

INTERNAL AUDIT SERVICE

*'Striving for excellence in governance'*

# Counter Fraud Prosecution Policy

## ***1. Introduction***

1.1 The Policy will form the Prosecution and other Sanctions Policy of the London Borough of Newham. It provides the guidelines and rules to be applied wherever the Internal Audit Section has investigated a criminal offence relating to fraud and corruption. The policy is in three parts:

Part 1 - Housing and Council Tax benefit fraud

Part 2 – Other Fraud committed against the Council.

Part 3 – The decision to prosecute

1.2 This fraud policy has been developed with the aim of providing a framework to ensure a fair and consistent approach to the use of formal sanctions. Whenever fraud is proven the Local Authority will consider, based on the merits of each case, whether it is right to bring some formal sanction action against the perpetrator.

1.3 The Policy provides due regard to the Crown Prosecution Service's guidelines for prosecuting cases. In particular it has regard to the circumstances of the case and the person involved.

1.4 The Policy is not intended to be prescriptive but refers to criteria relating to the alleged offence, alleged offender and value of the fraud which have to be taken into account before considering the sanction that may apply.

1.5 Approval of the policy is delegated to the Executive Director, Resources. It is referred annually to the Audit Board for comment.

## **THE POLICY**

### **Part 1 - Housing and Council Tax Benefit Fraud**

#### **2. Legislative Framework**

2.1 A person involved in Housing Benefit fraud may commit offences contrary to a number of acts of parliament. These include the Social Security Administration Act 1992, Theft Acts 1968 and 1978, The Criminal Attempts Act 1981, Forgery and Counterfeiting Act 1981, the Criminal Justice Act 1987 and the Fraud Act 2006. The Crown Prosecution Service (CPS), the Department for Work and Pensions and the Council may prosecute these offences.

#### ***3. Sanctions Available to The Council***

3.1 When the Council is able to prove beyond reasonable doubt that a criminal offence has been committed, there are a number of options open to the Council in addition to recovery of the overpaid benefit.

- a) Take no action.
- b) Administer a Local Authority Caution.
- c) Invoke an Administrative Penalty (30% of the overpaid Housing Benefit/Council Tax Benefit).

d) Prosecute.

NB: Where the evidence in the case is insufficient to prove the criminal offence, no sanction will be offered. All cases considered for sanction must be evidentially sound.

#### ***4. Relevant Factors to Take Into Consideration***

4.1 There can be no 'blanket' approach and each case will be considered on its individual merits. These guidelines attempt to set out what the Council will usually do in a particular situation rather than define an absolute course of action. Relevant matters for consideration include the following:

- a) The test of public interest
- b) The amount defrauded
- c) The factors surrounding the alleged offence
- d) Factors relating to the alleged offender

#### ***5. Test Of Public Interest***

5.1 The criteria for deciding whether a case is not in the public interest to prosecute is based on the Crown Prosecution Services' policy guidelines. Where the following factors apply it will not normally be in the public interest to prosecute, although an alternative sanction may still be considered:-

- a) The overpayment is below £500 and
- b) The alleged perpetrator has never previously offended, and
- c) There was no planning involved, and
- d) There was no other person involved in the fraud
- e) There is no evidence of the alleged perpetrator committing any other offence against the Council.

#### ***6. The Amount of Money Defrauded***

6.1 The amount of money defrauded can be used as a key indicator for deciding which particular sanction to use. However, decisions will not be based on this sole criterion alone. The following amounts should act as a guide only. In conjunction with this, the factors surrounding the alleged offence and factors relating to the alleged offender will also be considered.

- a) £0 (Attempt only) – Depending on the circumstances of the case, a caution. or prosecution may be considered
- b) £1 - £10,000 – (Where there is a full admission by the customer and they show remorse) Local authority or Police Caution and recovery of the overpayment.
- c) £1 - £10,000 – (Where the customer has made no admission or does not show remorse) – Administrative Penalty and recovery of the overpayment.
- d) £10,000 and above – Prosecution and recovery of the overpayment

(Notes:

1. Where a caution or an Administrative Penalty is appropriate, the claimant has the option of refusing to accept either of these sanctions. In these cases, the sanction may be increased to a prosecution.

2. The amounts in the above refer to the amount of money defrauded from the Council. The Council may now investigate and prosecute a number of other welfare benefits, primarily Income Support and Jobseekers' Allowance, either on its own or in conjunction with the Department of Work and Pensions' investigation service. In these latter cases, agreement on the sanction imposed will have to be reached between the Council and the Department of Work and Pensions because the levels at which the various sanctions are considered are much lower than the Council's e.g. prosecutions are considered for fraudulent overpayments in excess of £2000. It is recognised that in these cases, the Department of Work and Pensions sanction levels will generally be used.)

e) Prosecution will generally be considered where the claimant is a Council employee.

6.2 Where a Local Authority Caution is given it will be registered on the Department of Work and Pensions' database specifically set up for this purpose. Before any Caution or Administrative penalty is given, checks will ascertain whether this is a first offence. Where it is not the first offence, the sanction may be increased to the next level or consideration given to prosecution.

6.3 Where there is a successful prosecution by the Council, the relevant facts of the case will be reported to the police for entry on the Police National Computer system.

6.4 Where the person who is successfully prosecuted has an occupation shown on the list of 'Notifiable Occupations' then the appropriate regulatory body will be informed.

## ***7. Factors Relating to the Alleged Offence***

7.1 Any of the following factors will make it more likely that the Council will pursue a prosecution:-

- a) The fraud/illegal activity has continued for some time
- b) The fraud/illegal activity involves pre-thought and/or planning.
- c) There is evidence of a previous fraud.
- d) The evidence held is adequate and there are no serious errors in the Benefit assessment or investigation.
- e) There is evidence of collusion (including with a landlord, employer or other family member)
- f) The person has declined an Administrative Penalty or Caution.
- g) A section 110A Inspector of the Authority has been obstructed.
- h) The alleged perpetrator occupied a position of trust at the time of the fraud/illegal activity.

7.2 Where the alleged offender was in a position of trust or has an occupation governed by a regulatory body that has to be informed of criminal acts, or is an employee of the Council then a prosecution will almost always be recommended.

7.3 If any of the following factors exists, it is less likely that the Council will pursue a prosecution:-

- a) There are serious errors in the benefit assessment or investigation procedures.
- b) There has been an unacceptable delay in the investigation such that the defence would be prejudiced by a delay.

- c) A prosecution would attract poor publicity or would not particularly deter others from committing a similar offence.
- d) A vulnerable person would be put at risk by the prosecution. (e.g. an informant)
- e) Insufficient evidence.
- f) The case is 'out of time' for a prosecution. (Some offences are time limited by statute for a prosecution to be brought).
- g) The person voluntarily disclosed the offence before an investigation began.
- h) There is evidence that the person was intimidated by another to commit the offence.

## ***8. Factors Relating to the alleged offender***

8.1 The Council recognises that there are some vulnerable people whom it may not wish to prosecute and where it would not appear to be in the public interest to do so. In deciding whether to prosecute or impose another formal sanction the Council will consider any factors relevant to the alleged offender. In particular but not exclusively the following factors will be considered:-

- a) Does the alleged offender have poor health or suffer with a mental or physical condition?
- b) Is the alleged offender a young vulnerable person (e.g. someone who has left care)?
- c) Is the alleged offender vulnerable because of old age?
- d) Does the alleged offender have a reasonable command of the English language and would this have affected his/her ability to understand the offence that was committed?
- e) Does the alleged offender remain in receipt of means tested benefits?

8.2 Where the alleged offender remains entitled to means tested benefits, after any reassessment of benefits has taken place and the case does not meet the prosecution criteria,, the Council will offer a caution when the appropriate conditions are met but if not then an Administrative Penalty will apply.

8.3 Where the alleged offender has previously been prosecuted or has received a sanction for benefit fraud the Council will normally pursue prosecution as the first option.

## **Part 2 - Other Fraud**

### ***9. Legislative Framework***

9.1 A person involved in committing fraud against the Council may commit offences contrary to a number of acts of parliament. Primarily these include, Theft Acts 1968 and 1978, The Criminal Attempts Act 1981, Forgery and Counterfeiting Act 1981, the Criminal Justice Act 1987 and the Fraud Act 2006. The Crown Prosecution Service (CPS) and the Council prosecute these offences.

9.2 In addition, Council employees, its agents or any person with whom it does business may commit a corrupt act. These offences would be contrary to the Prevention of Corruption Acts 1906 and 1916. Only the Crown Prosecution Service can prosecute these offences.

9.3 In addition to offences relating to corruption there are other offences e.g fraud offences contrary to the Representation of the People Act that cannot be prosecuted by the Council and have to be referred to the police for investigation and subsequent prosecution by the Crown Prosecution Service

### ***10. Sanctions Available to The Council***

10.1 When the Council is able to prove beyond reasonable doubt that a criminal offence has been committed, the only options open to the Council in addition to recovery of any sums lost and any action, in the case of an employee, that it may take under the Council's Conduct Procedure are:

- a) Take no action.
- b) Prosecute

## **11 *Client Fraud***

11.1 The general principles outlined in paragraphs 5, 7 and 8 above will apply in these cases. Once again, however, every case will be considered on its own merits and action will be considered as appropriate. Generally, cases will be prosecuted when the value of the fraud exceeds £500.00 or when the alleged offender is found to have committed fraud in relation to more than one service area.

11.2 There will be cases where it may be difficult to quantify the value of the fraud but where it is deemed in the public interest to pursue a prosecution e.g. fraudulent use of disabled parking badges and fraudulent applications for parking permits.

## **12. *Employee Fraud/Crime***

12.1 In these cases, the principles outlined in paragraphs 5, 7 and 8 are not generally relevant. Once again, however, every case will be considered on its own merits but where it has evidence that a crime has been committed, especially in the normal course of the employee's duties, then the Council will generally pursue prosecution.

## **Part 3 - Decision To Prosecute**

### **13. *Housing and Council Tax Benefit fraud***

13.1 For fraudulent claims for Housing and Council Tax Benefit, it is for the Investigating Officer to identify potential cases for the imposition of a sanction. Once the relevant evidence has been obtained the Investigating Officer, using the above criteria should make a recommendation on the sanction that should be applied. It will be the decision of the relevant managers within the Audit Section on whether to proceed and what sanction to pursue. In order for a case to proceed it will require the authorisation of two of the relevant managers within the Audit Section, viz, the Counter Fraud Manager, Senior Audit Manager and Chief Internal Auditor.

13.2 If the authorising managers fail to reach agreement then the case will, in the first instance be reviewed by the remaining relevant manager to agree whether the case will proceed. If this is not possible then the case will be passed to the Head of Finance for consideration and authorisation.

13.3 When cases are referred to the police, the decision to refer will be taken in line with 13.1 above and will be formally recorded.

### **14 *Other Fraud***

14.1 For other client fraud, the general principles outlined in paragraph 13.1 will apply in these cases. The Investigating Officer will make a recommendation to the Counter Fraud Team Leader as to whether further action, including prosecution should be taken. Prosecution will only be

pursued following the authorisation of two of the relevant managers within the Audit Section, viz, the Counter Fraud Manager, Senior Audit Manager and Chief Internal Auditor.

14.2 If the authorising managers fail to reach agreement then the case will, in the first instance be reviewed by the remaining relevant manager to agree whether the case will proceed. If this is not possible then the case will be passed to the Head of Finance for consideration and authorisation

14.3 For employee fraud/crime, the Chief Internal Auditor and Counter Fraud Manager will make a recommendation to the relevant Chief Officer having regard to the conclusions reached by the investigator and the Counter Fraud Team Leader. This recommendation will only be made if the conclusion is that prosecution is the appropriate course of action. The Chief Officer will consider the facts of the case and also have regard to the amount of loss to the Council or details of goods or services lost or affected; service or staff impact details; any third party vulnerability; the status of the employee; mitigation and any other relevant factors. If the Chief Officer does not agree with the recommendation the case will go to the Executive Director Resources for arbitration. His decision will be final. In the absence of either the Chief Auditor or Counter Fraud Manager, the Senior Audit Manager will perform this role.

14.3 When cases are referred to the police, the decision to refer will be taken in line with 14.1 or 14.2 above and will be formally recorded. Managers in the Council should not refer instances of fraud to the police without having first consulted with the Chief Internal Auditor.

### ***Corruption***

14.4 Where there is evidence of corruption the matter will generally be referred to the police for prosecution. (The Attorney General has to approve corruption cases for prosecution and the expectation is that the police will investigate and prosecute through the Crown Prosecution Service.)

14.5 It should be noted, however, that whilst the decision to prosecute has been taken in accordance with the Council's policy, the final decision regarding whether or not a case is presented in court rests with the prosecuting solicitor. Where the prosecuting solicitor is the Council's Legal Services Division, a decision not to proceed with a case will only be taken after discussion in the first instance with the instructing officer.

14.6 The procedure to be followed by all officers within the Audit Section (Fraud) with regards to any case considered for formal sanction is set out in the Quality Procedure Manual which regulates the work of the Fraud Team.

14.7 Prosecutions will be carried out by the Council's Head of Legal Services, the Crown Prosecution Service or the Department of Work and Pensions as appropriate.

### ***15. Number of Cases Prosecuted***

15.1 The Internal Audit Section will report to Audit Board each year on the number of cases referred for prosecution and their outcomes.