

**FAREHAM**  
BOROUGH COUNCIL



**Fraud and Corruption  
Sanction and Redress  
Policy**

**June 2016**

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# 1. INTRODUCTION

Members and employees are expected to act with honesty and integrity and not to take advantage of any situation for personal gain for themselves or acquaintances. Residents, partners, other members of the public, suppliers and contractors are also expected to act with integrity in their business with the Council and not to behave dishonestly to the detriment of the Council.

Local authorities have a statutory duty under Section 151 of the Local Government Act 1972 to make arrangements for the proper administration of their financial affairs. This statutory duty includes the prevention, detection and deterrence of fraud against the Council. The arrangements the Council have in place are set out in our [Anti-Fraud and Corruption Policy](#).

When fraud has occurred the Council will seek to apply appropriate sanctions to punish those responsible as deterrence to future dishonest acts against the Council and also to maximise the recovery of the Council funds and assets that have been defrauded (redress).

This policy sets out the procedure that the Council will follow when an investigation supports the suspicion that fraudulent or corrupt activity has occurred which could lead to such action being taken.

Its purpose is to provide a fair, reasonable, consistent and efficient approach which takes into consideration the Council's Corporate Equality Policy and the Human Rights Act 1998; in particular Article 6 - the right to a fair trial.

It covers acts of theft, fraud, corruption, non-compliance and ICT abuse committed against the Council by its employees, members of the public or other organisations or their employees.

Separate policies covering other occasions where sanction and/or redress action may be considered are as follows:

- [Collection and Recovery Policy](#) – specifically for cases of failure to pay debts owed to the Council.
- [Regulatory Services Enforcement Policy](#) - for enforcement of legislation into food safety, occupational safety, environmental protection, noise control, private sector housing, animal welfare, licensing and antisocial activities.
- [Parking Enforcement Policy](#) - for enforcement of on street and off street parking restrictions.
- [Member Misconduct Complaints Procedure](#) – for cases where there is a conclusion that a member had failed to comply with the Code of Conduct.

## 2. SANCTION OPTIONS

It is the Council's policy that it will consider the full range of available sanctions and redress options throughout an investigation into a suspicion of fraud and corruption.

Offences identified may come from legislation or internal policies. Examples are:

Council Tax Reduction Schemes (Detection of Fraud & Enforcement) (England) Regulations 2013
Local Government Finance Act
The Prevention of Social Housing Fraud Act 2013
Housing Act 1985
The Fraud Act 2006
The Theft Act 1986
The Bribery Act 2010
Proceeds of Crime Act 2002
Forgery & Counterfeiting Act 1981
Computer Misuse Act 1990
Codes of conduct for employees and members
Departmental Health & Safety policy
Financial Regulations & Standing Orders

The main sanction and redress options available are:

Internal disciplinary Action (Employees)	Civil Penalties (Fine)
Civil Action to recover property, money, interests and costs	Regulatory Body Disciplinary Action
Criminal Sanction (such as Formal Caution)	Application for a Compensation or Confiscation Order
Criminal Prosecution in Magistrates or Crown Court	

The options are not mutually exclusive and can proceed in parallel. However, the relevance to the case will depend on the nature of the fraud and the perpetrator.

The burden of proof for the actions is different, ranging from the [balance of probabilities](#) for internal disciplinary cases and civil cases and [beyond reasonable doubt](#) for criminal sanction and prosecution.

Each case should therefore be considered individually and on its own merit and in accordance with the legislation that is applicable. In most cases the lead investigator will make a recommendation of the course of action to be considered. Before making a decision on the recommendation or deciding the appropriate course of action the Investigation Panel should consider the following:

- Legislation to be used
- Degree of criminality
- Nature of the offence
- Monetary loss and timing of the loss
- Quality of Evidence
- Denial or Admission
- Mitigating Circumstances
- Public Interest

The panel should formally record the sanction(s) that have been agreed as a result of the assessment.

### **3. DISCIPLINARY ACTION**

Any proposed disciplinary action to be taken against EMPLOYEES should be referred to Personnel services who will carry it out in accordance with the Council's [Disciplinary Code of Practice](#).

Any proposed disciplinary action to be taken by internal or external perpetrators using their professional or REGULATORY BODY should be referred to the appropriate body in accordance with their procedures.

### **4. CRIMINAL PROSECUTION**

If an act of fraud is considered too serious for disciplinary action or civil sanction then a criminal sanction or prosecution must be considered in line with the relevant legislation.

Offences of corruption are currently contrary to the Prevention of Corruption Acts 1906 and 1916. It should be noted that only the Crown Prosecution Service can prosecute these offences.

In some cases, if it appears that fraud has resulted in the commission of an offence, the matter may be reported to the police who may then refer the case to the Crown Prosecution Service. The case may be passed back to the Council to pursue its own prosecution using the evidence obtained by the police.

In other cases, the Council will prepare its own prosecution file in a standard similar to the Crown Prosecution Service and pass this to its Legal Services.

A decision to prosecute should not automatically prevent other sanctions being pursued. However, due consideration should be given to the impact of one upon the other.

Where the police have decided not to bring a prosecution, the matter should be referred to the Investigation Panel for further consideration. If the panel recommends that a sanction of prosecution is followed, this proposal then must be accepted by the Council's Legal team.

### **Things to consider before approving a case for Prosecution**

Any decision should be fair, independent and objective and they should not let any personal views about race, gender, disability, age, religious beliefs, political views or sexual orientation of either the perpetrator(s) or the witnesses to influence the decision.

In order to approve a case for prosecution of those accused of committing theft, fraud, corruption or ICT abuse against the Council, the Investigation Panel and Legal Team must be satisfied that the following two tests are passed:

- **the EVIDENTIAL TEST**
- **the PUBLIC INTEREST TEST**

The **Evidential Test** is based on the likelihood that a conviction will be secured. The burden of proof is "**beyond reasonable doubt**" and the evidence collected must be assessed in relation to this and be admissible in a court of law. This will involve reviewing:

- the evidence that the correct person is being accused;
- the evidence that the correct offences are being alleged and all parts of the offence can be proven;
- the reliability of the information sources and the ability to reproduce them in a court;
- the strength of the unused evidence that does not support the accusation;
- the strength of any defence given by the perpetrator;
- compliance with codes of practice in the way the investigation was conducted.

The **Public Interest Test** is based on the benefit there will be to the Council and the public by pursuing a prosecution.

The Council will be *more likely* to prosecute if:

The offence was deliberate and planned and not caused by a genuine mistake or misunderstanding;

The offence was on-going for a period of time and was unlikely to have stopped had the investigation not taken place;

A similar previous offence had been committed by the perpetrator;

There is evidence of collusion and/or the perpetrator is the ring leader or organiser of the offence;

The perpetrator was in a position of trust or the offence constitutes an abuse of position.

Circumstances which may make the option of prosecution *less likely* are:

The loss to the Council was under **£2,000**;

The perpetrator was co-operative during the investigation and has tried to right the loss or harm caused;

Mitigating circumstances of the perpetrator e.g. ill health or age

There was a significant delay in the prosecution being brought due to undue delay in the investigation;

There is the potential of considerable adverse publicity against the Council if a prosecution is sought.

It should be noted that these lists are not exhaustive.

## 5. CAUTIONS & ADMINISTRATIVE PENALTIES

There are occasions where fraud has been committed but prosecution is not the first course of action to be considered. This may be due to factors such as it being a first time offence, or it would be more detrimental to that person receiving a criminal record if the overpaid Council Tax Support is marginally larger than the prosecution limit of £2,000

For cases of Council Tax Support, an alternative to prosecution may be given in the form of a formal caution or administrative penalty.

A formal caution is an oral warning given only in specific circumstances. There has to be sufficient evidence to justify instituting criminal proceedings and the offence has to be admitted during an interview under caution.

However, if no admittance is given then an administrative penalty may be given as an alternative to prosecution. Again, there must be sufficient evidence to justify instituting criminal proceedings and the perpetrator must sign acceptance of the penalty as an alternative to prosecution. The amount

of the penalty is 50% of the amount of overpaid Council Tax Support, subject to a minimum of £100 and a maximum amount of £1,000.

If neither of these sanctions are accepted by the perpetrator, the Council will then proceed with prosecution.

## 6. CIVIL ACTIONS

In cases involving Council housing such as an illegal subletting of a Council property, a Notice to Quit and Notice Seeking Possession is generally sought from the County Court. Prosecution may be considered alongside civil action in serious cases.

Civil penalties may be given in the administration of Council Tax and Council Tax Support. In some circumstances a discount or exemption may be awarded to a Council Tax payer which reduces the amount of Council Tax payable. Failure to notify the Council in a timely manner of a change in circumstances which affects the discount or exemption will result in the award of a £70 penalty which is given under Schedule 3 of the Local Government Finance Act.

Where this failure to notify affects Council Tax Support but the overpayment is not suitable for criminal sanction, a £70 penalty may be given as an alternative sanction under the Council Tax Reduction Schemes (Detection of Fraud & Enforcement)(England) Regulations 2013.

## 7. REDRESS OPTIONS

Redress is defined as the recovery or attempted recovery of assets lost or defrauded. This includes financial recompense for the fraud. Where possible the Council would expect to follow cases through to this point to minimise the impact of the losses incurred and the cost of the investigation on the Council.

### Redress options via Court

Redress options will need to be considered alongside the sanction action to be taken. There are criminal ([compensation order](#)) and civil ([penalty, possession order or substantive claim](#)) options available to pursue redress although only one route should be pursued per case. Each case will need to be considered on its merits. However, the civil route is generally considered the most effective way to secure recovery for the Council.

Action may need to be initiated before an investigation is completed to secure the assets against which a claim will be made, if it is considered that there is a risk that they may be dissipated.

There are both criminal ([restraint and confiscation order](#)) and civil ([possession orders, freezing orders, asset disclosures and tracing injunction](#)) options to secure assets. The speed with which assets are restrained can determine what will be available to satisfy a civil judgement or compensation order and needs to be considered in relation to which route is used.



Civil “search” orders can also be used to preserve evidence and property if there is a real likelihood that the material will disappear.

Before any applications are made to a court to take one of the criminal or civil options outlined in the summary table, legal advice must be sought and approval must be obtained from the Legal Team.

### **Recovery from Council Tax Bills**

Any Council Tax discount, exemption or Council Tax Support that has been overpaid will be billed and collected in accordance with the Council’s [Collection & Recovery Policy](#).

## **8. OTHER ACTION OPTIONS**

If criminal proceedings have failed or have not been possible to complete, consideration can be given to referring a case to the National Crime Agency to instigate civil proceedings for recovery where it is in the public interest. However, the recoverable property must have been identified and have an estimated value of over £10,000.

If no other redress action is possible consideration should be given to pursuing recovery through:

- [an Insurance Claim \(under fidelity guarantee for employees, or money cover for external perpetrators\).](#)
- [recovery of Council pension if the perpetrator is an employee.](#)

Where a defendant fails to pay a debt due back to the Council following a judgement in our favour further action can be taken to recover the loss by applying for a judgement order for any of the following:

- [Attachment of Earnings.](#)
- [Garnishee Order - recovery from an amount of credit due to the debtor by third parties e.g. bank account, insurance policies.](#)
- [Charging Order - Charge placed on a property which is paid to the Council if the property is sold.](#)

## **9. PUBLICITY**

The Council will seek to publicise successful prosecutions and dismissals for fraud as a deterrent to others.

Publicity will include declaring the recovery of any assets awarded against the perpetrator.