



Bromsgrove
District Council

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Corporate Anti-Fraud Team
Sanction and Prosecution Policy
April 2010 – March 2011



Introduction

This policy identifies the procedures for referring fraud cases for sanction and potential prosecution, to ensure that cases are dealt with in a fair and equitable manner. This policy applies to all areas of investigation within the remit of the Corporate Anti-Fraud Team (CAFT). This policy amendment is driven by the automatic annual review of procedures.

Bromsgrove Council has the right to investigate and prosecute any case of fraud, bribery or corruption against the Council. This includes fraudulent claims for Housing Benefit and Council Tax Benefit.

It also has legal powers to prosecute National Benefit Offences, as paid by the Department for Work and Pensions, following the implementation of the Welfare Reform Act 2007. Where possible joint working will take place between the CAFT team and the Department for Work and Pensions.

The Corporate Anti-Fraud Investigation Officers are charged with the duty of investigating under the Police and Criminal Evidence Act 1984, and will therefore work within the guidelines of this Act, in addition to other investigative legislation. Other examples include: Criminal Procedure and Investigations Act 1996, Human Rights Act 1998, Data Protection Act 1998, Fraud Act 2006, other relevant Acts of Parliament and Social Security Legislation. Council Policies on Customer Care, and the Inclusive Equalities Scheme, will also be adhered to.

It is the duty of the Fraud Investigators to look at all referrals of suspected or alleged fraud, to establish the facts of each case, and to consider whether the facts point to an offence or not. The Council's Officers will at all times apply appropriate procedures to maintain confidentiality.

The Council will work in co-operation with other organisations such as the Police, Department for Work and Pensions, Home Office, and Her Majesty's Revenue and Customs, in order to combat all types of fraud against the Council, including Benefit fraud. Appropriate Data Sharing Protocols will be in place to allow this to take place, where necessary, in accordance with legal directions.

Investigation Officers will undertake all reasonable enquiries or activities at all times of day (or night, where applicable) in order to ascertain whether offences have been committed.

Surveillance

Activities may include Authorised Surveillance where Officers may follow or observe someone covertly if they have reasonable suspicion to suspect that an offence has been committed, or is being committed. Directed surveillance will be undertaken within the guidelines of the Regulation of Investigatory Powers Act 2000. Telecommunications data may also be obtained where applicable. Data that may be acquired with authorisation include:

- names
- addresses

- telephone numbers to find out who is called and when, but not the content of the calls
- IP addresses – when a session online was started and ended but not the website viewed
- Geographical location of the calling or called parties.

Communications data surveillance does not monitor content.

Benefit Fraud - Landlords

The Council will use all powers granted to the Council by the Secretary of State for Social Security under the Social Security Administration (Fraud) Act 1997, namely the powers of inspection and the power to obtain information from landlords.

When landlords commit an offence by either failing to report changes in their tenant's circumstances or help the claimant to commit benefit fraud, landlords will be investigated and may be prosecuted by the Council.

Any Landlord who is paid directly by the Council is made aware of their duty to report changes in circumstances. Any overpaid benefit to a Landlord will be recovered, either directly from ongoing payments of benefit to the Landlord or through civil recovery via the courts.

Any Landlord who is not paid directly by the Council may still be investigated for Benefit fraud and where necessary may be prosecuted, for example, in tenancy related cases.

Proceeds of Crime Act (POCA)

Recovery of property (which includes money) will be considered under the Proceeds of Crime Act 2002 where the fraudulent overpayment exceeds £17,000. Where this involves a Joint Investigation with the Department for Work and Pensions (DWP), the DWP's Financial Investigation Unit will be notified and will take this forward appropriately.

Cases which are not investigated jointly with DWP will still be considered for action under the Proceeds of Crime Act 2002, but by using alternative Financial Investigators.

The Evidential Test

When making the decision whether to prosecute or not the first step to apply is whether there is sufficient evidence.

There must be enough evidence to provide a realistic prospect of conviction. A realist prospect of conviction means that a jury or bench of Magistrates properly directed in accordance with the law is likely to convict the defendant.

The officer must consider whether the evidence put before them can be used in court and is reliable.

Only after the Evidential Test has been satisfied should the Public Interest Test be considered.

Public Interest Test

The CAFT must balance factors for and against the prosecution carefully and fairly.

The public interest factors that are relevant to establish a decision to prosecute will often depend on the seriousness of the offence or the circumstances of the offender.

Some factors may increase the need to prosecute while others may suggest an alternative course of action.

The Code for Crown Prosecutors should be referred to for detailed information on this subject for all cases being considered for potential prosecution. A copy of the Code can be obtained on the CPS website, www.CPS.gov.uk, or from the CPS Communications Branch, 50 Ludgate Hill, London, EC4M 7EX.

It should be emphasized that a decision to prosecute must be in the public interest and this decision ultimately is taken by those prosecuting, i.e. Legal Services for internal cases, the CPS or DWP solicitors or any other prosecuting body for external cases.

Policy on Prosecution

- The Council is prepared to prosecute, or ask others to prosecute, appropriate cases throughout the full range of Fraud against the Council;
- The final decision as to whether prosecute or not, will be taken by the Head of Legal, Equality & Democratic Services (in relation to internally prosecuted cases) and this decision will be binding;
- Elected members will not make decisions about particular cases;
- The Council will seek to prosecute any person who declines to accept an Administrative Penalty or Formal Caution as an alternative to legal action in Benefit Fraud cases;
- The following factors will be taken into account when considering whether a case is suitable for prosecution:
 - The amount of money obtained by the fraud
 - Careful consideration would have to be given to commencing a prosecution where the amount of the fraudulent activity has not resulted in 'significant financial gain' to the offender. Where there is no significant gain, a prosecution will still be considered if it is felt that the fraud was a deliberate attempt to gain money by deception (if for example, the fraud was discovered after a relatively short space of time and a significant financial gain has not yet occurred), or in the case of a persistent offender or any other case where prosecution could be warranted.
 - The suspects age, physical and mental condition
 - Consideration must be given to the mental and physical condition (including age) when deciding whether to prosecute. The officer should consider whether there are significant personal or mental problems that may be contributed to the reasons for committing the offence. It is therefore appropriate when considering the above issue, that an appropriate opinion as to the claimant's physical or mental condition is obtained.

- Voluntary disclosure
 - It may not be appropriate to prosecute those, whose disclosure was of their own free will, which has led to the identification of a fraud of which the Authority was unaware. Admissions made after enquiries had commenced do not constitute as voluntary disclosure.
- Previous incidence of fraud
 - Any evidence of previous fraudulent activity should form part of the overall 'prosecution assessment', regardless of whether any previous offences resulted in prosecution.
- Social factors
 - If it is considered that the claimants failure to declare the correct circumstances has been caused by significant extenuating social or financial factors these should be fully evaluated. The fact that an individual was in debt or has limited assets would not in itself meet this requirement.
- The amount of evidence obtained and the reliability of witnesses
 - Substantive evidence is essential to secure any conviction. Proceedings should not be sought if there is any doubt that the required evidence is not available. It must be clear that the fraudulent act was actually committed, and that it was committed in full knowledge, with a clear and deliberate intention. Satisfying the Code for Crown Prosecutors Evidential Test will ensure that the evidence is of the standard required by the courts.
- Failure or delay in the Investigation
 - It should be evidenced on the case file that all appropriate procedures have been adhered to with regard to satisfying the requirements of the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigations Act 1996 and other relevant legislation. Particular consideration should also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.
- Failure or delay in the Local Authority administration.
 - Full account must be taken of remiss administration or fault on the part of the Authority that has contributed to the processing of a fraudulent claim/payment.

Bromsgrove Council does not apply strict financial levels to the type of sanction that may be appropriate based on the level of the overpayment. Each case will be considered on its own individual merits and circumstances.

In cases of Joint Working with the Department for Work and Pensions, liaison and consideration will take place, in accordance with their policies:

- Overpayment more than £50 but less than £5000 – Formal Caution/Administrative Penalty may apply
- Overpayment of more than £5000 – Prosecution may apply.

Post-Investigation Considerations

Once the Investigating Officer has completed the investigation, the Fraud Services Manager will consider each case on its merits applying the criteria in this policy plus any other circumstances relevant to the case.

The Fraud Services Manager will decide whether there is enough evidence to provide a realistic prospect of securing a conviction, and if so, whether it is in the public interest to offer a Formal Caution, Administrative or Financial Penalty or recommend prosecution.

The decision to offer a Formal Caution, Administrative or Financial Penalty will be made by the Fraud Services Manager, having full regard to the Council Policy. Cases being referred for prosecution will be authorised by the Head of Legal, Equality and Democratic Services.

Formal Caution

A Formal Caution is an administrative sanction that Bromsgrove council is able to offer as an alternative to prosecution.

Cautions are usually aimed at less serious frauds. It provides a tool to avoid unnecessary appearance in the criminal courts, and to reduce the chances of them re-offending.

The following conditions must be met before a Caution can be administered:

- there must be evidence of the offenders guilt sufficient to give a realistic prospect of conviction
- the offender must admit the offence
- the offender must understand the significance of the caution and agree to being cautioned.

If a customer is subsequently prosecuted for another offence, the caution may be cited in court.

Administrative Penalty

Under Section 115 of the Social Security Administration (Fraud) Act 1997 an offer can be made to the customer to agree to pay a financial penalty in lieu of prosecution, in benefit fraud cases. The amount of the penalty is stipulated at 30% of the total overpaid benefit (rounded down to the nearest penny).

The following conditions must be met before an Administrative Penalty can be administered:

- the person has committed an offence, which would normally result in a prosecution
- the evidence is sufficient for a prosecution
- the person is aware of the terms of the Administrative Penalty
- the person will agree to accept the Administrative Penalty

Single Person Discount Fraud (Council Tax)

Where an allegation is received stating that a Single Person Discount on Council Tax liability is being applied incorrectly due to a failure of the customer to declare their true circumstances, an investigation may take place.

If the allegation is proved, the case may be considered for a relevant sanction.

Where fraud is proved, the Single Person Discount will be removed from the appropriate date and the council tax bill revised to include the overpaid discount.

In less serious cases either a Formal Caution or a Financial Penalty may be applied.

In more serious cases, prosecution proceedings may take place, subject to the approval of the Head of Legal, Equality and Democratic Services.

Other cases of Fraud, Bribery or Corruption against the Council

Where other examples of fraud, bribery or corruption are alleged to be taking place, these will be investigated and dealt with on a case by case basis. Where necessary, the CAFT team will work with other agencies to conclude the investigations and possible outcomes.

Where the matter is an internal enquiry, the Human Resources Team will be involved in order to consider any disciplinary actions that may need to be taken.

Publicity

The Council will publicise successfully prosecuted cases particularly where:

- the conviction will generate positive publicity
- the release may help to deter others from fraud
- it promotes the Councils Anti-Fraud work
- it promotes the Councils Fraud Hotline.

Equality and Diversity

Decisions on any Fraud Investigation will not discriminate or condone unacceptable behaviour, in relation to race, colour, nationality, nation or ethnic origin, sexual orientation, gender, gender re-assignment, religion, age, disability, income group, marital status or geographical location.

Decisions to prosecute or sanction such cases will be taken on individual merit, evidence obtained and legal requirements.

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