

# The City of Cardiff Council Prosecution Policy Internal Audit, Investigation Team



## 1. Introduction

- 1.1 The City of Cardiff Council is committed to protecting the public purse through its actions to prevent and detect fraud, as outlined in the [Fraud, Bribery and Corruption Policy](#) (1.CM.120).
- 1.2 The decision to prosecute an individual is a serious step. This Policy is designed to ensure that all officers involved in any such decisions understand and appreciate the principles that will be taken into account.
- 1.3 Frauds committed against or from within the Council will be reported to the Internal Audit, Investigation Team, based within Finance, Resources. Advice, guidance, support and liaison with the Police will be provided as appropriate.
- 1.4 Internal Audit Investigators have been trained to Professionalism in Security (PINS) standards and investigations are undertaken to criminal standard, utilising best practice.

## 2. General Principles

- 2.1 Each case must be considered on its own merits. When deciding whether to commence a prosecution, officers must be fair, independent and objective. They shall not be affected by improper or undue pressure from any source.
- 2.2 Investigations will be conducted in accordance with the Police and Criminal Evidence Act 1984 and its Codes of Practice, and all other relevant legislative and common-law rules.
- 2.3 In accordance with the Council's Fraud Publicity Policy, successful sanctions brought about by the Internal Audit, Investigation Team will be reported to the Communication and Media Group to enhance the awareness of the work of the team, to encourage fraud referrals and to maximise the deterrent effect.

- 2.4 In recognition of the Council's strategic aims and its status as a responsible steward of public funds, this policy 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.

## 3. Scope and Definition

- 2.1 This policy applies to criminal investigations undertaken by the Internal Audit, Investigation Team and for example, may relate to Blue Badge, Council Tax, Housing and Procurement investigations.
- 2.2 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.

Fraudsters pick YOUR pocket every day



## 4. Sanctions Available

4.1 There are 4 sanctions available:

- **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 warning given to adults who admit they are guilty of an offence. It is not a form of sentence, nor is it a criminal conviction, however, it will be recorded and may be considered in court if the recipient reoffends.
- **Unlawful profit order** (Prevention of Social Housing Fraud Act 2013) – the offender is required to pay the landlord an amount representing profit made.
- **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

5.1 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 duration of the fraud;
- the seriousness and extent of the fraud;
- aggravating factors;
- age / health of the offender;
- level of premeditation / deception / dishonesty;
- the admittance of the offence at interview;
- if the offender has a history of fraud/theft.

## Prosecution

5.2 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order.

5.3 The case will be prepared for proceedings if all the following criteria are met:

- the person has committed an offence which has a realistic prospect of conviction;
- the evidence is reliable, credible and admissible;
- where a prosecution is in the public interest.

5.4 It will be the intention of the Investigation Team to apply for full costs at Court Hearings.

## Simple Caution

5.5 A simple caution is an official warning given to adults who admit they are guilty of first-time minor offences. It is intended to act as a deterrent to stop reoffending, however, it may only be issued if:

- the offender is over eighteen years of age;
- there is evidence of an offender’s guilt;
- the offender admits to the offence;
- the offender consents to the caution.

5.6 If the offender fails to attend an interview under caution or refuses to accept the offer of a caution, then the file will be considered for prosecution. Simple cautions will be reported to the Police and may be recorded on their systems.

## Unlawful profit order

5.7 An unlawful profit order is an order requiring the tenant / offender against whom it is made, to pay the landlord an amount representing the profit made by the tenant / offender as a result of the conduct (constituting the offence). Action may be brought through criminal or civil proceedings.

## **Overpayment Recovery and Civil Court Action**

- 5.8 A strict requirement to repay monies fraudulently obtained is in itself another major deterrent to fraud, and will not influence the decision to sanction. Civil recovery proceedings may be instigated if the overpayment is not repaid.

## **6. Responsibilities in Respect of Sanctions**

- 6.1 The Investigating officer will produce a sanction file in accordance with standard procedures and will ensure that mitigating and aggravating factors are brought to the attention of the Group Auditor (Investigations) and / or Governance and Legal Services.
- 6.2 The Group Auditor (Investigations) will review the case and consider the appropriateness of a sanction in accordance with this policy, prior to the referral of the case to Governance and Legal Services.
- 6.3 Ordinarily sanctions will be administered by Governance and Legal Services, however, circumstances may arise where the sanction file is passed to the Police, Crown Prosecution Service or other Local Authority as appropriate.
- 6.4 Governance and Legal Services will review each sanction file received from the Internal Audit 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. Reporting**

- 7.1 The Group Auditor (Investigations) will collate statistical information and report successful sanctions to the Audit Committee.
- 7.2 The Group Auditor (Investigations) will report successful sanctions to the relevant Directorate and the referrer of the original allegation, if applicable.

## **8. Review**

- 8.1 This policy will be reviewed every two years, unless legislation or further developments require it to be reviewed before this date. This will ensure the policy meets its objectives and takes account of good practice developments.