



Derby City Council

Organisation & Governance

Finance Department

## DERBY CITY COUNCIL

# CORPORATE FRAUD PROSECUTION POLICY

Document owner	John Massey
Document author	John Massey
Document manager	Tracey Thomas
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## BACKGROUND

Derby City Council has a zero tolerance to fraud and this commitment is embodied in the Council's Corporate Fraud Team which has been established to prevent, detect and take appropriate action against anyone committing fraud against the Council.

Since 2011 the Council has had an approved Corporate Prosecution Policy (CPP) which sets out the Council's high level approach to prosecutions. This Policy sits beneath the CPP and unless specifically detailed it will defer to the details and principles set out in the CPP.

This policy sets out:

- (a) The Corporate Fraud Team's approach to assisting in the prosecution of offenders;
- (b) Consistent guidelines for making decisions to prosecute, and the administration of other sanctions.

It is not intended to be prescriptive or exhaustive. The Council will exercise its discretion when appropriate, about the extent of involvement or action (as applicable) required, looking at each case individually.

## POLICY STATEMENT

Derby City Council is committed to the highest possible standards of probity and accountability. It is wholly opposed to all forms of fraud, corruption and theft. It is equally committed to defending the public purse, and the public at large. As part of these commitments the Council adopts a presumption in favour of prosecution against perpetrators of criminal conduct, if there is sufficient evidence to initiate a prosecution and taking such action is in the public interest.

The Council's Anti-Fraud and Corruption Policy and Strategy outlines the approach that will be adopted to create an anti-fraud culture throughout the Council in order to prevent, detect and investigate fraud, corruption and theft, and to seek appropriate sanctions against perpetrators of regulatory crime.

It states that:

*"Derby City Council is committed to the prevention, detection and investigation of all forms of fraud and corruption. The Council aims to prevent theft, fraud and corruption by:*

- *developing an anti-fraud and corruption culture among staff and the public to deter such acts;*
- *encouraging the reporting of reasonably held suspicions;*
- *designing and operating systems, procedures and policies which minimise the risk of fraud, theft, corruption, misappropriation and misuse of assets; and*

- *assisting other government bodies, where appropriate, in their investigations into theft, fraud and corruption”.*

It also outlines that the Council will treat each case on its own merits, but where appropriate, the Council will seek to prosecute persons who:

- operate corrupt practices against the Council; or
- steal from the Council; or
- defraud the Council.

It will seek to recover the proceeds of any such activity from identified offenders using the Proceeds of Crime Act 2002, Criminal Justice Act 1988 and the provisions within the Prevention of Social Housing Fraud Act 2013 to obtain Confiscation Orders and / or Compensation Orders as well as the recovery of the full criminal benefit figure where possible.

The same broad principles apply equally to those matters for which the Council has a statutory or regulatory mandate to protect the interests of the wider public.

This Corporate Fraud Prosecution Policy supports the statements set out in the Council’s Anti-Fraud and Corruption Policy and Strategy.

## **UNDERTAKING OUR OWN PROSECUTIONS**

These arise from statutory or regulatory powers vested in the Council as an enforcing authority for specific statutory or regulatory crime within the administrative area of Derby. These powers will either arise by way of a “power” or a “duty” to act.

The broad principles of how the Council can use its powers are set out in the Regulatory Enforcement and Sanctions Act 2008; this has now been replaced by the Regulators’ Code 2014.

The Regulators’ Code provides a set of principles for Regulators to consider:

- (a) regulators should carry out their activities in a way that supports those they regulate to comply and grow;
- (b) regulators should provide simple and straightforward ways to engage with those they regulate and hear their views;
- (c) regulators should base their regulatory activities on risk;
- (d) regulators should share information about compliance and risk;
- (e) regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply;
- (f) regulators should ensure that their approach to their regulatory activities is transparent.

Section 6 of the Regulator's Code sets out an expectation that local authorities will ensure that their approach to their regulatory activities is transparent. This means we will publish our Policy on how we intend to deliver regulation and what those affected can expect.

The Regulators' Code indicates that it is for each Local Authority to determine an approach to service standards that will work best for those it regulates and itself. Not every case would therefore result in an investigation, or prosecution.

Following an investigation, a two-stage test will be undertaken prior to a decision to prosecute being made. Firstly, an assessment of the sufficiency of the available evidence - "the evidential test" - to determine whether or not there is enough to secure a realistic prospect of conviction. This part of the two-stage process is a professional assessment and in all cases will be undertaken by Legal Services.

The second part of the test is an assessment of the interests of justice - "the public interest test" – that is, understanding the extent of the public interest need to see that justice is [seen to be] done. This assessment will typically be undertaken jointly between Legal Services and relevant case officers from the service area involved in the investigation of the offence, or officers from the Corporate Fraud team.

Only where there both the evidential and public interest tests are satisfied will a prosecution ever ensue.

## **SANCTIONS**

There are a range of sanctions to be considered when deciding the action to take in relation to our own investigations.

For each of the sanctions identified below, non-exhaustive examples are provided of the sort of considerations that may result in them being triggered:

### 1. Take No Action

The Council may consider taking no action in the following circumstances:

- the value of the fraud/criminality is minimal/not significant;
- it is a first offence;
- there was voluntary disclosure by the perpetrator;
- the age of the offender (at the date on which action is being considered);
- there are significant physical, mental or other welfare considerations;
- there has been undue delay between the date of the offence and the date on which a decision on sanction is being made, unless the:

- \* seriousness of the offence is significant
- \* delay is caused wholly or partly by the offender
- \* discovery of the offence is recent
- \* investigation of the offence has, out of necessity, been lengthy and complex.

### 2. Issue a Simple Caution

The Council may consider issuing a simple caution in the following circumstances:

- it is a first offence;
- the offence is minor;
- the offence was committed as a result of a genuine mistake or misunderstanding, balanced against the seriousness of the offence;
- there was no planning involved/criminality was opportunistic;
- the value of the fraud/extent of the criminality is minimal;
- the offence was admitted during an interview under caution;
- genuine expression of remorse/regret by the perpetrator;
- the public interest merit in prosecution is questionable e.g. there might be social, medical or other welfare factors which ordinarily militate against a decision to prosecute;
- penalty action is not appropriate (Housing Benefit and Council Tax Support cases only);
- the fraud has taken place over a relatively short period of time (Council Tax Support cases only);
- the offender has put right the loss or harm caused (but care should be taken to ensure offenders do not avoid prosecution solely because they make recompense).

Although cautions may be administered by third tier officers or higher, they should only ever be offered where there has been an assessment by Legal Services that there is sufficient evidence available to secure a conviction. This is because where a caution is offered, and the perpetrator refuses to accept the caution, the case must proceed to prosecution.

### 3. Administrative Penalty - Housing Benefit

This is a sanction available in Housing Benefit fraud cases, provided for by Section 115A of the Social Security Administration Act 1992 (SSAA), as amended by section 15 of the Social Security (Fraud) Act 1997. It enables the Council to levy a penalty of up to 50% of the value of Housing Benefit overpaid.

An Administrative Penalty will be considered in all cases where the DWP has recommended that course of action.

As with simple cautions, where an offer of an Administrative Penalty is refused by the perpetrator, the case will proceed to prosecution.

### 4. Administrative Penalty – Council Tax Support

This is a sanction available in Council Tax Support fraud cases, provided for by Section 115A of the SSAA and Section 11 Council Tax Reduction Schemes (Detection of Fraud and Enforcement (England) Regulations 2013). It enables the Council to levy a penalty of up to 50% of the value of the gross Council Tax Support overpayment being offered.

#### Conditions for Administrative Penalties

To consider applying an Administrative Penalty for either Housing Benefit and / or Council Tax Support the following conditions must apply:

- there is a recoverable overpayment of excess award as defined by the relevant legislation;
- the cause of the overpayment is attributed to an act or omission on the part of the defendant;
- there are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which the 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.

#### 5. Civil Penalties

This section only refers to Civil Penalties relating to Council Tax. Civil Penalties for Housing Benefit is covered separately in the Housing Benefit Overpayment Recovery Policy.

The Local Governance Finance Act 1992 and the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 provide the Council with the ability to impose financial penalties where a person fails to report a material fact or where a person fails, without good reason, to correct an error.

The requirements to levy a Penalty are set out in the Acts but are essentially as follows:

- as a general rule the penalties are fixed one-off “fines” to be added to a person’s Council Tax account;
- 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 Council Tax Support;
- 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 the relevant legislation.

#### 6. Prosecution

A decision to prosecute will be made where there is sufficient admissible evidence, which has been properly obtained and which demonstrates:

- a significant degree of criminality e.g. it was premeditated, there was collusion with others (whether or not those others are also prosecuted), there is evidence of previous criminality, the duration of the criminality, etc;
- a breach of trust, for example, the perpetrator is an employee, member, contractor, or has close links to one or more of such class of persons, or otherwise is likely to be perceived by the ordinary public as occupying a position of trust;
- a loss to public funds;
- lack of cooperation by the perpetrator at investigative stage;
- the nature of the offence is widespread, or is a manifestation of a local trend;
- there is significant danger to the health, safety or well-being of persons, or the environment;
- the offence involves or is directed at victims from vulnerable groups such as children, the elderly or infirm, and/or impacts upon the Council's statutory equality obligations;
- an overwhelming public interest need to secure that justice is [seen to be] done.

In all cases of fraud we will seek to recover the overpaid benefit/reduction/award.

In all cases considered for sanction, it is essential that each case is subject to scrutiny on the basis of its own particular details.

The circumstances of each individual case will ultimately determine the eventual sanction route.

The Council will consider any previous prosecutions, cautions or administrative penalties from either this Council, other Local Authorities or the Department of Work and Pensions, the Police or other enforcement agencies.

## **LIAISON & COOPERATION WITH OTHER AGENCIES**

The Council may liaise with other agencies as necessary (for example, the Police, Crown Prosecution Service, Department of Works and Pensions, Her Majesty's Revenue & Customs) concerning a potential prosecution.

There will be occasions when it is necessary to undertake multi-agency investigations and/or prosecutions because criminal activity or statutory/regulatory breaches cut across the remit of other agencies in addition to the Council.

Examples include operations involving the Council in-house Housing Benefits team and the Department of Work & Pensions (DWP) and cross-authority trading standards operations.

In joint initiatives, where the Council is the lead agency, the terms of this Prosecution Policy will apply.

### **Customer Feedback and Disputes**

The Council will endeavour to resolve any disputes in relation to investigations and other actions taken under this Policy, at the earliest possible opportunity and will ensure that customers are fully aware of the ways in which they can contact the Council in order to discuss any dispute they may have.

If a customer wishes to make a complaint regarding the way in which the Council has undertaken an investigation, or any other action under this Policy, they will be fully advised of the Customer Feedback procedure and will be given every assistance in registering a complaint.

### **Policy Review, Monitoring and Governance**

The Head of Revenues, Benefits and Exchequer Services (HRBES) will monitor the effectiveness of this Policy. The HRBES will bring any issues with its operation to the section 151 officer for consideration.

This Policy will be reviewed regularly to ensure it is kept relevant and takes account and advantage of changes in legislation, new approaches and new ways of working.