

Audit Committee

29 June 2018



Corporate Fraud Sanction Policy

Report of Paul Bradley, Chief Internal Auditor and Corporate Fraud Manager

Purpose of the Report

1. This report presents the Corporate Fraud Sanction Policy.

Background

2. Durham County Council's Counter Fraud and Corruption Strategy sets out the commitments of Durham County Council to tackling fraud, corruption and bribery. It also makes clear to all concerned the appropriate and decisive action that will be taken against those committing, or attempting to commit, fraudulent and/or corrupt acts against the Council and that cases will be thoroughly investigated and dealt with.
3. The Council seeks to ensure that it creates a zero tolerance culture in order for it to be effective in its approach to dealing with fraud, corruption and bribery. There is commitment to ensure that opportunities are reduced to the lowest possible level by:
 - Raising awareness of the impact of fraud, both on the organisation and the individual;
 - Preventing, detecting, investigating and deterring fraud;
 - Applying sanctions against people who commit fraud;
 - Seeking redress for frauds, overpayments and losses.
4. The risk of fraud and corruption is recognised as a strategic risk within the Council's Corporate Strategic Risk Register.
5. The Audit Committee is responsible for monitoring the arrangements the Council has put in place to mitigate the risk of fraud and corruption by seeking assurance on their effectiveness.
6. This policy is part of the 'Pursue' theme of the revised Counter Fraud & Corruption Strategy; 'Being stronger in punishing fraud/recovering losses'.

Content

7. The policy sets out what actions will be taken in dealing with cases of fraud and the criteria to be used to decide whether a sanction is appropriate. Its principles will apply equally to any fraud against the Council or against funds for which the Council has responsibility. This will ensure that decisions are consistent and fair.
8. It is acknowledged that, even with strong preventative measures, motivated fraudsters may still succeed, so the Council must have a robust enforcement response to pursue fraudsters and to deter others.
9. The Council will always take into account:
 - The value of the financial loss involved;
 - If the person has used a false identity document, either forged or counterfeit to make a gain or a loss to another;
 - The period of time over which the alleged offence took place;
 - The standard of the evidence obtained during the investigation;
 - Any evidence that the offence was premeditated and thereby calculated and a deliberate attempt to defraud the Council;
 - Whether the person was in a position of authority or trust;
 - The type of fraud;
 - The person's previous convictions, cautions, administrative penalties and civil and disciplinary outcomes;
 - If the person has declined the offer of an administrative penalty or caution or has withdrawn from an administrative penalty agreement;
 - Whether it is in the public interest;
 - The reputation of the Council;
 - Any mitigating or aggravating circumstances that might be present.
10. Criminal prosecutions, sanctions, civil action and disciplinary action all deter offenders and reinforce a culture of zero tolerance towards fraud and corruption. The Corporate Fraud Team currently don't have a policy that enforces them to offer all the available sanctions that are currently available.
11. The Fighting Fraud and Corruption Locally Strategy 2016-2019 and the companion document and checklist, include that all Councils should include sanctions and redress as part of their strategies. Under the 'Pursue Principle', it suggests that Councils should develop capability and capacity to punish fraudsters and prioritise fraud recovery and the use of civil sanctions. This policy therefore assists our strategy and this principle.
12. Fraud must not pay, where fraud or corruption is discovered, the full range of sanctions will be deployed, including civil, disciplinary, criminal action, and referring cases to other law and enforcement organisations.

13. This policy includes detail in the following areas:

- Decision making process;
- Forms of sanction that can be imposed;
- Recovery of losses;
- Partnerships;
- Recording sanctions; and
- Publicity.

14. The forms of sanction that are included in this policy are:

- Disciplinary action;
- Civil Proceedings;
- Criminal Proceedings;
- Offer of an Administrative Penalty;
- Offer of a Caution;
- Warning Letters.

15. In some cases, more than one form of sanction may be appropriate. For example, where the employee has defrauded the Council, disciplinary, prosecution and civil recovery action may be taken.

16. By taking action against fraudulent offenders, the Council will convey the message to the public and employees, that any fraud will not be tolerated.

Recommendations

17. Members are asked to note the contents and approve this Policy.

- (a) Corporate Fraud Sanction Policy (Appendix 1).

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Appendix 1: Implications

Finance

The potential loss to the Council arising from fraudulent actions. The cost of the Corporate Fraud Team is £163,840 and in 2017/18 has recovered or intercepted £796,691 of potential fraud.

Staffing

Disciplinary action to be taken against known employees where fraud has been proven.

Risk

The risk of fraud and corruption is recognised as a corporate strategic risk. An effective counter fraud strategy is a key control in helping to mitigate the risk.

Equality and Diversity/Public Sector Equality Duty

None

Accommodation

None

Crime and disorder

Fraud is a criminal offence.

Human rights

None

Consultation

The Trade Unions have been sited on the draft policy.

Procurement

None

Disability Discrimination Act

None

Legal Implications

Ensuring proper governance procedures are in place, (particularly the Counter Fraud & Corruption Strategy, Contract Procedure Rules, Financial Procedure Rules, Codes of Conduct and the Confidential Reporting Code), that are supported by a robust audit programme of counter fraud awareness measures and assurance reviews will assist the Council in complying with anti-corruption law, in particular the Bribery Act, and also serves to reduce the risk of reputation damage and financial loss by litigation.



Durham County Council

Corporate Fraud Sanction Policy

Version 1.1

Date of last review: March 2018

1. INTRODUCTION

- 1.1 Durham County Council's Counter Fraud and Corruption Strategy sets out the commitments of Durham County Council (the Council) to tackling fraud, corruption and bribery. It also makes clear to all concerned the appropriate and decisive action that will be taken against those committing, or attempting to commit, fraudulent and/or corrupt acts against the Council and that cases will be thoroughly investigated and dealt with.
- 1.2 The Council seeks to ensure that it creates a zero tolerance culture in order for it to be effective in its approach to dealing with fraud, corruption and bribery. There is commitment to ensure that opportunities are reduced to the lowest possible level by:
- Raising awareness of the impact of fraud, both on the organisation and the individual;
 - Preventing, detecting, investigating and deterring fraud;
 - Applying sanctions against people who commit fraud;
 - Seeking redress for frauds, overpayments and losses.
- 1.3 This policy sets out what actions will be taken in dealing with cases of fraud and the criteria to be used to decide whether a sanction is appropriate. Its principles will apply equally to any fraud against the Council or against funds for which the Council has responsibility. This will ensure that decisions are consistent and fair.
- 1.4 The Council will always take into account:
- The value of the financial loss involved;
 - If the person has used a false identity document, either forged or counterfeit to make a gain or a loss to another;
 - The period of time over which the alleged offence took place;
 - The standard of the evidence obtained during the investigation;
 - Any evidence that the offence was premeditated and thereby calculated and a deliberate attempt to defraud the Council;
 - Whether the person was in a position of authority or trust;
 - The type of fraud;
 - The person's previous convictions, cautions, administrative penalties and civil and disciplinary outcomes;
 - If the person has declined the offer of an administrative penalty or caution or has withdrawn from an administrative penalty agreement;
 - Whether it is in the public interest;
 - The reputation of the Council;
 - Any mitigating or aggravating circumstances that might be present.
- 1.5 These examples are not exclusive or exhaustive and each case should be judged on its own merit.

1.6 By taking action against fraudulent offenders, the Council will convey the message to the public that any fraud will not be tolerated.

2. DECISION MAKING

2.1 The decision to refer a case for further action is a serious matter for all parties involved and each case will be examined on its own merits on a consistent and impartial basis. The decision to treat a fraud as serious and to impose a sanction will be taken by a Senior Officer within the Internal Audit service.

2.2 The decision to refer a matter for criminal or civil prosecution will be taken in consultation with the Council's legal services.

2.3 A record of all such decisions and reasons for particular sanctions will be made and retained for all cases. Documentation will be completed and kept on the record.

3. NO FURTHER ACTION

3.1 No further action will be taken where either the evidence does not support that a fraud has taken place, or, where it is considered a fraud has taken place, but it will not be pursued due to one or more of the following factors:

- Evidence is not robust or reliable;
- It is not in the public interest to pursue;
- It is not in the interests of the Council to pursue.

4. FORMS OF SANCTION:

4.1 Forms of sanction are:

- Disciplinary action;
- Civil proceedings;
- Criminal proceedings;
- Offer of an Administrative Penalty;
- Offer of a Caution;
- Warning Letters.

4.2 In some cases, more than one form of sanction may be appropriate. For example, where the employee has defrauded the Council, disciplinary, prosecution and civil recovery action may be taken.

Disciplinary Action

- 4.3 In the event of an allegation made against an employee, disciplinary action may be taken following the Council's disciplinary policy. In some cases, disciplinary action and criminal action may be appropriate and could be investigated in parallel. Outcomes of any disciplinary action will be taken in line with the Council's disciplinary policy and may, in appropriate cases, include dismissal from employment.
- 4.4 In order to create a zero tolerance culture, the Council must exercise a tough approach against both internal employees and external customers/partners committing or attempting to commit fraud.

Civil Proceedings

- 4.5 Where it is considered that criminal prosecution will not be pursued, as the evidence is not sufficient to prove beyond reasonable doubt, it may be appropriate to consider civil proceedings.
- 4.6 For civil proceedings, the standard of proof is on the balance of probabilities.
- 4.7 Where it is evident that the Council has been defrauded by one of its own employees, customers or service users or other third party, the proceeds of fraud may be preserved through civil proceedings by:
- Recovery of monies;
 - Council Tax Support Fraud – Civil Penalties
 - Council Tax Fraud – Civil Penalties

Further detail on each of these is provided below.

Recovery of monies

- 4.8 Where an overpayment arising from a fraud is identified, the Council will take steps to recover the resultant debt, including taking action in the civil courts if necessary.
- 4.9 Regardless of whether or not any sanction action is taken, the Council will always seek to recover any overpayments or misused monies.
- 4.10 There will be overpayments which are not due to fraud, and the Council will determine the appropriate recovery in these cases.

Council Tax Support Fraud – Civil Penalties

- 4.11 Civil penalties can be imposed for incorrect statements. Regulation 13 of the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) 2013 allows the Council to impose a penalty of £70 where, without reasonable excuse, there is a failure to report the relevant change of circumstances promptly.
- 4.12 The £70 penalty can only be imposed where a person has not been charged with a Local Council Tax Fraud Offence or has not been offered an administrative penalty or caution.

Council Tax Fraud – Civil Penalties

- 4.13 Civil penalties can be imposed for failure to supply information. Schedule 3 of the Local Government Finance Act 1992 allows the Council to impose a penalty of £70 where a person fails to comply with certain requirements as to the supply of information.
- 4.14 A penalty can be imposed on any person who has:
- been requested by the Council to supply information to identify the liable person for Council Tax and has failed to supply this information; or
 - knowingly supplied information, with regard to identifying the liable person, which is inaccurate in a material particular; or
 - failed without reasonable excuse, to notify the Council that the dwelling will not be, or was no longer an exempt dwelling; or
 - failed without reasonable excuse, to notify the Council that the chargeable amount is not subject to a discount, or is subject to a discount of a lesser amount.

Criminal Proceedings

- 4.15 In the most serious of cases, the Council will give consideration to the prosecution of those offenders suspected to have committed fraud. Where the Council considers there is sufficient evidence to indicate a criminal act has taken place, the Council will utilise its Legal Service to undertake the criminal prosecution.
- 4.16 There may be cases that are deemed more appropriate to be referred to the police. With these cases, the decision taken by the police or the Crown Prosecution Service will be final as to whether or not to pursue the case.

4.17 Criminal proceedings may be brought for a suspected offence under the following legislation:

- The Theft Act 1968 (as amended);
- The Fraud Act 2006;
- Forgery and Counterfeiting Act 1987;
- Computer Misuse Act 1990;
- Local Government Finance Act 1992;
- Data Protection Act 1998;
- Identity Card Act 2006;
- The Bribery Act 2010;
- Welfare Reform Act 2012;
- The Prevention of Social Housing Fraud Act 2013;
- The Council Tax Reduction Scheme (Enforcement & Fraud) Regulations 2013;
- Housing Act 1996;
- Road Traffic Regulation Act 1984;
- Proceeds of Crime Act 2002;
- Any other relevant provision in law.

4.18 The Council must be satisfied that the investigation has been conducted efficiently and in accordance with the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984. Where administrative failures or unnecessary delays are evident, the Council will take these factors into consideration but, depending upon the circumstances, they will not preclude a prosecution.

4.19 In deciding whether prosecution is an appropriate course of action, the Council will be guided by the Code for Crown Prosecutors and will only initiate legal action if it has satisfied both the evidential test and the public interest test. When necessary, advice will be obtained from an appropriate source, usually the prosecuting solicitor.

4.20 The value of any financial loss is a key factor to take into consideration when determining whether a prosecution is appropriate. If the gross adjudicated overpayment is above £3,000, then the case will be prosecuted from the outset, unless there are overriding mitigating factors (as set out below).

4.21 Whilst it will form part of the decision making process, the value of any financial loss is only one factor to be taken into consideration when determining whether a prosecution is appropriate. Other factors, such as the nature and duration of the offence, the method of commission and its severity, will also need to be considered. There are fraud types that won't have any value where prosecution will be suitable.

4.22 Mitigating personal and social factors will also be considered, including:

- The physical and/or mental health of the subject;
- Their ability to understand proceedings;
- Their domestic situation, if they have dependants;
- The effect upon any third parties.

4.23 Similarly, aggravating factors will also be considered, such as:

- Any element of conspiracy or collusion;
- Previous fraud sanctions or convictions;
- Was there any degree of premeditation;
- Is this type of offence prevalent within the area;
- Has an offer of an alternative sanction been refused.

4.24 The above illustrative factors will be considered in deciding whether to prosecute an individual. It does not represent an exhaustive list of individual circumstances, which may be taken into account.

4.25 Any decisions taken under this policy will be fully documented and the factors used in reaching the decision recorded. It is recognised that criminal prosecution is a serious step to take and the decision to refer cases for prosecution will not be taken lightly.

4.26 In the event of a prosecution not being the preferred option, alternative sanctions such as cautions and administrative penalties may only be considered, if the case could be successfully prosecuted upon the offer of alternative sanctions being refused.

4.27 Whilst the Council does not hold any housing stock, it can still investigate suspicions of tenancy fraud. The Council view is that one property lost to fraud is one less property available to use for genuine applicants on the housing register. The Prevention of Social Housing Fraud Act 2013 allows the Council to prosecute in relation to tenancy fraud. Where appropriate this will be carried out by working in partnership with local registered social landlords.

4.28 Details of all prosecutions should be held by the Council for a period of six years. If a person is subsequently prosecuted for a later offence, the prosecution may be cited in court, adhering to the Rehabilitation of Offenders Act and advice from legal services.

Offer of an Administrative Penalty

4.29 From 01 April 2013, Regulation 11 of the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013, introduced penalties as an alternative to prosecution in cases of local Council Tax Support Fraud.

- 4.30 A penalty, as an alternative to prosecution, will only be considered where there is sufficient evidence to justify the prosecution of an offence, where the offence is not so serious and where the overpayment is low enough that it would not be in the public interest to prosecute.
- 4.31 If a person enters into an administrative penalty agreement, they will be required to pay a penalty to the Council in addition to repaying the council tax reduction overpayment. The Council will recover overpayments and penalties in accordance with legislation but, in doing so, will ensure that no one is placed in hardship. A decision to impose a penalty will not be taken lightly.
- 4.32 The amount of penalty is to be 50% of the amount of the excess reduction (rounded down to the nearest whole penny), subject to a minimum amount of £100 and maximum amount of £1,000. The Council can also administer a penalty of £100 for attempted fraud cases.
- 4.33 Failure to repay the debt or default on instalments may result in civil proceedings being taken or the withdrawal of the financial penalty agreement and criminal proceedings considered as an alternative.
- 4.34 For an offer of an administrative penalty to be made, the following criteria should be met:
- There are grounds for instituting criminal proceedings but the case is not so serious that prosecution should be considered at the outset;
 - The offender's lack of previous convictions/cautions has been taken into account;
 - The offer of a penalty would not cause severe financial hardship or put a vulnerable person at risk;
 - The offender would have the means to pay the penalty and by offering a penalty this would act as a suitable deterrent.
- 4.35 There will be occasions where not all of the above criteria are met, however an administrative penalty may still be appropriate. Every case will be considered on its own merits and legal advice will be sought where there is a doubt whether an administrative penalty is an appropriate sanction. All decisions to offer an administrative penalty will be fully documented and the factors used in reaching the decision recorded.
- 4.36 Details of all administrative penalties will be held by the Council for a period of six years.

Offer of a Caution

- 4.37 A caution is a meaningful warning given in certain circumstances as an alternative to prosecution. Should the offender decline the offer of a caution then consideration will be given to initiating criminal proceedings, therefore all cases must be of a prosecutable standard and satisfy the evidential and public interest test.
- 4.38 For an offer of a caution to be made, the following criteria should be met:
- The offender is eighteen years of age or over;
 - There are grounds for instituting criminal proceedings but the case is not so serious that prosecution should be considered from the outset;
 - The offence is relatively minor;
 - The offender's history of previous convictions/cautions has been taken into account;
 - There has been a clear, reliable and recordable admission of the offence, which is compliant with the Police and Criminal Evidence Act.
- 4.39 There will be occasions where not all of the above criteria are met, however a caution may still be appropriate. Every case will be considered on its own merits and legal advice will be sought where there is doubt whether a caution is an appropriate method of disposal. All decisions to offer a caution will be fully documented and the factors used in reaching the decision recorded.
- 4.40 Details of all cautions will be held by the Council for a period of six years. If a person is subsequently prosecuted for a later offence, the caution may be cited in court, adhering to the Rehabilitation of Offenders Act and advice from legal services.

Warning Letters

- 4.41 In circumstances where there is sufficient evidence, but it is not in the public interest to prosecute or issue an alternative sanction, the Council will issue a warning letter. Such circumstances may include:
- Where the offence was committed by mistake;
 - Where the person committing the offence would still be eligible, if they applied again;
 - Where the offender was not interviewed under caution and it is deemed appropriate that a warning letter would act as a suitable deterrent.

4.42 This list is not exhaustive and each case will be judged on its merits. All decisions to offer warning letters will be fully documented and the factors used in reaching the decision recorded.

4.43 Details of all warning letters will be held by the Council for a period of six years.

5. RECOVERY OF LOSSES

5.1 In all cases where a loss has been incurred by the Council due to a fraudulent activity, theft, corruption, bribery or any other financial misconduct, the Council will seek to recover that loss and, where appropriate, the cost of the investigation. The Council will actively pursue recovery of all overpayments in line with the Redress of the Council's Counter Fraud & Corruption Strategy.

5.2 This action may include consideration under the Proceeds of Crime Act 2002. The Council may use its own accredited financial investigators or those attached to other law enforcement agencies in order to conduct the investigation, obtain orders and present evidence.

6. PARTNERSHIPS

6.1 Where appropriate, the Council will work in partnership with other organisations such as the Police, Department for Work and Pensions, Home Office, Her Majesty's Revenues and Customs, UK Borders Agency, other Local Authorities and Registered Social Landlords.

6.2 The Council will assist with any sanctions and prosecutions being imposed by its partners and support such actions. The Council will utilise the expertise and regulatory powers that each of its partners have to maximise the sanctions available.

7. RECORDING PENALTIES, SANCTIONS AND PROSECUTIONS

7.1 For an effective regime of sanctions to be successful, it is a requirement that accurate records of all convictions, penalties, cautions, warning letters and outcomes of fraud investigations are maintained. This will enable the correct decisions to be made taking full account of the defendant's background. Therefore it is important that a record of every individual sanction is recorded.

- 7.2 All sanctions must be recorded by the Council. Copies of documents used to consider and administer the sanction, should be retained in accordance with the relevant retention guidelines. The Council will also send relevant details to the National Anti-Fraud Network (NAFN) to be retained on their central database. In the case of prosecutions, all cases that result in successful convictions will be reported to Durham Constabulary for recording on the Police National Computer (PNC) database.

8. PUBLICITY

- 8.1 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 and reassure the public that the Council does take action against those committing, or attempting to commit, fraudulent and or corrupt acts.
- 8.2 Consideration will be given to whether the outcome of any sanction case should be reported to the community via various media channels. Publicity, where appropriate, will ensure the profile of counter fraud activity remains at a level which will contribute to ensuring the key objectives of preventing and detecting fraud are met.

9. REVIEW

- 9.1 This policy will be subject to an annual review to ensure it remains current and effective.