



ANTI FRAUD AND ANTI CORRUPTION PROSECUTION AND SANCTION POLICY

The Policy applies to all those working for and on behalf of MVDC, those working on electoral matters, for and on behalf of (and including) the MVDC Electoral Registration Officer (ERO) and the MVDC Returning Officer (RO) and to companies that are wholly owned by MVDC (at the time of implementation Mova Property Ltd and Mova Holdings Ltd).

1. Introduction

1.1 The Council's Anti-Fraud and Anti-Corruption Policy sets out the aims and objectives with regard to tackling fraud and corruption and includes the Council's Prosecution and Sanctions Policy Statement. It states that we will seek the strongest possible sanction against any individual or organisation that defrauds, or seeks to defraud the Council. The use of prosecution and sanctions will be governed by the following Policy, and the principles of the Policy shall apply equally to any fraud against the Council, or against funds for which the Council has responsibility.

1.2 The Policy covers all circumstances and types of fraud against the Council, and / or partner organisations.

1.3 The objective of the Prosecution and Sanction Policy is to ensure that:

- The Council considers a full range of sanctions, including criminal proceedings, in a just and consistent manner;
- Sanctions are applied in an effective and cost efficient manner;
- The decision to prosecute is robust and transparent.

1.4 This Policy is designed to provide a framework to ensure that the most appropriate resolution to a case is reached. The decision to prosecute will have regard at all times to the Council's Anti-Fraud and Anti-Corruption Policy objectives, the individual circumstances of each person concerned and the overall impact of the punishment to both the individual and the community.

1.5 A range of sanctions are available to the Council depending on the type and circumstances of the offence. These include:

- Disciplinary action; in certain circumstances
- Civil proceedings;
- Criminal proceedings (prosecution);
- Formal caution;
- Administrative penalties, in certain circumstances
- Civil Penalties, in certain circumstances
- Fine, and / or compensation claim.
- Recover the overpayment or debt but take no formal action

For all options, recovery of the debt will be actively pursued.

1.6 In appropriate cases we will take more than one form of action. For example, where Officers have defrauded the Council we may take disciplinary, prosecution and civil recovery action.

1.7 The decision to take disciplinary action will be made with regard to the Council's Disciplinary Policy and Guidance and is independent of any decision to prosecute.

2. Criminal Prosecution

2.1 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.

2.2 The ultimate decision on prosecution will be taken by the prosecuting body. In some cases this will be the Council's Legal Services. In these cases the decision to refer cases to the prosecuting authority will be taken by the Business Manager and Executive Head of Service, after a recommendation report is made by the Fraud and Investigation Team Manager.

2.3 Housing Benefit Fraud investigations are no longer the responsibility of the Council. All Benefit Fraud prosecutions are undertaken by the Department for Work and Pensions (DWP) Counter Fraud and Compliance Directorate (CFCD). The Council will authorise CFCD to prosecute Housing Benefit Fraud offences for as long as the role of administering the benefit retains with the Council. The decision to authorise CFCD to prosecute a Housing Benefit offence will be made by the Benefits Manager or Executive Head of Service in his absence. In circumstances of joint working with CFCD, where the Council are investigating Council Tax Support Fraud, in conjunction with CFCD investigating Housing Benefit or another national welfare benefit, the Council will retain the right to make its own decision regarding prosecution or other suitable sanction in respect of the Council Tax Support offence. However all decisions will consider the importance of maintaining a consistent approach to the disposal of the offence.

2.4 Where an investigation has been passed to the Police to investigate, they will liaise with the Crown Prosecution Service to make the ultimate decision on whether or not to prosecute.

2.5 When considering a case for prosecution it is generally accepted that there are two "tests" to be applied - the Evidential Stage test and the Public Interest test. These are currently set out in the current Code for Crown Prosecutors. In most cases, the Evidential Stage test should be considered prior to the Public Interest Test.

3. Evidential Stage Test

3.1 Is there the required level of evidence to support a prosecution? Without this the case cannot go ahead no matter how important the case or how strong the public interest is in favour of prosecution.

3.2 The evidence must be acquired in a form which can be used by the Court and be admissible, and there must be enough evidence to form a realistic prospect of conviction. In order to ensure that a “realistic prospect of conviction” exists, officers of the Fraud and Investigation Team will at all times ensure that investigations are conducted in accordance with relevant legislation and in line with published Codes of Practice and Guidance with regard to evidence gathering, interviewing and rules of disclosure.

3.3 The evidence gathered will be examined in the first instance by the investigator and their Manager. When both are satisfied that sufficient evidence exists to support a realistic prospect of prosecution and that the Public Interest Stage is also satisfied, the case file will be passed on to either the Council’s Legal team, the DWP Solicitor or the Crown Prosecution Service via the Police, with signed authority from a senior officer with delegated authority. All prosecutors will then apply their own inspection of the evidence to ensure that both tests are met.

4. Public Interest Test

4.1 In order to ensure consistency and correctness when considering a case for Sanction/Prosecution, the guidelines applied by the Crown Prosecution Service - as detailed in Section 10 of the Prosecution of Offences Act 1985, will be followed by officers of the Fraud and Investigation Team. Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction.

5. Details

5.1 The Council’s Prosecution and Sanction Policy has been developed with the aim of providing a rational and consistent approach to the use of prosecution or formal sanctions. The Council will not discriminate (positively or negatively) against any claimant or group of claimants.

5.2 This Policy is not intended to be prescriptive but refers to criteria relating to the offence, the offender and the value of the fraud that has to be taken into account before considering the sanction that may apply.

5.3 When the Council has reasonable grounds to believe that a criminal offence has been committed there are a number of options it has to consider, listed earlier in this document.

5.4 There can be no “blanket” approach, as each case must be considered on its own merits. These guidelines set out what the Council will normally do in a particular situation rather than define an absolute course of action. Relevant matters for consideration should include the following:

- The case passes the evidential test and there are no serious errors in the administration process or investigation;
- The case passes the public Interest test;
- The amount defrauded;
- The offence has continued for some time;
- The offence involved some pre-thought and planning;
- There is evidence of a previous fraud;
- There is evidence of collusion;
- An Authorised Officer has been obstructed in the course of their duties;
- The Perpetrator held a position of trust.

6 Conducting a Criminal Investigation

6.1 Whether there is evidence of an offence or information is held which indicates an offence may have been committed, the standards of a criminal investigation will be maintained. The principles of PACE (Police and Criminal Evidence Act), CPIA (Criminal Procedures and Investigations Act), HRA (Human Rights Act), Equality Act, Data Protection Act 2018, Prevention of Social Housing Fraud Act 2013 and RIPA (Regulation of Investigatory Powers Act 2000) will be adhered to.

6.2 The objective of the investigation is to establish the facts. Where sufficient evidence of an offence or offences is found, the application of a sanction will be considered.

7 Interviewing

7.1 Interviews, undertaken by officers, may take place when all the required evidence has been obtained. However, in many instances it could be necessary to interview earlier. In either instance, if an Officer has grounds to suspect an offence (PACE 10.1) the interview must be conducted in accordance with PACE (Police and Criminal Evidence Act) or the interviewee cautioned.

7.2 Where an interview is being conducted, but a caution has not been administered, a caution shall be administered as soon as the interviewing Officer has grounds to suspect an offence (again PACE 10.1 applies).

7.3 Where there are reasons why an interview should not be undertaken, for example on medical grounds, a decision will then be made about whether to proceed with an interview under caution.

7.4 Consideration will be given to any any protected characteristics (as defined under the Equality Act 2010) of claimants prior to any interview.

8. The Decision to Sanction or Prosecute

8.1 Once the investigation has been concluded, the Officer will present the case with a recommendation to the Fraud and Investigation Manager, about whether a sanction is appropriate. The Fraud and Investigation Manager will apply the evidential test and the public interest test. Should the Manager decide that the case is suitable for a sanction, it will be passed to the Business Manager who will make the final decision as to whether to sanction.

8.2 It should be noted that, where there has been a decision to prosecute a case in accordance with the Council's Policy, the final decision regarding whether a case is presented in Court rests with the prosecuting authority (Councils Legal Services Team).

Consideration factors for a prosecution:

- The amount overpaid, or loss to the Council (including combined loss to public purse if joint working with another official organisation) , is significant
- The defendant was in a position of authority or trust;
- False identities or false documents have been used
- The evidence shows that the individual was instrumental in the offence;
- There is evidence that the offence was premeditated and whereby there was a calculated and deliberate attempt to defraud the Authority;
- The individual's previous convictions, cautions or administrative penalties are relevant to the present offence;
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or the offence, although not serious in itself, is widespread in the area where it was committed;
- The period of time over which the alleged offence took place;
- There has been an attempt to defraud.
- The offer of a lesser sanction has not been accepted

9. Consideration Factors against a Prosecution

The Council will take into consideration a variety of factors, including those identified within the Crown prosecution Service Code for Crown Prosecutors, in deciding whether a prosecution is to proceed.

10 Formal Caution

10.1 A formal caution is an oral warning given to a person who has committed an offence and who is then required to make a written admission to the offence acknowledging that they have received a caution in return for not being prosecuted through the criminal courts.

10.2 In order to offer a caution the individual must have admitted the offence during the interview under caution and the value of loss is not significant. Cautions may be administered in cases where there is no loss but an attempt to defraud the Council has been proven.

10.3 If the caution is not accepted the matter should be referred for prosecution. Where a prosecution is brought, the Court will be informed that the case had been presented to them because the individual refused to accept a formal caution.

11. Administrative Penalties

11.1 The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 allows a financial penalty to be offered to an individual identified as responsible for an offence of Council Tax Support fraud. This is known as an Administrative Penalty. The penalty is calculated as 50% of the excess award calculated on a daily basis from the date of the award until the date the Council could reasonably be aware of the excess award subject to a minimum of £100 and maximum of £1,000.

11.2 An Administrative Penalty 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.
- 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 over-burden them if they have existing priority debts.

11.3 In order to offer an Administrative Penalty it is not necessary for the individual to have admitted an offence. If the Administrative Penalty is accepted the individual undertakes to repay the original overpayment and the Administrative Penalty in return for not being prosecuted through the criminal courts. Consideration should be given as to the individual's financial circumstances in deciding the appropriateness of offering an Administrative Penalty.

As in all cases of fraud we will seek to recover the overpaid benefit/reduction/award.

11.4 If the Administrative Penalty were not accepted the matter should be referred for prosecution. Where a prosecution is brought, the court will be informed that the case had been presented to them because the individual refused to accept an administrative penalty.

12. No Action Taken and Civil Penalties

12.1 Should the value of loss be low, the Fraud and Investigation Manager will consider not issuing a formal sanction (unless intent to defraud has been proven). A warning letter advising the subject of the continued importance of reporting changes will normally be sent. The letter should also reinforce the point that future failures to report changes could result in prosecution.

13. Civil Penalties

13.1 In certain circumstances, the Council has the option to issue a civil penalty instead of taking legal sanction action. This is for irregularities in respect of Council Tax Support (CTS) and Council Tax Discount.

13.2 A penalty of £70 may also be imposed by an authority on a person who negligently makes an incorrect statement in connection with an application for a CTS or where a person fails to notify a change of circumstances when required to do so under CTS regulations. A penalty of £70 may also be applied for a failure to notify of relevant information in respect of any Council Tax Discount or Exemption.

14. Failure to co-operate

14.1 Normally three attempts will be made to invite an individual to be interviewed. If he or she fails to attend, consideration will be made to approaching Surrey Police to carry out an arrest, so that the interview can be undertaken at a Police Station. Authorisation to approach the Police will be obtained from the Business Manager, after having taken advice from the Council's Legal Department. Alternatively prosecution action can commence, with the agreement of the Council's solicitor.

15. Closer Working

15.1 The Council will work closely with partner organisations, to ensure that the full scale of an offence is investigated, and unified consistent sanction action is taken. The Council reserves the right to undertake sanction action (including Prosecution) where legislation allows and it is deemed in the interest of the Council, or residents, to do so. An example of such action would be prosecuting for tenancy fraud offences, in relation to a Social Housing provider stock property.

15.2 The Council will jointly work with (where legislation allows) and support the Department for Work and Pensions (DWP) Counter Fraud Compliance Directorate (CFCD), in taking appropriate sanctions, including prosecution, for proven offence of Housing Benefit Fraud. The Council will provide all supporting documents required by CFCD. The Council will make decisions on whether to support these actions, following the same guidelines as detailed earlier in this policy (i.e. Evidential and Public Interest Test).

16. Delegation of Authority

16.1 The Council will delegate the power to administer a Caution and Administrative Penalty to an offender to either specific officers or Managers of the Authority.

16.2 The officers with the delegated power will be those in the posts of: -

- Executive Head of Service
- Business Manager, or Nominated deputy in the absence of the Manager
- Fraud and Investigation Manager
- Officers of the DWP delegated to administer caution or Administrative penalty – for HB fraud or joint working cases only.
- Officer of joint working partner, if that officer has powers delegated by own body.

16.3 The Council will delegate the power to prosecute an offender for Local Authority Housing Benefit Fraud to the Crown Prosecution Services (CPS). In cases of other joint working, i.e. with other local authorities, this power can be delegated to a solicitor or the legal department of that other Authority.

17. Overpayment Recovery

17.1 The Council will actively pursue recovery of all overpayments in line with the Redress Statement in the Council's Anti-Fraud and Anti-Corruption Policy and Strategy.

17.2 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.

18. Prosecution and Sanctions publicity strategy

18.1 The Council will seek to maximise publicity as a deterrent to others who might consider defrauding the Authority by issuing press releases to the local media at the conclusion of a successful prosecution. A publicity sentencing assessment will be conducted prior to the release of a press release to establish whether it is reasonable and proportionate to publicise name of the offender. The assessment will be authorised by the appropriate Executive Head of Service. The press release will also feature on the news page of the Mole Valley District Council external website. Details included in press releases will be subject to Human Rights and Data Protection restrictions and be in line with the Council's corporate publicity policy

19. Review

Version Control

Version Date	November 2018	October 2020
Author		Fraud Manager
Approved by		Deputy Chief Executive (s151 Officer)
Review Date	November 2020	October 2022