

POWYS COUNTY COUNCIL



FRAUD SANCTION & PROSECUTION POLICY

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Date	Dec 19
Document Status	Final Draft v3
Date Approved	
Date due for review	

1 Policy Statement

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

The Council will utilise own 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 Corporate Anti-Fraud Team on behalf of the Council.

2 Introduction

2.1 The Councils Anti-Fraud and Corruption Policy sets out our aims and objectives with regard to both deterring and tackling fraud and associated offences. The Anti-Fraud and Corruption policy 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.

2.2 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 efficient 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.

3 Determining the Appropriate Sanction Route

3.1 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 Anti-Fraud and Corruption Policy objectives, the individual circumstances of the persons concerned and the overall impact of the punishment to both the individual and the community.

3.2 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.

- 3.3 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 the Head of Financial Services, 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 to undertake criminal prosecutions.

- 3.4 The decision to refer cases for prosecution to legal services or to recommend the issue of civil/financial penalties as alternatives to prosecution, where permitted by certain legislation, will be taken by the Sanction Panel. This will consist of a Solicitor, input from the service Senior Manager and the Income and Awards Senior Manager, in conjunction with the Councils Head of Financial Services.

- 3.5 Alternatively, Corporate Anti-Fraud Team 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
- Social Security Administration Act 1992 (SSAA)
- Local Government Finance Act 1992 (LGFA)
- Data Protection Act 1998 (DPA)
- Identity Card Act 2006
- Fraud Act 2006
- The Bribery Act 2010
- Welfare Reform Act 2012 (WRA)
- The Prevention of Social Housing Fraud Act 2013. (PoSHFA)

4 The decision to prosecute

- 4.1 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 the Police and Criminal Evidence Act, the PACE Codes of Practice and the Code for Crown Prosecutors.

- 4.2 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.
- 4.3 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.

5 Members / Staff / Support Staff

- 5.1 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 in accordance with the Councils Discipline Policy and/or prosecution as appropriate.

- 5.2 Where a fraud involving an elected Member is identified this will be reported to the Council's Monitoring Officer and potentially the Standards Board Committee.
- 5.3 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.
- 5.4 Where appropriate under this policy we will refer cases to the relevant prosecuting authority for criminal prosecution.

6 'Welfare' Fraud

- 6.1 This includes any local or national benefit/allowance administered on behalf of the Council or central government, for example, housing benefit, council tax reduction support, social fund, direct payments, some council tax discounts/exemptions and any national benefits which the council is empowered to investigate, such as job seekers allowance, income support and employment support allowance (under any pilots or agreed partnership.)
- 6.2 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.

7 Civil Penalties

- 7.1 The *Local Government Finance Act*, the *Council Tax Reduction Schemes (Detection of Fraud and Enforcement)(Wales) Regulations 2013* and the *SSAA* (as amended by the *WRA*) both provide councils with the ability to impose financial penalties where a person fails to report a material fact affecting their benefits or where a person fails, without good reason, to correct an error.
- 7.2 Each 'Act' lays out its own requirement for such a penalty to be imposed:
- As a general rule the penalties are fixed one-off 'fines' to be added to a person's liability to pay.
 - 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 benefit or a reduction in Council Tax liability.
 - 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 legislation.

8 Administrative Penalties.

8.1 Section 115A of the *SSAA and Regulation 11 Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013*, provide for financial/administrative penalties as alternatives to prosecution. The legislation allows for financial penalties amounting to 50% of the gross overpayment/reduction can be offered if the following conditions are met:

- There is a recoverable overpayment or excess award of benefit/reduction as defined by the relevant legislation.
- There is no overpayment or excess award but that an application has been made where an individual has knowingly made a false statement.
- 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 a 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 overburden them if they have existing priority debts.

8.2 In all cases of fraud the Council 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; the Council, other Local Authorities the Department of Work and Pensions, the Police, or other enforcement agencies.

9 Housing/Tenancy Fraud

9.1 In all cases of fraudulent housing or homeless applications, where a tenancy has been obtained, the Council will seek repossession of the property and recovery of any financial losses. The Councils view is that one property lost to fraud is one less property available to use for genuine applicants.

9.2 Where a false statement is made on a housing or homeless application, or a Right to Buy or Succession application, the Council will also consider prosecution. Fraud and illegal subletting committed by applicants will be considered for criminal prosecution using the Theft Act, Fraud Act, Housing Acts and/or PoSHFA.

9.3 The factors that will affect our decision to prosecute will be based on the evidential and the public interest tests.

10 Other Fraud

- 10.1 This includes, Grants, Reliefs and exemptions, council tax or non-domestic rates and other applications for financial assistance.
- 10.2 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.
- 10.3 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.

11 Proceeds of Crime

- 11.1 The Council in partnership with Corporate Anti-Fraud Team 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.
- 11.2 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.

12 Recording Penalties Sanctions and Prosecutions

- 12.1 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.
- 12.2 Any/all sanctions must be recorded by both Corporate Anti-Fraud Team 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 Dyfed-Powys Police for recording on the Police National Computer (PNC) central databases.

13 Publicity

- 13.1 It is Councils intention to positively promote this policy as well as the outcome of any prosecutions, which will deter others from fraudulent activity and reassure the public that the authorities take action to prevent fraud.

14 Reporting and Review

- 14.1 Summary information on cases and action taken will be reported to the Councils Communications team in line with the Procedures for Publishing Press Releases Referencing Criminal Convictions. An annual report will be produced for the Chief Executives, Senior Management Team and Audit Committees of the Council of all cases where sanctions or prosecutions have resulted from investigations conducted by Counter Fraud Officers.
- 14.2 This policy will be reviewed every 3 years or when changes in legislation require it by the Council's Head of Legal Services, and the Income and Awards Senior Manager. Any minor or consequential changes will be made with the agreement of the Head of Legal Services.

15 Further reading and guidance that supports this policy

- The Councils own Anti-Fraud and Corruption Policy
- Issue of Civil Penalties- Council Tax Reduction Scheme (Enforcement & Fraud) Regs 2013.
- Issue of Administrative Penalties and Prosecution in CTRS criminal cases- CTRS
- (Enforcement & Fraud) Regs 2013. Fraud Act 2006.
- Issue of Civil Penalties and Prosecution for Council Tax Fraud (SPD/Student exemptions & Discounts etc.) Local Government Finance Act 1992. Fraud Act 2006. Theft Act 1978 (S2)
- Prosecution for Tenancy Fraud and civil/criminal recovery of unlawful profits. Prevention of Social Housing Fraud Act 2013. Fraud Act 2006. Proceeds of Crime Act 2002.
- Prosecution for Housing Application/Homelessness Fraud- Housing Act 1996. Fraud Act 2006
- Blue Badge Abuse, Disabled Persons' Parking Badge Act 2013. Road Traffic Acts. Fraud Act 2006
- Staff/Members- Disciplinary Process/Standards Board. Prosecution: Fraud Act 2006
- NNDR Fraud. Penalties and Prosecution. Theft Act 1968 and Fraud Act 2006
- Prosecution for Application Fraud. Theft Act 1968 and Fraud Act 2006.