



East Herts Council Fraud Sanctions Policy

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Leadership Team
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INTRODUCTION

East Herts Council takes its responsibility to protect public funds seriously and expects its business to be conducted to the highest ethical and legal standards. The council has a zero tolerance to fraud, theft and corruption. Where there is evidence of fraud, theft or corruption against the council, those responsible, whether internal or external to the council, will be held accountable for their actions using the full range of sanctions available. The use of sanctions is governed by this policy that sets out appropriate action to take.

This Policy forms part of the council's counter fraud framework (it includes matters of fraud, bribery, corruption, misconduct) and its objectives are:

1. To ensure sanctions are applied fairly and consistently;
2. To ensure sanctions are applied in an efficient and cost-effective way;
3. To set out the range of sanctions available;
4. To ensure the sanction decision making process is robust, transparent and fair
5. To make it clear that the council will not tolerate fraud.

The council will investigate allegations of fraud, theft, corruption or irregularity in line with its Fraud Response Plan. (See Anti-Fraud and Corruption Strategy, appendix 2.) Following an investigation, a range of factors will require consideration before deciding on appropriate sanction, including the individual circumstances of each case, the impact on the individual and the wider community, and the seriousness of the offence.

SANCTION OPTIONS

Where there is evidence of fraud, theft or corruption, the following options will be considered:

- 1) No further action;
- 2) Referral to professional bodies;
- 3) Disciplinary action;
- 4) Civil proceedings;
- 5) Criminal prosecution;
- 6) Sanctions as alternatives to prosecution.

The council will consider any of the above options and parallel sanctions may be pursued.

No further action

The council may consider, following an investigation, closing a case without taking any further action. This may occur where there is no evidence of fraud or misconduct, or where it is not in the public interest to take action.

Referral to professional bodies

Where there is adequate evidence that a person or entity has breached professional duties or responsibilities, the council will refer the matter to the relevant professional body.

Disciplinary Action

In the event that an allegation is made against a council employee, the Shared Anti-Fraud Service (SAFS) will consult with the council's Human Resources service and appropriate action will be taken following the [Disciplinary Policy](#). (Intranet link for staff only.)

The investigating officer may be a member of the Shared Internal Audit Service, SAFS Fraud Team, and / or another investigating officer appointed through the HR disciplinary process. Sanctions may include warnings or dismissal and alongside this, additional sanction options will be considered including referral to professional bodies, civil proceedings and criminal prosecutions.

If during the course of an investigation or disciplinary action, the employee suspected of fraud, theft or corruption chooses to resign, the council will continue to pursue referral to professional bodies, civil proceedings or criminal prosecution where appropriate.

In the event of an allegation against a Councillor in relation to fraud, theft or corruption against the council, this will be reported to the Monitoring Officer, who will agree the action to be taken with the Chief Executive. Depending on the circumstances of the case, criminal proceedings may also be considered.

Civil Proceedings

The council may take civil proceedings where appropriate. Regardless of whether or not any sanction action is taken, the council will seek, where appropriate, to recover any overpaid, misused or unfairly gained monies.

The following measures may be considered in the pursuit of financial recovery:

- Consultation with the council's Payroll and Pensions teams to redress financial loss caused by employees. The council will attempt to recover the loss from the capital value of the individual's accrued benefits in the Pension Scheme if they are a member, which are then reduced as advised by the actuary;
- Recovery of money through appropriate legal proceedings;
- Legal action such as freezing / restraint orders to preserve evidence and assets.

There will be overpayments which are not due to fraud, and the council will determine appropriate recovery in these cases.

Criminal Prosecution

Where the council considers it 'expedient for the promotion or protection of the interests of the inhabitants of their area', Section 222 of the Local Government Act 1972 empowers the council to prosecute or appear in legal proceedings and, in the case of civil proceedings, institute them in their own name.

Furthermore, Section 223 of the Local Government Act 1972 allows a 'Local Authority to authorise any member or its staff to prosecute or defend designated matters in magistrates' court'.

In the most serious of cases, the council will consider the prosecution of those offenders suspected to have committed fraud or theft. Where the council considers there is sufficient evidence (based on the Code for Crown Prosecutors) to indicate a criminal act has taken place, a decision will be made whether to undertake a criminal prosecution utilising the council's Legal Services (or contracted legal representatives) the police or another law enforcement partner (such as DWP or HMRC). This decision will be made by the Head of SAFS, the Head of Legal Services, the Chief Executive, Deputy Chief Executive or relevant Head of Service.

Before a decision is taken whether or not to prosecute, the council will be guided by the Code for Crown Prosecutors and will only initiate legal action if, following legal advice, it has satisfied the following two tests:

1) Evidential Test – the evidence must be:

- Clear, reliable and admissible in court; and
- Strong enough for a realistic chance of prosecution. i.e. to prove a case ‘beyond reasonable doubt’.

2) Public Interest Test – the prosecution is in the public interest, taking into account:

- Seriousness and / or monetary value of the offence;
- Cost and proportionality of the prosecution;
- Age and health of the suspect;
- Culpability of the suspect;
- Circumstances of and harm caused to the victim; and
- Impact on the community.

Where a case has been referred to the Police to investigate, the final decision as to whether or not to pursue the case will be taken by the Police and the Crown Prosecution Service.

The council will conduct the investigations in accordance with the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984. Criminal proceedings may be brought for a suspected offence under the following legislation:

- The Theft Act 1968 (as amended);
- The Fraud Act 2006;
- Local Government Finance Act 1992;
- Housing Act 1996;
- Prevention of Social Housing Fraud Act 2013;
- Forgery and Counterfeiting Act 1981;
- Computer Misuse Act 1990;
- Identity Documents Act 2010;
- The Bribery Act 2010;
- Road Traffic Regulation Act 1984;
- Any other relevant provision in law.

Any criminal proceedings can include an attempt to recover money under the Proceeds of Crime Act 2002 or Prevention of Social Housing Fraud Act 2013.

Sanction as Alternatives to Prosecution

The Local Government Finance Act 1992 allows the council to consider financial penalties as alternatives to prosecution and these should always be considered. However, in serious cases of fraud or where repeat offending occurs, the option to prosecute offenders will be kept under review.

Civil Penalties

Regulation 13. Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 and Schedule 3 Local Government Finance Act 1992 permit 'billing authorities' to impose financial penalties where a person fails to report a material fact affecting their council tax liability or where a person fails, without good reason, to correct an error.

The Head of the Shared Revenue & Benefits Service will make the decision about the imposition of any Civil Penalties.

All penalties will be recovered by adding the debt to a person's Council Tax liability for the current year and recovered only once that annual liability has been settled in full.

Administrative Penalties

Regulation 11 Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, provide for Administrative Penalties to be offered to persons as alternatives to prosecution. The legislation allows for Administrative Penalties amounting to 50% of the gross reduction can be offered. In all such cases of fraud the council will seek to recover the excess award as well any penalty.

The Head of the Shared Revenue & Benefits Service will make the decision about the offer of any Administrative Penalties on advice from the SAFS. The Head of SAFS will arrange for the administrative penalty to be offered to the person liable for it and any cooling off period required by legislation.

Parallel Sanctions

It is preferable for the appropriate sanctions to proceed simultaneously, but it is not necessary for anyone to await the result of another before concluding. However, due consideration must be given to all proceedings to ensure that one does not impact improperly upon another. The decision to run parallel sanctions will be determined on a case by case basis.

PARTNERSHIPS

Where appropriate, the council will work in partnership with other organisations such as the Police, other Local Authorities, Social Housing Providers, Department for Work and Pensions, Her Majesty's Revenue and Customs, UK Borders Agency and the Home Office, to bring joint proceedings or assist the other organisation to bring its own proceedings.

RECORDING DECISIONS

For an effective regime of sanctions to be successful accurate records of all convictions, penalties and cautions must be maintained. This will enable the correct decisions to be made taking full account of the defendant's background.

All sanctions will be recorded by both SAFS and the council, and copies of all documents used to consider and issue the sanction should be retained, in accordance with the relevant retention policies.

In the case of prosecution, all cases that result in successful convictions will be reported to the police for recording on the Police National Computer (PNC) central databases.

PUBLICITY

It is the council's intention to positively promote this Policy, as well as the outcome of any prosecutions, to deter others from fraudulent activity and reassure the public that the council acts against those committing fraudulent and or corrupt acts.

Consideration will be given to whether the outcome of any case should be reported to the community via various media channels. Publicity, where appropriate, will ensure the profile of counter fraud activity remains at a level which will contribute to ensuring the key objective of preventing fraud is met.

REVIEW

This Policy will be kept under regular review by the Section 151 and Monitoring Officers to ensure compliance with current legislation and best practice.