

Sanction Procedure

Counter-Fraud, Bribery and Corruption



**STRONGER
FAIRER
GREENER**



Document Control

Organisation	Cardiff Council
Title	Sanction Procedure
Author	Audit Manager
Owner	Corporate Director Resources, Section 151 Officer
Review date	Biennially

Revision History

Revision Date	Revision	Previous Version	Description of Revision
2017	1.0		Initial document
December 2023	1.1	1.0	Reflecting Counter-Fraud, Bribery and Corruption Strategy updates

Contents		Page
1.	Introduction	1
2.	General Principles	2
3.	Scope and Definition	2
4.	Sanctions	3
5.	Criteria	3
6.	Responsibilities	4
7.	Review	5

1. Introduction

- 1.1 This procedure is aligned to the Council's Counter-Fraud, Bribery and Corruption Strategy (**LINK**), which communicates a zero-tolerance approach, and encourages and promotes fraud prevention and detection.
- 1.2 The Strategy has a core objective to develop and maintain a culture in which fraud, bribery and corruption are understood across the organisation as unacceptable, for which firm action will be taken to prevent and detect fraud loss, bring fraudsters to account quickly and efficiently, and to recover any losses.
- 1.3 As part of the strategic response to fighting fraud, the Council has communicated how it will pursue and punish fraudsters by using civil sanctions, recovering losses, and supporting the law enforcement response.
- 1.4 It is a legal right to receive services from the Council in English or Welsh according to choice. Correspondence will be received, and investigations will be conducted in accordance with the Welsh Language Standards. Arrangements are in place to communicate with individuals and progress fraud issues and concerns in other languages as required.
- 1.5 This procedure has been written to include, so far as is reasonable, preventative procedures in relation to Corporate Criminal Offence, pursuant to section 45(2) of the Criminal Finances Act 2017.
- 1.6 Examples of how fraud and corruption will be prevented and pursued as part of the Council's robust counter-fraud response are as follows:

Prevent	Pursue
<ul style="list-style-type: none">• Making best use of information and technology• Enhancing fraud controls and processes	<ul style="list-style-type: none">• Developing our capability and capacity to punish offenders• Use of criminal and civil sanctions prioritising fraud recovery
<ul style="list-style-type: none">• Developing and maintaining an effective anti-fraud culture	<ul style="list-style-type: none">• Collaboration across geographical and sectoral boundaries
<ul style="list-style-type: none">• Communicating activity and success	<ul style="list-style-type: none">• Learning lessons and closing the gaps

- 1.7 The decision to sanction an individual is a serious step and may have lasting implications for the offender. This procedure is designed to ensure that all officers involved in any such decisions understand and appreciate the principles that will be taken into account.
- 1.8 There is a requirement for all frauds* committed against or from within the Council to be reported to the Audit Manager, via the Internal Audit, Corporate Fraud Investigation Team, based within Finance, Resources. (fraud@cardiff.gov.uk)

**except housing benefit fraud which will be reported to the Department for Work and Pensions.*

- 1.9 Corporate Fraud Investigation Team Investigators are professionally trained and highly experienced. Investigations are undertaken to the criminal standard outlined in paragraph 2.3, utilising best practice.

2. General Principles

- 1.1 In recognition of the Council's strategic aims and its status as a responsible steward of public funds, this procedure aims to ensure that persons who commit fraud are dealt with fairly and consistently. Its specific objectives are to:
- ensure that those who commit fraud are punished;
 - assist officers in the selection of the most appropriate sanction;
 - ensure that sanctions are successfully applied;
 - maximise the deterrent effect of successful sanctions;
 - maintain and generate public confidence in and respect for the Council, by helping to ensure that justice is seen as being done.
- 1.2 Each case must be considered on its own merits. When deciding whether to commence a sanction, officers must be fair, independent, and objective. They shall not be affected by improper or undue pressure from any source.
- 1.3 Investigations will be conducted in accordance with the Police and Criminal Evidence Act 1984 and its Codes of Practice, as applicable, and all other relevant legislative and common-law rules.
- 1.4 In accordance with the Corporate Fraud Investigation Team's Publicity Procedure, the Team will work with the Communications and Media Team to seek to generate additional positive publicity for successful counter-fraud activity, to maximise the deterrent effect, and to encourage fraud referrals.
- 1.5 It is advised that those tasked with administering the Procedure have also received adequate Equality/Unconscious Bias training to ensure fairness throughout the process.

3. Scope and Definition

- 1.6 This procedure applies to criminal investigations undertaken by the Corporate Fraud Investigation Team and for example, may relate to Council Tax Liability, Council Tax Reduction, Housing, and Procurement investigations.
- 1.7 Due to the size of the organisation and the proactive work undertaken by the Investigation Team, occasionally Council employees may be identified as potential fraudsters. In the first instance the criminal investigation will take precedence, however, advice will be sought from Human Resources and Legal Services as appropriate.

4. Sanctions

1.8 There are a number of Criminal / Civil sanctions available to the Council:

- **Prosecution** - criminal proceedings may be brought against offenders and the case heard in Court when there appears to be sufficient evidence of a criminal offence and it is in the public interest to prosecute.
- **Simple Caution** - a “simple” caution is a formal warning that may be given to persons aged 18 or over who admit to committing an offence. This is designed to provide a means of dealing with low-level, mainly first-time, offending without a prosecution. In addition, a simple caution may only be given if there appears to be sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted.

Simple cautions form part of an offender’s criminal record and may be referred to in future legal proceedings and, in certain circumstances, may be revealed as part of a criminal record check.

- **Unlawful profit order** - (Prevention of Social Housing Fraud Act 2013) – the offender is required to pay the landlord an amount representing profit made.
- **Financial penalties** - the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013, provides the Council with the ability to impose financial penalties.
- **Overpayment recovery & civil court action** - in all cases of fraud the Council will vigorously pursue the recovery of property and overpaid monies and will use all means available, including civil sanctions.

5. Criteria

1.9 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which sanctions are determined and the following will be taken into account:

- the full code test (for which further details are provided below);
- the seriousness of the fraud;
- the extent to which the offending was premeditated and/or planned;
- the extent to which the suspect has benefitted from criminal conduct;
- the loss to the Council;
- whether the suspect has previous criminal convictions and/or out-of-court disposals;
- the age and health of the suspect;
- aggravating / mitigating factors;
- admittance of the offence at interview.

- 1.10 The [Code for Crown Prosecutors](#) gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.
- 1.11 All cases must meet the full code test before an Investigator can recommend a prosecution. The full code test has two stages, being the evidential test followed by the public interest test.
- 1.12 In order to pass the evidential test, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. 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 to a criminal sanction, no matter how serious or sensitive it may be.
- 1.13 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. Consideration will be given to:
- how serious is the offence committed;
 - what is the level of culpability of the suspect;
 - what are the circumstances of and the harm caused to the victim;
 - what was the suspect's age and maturity at the time of the offence;
 - what is the impact on the community;
 - is prosecution a proportionate response;
 - do sources of information require protecting.
- 1.14 The decision to prosecute is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care. It is recognised that prosecuting an offender may send a strong message, reinforcing the Council's stance in respect of protecting the public purse, however, this must be weighed against the burden on the court system and cost to the Council bringing less serious cases before the court.
- 1.15 A strict requirement to repay monies fraudulently obtained is in itself another major deterrent to fraud and will not influence the decision to sanction.

6. Responsibilities

- 1.16 Legal Services will normally undertake the role of prosecutor / administer out of court disposals, however, there may be occasions such as collaborating with other external partners when the Crown Prosecution Service or other Local Authority Solicitors fulfil the role.
- 1.17 The Investigating officer will bring to the attention of the Group Auditor (Investigations) all cases that may attract adverse publicity or that require alternative methods of disposal, so that senior management may be notified as appropriate.
- 1.18 Cases that fall within parameters as defined within this procedure will require the Investigating Officer to produce a sanction file in accordance with standard procedures.

- 1.19 The Group Auditor (Investigations) will review the case and consider the appropriateness of a sanction in accordance with this procedure, prior to the referral of the case to Governance and Legal Services.
- 1.20 Governance and Legal Services will review each sanction file received from the Internal Audit Corporate Investigation Team to ensure that there are sufficient grounds to instigate proceedings, taking into account the evidential and public interest test. The delegation to prosecute rests with Governance and Legal Services.

7. Review

- 1.21 This procedure will be reviewed every two years, unless legislation or further developments require it to be reviewed before this date. This will ensure the procedure meets its objectives and takes account of good practice developments.
- 1.22 Reviews will be overseen by the Audit Manager who shall have authority, in consultation with the Corporate Director Resources and Portfolio Cabinet Member, to make any minor amendments to ensure the procedure remains effective. Material and strategic updates to be approved by Cabinet after consideration by the Governance and Audit Committee.