

HERTFORDSHIRE COUNTY COUNCIL
FRAUD
SANCTION & PROSECUTION
POLICY



Policy Statement

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

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 will 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 and complies fully with the Councils existing 'Anti-Fraud and Corruption Strategy'.

Introduction

The Councils Anti-Fraud and Corruption Strategy sets out our aims and objectives with regard to both deterring and tackling fraud and associated offences. The Anti-Fraud and Corruption 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 this 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 effective 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.

This policy is designed to provide a framework to ensure the most appropriate resolution to a case is reached. The sanction decision will have regard at all times to the objectives of the Anti-Fraud and Corruption Policy, the individual circumstances of the persons concerned, and the overall impact of the punishment to both the individual and the community.



A range of sanctions are available to the Council in relation to identified fraud and corruption. These include disciplinary action, civil proceedings, criminal proceedings and civil/financial penalties. Where appropriate, the Council may take more than one form of 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. We recognise that this is a serious step to take and the decision to refer cases for prosecution will not be taken lightly. The ultimate decision on prosecution will be taken by the prosecuting body. In some cases this will be the Council, through a designated officer, in others the Crown Prosecution Service.

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

The decision to refer cases for prosecution to legal services will be taken by the SAFS Counter Fraud Manager in conjunction with that Council Lead Officer. The decision to recommend the issue of civil/financial penalties as alternatives to prosecution, where permitted by certain legislation, will lie with the designated officer in the Council.

Alternatively, SAFS or the Council may refer cases to the police for investigation who may then refer matters to the Crown Prosecution Service or other prosecutor. 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 offending contrary to any of the following has occurred, although this list is not exclusive.

- Theft Acts 1968/ 1978
- Forgery and Counterfeiting Act 1987 (FCA)
- Computer Misuse Use Act 1990
- Data Protection Act 1998 (DPA)
- Identity Card Act 2006
- Fraud Act 2006
- The Bribery Act 2010
- Disabled Persons' Parking Badge Act 2013



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 and fully comply with PACE, the PACE Codes of Practice and the Code for Crown Prosecutors.

When considering a case for prosecution the Council will apply the most recent edition of the Code for Crown Prosecutors and ensure that all cases accepted for prosecution meet the Full Code Test; namely, that there is sufficient evidence to have a realistic prospect of a conviction and that it is in the public interest to prosecute.

The two stages of the Full code test will be considered as follows:-

(1) The Evidential Stage

Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

If the case passes the evidential stage it will then be considered under the Public Interest Stage.

(2) Public interest test

A 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
- 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.

The more serious the offence, or the offender's record of criminal behaviour, the more likely it is that a prosecution will be required to meet the public interest.

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 / Support 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 we will seek disciplinary action. For Members this will be reported to the HCC Monitoring Officer and potentially the HCC Standards Board.

Where a financial loss has been identified we 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 teaching and social services staff, we will refer cases to the relevant professional body.

Where appropriate under this policy we will refer cases to the relevant prosecuting authority for criminal prosecution.

'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 payments, some council tax discounts/exemptions and any national benefits which the council is empowered to investigate.

Under amendments to the Local Government and Social Security legislation there are often options to consider financial penalties as an alternative 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.

Other Fraud



This includes areas such as Grants, or other applications for financial assistance, Procurement/Tendering Process, Contract Management or Payments fraud.

In cases where the Council suffers a financial loss, or risk of loss, we 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, SIAS.

The Council will also consider criminal prosecution. The factors that will affect our decision to prosecute will be based on the evidential and the public interest test. This will include cases of attempted fraud i.e. applications for renovation grants where the financial estimates are deliberately misstated; false applications for direct care payments.

Proceeds of Crime

The Council in partnership with SAFS will use the Proceeds of Crime Act 2002, Criminal Justice Act 1988 and the provisions of PoSHFA 2013 to obtain Confiscation Orders to include Compensation Orders as well as recovery of the full criminal benefit figure where possible.

The Council may use its own accredited Financial Investigators or those attached to other law enforcement agencies in order to conduct investigation, obtain orders and present evidence.

Recording Penalties Sanctions and Prosecutions

For an effective regime of sanctions to be successful it is a requirement that accurate records of all convictions, penalties and cautions 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 each is maintained.

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) central databases.

Publicity



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.

Reporting and Review

Summary information on cases and action taken will be reported to the Council's Communications Team, and SAFS Board. An annual report will be produced for the Chief Executive, Senior Management Team and Audit Committees of the Council of 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 SAFS Counter Fraud Manager. Any minor or consequential changes will be made with the agreement of the Head of Legal.

Further reading and guidance that supports this policy

1. HCC Anti-Fraud and Corruption Strategy.
2. All decision making. 'Standards of Service' for SAFS and Partner services contained in the SAFS Annual Business Plan 2016/2017.
3. Blue Badge Abuse, Disabled Persons' Parking Badge Act 2013. Road Traffic Acts. Fraud Act 2006
4. Staff/Members- Disciplinary Process/Standards Board
5. Prosecution for Application Fraud against other Council services. Theft Act 1968 and Fraud Act 2006.