



DISTRICT COUNCIL
NORTH OXFORDSHIRE

**CHERWELL DISTRICT COUNCIL AND
SOUTH NORTHAMPTONSHIRE COUNCIL**

Appendix A

Corporate Fraud Prosecution and Sanction Policy

1. Introduction

- 1.0 The purpose of this policy is to ensure that Cherwell District Council (CDC) and South Northamptonshire Council (SNC) have in place guidelines to assist the decision making process when prosecution or sanction action may be appropriate following an investigation by the Corporate Fraud Team (CFT), The sanctions available are Prosecution, Administrative Penalty and Formal Caution. For all these actions the standard of evidence has to be the same.
- 1.01 This policy is not prescriptive. 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 CDC and SNC will approach every case.
- 1.02 This policy is incorporated within the CDC and SNC Corporate Enforcement Policy and has been prepared with consideration of the Regulators Code, the Principles of Good Regulation and on core principles found in the Crown Prosecution Service (CPS) 'The Code for Crown Prosecutors' Specifically:
- the Decision to Prosecute or Sanction;
 - the Evidential Test; and
 - the Public Interest.

<https://www.cps.gov.uk/publications/codeforcrownprosecutors/codetest.html>

2.0 The Decision to Prosecute

- 2.01 The decision to instigate prosecution proceedings in the name of CDC and SNC lies with the Corporate Fraud Team (CFT) in liaison with the Law and Governance Team,
- 2.02 This will be discussed in a regular preliminary sanction panel meeting held with CFT, in order to agree appropriate disposal for cases that pass the CPS criteria for prosecution. This should take place prior to prosecution papers being prepared in full.
- 2.03 The reviewing Officer must be fair, impartial, and objective *and* comply with the Equality Act 2010. They must not be involved in the investigation or affected by improper or undue pressure from any source.

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3.0 The Evidential Test

- 3.1 This is the first stage in the decision to prosecute or apply a sanction. The Evidential Test will be undertaken by a prosecuting lawyer within, or appointed by, CDC and SNC's Law and Governance Team, based on the evidence provided by a Corporate Fraud Investigation Officer (CFIO), in a preliminary sanction/prosecution file.
- 3.02 The Evidential Test is to be considered in all cases regardless of the method of sanction chosen. The Code of Crown Prosecutors, revised in January 2013, lays out how this test must be applied. Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each offence. They must also consider what the defence case may be, how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be
- 3.03 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the offence alleged. This is a separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied that it is sure of a defendant's guilt.
- 3.04 When deciding whether there is enough evidence to prosecute, the prosecutor must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. There will also be cases in which the evidence may not be as strong as it first appears. Prosecutors must ask themselves the following questions:

4.0 Can the evidence be used in court?

- 4.01 Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, is there enough other evidence for a realistic prospect of conviction?
- 4.02 Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?
- 4.03 What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?
- 4.04 If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?

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- 4.05 Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?
- 4.06 Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the investigating officers should be asked to seek out which may support or detract from the account of the witness?
- 4.07 Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

5.0 The Public Interest Test

- 5.01 The Public Interest Test is the second part of the test outlined in the Code of Crown Prosecutors guidelines, revised in January 2013. This will be considered in all cases regardless of the method of sanction chosen. The Code of Crown Prosecutors lays out the public interest factors which can increase the need to prosecute or may suggest an alternative course of action. The factors will vary from case to case. Not all the factors will apply to each case and there is no obligation to restrict consideration to the factors listed. In making a decision to prosecute all available information must be carefully considered. The Councils' officers will refer to the latest CPS guidance and best practice when considering the public interest test.
- 5.02 The preliminary sanction/ prosecution file produced by the CFIO for the prosecutor will identify the factors for and against prosecution as specified in the Code for Crown Prosecutors. A preliminary report setting out the case for potential prosecution. The CFIO has an explicit duty to provide the prosecutor with an accurate and honest assessment of the circumstances of the defendant and the case.
- 5.03 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution.
- 5.04 The prosecutor must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be appropriate.
- 5.05 The common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case,

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But the more serious the offence, the more likely it is that a prosecution will be needed in the public interest.

- 5.06 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The prosecutor must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

6.0 The Decision

- 6.01 If the case fails either the Evidential Test or the Public Interest Test then it will not proceed to prosecution, this would rule out consideration of any other form of sanction.

- 6.02 However, the case may still be categorised as 'on the balance of probabilities' being fraudulent and recorded as such by CFT. Furthermore, civil, recovery or disciplinary action may still be instigated.

- 6.03 If the case passes the Evidential and Public Interest tests the following options are available:-

- I. No Further Action be taken;
- II. Disciplinary Action – for internal cases;
- III. Civil Action – to recover money, interest or costs or property;
- IV. Sanction - Issue a Council Caution
- V. Sanction - Issue a penalty where legislation exists permitting CDC and SNC to sanction; or
- VI. Prosecute

- 6.04 In certain cases, the prosecutor may consider multiple actions. For example, in internal cases, disciplinary action, civil action and prosecution may be authorised.

7.0 Prosecution Process

- 7.01 Upon review of the preliminary sanction/ prosecution report, if it is considered that the evidence and public interest tests are satisfied and that prosecution is the appropriate form of sanction, the CFIO will compile a prosecution file. In addition to the prosecution file the CFIO will complete an investigation report.

- 7.02 In this report the CFIO will set out;

- the circumstances of the case;
- the evidence obtained;
- which offences may have been committed;
- how the evidence proves the elements of the offence; and
- set out why it is in the public interest to prosecute (NB the CFIO has an explicit duty to provide the CEO with an accurate and honest assessment of the circumstances of the defendant and the case).

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- 7.03 The CFIO will pass the prosecution file and investigation report to the prosecuting lawyer.
- 7.04 The prosecutor will review the full file and undertake the Evidential Test.
- 7.05 If the case fails the Evidential Test the case is returned to the CFIO and no further criminal action will be taken.
- 7.06 However, the case may be still be categorised as 'on the balance of probabilities' being fraudulent and recorded as such by CFT. Furthermore, civil, recovery or disciplinary action may still be instigated.
- 7.07 If the case passes the Evidential Test the prosecutor will undertake the Public Interest Test.
- 7.08 If the case fails the Public Interest Test the case is returned to the CFIO and no further criminal action will be taken.
- 7.9 However, the case may be still be categorised as 'on the balance of probabilities' being fraudulent and recorded as such by CFT. Furthermore, civil, recovery or disciplinary action may still be instigated.
- 7.10 If the case passes the Public Interest Test and a prosecution is still considered the most appropriate course of action, a prosecution will be instituted.
- 7.11 During the course of a prosecution the prosecutor is required to ensure that the evidential test and public interest remain satisfied. The prosecution will be stopped if information comes to light which the prosecutor considers the evidence is no longer sufficient to provide for a realistic prospect of conviction, or that prosecution is no longer in the public interest.

8.0 Potential Offences

- 8.01 A person involved in perpetrating fraud may commit an offence which could relate to any of the following Acts (this is not an exhaustive list):
- Fraud Act 2006;
 - Local Council Tax Reduction Scheme (Fraud and Enforcement) Regulations 2013;
 - Prevention of Social Housing Fraud Act 2013;
 - Proceeds of Crime Act 2002;
 - Theft Act 1968 & 1978;
 - Forgery & Counterfeiting Act 1987;
 - Criminal Justice Act 1967;
 - Data Protection Act 1998;
 - Computer Misuse Act 1990.

9.0 Alternatives to Prosecution: Sanctions and Penalties

- 9.01 An administrative penalty or caution may be offered as an alternative to prosecution where:

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- Grounds exist for instituting proceedings
- Prosecution is possible but is not the preferred option
- The case is not so serious that prosecution should be considered
- In the case of the offer of an administrative penalty, the amount of the penalty would not cause severe financial hardship or place the family at risk
- In the case of the offer of a Caution, the offence has been admitted during an Interview under Caution, conducted in accordance with the provision of the Police and Criminal Evidence Act 1984. When the CFT have completed an investigation they will consider whether to instigate criminal proceedings or offer an alternative sanction. Each case will be considered on its own merits.

9.02 **Simple Caution:** For a simple caution to be considered the suspected offender must fully admit each alleged offence. The CFIO will then complete a report summarising the case together with the supporting evidence and a recommendation for a simple caution to be a means of disposal to an independent reviewing officer. The independent reviewing officer must satisfy themselves that the case meets the prosecution standard in consideration of the evidential and public interest tests.

9.03 **Financial Penalty:** Under section 14C Local Government Finance Act 2012, allows the authority to impose a £70 penalty to any person who;

- fails to notify the council within 21 days that an exemption on a dwelling should have ended
- fails to notify the council within 21 days that a discount (including single person discount) should have ended
- fails to notify the council of a change of address or fails to notify the council of a change in the liable party
- fails to provide information requested to identify liability
- fails to provide information requested after a liability order has been obtained

The offender will be notified of the offence but not necessarily interviewed. This sanction carries more of a deterrent against re-offending than a simple caution by ensuring that the person is financially penalised for the offence and also offers the Council some recompense for the costs of the investigations. The offender may be liable for a charge of £70 which could increase to £280 if there is a continual failure to provide the correct information

9.04 **Council Tax Reduction Scheme Sanctions:** The Council Tax Reduction Schemes (Detection of Fraud and Enforcement)(England) Regulation 2013 make provision for powers to require information, creates offences and provides powers to impose penalties in connection with Council Tax Reduction schemes. A penalty of £70 may be imposed by the Council if someone negligently makes an incorrect statement in connection with an application for a reduction under the scheme, or where a person fails to notify a change of circumstances promptly and at least within one calendar month.

There are provisions under this scheme to offer sanctions similar to those under the Social Security Administration Act 1992. Corporate Fraud Investigators will consider prosecution in

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appropriate cases or as an alternative will offer a caution or financial penalty of 50% of the excess award. This will be 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.

9.05 Whenever, a sanction is issued where there is evidence of fraud the case should be recorded by the CFT as fraud.

10 Exceptions

10.01 It is the Council's policy to consider the exclusion of people with mitigating circumstances from the imposition of penalties. Each case will be considered on its own merits by the Corporate Fraud Team. Examples of mitigating circumstances may include:

- a significant degree of physical or mental infirmity, such as a terminal illness, severe clinical depression, hearing/sight/speech problems, learning difficulties or frailty due to old age.
- Making a voluntary disclosure of the alleged offence before the Council had any suspicions regarding the validity of their entitlement to a Council Tax discount or exemption, Local Council Tax Support Reduction Scheme entitlement.
- That a matter may be dealt with more effectively without redress to a penalty, for example due to age or immaturity, although youth in itself is not a good enough reason not to instigate proceedings. In such a case, consideration should be given to issuing an advice letter in order to complete closure of the case.

11.0 Appeals

11.01 A customer has the right of appeal to the Valuation Tribunal for England against the decision by the Council to apply a penalty. An appeal must be made in writing directly to the Valuation Tribunal. www.gov.uk/government/organisations/valuation-office

12. Publicity

12.01 Deterrence is a key component in tackling fraud, corruption and error.

12.02 When the authority obtains a guilty outcome from prosecution action they have taken they will seek maximum publicity of the case. Thus sending a clear message that CDC and SNC will robustly protect taxpayers' money and valuable resources.

12.03 The Council will celebrate the successes of the CFT in protecting the public purse.