

Fraud and Corruption - Prosecution Policy

Document Control

Title	Bury Council – Fraud & Corruption Prosecution Policy
Document Type	
Author	FAIR Team
Owner	Corporate Core Finance
Subject	Counter Fraud & Corruption
Date Created	July 2023
Approval Date	
Review Date	



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1. Scope and Purpose

The fraud and corruption prosecution policy forms part of the Council's overall counter fraud and corruption arrangements. The policy covers all acts, and/or attempted acts, of fraud or corruption committed by officers or members of the Council, or committed by members of the public, or other organisations or their employees, against the Council.

The policy sets out the circumstances in which the Council will take legal action against the perpetrators of fraud or corruption. It also sets out the circumstances when it is appropriate to consider alternative courses of action such as offering a caution.

In addition to prosecution, where employees are alleged to have committed fraud, an internal investigation may also be undertaken following the Council's Disciplinary, Capability and Grievance Procedures which are detailed on the Council's intranet.

This policy should be read in conjunction with the Council's constitution, financial regulations, the anti-fraud strategy, the whistleblowing policy and the Council's disciplinary policy and procedures.

The policy contains specific guidelines for determining the most appropriate course of action when fraud has been identified. Offences other than fraud and corruption (for example those relevant to the enforcement of regulations) are dealt with by the appropriate service departments under other policies and relying on specific legal powers.

2. Principles

The Council is committed to deterring fraud and corruption. As part of its overall strategy to do this, the Council will seek to take appropriate action against anyone suspected to have attempted and/or committed a fraudulent or corrupt act against it. The Council considers that those guilty of serious fraud or corruption must take responsibility for their actions before the courts.

The policy is designed to ensure that the Council acts fairly and consistently when determining what action to take against the perpetrators of fraud or corruption.

Where evidence is identified that staff and members may have committed fraud or corruption they may be prosecuted in addition to such other action(s) that the Council may decide to take, including disciplinary proceedings and referral to the relevant officer or professional body. Any decision not to prosecute a member of staff for fraud and corruption does not preclude remedial action being taken by the

relevant director(s) in accordance with the Council's disciplinary procedures or other policies.

This Policy is also designed to be consistent with council policies on equalities. The Council will be sensitive to the circumstances of each case and the nature of the crime when considering whether to prosecute or not. This document may be made available in alternative language upon request.

The consistent application of the policy will provide a means for ensuring that those who have perpetrated fraud and corruption are appropriately penalised. It will also act as a meaningful deterrent to those who are contemplating committing fraud or corruption. The Council recognises the deterrent value of good publicity and therefore information regarding successful prosecutions and sanctions will be made public.

Any decision taken by the authorised officers to prosecute an individual or to offer a formal sanction will be recorded in writing. The reason for the decision being taken will also be recorded. For cases which recommend prosecution of an employee, the authorised officers who will make the decision to prosecute are the Monitoring Officer in conjunction with the S151 Officer and the Head of Human Resources. For all other cases, the authorised officers making the decision to prosecute are the Head of Fraud, Audit, Insurance and Risk in conjunction with Head of Legal Services.

Irrespective of the action taken to prosecute the perpetrators of fraud and corruption, the Council will take whatever steps necessary to recover any losses incurred, including taking action in the civil courts.

3. Prosecution

In the accordance with The Code for Crown Prosecutors¹ this policy is intended to ensure the successful prosecution of offenders in court. However, not every contravention of the law should be considered for prosecution. The Council will weigh the seriousness of the offence (taking into account the harm done or the potential for harm arising from the offence) with other relevant factors, including the financial circumstances of the defendant, mitigating circumstances and other public interest criteria. All cases will be looked at individually and be considered on their own merit.

To consider a case for prosecution the Council must be satisfied that The Code for Crown Prosecutors two tests have been passed. Firstly, there must be sufficient evidence of guilt to secure a conviction. This is called the **evidential test**. Secondly, it must be in the public interest to proceed – the **public interest test**.

3.1. Evidential Test

¹ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

To pass the evidential test, authorised officers must be satisfied that there is a realistic prospect of conviction based on the available evidence (that is, there must be sufficient admissible, substantial and reliable evidence to secure a conviction):

3.2. Public Interest Test

To pass the public interest test, the authorised officer will balance, carefully and fairly, the public interest criteria against the seriousness of the offence. The public interest criteria include:

- the likely sentence (if convicted)
- any previous convictions and the conduct of the defendant
- whether there are grounds for believing the offence is likely to be repeated
- the prevalence of the offence in the area
- whether the offence was committed as a result of a genuine mistake or misunderstanding
- any undue delay between the offence taking place and/or being detected and the date of the trial
- the likely effect that a prosecution will have on the defendant
- whether the defendant has put right the loss or harm caused.

It will generally be in the public interest to prosecute if one or more of the following factors applies, subject to any mitigating circumstances:

- the actual or potential loss to the Council was substantial
- the fraud has continued over a long period of time
- the fraud was calculated and deliberate
- the person has previously committed fraud against the Council (even if prosecution did not result) and/or there has been a history of fraudulent activity
- the person was in a position of trust (for example, a member of staff)
- there has been an abuse of position or privilege
- the person has declined the offer of a caution or financial penalty
- the case has involved the use of false identities and/or false or forged documents

Investigating officers and prosecutors will review the appropriateness of pre-charge engagement where prosecution is considered. This is likely to occur where such engagement may lead the defendant to volunteer additional information that may identify new lines of inquiry. Pre-charge engagement may be instigated by the investigating officer, the council prosecutor, the defendant's representative or a defendant themselves (if unrepresented).

4. Mitigating Factors

The following mitigating factors will be taken into account when determining whether to prosecute:

4.1. Voluntary Disclosure

A voluntary disclosure occurs when an offender voluntarily reveals fraud about which the Council is otherwise unaware. If this happens, then the fraud will be investigated but the offender will not be prosecuted unless in exceptional circumstances.

However, any person colluding in the crime will still be prosecuted. A disclosure is not voluntary if the:

- admission is not a complete disclosure of the fraud
- admission of the fraud is made only because discovery of the fraud is likely, (for example, the offender knows the Council is already undertaking an investigation in this area and/or other counter fraud activity)
- offender only admits the facts when challenged or questioned
- offender supplies the correct facts when making a claim to Legal Aid

4.2. Ill Health or Disability

The suspects mental and physical health will be taken into account before any decision is made to prosecute. Evidence from a GP or other doctor will be requested. It is also necessary to prove that the person understood the rules governing the type of fraud committed and was aware that their action is wrong. This may not be possible where, for instance, the offender has serious learning difficulties. However, simple ignorance of the law will not prevent prosecution.

4.3. Social Factors

A wide range of social factors may make a prosecution undesirable. The test is whether the court will consider the prosecution undesirable and go on to reflect that in the sentence.

4.4. Exceptional Circumstances

In certain exceptional circumstances the Council may decide not to prosecute an offender. Such circumstances include:

- the inability to complete the investigation within a reasonable period of time
- the prosecution would not be in the interests of the Council
- circumstances beyond the control of the Council make a prosecution unattainable

5. Alternatives to Prosecution

If some cases are considered strong enough for prosecution but there are mitigating circumstances which cast a doubt as to whether a prosecution is appropriate then the Council may consider the offer of a sanction instead. The three sanctions available are:

- a caution, or
- a financial penalty, or
- a civil penalty

5.1. Simple Cautions

A simple caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. All cautions are recorded internally and kept for a period of six years. Where a person offends again in the future, any previous cautions will influence the decision on whether to prosecute or not.

For less serious offences a simple caution will normally be considered where all of the following apply:

- there is sufficient evidence to justify instituting criminal proceedings
- the person has admitted the offence
- there is no significant public interest in prosecution
- it was a first offence
- a financial penalty is not considered to be appropriate.

Only in very exceptional circumstances will a further caution be offered for a second or subsequent offence of the same nature.

Cautions will be administered by the Head of Fraud, Audit, Insurance & Risk, or a Senior Corporate Fraud Officer on behalf of the Council. If a caution is offered but not accepted, the Council will usually consider the case for prosecution. In such cases the court will be informed that the defendant was offered a caution but declined to accept it.

5.2. Financial Penalties – Council Tax and Council Tax Reduction Scheme

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement – England) Regulations 2013, permit a financial penalty to be offered to claimants as an alternative to prosecution. The penalty is set at 50% of the amount of the excess reduction, subject to a minimum of £100 and a maximum of £1000. Once a penalty is accepted, the claimant has 14 days to change their mind.

Subject to the criteria set out in the guidelines below, a financial penalty will normally be offered by the Council in the following circumstances:

- the Council believes that there is sufficient evidence to prosecute
- it was a first offence or a previous offence was dealt with by way of a caution, and
- in the opinion of the Council, the circumstances of the case mean it is not overwhelmingly suitable for prosecution, and
- the claimant has the means to repay both the overpayment and the penalty, and there is a strong likelihood that both the excess reduction and the penalty will be repaid

5.3. Civil Penalties for failure to supply information – Council Tax

Schedule 3 of the Local Government Finance Act 1992 allows Bury Council to impose a penalty of £70 where a person fails to comply with certain requirements as to the supply of information.

A penalty can be imposed on any person who:

- has been requested by the Council to supply information to identify the liable person for Council Tax and has failed to supply this information, or
- has knowingly supplied information, with regard to identifying the liable person, which is inaccurate in a material particular, or
- has failed, without reasonable excuse, to notify the Council that the dwelling will not be, or was no longer an exempt dwelling, or
- has failed, without reasonable excuse, to notify the Council that the chargeable amount is not subject to a discount or is subject to a discount of a lesser amount.

It is important to note that the suspect does not need to have admitted the offence for a financial penalty to be offered. Financial penalties will be administered by the Head of Fraud, Audit, Insurance & Risk, or a Senior Corporate Fraud Officer. If a financial penalty is not accepted or is withdrawn, the Council will usually consider the case for prosecution. In such cases, the court will be informed that the defendant was offered a penalty but declined to accept it.

6. Proceeds of Crime Act 2002 (POCA)

In addition to the actions set out in this policy, the Council reserves the right to refer all suitable cases for financial investigation with a view to applying to the courts for restraint and/or confiscation of identified assets. A restraint order will prevent a person from dealing with specific assets. A confiscation order enables the Council to recover its losses from assets which are found to be the proceeds of crime.

7. Review

Bury Council will continue to review its rules and procedures and will make sure that the Fraud and Corruption - Prosecution Policy is regularly reviewed to ensure it stays current, appropriate and effective.