



PROSECUTION POLICY

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Revised: September 2010



LONDON BOROUGH OF RICHMOND

PROSECUTION POLICY

(Revised September 2010)

1. Introduction and Statement of Policy

- 1.1 The Council condemns any breach and abuse of its financial systems and procedures and is committed to deterring all such intentional breaches and abuses.
- 1.2 The Council believes that having a clear policy on prosecution, which is applied consistently, acts as a strong deterrent. The Council aims to apply this policy in a way which is transparent, accountable, proportionate and consistent.
- 1.3 The Council will not tolerate acts of fraud and corruption perpetrated against the Council and, in all instances where a prima facie case of fraud or corruption is established, the case will be progressed from the outset with the intention that offenders will be prosecuted.
- 1.4 However, it is acknowledged that in some cases, mitigating factors or economic considerations may have a bearing, and consequently a decision may subsequently be made to seek an alternative form of sanction.
- 1.5 The policy covers general fraud and corruption cases as well as specific rules for dealing with benefit fraud cases. Benefit fraud is covered in section 7.
- 1.6 Where staff (including in this policy permanent, temporary or agency staff) or Members are implicated and an investigation is undertaken, it will be normal process to apply disciplinary or other appropriate sanctions and criminal sanctions simultaneously.
[We don't normally apply the disciplinary process to agency staff, only employees. With agency staff the normal sanction is ending the arrangement with the agency.]
- 1.7 The Council will, if satisfied that it has suitable grounds for doing so, and bearing in mind the relevant legislative provisions, seek to recover from any person who has abused its financial systems and procedures, such sum(s) or goods as it considers appropriate in addition to costs and compensation.

- 1.8 Subject to advice from the Police, CPS or Counsel, the Council may also seek redress under the provisions of the Proceeds of Crime Act 2002.

2. Prosecution by Other Council Departments

- 2.1 Prosecutions are undertaken for a number of reasons by Departments outside of the Fraud Functions (e.g. Trading Standards, Social Services). They have their own written policies and thus do not fall within the scope of this document.
- 2.2 The Corporate Anti-Fraud team responsible for investigating Benefit Fraud have established written policies to take account of specific powers granted to them under other legislation. As such, they have a wider range of sanctions available to them and administered by them. A summary of the additional means of disposal of a matter are covered in Section 7 to this policy and within the [Anti Fraud and Corruption Strategy](#).
- 2.3 Consequently, this Section will concern itself with the prosecution of offences often loosely described as “internal fraud”, but which in fact covers fraud by staff, Members, contractors, or members of the public attempting to defraud the Council directly, i.e. all those investigations that fall under the remit of the Internal Audit Investigations.

3. Prosecution

- 3.1 The Council will take steps to investigate any suspected breaches or abuses of its financial systems and procedures. If satisfied, prima facie, that a crime has been committed it will, in normal circumstances, refer such matters to the Police for further investigation and prosecution, in accordance with advice from the Police themselves and, where appropriate, the Council’s Head of Legal and Electoral Services.
- 3.2 It is acknowledged that if a case is referred to the Police, the expectation from the Police is that the Council, i.e. the Internal Audit Team, will be responsible for continuing, coordinating and managing the investigation, and for the preparation of case files to Prosecution Standard.
- 3.3 In all investigations by the Council or the Police into such irregularities, the Council requires there to be full co-operation and assistance from all Departments, Directors, staff and Members in order to demonstrate and preserve suitable transparency, integrity and accountability for the public funds it administers.
- 3.4 Where there is evidence that a criminal act has taken place, and prosecution is deemed to be appropriate, any necessary Police liaison will be undertaken by the Head of Internal Audit, although this function may be delegated to the investigator appointed by the Internal Audit Team.
- 3.5 The Council will always consider prosecution as an appropriate course of action in cases where the offence is serious, committed by a persistent offender, or involves a Council employee or representative.

- 3.6 The Council will prosecute to fulfil a responsibility to put offenders before the court, to protect public funds, to act as a deterrent to others and to help prevent fraud in the London Borough of Richmond upon Thames. The Council will also seek to publicise each case using the professional services within the Council.
- 3.7 In deciding whether to prosecute, the Council will take the following into account:
- The quality of the available evidence
 - Is there sufficient evidence for a realistic prospect of a conviction?
 - The degree of criminality
 - How was the fraud perpetrated?
 - Was it opportunist? If not, how much planning went into creating and continuing the fraud?
 - The duration of the fraud
 - How long did it continue for?
 - The loss to Public funds
 - What is the size of the “overpayment” or other loss resulting from the fraud?
 - Has it been fully repaid?
 - Whether the perpetrator is a persistent offender.
 - Have they previously committed fraud, irrespective of whether they were prosecuted?
 - Whether the fraud involves a Council employee, contractor or representative.
 - Have they breached a position of trust?
 - Whether the type of offence is widespread in the area it was committed.
 - Is the offence part of a trend in a particular locality?
 - Whether there has been a voluntary disclosure.
 - Was the fraud admitted prior to investigation?
 - The offender’s mental or physical condition
 - Are they fit to stand trial?
 - Are there any social factors surrounding the case?
 - The age and any disability of the offender or a close relative, their family circumstances.
 - Are there any literacy, language or learning difficulties?
 - Whether it is the public interest to do so.
 - What is the deterrent value? (The Magistrates Association Sentencing guidelines will be used to ensure cases put before the courts will be treated seriously).
- 3.9 A decision to prosecute as a result of the outcome of any investigation will not be made without the authority of the Director of Finance and Corporate Services (with the exception of Benefit fraud cases – see section 7).
- 3.10 In practice, the agreement of the Director of the Department concerned will be sought, however it may be that as the s.151 officer, the Director of Finance and Corporate Services has ultimate authority in matters relating to the prosecution of offenders.
- 3.11 Each case deemed suitable for submission for prosecution will be subject to a full review by the Head of Internal Audit and the Director of Finance and Corporate Services and (as appropriate in each case) the Director of Department, Legal

Services, the Police or other relevant Authority (also see section 7 below for benefit fraud cases).

- 3.12 The initial decision as to whether a case is suitable for prosecution rests with the Head of Internal Audit. In such cases, the Head of Internal Audit will notify this fact at the earliest opportunity to the Director of Finance and Corporate Services.
- 3.13 The Director of Finance and Corporate Services will, at the earliest opportunity following notification of the suitability of a case for prosecution, seek agreement to prosecute from the Director of the Department concerned. Such agreement may be made by e-mail.
- 3.14 In the event of a major difference of opinion as to whether to prosecute (subject to the provisions of para. 3.11) it may become necessary to convene an exceptional Prosecution Panel consisting of at least three persons to include: the Director of Finance and Corporate Services (or delegated person); the Director of the Department affected by the fraud (or delegated person); and the Head of Internal Audit (or delegated person). Other Panel members may be drawn from Legal Services, the Monitoring Officer, the Chief Executive, Audit Management, or any other specialist as required.
- 3.15 The officer investigating the case may not form part of the exceptional Prosecution Panel (although may be called as a witness) and the Panel will base their decision on the content of the Fraud Report, for reasons of demonstrable impartiality on behalf of the investigating service.
- 3.16 The decision in respect of prosecution will be notified in writing (which may be by email) to the Head of Internal Audit and Officer investigating the Case who will place the notification on the case file and take the appropriate next action.
- 3.17 The Council will consider each case individually and give thought to both mitigating and aggravating factors.
- 3.18 Despite the intention to prosecute offenders, there are associated costs in bringing a case to court which can be substantial and must be borne by the Council and the Council Taxpayers. By adopting this policy the Council commits itself to give serious thought to the costs involved, before proceeding with any prosecutions.
- 3.19 The cost of prosecution (where not progressed through the Police and via them the CPS) will be borne by the Department concerned.
- 3.20 In normal circumstances, once the decision to prosecute has been made and approved, the prosecution process will proceed uninterrupted. However, it is acknowledged that occasionally external forces will have an adverse affect and it may be that the CPS chooses to discontinue action, or there may be some other reason why criminal prosecution cannot or should not continue.
- 3.21 In these circumstances, consideration will be given as to whether it is appropriate to suspend proceedings and if so whether to undertake civil proceedings as an alternative (with due consideration to the implicit costs).

4. Other Sanctions

- 4.1 Legislation allows Benefit investigations the option to offer alternative sanctions to prosecution, such as the offering of a formal caution or administrative penalty (See 7 below). The option of an administrative penalty is not an option available to the Council for other offences.
- 4.2 The Police may offer a formal caution as an alternative to prosecution in suitable cases where they have been involved. The decision to do so rests with them, although any such decision will be notified via the Head of Internal Audit or Officer investigating the Case.
- 4.3 In such cases, prosecution will not proceed (although a basic tenet for offering a caution is that it must be considered that a prosecution would succeed if pursued). There is nothing to prevent the Council pursuing a private prosecution in these cases (Note: the court is unlikely to look favourably upon it if a caution has already been offered and accepted).
- 4.4 The Council may still pursue a civil action for recovery where appropriate.

Parallel Sanctions

- 4.5 As stated previously, the circumstances of an offence that involves or implicates a member of staff may dictate that both a criminal investigation and a disciplinary investigation be conducted simultaneously (or in parallel).
- 4.6 The practicalities of conducting a simultaneous criminal investigation and disciplinary investigation are covered in detail in the [Fraud Investigation Manual](#). Suffice to say that the two investigations will be conducted independently (as far as practically possible.) .
- 4.7 Due to conflicts between the legislation covering the gathering of evidence under employment law and under the Police and Criminal Evidence Act 1984 (PACE) it is preferable that the investigations are conducted independently and separately (although this does not necessarily imply that the same department cannot handle both investigations nor that information gathered cannot be shared between the two investigations).
- 4.8 Although conducted separately, the Head of Internal Audit will liaise both with Human Resources and any officer tasked with conducting the disciplinary investigation.
- 4.9 A conflict can arise with regard to the questioning of suspects. This is covered in detail in the [Fraud Investigation Manual](#).
- 4.10 Criminal investigation and prosecution can take substantially longer to undertake and complete than disciplinary investigation, and consequently any disciplinary investigation (and potential sanction) should not be unnecessarily delayed pending the outcome of any criminal investigation. The fact of the criminal

investigation by itself should not form the grounds of the disciplinary investigation.

- 4.11 Sanctions relating to disciplinary investigations are covered in the Council's Officer Code of Conduct and Personnel Procedures, and can range in scope up to and including summary dismissal for proven Gross Misconduct.

5. Recovery and Redress

- 5.1 The Council will, wherever applicable and taking account of the relevant legislative provisions, seek to recover from anyone who has committed fraud against the Council, such sum(s) or goods as it considers appropriate in addition to costs and compensation
- 5.2 In the event of criminal matters, an application for compensation and costs will be made at the time of the submission of the prosecution case.
- 5.3 There are also remedies in civil litigation for seeking to recover losses in cases where compensation awarded by the court falls below that which has actually been lost by the Council.
- 5.4 Details of procedures concerning redress through civil litigation can be obtained from the Litigation Team in Legal Services, who will take the lead on any such case and process the application through the civil courts.

6. Proceeds of Crime

- 6.1 In addition to compensation and civil redress, criminal matters may also be suitable for an application under the Proceeds of Crime Act 2002 (POCA). The POCA introduces a regime for seizing assets that have been acquired through criminal conduct.
- 6.2 In cases where the prosecution is handled by the Police, they will normally advise on the suitability of the case for consideration under POCA and will deal with the administration of any application.
- 6.3 The POCA :
- unifies the confiscation regimes for offences
 - created an Asset Recovery Agency (ARA), which is now merged with the Serious Organised Crime Agency (SOCA).
 - seeks to target lifestyle criminals
 - replaces and strengthens the existing investigation procedures, providing the Crown Court with a series of new powers to freeze assets and obtain information and disclosure
 - creates new money laundering offences, replacing existing legislation.
- 6.4 The underpinning principle of POCA is to demonstrate that crime does not pay, and whereas in the past prosecution alone may have been an insufficient deterrent (due to a perceived laxness in sentencing) POCA will seek redress by confiscating not only what the criminal has had as a direct result of the crime (i.e. the loss to the Council) but also what can be demonstrated to have been

obtained as a benefit from the proceeds of the crime (as a basic example, if someone steals funds that allow them to put a deposit on a property, then the whole property becomes forfeit, not just the value of the funds stolen).

- 6.5 POCA is complex legislation and there are minimum financial limits and other criteria to consider in deciding whether POCA can be applied. Advice will therefore be obtained from the Police, CPS, Head of Legal and Electoral Services and/or Counsel when considering whether it is appropriate to seek redress under this legislation. The usual practice, where POCA applies, would be to seek to pay the Council the full amount of compensation out of any confiscation (the balance going to the Crown).

7 Benefit Investigations

- 7.1 There are a number of factors that will be taken into account when deciding on which course of action the Authority will take when dealing with benefit fraud cases. These factors are used as a guideline however the full circumstances of each individual case will be taken into account when making a decision. A decision matrix is completed to score each case (see Appendix A):

- 7.2 All sanction decisions must be agreed by the Fraud Manager however the following limits are also applied:

- For cases exceeding £5k, sanctions must be agreed by the Head of Internal Audit and Risk Management;
- For cases exceeding £10k, sanctions must be agreed by the Head of Internal Audit and Risk Management and the Director of Finance and Corporate Services.

- 7.3 The options for sanction are fourfold:

7.3.1 Option 1 – No further Action

If the decision is to take no action except for the recovery of the overpayment then the person should be notified in writing of the Authority's decision.

The person should also be notified that any future claims to benefit will be reduced to 26 weeks. (DWP, 2002)

7.3.2 Option 2 – Cautioning

If the decision is made to administer a formal caution then the following conditions must be adhered to:

- There must be evidence of the offender's guilt to give a realistic prospect of conviction;
- The offender must admit the offence
- The offender (or in the case of a juvenile, his parents or guardian) must understand the significance of a caution and give informed consent to being cautioned. (Home Office, 1994 page: 5)

It is recommended that the following protocols are observed when administering a caution:

- The caution should be issued in a formal office at the council
- The issuing officer should be principal officer or above
- The issuing officer should be dressed formally for the occasion
- The caution should be read and a letter explaining the seriousness of the caution and the effects on future benefit should be given to the offender
- The offender should be told that details of the offence could be used in any later court case where benefit fraud was involved

(Home Office, 1994 page:7)

The administration of the caution will be notified to the Professional Standards Unit (Department for Work and Pensions (DWP)) and the London Team Against Fraud.

If a caution is not accepted then the case will be referred for prosecution.

The person should also be notified that any future claims to benefit will be reduced to 26 weeks. (DWP, 2002)

7.3.3 **Option 3 – Administrative Penalty**

If the decision is made to offer an Administrative Penalty an offer will be made to that person to accept a penalty rather than be prosecuted. (Social Security Administration (Fraud) Act 1997)

The details of the penalty will be referred to the Professional Standards Unit (DWP) and the London Team Against Fraud in the prescribed manner.

If the penalty is not accepted the case will be referred for prosecution.

The person should also be notified that any future claims to benefit will be reduced to 26 weeks. (DWP 2002)

7.3.4 **Option 4 – Prosecution**

If the decision is made to prosecute, the case will be referred to the Authority's Legal Department who will review the evidence gathered and the suitability of the case.

The Authority will seek to recover full costs from the defendant.

The details of the penalty will be referred to the Professional Standards Unit (DWP) and the London Team Against Fraud in the prescribed manner (F9, F11 2002).

7.3.5 **Prosecuting Authorities**

Further considerations may also be made to the most appropriate body to prosecute cases. As a rule where a case involves a benefit agency fraud the case will be passed to them to prosecute e.g. Department for Work and Pensions (DWP).

A large-scale fraud may be offered to the Crown Prosecution Service via the Criminal Investigation Department, if it was felt that their skill and expertise might be best suited to the type of crime being investigated.

7.3.6 Recovery of Overpayment

The Authority has in place sound procedures for recovering overpaid benefit and fines. Therefore in most cases the Authority will not seek to complicate matters by obtaining a compensation order. (section 35 of the Powers of the Criminal Courts Act 1973)

If a person defaults on their repayments of an outstanding debt, restitution will be sought in the civil courts and where appropriate, under the Proceeds of Crime Act 2002 (POCA).

Appendix A

Benefit Fraud Decision Matrix

<i>Factors for prosecution</i>	<i>Plus points</i>		<i>Points</i>
Is the person a Councillor or Employee of the Council?			
Is there evidence of pre-meditation or systematic abuse?	Yes=3pts	No=0pts	
Was more than one person involved?	Yes=3pts	No=0pts	
How much is the overpayment?	1 point for each multiple of £500 (starting at 1 point for £0.00-500.00)		
Is the person the identifiable ring leader or the instigator of the of the offence (where more than one person is involved)	Yes=2pts	No=0pts	
Are there any previous convictions for or cautions which are relevant to the present offence?	2 Points for each relevant offence		
Unpaid overpayment or penalty?	Yes=1pt	No=0pts	
	Sub Total		

<i>Factors against prosecution</i>	<i>Minus points</i>	<i>Points</i>
The person is in social services care	4 points	
Is the person over 65?	1 point for each 5 years over 65	
Is the person under 18	1 point	
Voluntary disclosure	5 points	
Is the person a member of a household which includes children under 16?	1 point	
	Sub Total	

Total (Factors for prosecution less Factors against prosecution)	
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If the score is less than 2 then in most cases **no further action** will be taken (Option 1)

If 2,3 or 4 is scored in most cases a **caution** would be the usual course of action. (Although the other conditions must also be satisfied outlined in Option 2)

If 5 is scored an **administrative penalty** would usually be offered. (Option 3)

If the score is 6 or more;

- or the accused has been prosecuted for a similar offence or;
- in the opinion of the Fraud Manager, Head of Internal Audit and Risk Management and Legal Department a prosecution is in the public interest a **prosecution** would be the usual course of action. (Option 4)