity is an important tool in the prevention of fraud as it highlights the work of the Corporate Audit, Fraud & Risk service and can act as a deterrent.