

Assurance Group

The Fraud Prosecution Policy

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The Council's commitment to the Prosecution Policy

The London Borough of Barking & Dagenham is committed to the protection of public funds through its action against fraud and associated offences. The Council will seek application of the strongest possible sanctions against those found to have perpetrated fraud against it.

What are the aims and requirements of the policy?

The aim of this prosecution policy is to prevent and deter fraud against the Council. This policy sets out the range of sanctions that may be applied where fraud and wrongdoing is identified and the circumstances relevant to their application.

Who is governed by this Policy?

This policy applies to all council employees (both permanent and agency), employees of the Council's owned companies, contractors and members of the public found to have committed fraud and other wrongdoing against the Council. Disciplinary action will also be taken against Council employees found to have committed fraud against other local authorities or any other agency administering public funds.

Executive Summary

The London Borough of Barking & Dagenham is committed to the protection of public funds through its action against fraud.

In order to reinforce the deterrence message, where fraud and wrongdoing is identified the Council will take disciplinary action (in the case of employees), civil action or criminal sanctions or a combination of all three in parallel, in accordance with this policy. All references to fraud in this document include any other type of fraud related offences as defined in the Counter Fraud policy.

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Fraud Prosecution Policy

The London Borough of Barking and Dagenham is committed to preventing fraud wherever possible. All allegations of fraud will be taken seriously.

Where fraud is found to occur, in any form, it will be dealt with rigorously in a controlled manner in accordance with the principles in the Counter Fraud Strategy. It will be investigated fully, and the London Borough of Barking and Dagenham will prosecute all offenders, where appropriate, including Members, employees, contractors and external partners, in accordance with this policy and legal guidelines.

This procedure will be operated in conjunction with the London Borough of Barking and Dagenham's disciplinary procedures and all employees will be subject to disciplinary action as well as any prosecution process.

Where there is clear evidence that a fraudulent, or corrupt, act has been committed the case will be considered for prosecution.

In assessing whether to start a prosecution the Council will apply The Full Code Test in the Code for Crown Prosecutors, as revised from time to time. This is a two-stage process, undertaken by the Legal Department, and will be applied after the Counter Fraud Team have pursued all reasonable lines of enquiry and any further evidence or material is unlikely to affect the application of the Test.

- **The Evidential Stage: is there sufficient evidence to provide a realistic prospect of conviction?**
- **The Public Interest Stage: is it in the public interest to prosecute or to offer an out-of-court disposal?**

If a case passes the evidential stage, a prosecution will usually be pursued unless there are public interest factors against prosecution which clearly outweigh those tending in favour.

The Council will prosecute in most instances where the fraud perpetrated:

- was not a single incident
- is of high value
- was planned
- was carried out by an officer in a position of authority and/or trust and they took advantage of this
- involved more than one person

Details of how the Council will apply the 2 stage Test can be found at the end of this document.

Fraud Sanctions & Redress

With respect to a *prima facie* case of fraud, an appropriate combination of the following three sanctions may be applied:

- **Disciplinary Action** - Application of this sanction is normally internal disciplinary action but may involve a referral to the relevant professional organisation from which professional disciplinary action could ensue
- **Civil Action** - to recover money, interest and costs where it is cost effective and desirable for the purpose of deterrence, it may be decided that civil redress is the most appropriate course of action. In such instances the council's legal services team will utilise civil law to recover any losses
- **Criminal Sanction** - fines, imprisonment, and compensation orders with or without police involvement

Where it is decided that a criminal prosecution is to be pursued (following discussion and advise from Legal), the Assurance Group will brief the most appropriate Chief Officer, however, the option to prosecute may also be determined by the police in some instances.

Managers should not notify the police directly, except in an emergency to prevent further loss, or where it is necessary for the police to examine an area before it is disturbed by employees or members of the public.

In instances where an investigation reveals either numerous cases of fraudulent activity, significant value, or breaches of the employee code of conduct (and/or disciplinary rules) the option of pursuing a series of sanctions (parallel sanctions) may be chosen.

The individual or parallel sanctions that are to be applied will be the decision of the Assurance Group following consultation with the Counter Fraud & Risk Manager, Legal Services and Human Resources.

In instances where parallel sanctions are applied, for example, internal disciplinary and criminal sanctions, the Assurance Group will carry out an investigation with a view to criminal prosecution, whilst simultaneously conducting an internal investigation under the Disciplinary Procedure.

The Assurance Group will provide evidence to Human Resources in order that an internal investigation and disciplinary hearing can be taken forward with respect to the evidence given. The advantage of this approach is that all appropriate action is taken at the earliest opportunity.

The Council believes fair and effective prosecution is essential to protect public funds and deter fraudulent activity.

Irrespective of the sanctions pursued for general fraud, the council will use all measures available to it to recover any money lost due to fraudulent activity.

In respect to criminal redress, this will be sought through the application for a Compensation Order to the Courts. This Order will not only outline the losses sustained by the council through fraud but also the investigation costs.

In respect of Internal Disciplinary, the council has a responsibility, following the outcome of its investigation, to initiate an appropriate procedure aimed at recovering all monies identified as being lost or misappropriated through fraud.

The mechanism by which misappropriated monies are to be repaid will normally be established and agreed prior to any sanction being applied and may be managed through utilisation of procedures such as deduction from salary or debtor invoicing as well as the recovery of losses from pension entitlements where appropriate.

Where the above mechanisms fail to recover any monies owed to the council, following advice from Legal Services, the Assurance Group will consider the option of civil redress.

Civil redress is available to the council in all instances where initial attempts to recover the loss, such as deduction from salary or debtor invoicing, have failed. In such instances, if considered appropriate, Legal Services will make an application either to the Small Claims or County Court - depending on the value to be recovered.

Where other fraudulently obtained assets are found, action under Proceeds of Crime legislation will also be considered utilising Accredited Financial Investigator resources.

Publicity

Assurance Group officers will seek to publicise successfully prosecuted cases, with the aim to deter others and thereby to prevent further frauds.

Further Support & Guidance

- If there are any questions about these procedures, the Counter Fraud and Risk Manager can be contacted on 020 8227 2850, caft@lbbd.gov.uk or by visiting our intranet pages.

Stages the council will apply in considering a case for prosecution

The Evidential Stage

We must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge*. We 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 we have found that there is a realistic prospect of conviction based on the objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which they might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

When deciding whether there is sufficient evidence to prosecute, We will ask ourselves the following:

Can the evidence be used in court?

Are there any questions on the admissibility of the evidence

Is the evidence reliable?

We will consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

We will consider whether there are any reasons to doubt the credibility of the evidence.

Is there any other material that might affect the sufficiency of evidence?

We must consider at this stage and throughout the case whether there is any material that may affect the assessment of the sufficiency of evidence, including examined and unexamined material in the possession of the police, and material that may be obtained through further reasonable lines of inquiry.

The Public Interest Stage

In every case where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.

It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.

When deciding the public interest, we will consider each of the questions set out below to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.

The explanatory text below provides guidance to us when addressing each particular question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.

We will consider how serious is the offence committed.

The more serious the offence, the more likely it is that a prosecution is required. When assessing the seriousness of an offence, we should include in our consideration the suspect's culpability and the harm caused, by asking themselves the following questions.

What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by:

- i. the suspect's level of involvement;
- ii. the extent to which the offending was premeditated and/or planned;
- iii. the extent to which the suspect has benefitted from criminal conduct;
- iv. whether the suspect has previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order;
- v. whether the offending was or is likely to be continued, repeated or escalated;
- vi. the suspect's age and maturity (see paragraph below)

A suspect is likely to have a much lower level of culpability if the suspect has been compelled, coerced or exploited, particularly if they are the victim of a crime that is linked to their offending.

We should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons.

What are the circumstances of and the harm caused to the victim?

The circumstances of the victim are highly relevant. The more vulnerable the victim's situation, or the greater the perceived vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim. A prosecution is also more likely if

the offence has been committed against a victim who was at the time a person serving the public. It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics.

We will also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special measures and the possibility of a prosecution without the participation of the victim.

We should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family. However, we do not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

What was the suspect's age and maturity at the time of the offence?

The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered, including whether a prosecution is likely to have an adverse impact on their future prospects that is disproportionate to the seriousness of the offending. We must have regard to the principal aim of the youth justice system, which is to prevent offending by children and young people. We must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child. We should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties. As a starting point, the younger the suspect, the less likely it is that a prosecution is required. However, there may be circumstances which mean that, notwithstanding the fact that the suspect is under 18 or lacks maturity, a prosecution is in the public interest. These include where:

- i. the offence committed is serious;
- ii. the suspect's past record suggests that there are no suitable alternatives to prosecution; and
- iii. the absence of an admission means that out-of-court disposals that might have addressed the offending behaviour are not available.

What is the impact on the community?

The greater the impact of the offending on the community, the more likely it is that a prosecution is required. The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offending. Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group. Evidence of impact on a community may be obtained by way of a Community Impact Statement.

Is prosecution a proportionate response?

In considering whether prosecution is proportionate to the likely outcome, the following may be relevant:

The cost to the council and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. Prosecutors should not decide the public interest on the basis of this factor alone. It

is essential that regard is also given to the public interest factors identified when considering the other questions in this guide but cost can be a relevant factor when making an overall assessment of the public interest.

Cases should be prosecuted in accordance with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, ongoing investigations, international relations or national security. It is essential that such cases are kept under continuing review.