

**BROXBOURNE BOROUGH COUNCIL**

**FRAUD**

**SANCTION AND PROSECUTION**

**POLICY**



## Policy Statement

The Council will use the full range of sanctions available to it, including criminal prosecution, civil recovery, internal discipline and referral to professional bodies in order to deter fraud, corruption, bribery and associated offences.

The Council complies with the Local Government Concordat on Good Enforcement and has in place an Enforcement Policy the requirements of which this 'Fraud Sanction and Prosecution Policy' fully reflects.

The Council will utilise in-house legal services or agent solicitors to conduct prosecutions, as well as the Crown Prosecution Service, where appropriate.

The Council may refer matters to other law enforcement agencies or regulators where appropriate and support those agencies in bringing proceedings.

This policy only relates to investigations undertaken by the Shared Anti-Fraud Service (SAFS) on behalf of the Council.

## Introduction

Broxbourne Council's Anti-Fraud and Corruption Strategy sets out the aims and objectives with regard to both deterring and tackling fraud and associated offences. The strategy states that the Council will seek the appropriate sanctions against any individual or organisation that defraud or seek to defraud it. The use of sanctions will be governed by this 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.

The objectives of this policy are:

- **To ensure that the Council can apply a full range of sanctions in a just and consistent manner.**
- **To ensure that sanctions are applied in an effective, proportionate and cost efficient manner.**
- **To ensure that the sanction decision making process is stringent, robust, transparent and properly considers the public interest.**



- **To make it clear that the Council will not tolerate fraud and will take appropriate action to punish those who to seek to defraud public funds.**

A range of sanctions are available to the Council in relation to alleged or proven fraud and corruption. These include disciplinary action, civil proceedings, criminal proceedings, debt recovery and civil/financial penalties. Where appropriate, the Council may take more than one action. For example, where staff commit fraud or corruption, disciplinary, prosecution and civil recovery action may all be appropriate.

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

Other than where the Crown Prosecution Service is the most appropriate prosecuting authority, the Council will utilise internal legal services, approved solicitors or Counsel to undertake criminal prosecutions.

The decision to refer cases for prosecution to legal services will be taken by the Head of SAFS in conjunction with that Council's Head of Legal Services.

Alternatively, SAFS or the Council may refer cases to the police for investigation and prosecution by the Crown Prosecution Service. This may occur in cases of staff fraud or where the fraud is complex and/or of a very serious nature or linked to Safeguarding issues.

This policy outlines various penalties/sanctions or criminal proceedings that may be considered by the Council, as permitted by legislation, where any criminal offence including those yet to be enacted is identified.

### **The decision to prosecute**

The Council will apply the Director for Public Prosecutors Guidance on Charging to ensure that decisions to charge criminal offences and other prosecution decisions are fair and consistent.

The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.



The Full Code Test should be applied:

- a. when all outstanding reasonable lines of inquiry have been pursued; or
- b. prior to the investigation being completed, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test, whether in favour of or against a prosecution.

The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions, which sets out the general principles Crown Prosecutors should follow when they make decisions on cases.

*Is there enough evidence against the defendant?*

When deciding whether there is enough evidence to charge, Crown Prosecutors must consider whether evidence can be used in court and is reliable and credible, and there is no other material that might affect the sufficiency of evidence. Crown Prosecutors must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.

*Is it in the public interest for the CPS to bring the case to court?*

A prosecution will usually take place unless the prosecutor is sure that the public interest factors tending against prosecution outweigh those tending in favour.

Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction as set out in the Code for Crown Prosecutors.

## **Members & Staff**

In all cases of:

- fraud, and / or
- theft, and / or
- financial misconduct, and / or
- serious and intentional breach of financial regulations, and /or
- corruption



committed by employees of the Council disciplinary action will be sought in accordance with the Council's Discipline Policy. Where a fraud involving an elected Member is identified this will be reported to the Council's Monitoring Officer.

Where a financial loss has been identified the Council will always seek to recover this loss either through the civil or criminal process. In addition, where staff are members of professional bodies or are subject to national codes of conduct such as internal audit, housing or planning services, cases will be referred to the relevant professional body.

Where appropriate under this policy matters will be referred to the most appropriate prosecuting authority.

### **'Welfare' Fraud**

This includes any local or national benefit/allowance administered on behalf of the Council or central government, for example, housing benefit, council tax support, social fund, direct payment and council tax discounts/exemptions.

The Local Government Finance Act 1992 allows the Council to consider financial penalties as alternatives to prosecution and these should always be considered. However, in serious cases of fraud or where repeat offending occurs, the option to prosecute offenders will be kept under review.

Where appropriate cases may be referred to the Department of Work and Pensions (DWP) and the Council has signed up the national Joint Working Agreement with the DWP to facilitate the sharing of data to allow cases to be passed to the DWP for this purpose.

### *Civil Penalties*

Regulation 13. Council Tax Reduction Schemes (Detection of Fraud and Enforcement)(England) Regulations 2013 and Schedule 3 Local Government Finance Act 1992 permit 'billing authorities' to impose financial penalties where a person fails to report a material fact affecting their council tax liability or where a person fails, without good reason, to correct an error.

Each Act lays out its own requirement for such a penalty to be imposed:

- As a general rule the penalties are fixed one-off 'fines' to be added to a person's liability to pay.



- They can only be offered where a person fails to report a material fact or is negligent in some way and that failure resulted in an overpayment of benefit or a reduction in Council Tax liability.
- These penalties can only be imposed where no criminal charges or other administrative penalties are offered.
- The person receiving the penalty can appeal against the imposition of it, if permitted by legislation.

The Head of SAFS, or in their absence the SAFS Assistant Manager, will make the decision about the imposition of any Civil Penalties.

Once such a decision has been made the Manager of the Shared Revenue and Benefit Service will be informed and will apply all penalties, as instructed by the Head of SAFS.

All penalties will be recovered by adding the debt to a person's Council Tax liability for the current year and recovered only once that annual liability has been settled in full.

#### *Administrative Penalties*

*Regulation 11 Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013*, provide for Administrative Penalties to be offered to persons as alternatives to prosecution. The legislation allows for Administrative Penalties amounting to 50% of the gross reduction can be offered if the following conditions are met:

- There is a recoverable excess award of council tax reduction as defined by the relevant legislation.
- There is no excess award but that an application has been made where a person has knowingly made a false statement.
- The cause of the excess award is attributed to an act or omission on the part of a person.
- There are grounds for instituting criminal proceedings for an offence relating to the excess award upon which a penalty is based.
- The person offered such a penalty has the ability to repay it within a reasonable timescale and the imposition of such a penalty will not over-burden them if they have existing priority debts.

In all such cases of fraud the Council will seek to recover the excess award as well any penalty.



The Head of SAFS will make the decision about the offer of any Administrative Penalties

The SAFS Assistant Manager will arrange for the administrative penalty to be offered to the person liable for it and any cooling off period required by legislation.

Once a penalty has been accepted the Head of Finance, will arrange for an invoice to be raised.

### **Housing/Tenancy Fraud**

In all cases of fraudulent housing or homeless applications, where a tenancy has been obtained with a social housing provider, the Council will assist with possession of the property by the provision of any relevant information, to the social housing provider.

Where a false statement/misrepresentation is made on a housing or homeless application, the Council will also consider prosecution using the Theft Act, Fraud Act, Housing Acts and/or Prevention of Social Housing Fraud Act (P) whichever is the most appropriate.

### **Other Fraud**

This includes, grants, reliefs and exemptions, council tax or non-domestic rates and other applications for financial assistance to the Council where fraud is suspected or proven.

In cases where the Council suffers a financial loss, or risk of loss, the Council will always seek recovery. Where an organisation is involved in the fraud, the Council will also make referrals to the relevant governing body as and when appropriate, i.e. Charities Commission, Registrar of Companies, Insolvency Service.

Where professional individuals are found to be guilty of fraud against the Council as well as other sanctions mentioned already the Council reserves the right to report matters to the relevant professional body or regulator.

### **Proceeds of Crime**





The Council will make use of the Proceeds of Crime Act 2002, Criminal Justice Act 1988 and the provisions of PoSHFA (Prevention of Social Housing Fraud Act) 2013 to obtain Confiscation and Compensation Orders.

The Council may use its own Accredited Financial Investigators, those who work with SAFS or those attached to other law enforcement agencies in order to conduct financial investigations, obtain orders and present evidence at court.

### **Recording Penalties Sanctions and Prosecutions**

For an effective regime of sanctions to be successful it is essential that accurate records of convictions, penalties and cautions are maintained. This will enable the correct decisions to be made taking full account of the defendant's background.

All sanctions must be recorded by both SAFS and the Council, and copies of all documents used to consider and issue the sanction should be retained, in accordance with the relevant Retention Policies. Relevant paperwork must also be sent to the National Anti-Fraud Network to be retained on its central data-base. In the case of prosecution, all cases that result in successful convictions will be reported to Hertfordshire Constabulary for recording on the Police National Computer (PNC).

### **Publicity**

It is Council's intention to positively promote this policy as well as the outcome of any prosecutions, deterring others from fraudulent activity and reassuring the public that the Council take action to prevent, deter and investigate fraud against the public purse.

### **Reporting and Review**

Summary information on cases and action taken will be reported to the Council's Communications Team and SAFS Board in line with the Council's guidelines for publishing press releases. An annual report will be produced for the Chief Executive, Corporate Management Team and Audit and Standards Committee including all cases where sanctions or prosecutions have resulted from investigations conducted by SAFS Officers.

This policy will be reviewed annually or when changes in legislation require it by the Council's Head of Legal Services, and the Head of SAFS. Any minor or consequential changes will be made with the agreement of the Head of Legal Services.

