



Basingstoke  
and Deane

## SANCTION POLICY

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## 1. Introduction

1.1. The council's *Anti-Fraud Policy* and *Anti-Fraud and Corruption Strategy* set out the council's aims and objectives with regard to tackling fraud and corruption. They state that the council will take appropriate action against any individual or organisation that defrauds, or attempts to defraud the council. The application of sanctions promotes the councils 'zero tolerance' of fraud, and also acts as a deterrent to commit fraud.

1.2. The use of sanctions will be governed by this Policy. Its principles will apply equally to any fraud against the council or against funds for which the council has responsibility.

1.3. A range of sanctions are available to the council. These include:

- No further action
- Disciplinary action
- Civil proceedings
- Criminal proceedings or a criminal proceedings alternative (i.e. official cautions and administrative penalties)

In some cases more than one form of sanction may be appropriate. For example, where employees have defrauded the council we may take disciplinary, prosecution and civil recovery action.

1.4 The sanction decision will have regard at all times to the council's *Anti-Fraud and Corruption Strategy* objectives, the individual circumstances of each person involved and the overall impact of the punishment to both the individual and the community.

1.5 Where necessary, the council will work in co-operation with other organisations such as the Police, Department for Work and Pensions, Home Office, HM Revenue and Customs and other Local Authorities.

## 2. No further action

2.1 A case may be considered for no further action. This may be due to the following factors:

- Evidence is not robust or reliable
- The offence is minor

## 3. Disciplinary action

3.1 In the event an allegation is made against an employee, disciplinary action may be taken following the council's *Disciplinary Policy* that can be found in the staff handbook on Sinbad.

3.2 See Section 7. *Councillor and employee fraud and corruption*

## **4. Civil Proceedings**

- 4.1 Where it is considered that a criminal prosecution will not be pursued, as evidence is not sufficient to prove a case beyond reasonable doubt, it may be appropriate to consider civil proceedings.
- 4.2 For civil proceedings the standard of proof is on the balance of probabilities.
- 4.3 Where it is evident the council has been defrauded by one of its employees, service users/customers or other party, the proceeds of fraud may be preserved through civil proceedings without notice to the subject, by the following measures:
  - Freezing/tracing injunctions – an interim measure which restrains a person from removing or dealing with assets located within the jurisdiction
  - Search order – an interim order for the preservation of evidence
  - Recovery of money
- 4.4 Regardless of whether or not any sanction action is taken, the council will always seek to recover any overpayments or misused monies.

## **5. Criminal Proceedings - Prosecution**

- 5.1 Where the council consider there is sufficient evidence to indicate a criminal act has taken place criminal proceedings may be taken and the council will utilise its Legal Service to undertake the criminal prosecution.
- 5.2 For cases that are referred to the police, the decision taken by the police or Crown Prosecution Service will be the final decision as to whether or not to pursue a case.
- 5.3 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.
- 5.4 When considering a case for prosecution it is generally accepted that there are two “tests” to be applied – the evidential test and the public interest test. These are set out in The Code for Crown Prosecutors. The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions that sets out the general principles Crown Prosecutors should follow when they make decisions on cases.

### **Evidential Stage Test**

- 5.5 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge.
- 5.6 They must consider what the defence case may be, and how it is likely to affect the prospects of a conviction. A case which does not pass the

evidential stage must not proceed, no matter how serious or sensitive it may be.

- 5.7 When deciding whether there is sufficient evidence to prosecute, prosecutors must consider whether the evidence can be used and whether it is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears.
- 5.8 The evidence gathered will be examined in the first instance by the Investigator and Chief Internal Auditor. When both are satisfied that sufficient evidence exists to successfully prosecute and that the Public Interest Test is also satisfied the case file will be passed on to the council's Legal Team. Prosecutors will then apply their own inspection of the evidence to ensure that both tests are met.

### **Public Interest Test**

- 5.9 Where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 5.10A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour, or unless the prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal.
- 5.11 The more serious the offence or the offender's record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest.
- 5.12 Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction.

## **6. Specific fraud types and alternatives to prosecution**

### **Housing Benefit Fraud**

#### **Single Fraud Investigation Service**

- 6.1 On 01 May 2015 the council's responsibility for the investigation of fraud relating to Housing Benefit and Council Tax Benefit (Council Tax Benefit has been replaced by the Local Council Tax Support Scheme) was transferred to the Department for Work and Pensions under the Single Fraud Investigation Service (SFIS). This change was introduced by the Welfare Reform Act 2012.

6.2 The council whilst still responsible for the administration of Housing Benefit will work with SFIS to assist their duties of investigation.

### **Criminal Proceedings - Prosecution**

6.3 As a result of a SFIS investigation, prosecution action may be taken in relation to Housing Benefit fraud and/or Council Tax Benefit. Such action will be taken by SFIS legal teams, with the councils counter fraud team assisting by providing any necessary prosecution documents.

### **Administrative Penalties**

6.4 Administrative Penalties may also be considered by SFIS as an alternative to prosecution for Housing Benefit and/or Council Tax Benefit offences.

6.5 An administrative Penalty is a type of fine calculated on the amount of the overpayment that occurred due to the offence. For all overpayments accrued on or after 18<sup>th</sup> December 1997 the penalty is set at 30% of the overpayment. For overpayments accrued on or after 8<sup>th</sup> May 2012, the minimum penalty is £350 up to 50% of the overpayment not exceeding £5,000.

6.6 If an administrative penalty is considered, SFIS investigators will liaise with the council's counter fraud team to ensure the council agrees with the recommendation. Once the administrative penalty has been offered and accepted the council will recover the penalties in accordance with any relevant legislation but in doing so will not place any one in hardship. The council's debt recovery process will be followed to achieve this.

6.7 If the penalty is not accepted then the matter may be referred for prosecution.

**6.8 In all cases of fraud the council will seek to recover the overpaid benefit.**

### **Loss of Benefit Provision**

6.9 The Welfare Reform Act 2012 contains a loss of benefit provision effective from April 2013. These provisions are designed to strengthen and toughen the existing loss of benefit provision for benefit fraud offences introduced from April 2010 known as 'one strike'.

6.10 If a claimant accepts an Administrative Penalty as an alternative to prosecution, any social security benefit they receive now or in the future may be the subject of a four week loss of benefit provision in accordance with the Social Security (loss of Benefit) Regulations 2001, as amended by the Social Security (Loss of Benefit) Amendment Regulations 2010 and now amended by the Welfare Reform Act 2012.

6.11 Offences which result in a first conviction for Benefit Fraud may be subject to the 13 week loss of benefit provision for any social security benefit they receive now or in the future in accordance with the above regulations.

6.12 Two offences of Benefit Fraud which are committed within a set period, the second offence resulting in a conviction may be subject to the 26 week loss of benefit provision for any social security benefit they receive now or in the future in accordance with the above regulations.

6.13 A conviction involving a serious organised benefit or identity fraud will be subjected to a 3 year loss of benefit. In addition three offences of Benefit Fraud committed, the third resulting in a conviction may be the subject of a 3 year loss of benefit now or in the future in accordance with the above regulations.

### **Council Tax Support Fraud**

6.14 Council Tax Support replaced Council Tax Benefit on 01 April 2013 and the investigation of fraud and abuse of this scheme remains with the council. For any offences relating to Council Tax Benefit see *Single Fraud Investigation Service*.

### **Simple Cautions**

6.15 A simple caution is an oral warning (of which a written record is made), given in certain circumstances to a person who has committed an offence.

6.16 There are several pre-conditions, which must be satisfied if a matter is to be dealt with by simple caution:-

- There is sufficient evidence to justify instituting criminal proceedings
- The person has admitted the offence during an interview under caution and agrees to the caution
- There are no previous convictions or cautions for Local Council Tax Support Fraud or its precursor Council Tax Benefit in the last five years.
- There was no other person involved in the fraud.

6.17 Details of simple cautions are held by the council and will be administered by a senior officer of the council.

6.18 A simple caution is a meaningful penalty and deterrent for those persons who commit fraud against the council where criminal proceedings are not a first option. If the simple caution is not accepted the matter may be referred for prosecution.

6.19 If the person is subsequently prosecuted for a later Local Council Tax Support offence, the caution may be cited in court.

### **Penalties as an alternative to prosecution**

6.20 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.

- 6.21 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.
- 6.22 If a person enters into a Financial Penalty they will be required to pay a penalty to the council in addition to repaying the overpayment. The council will recover overpayments and penalties in accordance with any relevant legislation but in doing so will not place any one in hardship.
- 6.23 The amount of Penalty is to be 50% of the amount of the excess reduction and subject to a minimum of £100 and maximum of £1000.
- 6.24 Failure to repay the debt or default on instalments may result in civil proceedings being taken, although regard will be given to the individual's financial circumstances.

#### **Civil penalties for incorrect statements**

- 6.25 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 a relevant change of circumstances promptly which results in an overpayment of Council Tax Support.
- 6.26 The £70 penalty can only be imposed where a person has not been charged with a Local Council Tax Support offence or been offered a Formal Caution or Financial Penalty under Regulation 11 of the Council Tax Reduction Schemes(detection of Fraud and Enforcement)(England) Regulations 2013.

### **Council Tax**

#### **Civil penalties for failure to notify or supply information**

- 6.27 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.
- 6.28 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
  - Has knowingly supplied information, with regard to identifying the liable person, which is inaccurate in a material particular; or

- Has failed, without reasonable excuse, to notify the council that the dwelling will not be, or was no longer an exempt dwelling; or
  - Has 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.
- 6.29 Where a penalty has already been imposed and a further request is made to supply the same information, a further penalty of £280 may be imposed for each subsequent failure.

### **Housing Tenancy Fraud**

- 6.30 Whilst the council does not hold any housing stock it can investigate suspicions of tenancy fraud such as unauthorised sub-letting, abandonment, false succession applications, right to buy, general tenancy breaches.
- 6.31 The council's view is that one property lost to fraud is one less property available to use for genuine applicants on our housing register.
- 6.32 With effect from 15 October 2013 the Prevention of Social Housing Fraud Act has been available for the council to prosecute in relation to tenancy fraud. Where appropriate this will be carried out by working in partnership with local housing associations.

## **7. Councillor and employee fraud and corruption**

- 7.1 All cases of fraud, theft, financial misconduct, serious and intentional breach of financial regulations and corruption committed by employees or councillors will be dealt with in accordance with this policy as well as the *Disciplinary Policy / Members Code of Conduct*.
- 7.2 Where allegations are substantiated an employee will be subject to the council's disciplinary procedures. This could result in warnings or dismissal in the most serious cases. Referral to the police will not necessarily prohibit action under the disciplinary procedure.
- 7.3 Councillors will be dealt with in accordance with the *Members Code of Conduct*.
- 7.4 Where a financial loss has been identified the council will seek to recover this loss either through the civil or criminal process.
- 7.5 Any decision as to whether to refer the issue to any other enforcement agencies, for example, the Police or HM Revenue and Customs will be a joint decision between Internal Audit, the relevant Head of Service and Human Resources.

## **Parallel Sanctions**

- 7.6 It would be wrong to assume that any sanction(s) should be held to wait for another to proceed to conclusion.
- 7.7 It is preferable for the appropriate sanctions to proceed simultaneously, but it is not necessary for any one sanction to await the result of another before concluding. However, due consideration will be given to all proceedings to ensure that one does not impact improperly upon another.
- 7.8 The decision to run parallel sanctions will be determined on a case by case basis.

## **8. Recompense and Restitution**

- 8.1 In all cases where a loss has been incurred by the council due to fraudulent activity, theft, corruption or any other financial misconduct we will seek to recover that loss and where appropriate the cost of the investigation.
- 8.2 This action may include consideration under the Proceeds of Crime Act 2002.