

London Borough of Barnet

Counter Fraud Framework Manual 2021

Prosecution and Sanction Policy Statement

1 Introduction

- 1.1 The purpose of this policy is to ensure the London Borough of Barnet has a set of guidelines in place that will assist in the decision-making process when appropriate sanction action necessary as a result of an investigation.
- 1.2 This policy does not intend to be prescriptive as a number of factors will need to be considered on a 'case-by-case' basis before appropriate sanction action can be decided upon.
- 1.3 This policy centres around the core principles found in the Crown Prosecution Service (CPS) guidelines for prosecuting criminal matters. Specifically, consideration will be given to the circumstances of each case, the seriousness of the offence and the person involved in the matter.
- 1.4 A procedure has also been developed to support this policy as part of an Investigation procedure manual which is followed by all officers responsible for investigating fraud based within the Corporate Antifraud Team (CAFT). The Investigation procedure manual is not available for general publication.
- 1.5 All overpayments or monetary loss that result from proven fraud, will be pursued rigorously and, where necessary, legal action will be taken to effect recovery.
- 1.6 In the event of a successful prosecution the decision to publicise the outcome will take into account the following criteria:
 - Interest of Barnet Council
 - Deterrent value to others
- 1.7 This policy will be continually reviewed and updated as a result of new case decisions, legislation and case law and should be considered in conjunction with the policies mentioned in Section 4 of this policy

2 Sanction/Prosecution Options

- 2.1 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
 - Road Traffic Regulations Act 1984
 - Local Council Tax Reduction Scheme (Fraud and Enforcement) Regulations 2013
 - Prevention of Social Housing Fraud Act 2013
 - Housing Act 1985
 - Proceeds of Crime Act 2002
 - Theft Act 1968 & 1978
 - Forgery & Counterfeiting Act 1987
 - Criminal Justice Act 1987
 - Data Protection Act 2018 Computer Misuse Act 1990
 - Identity Card Act 2006 & Identity Document Act 2010
 - Criminal Attempts Act 1981

- 2.2 The CAFT will investigate all types of fraud or criminal activity committed against the London Borough of Barnet and in relevant cases will take appropriate sanction action against the individuals responsible. The final decision as to what action will be taken will rest with the CAFT authority as set out in the Councils Constitution.
- 2.3 The following options will be considered where a prima facie case exists:
- Take no further action
 - Disciplinary Action – for internal cases
 - Civil Action – to recover money, interest or costs or property
 - Sanction - Issue a Simple Caution (where the law allows and is appropriate)
 - Sanction - Issue an Administrative Penalty (Council tax Reduction Scheme Fraud)
 - Prosecute (Local Authority or CPS), for the purpose of fines, imprisonment, confiscation orders and compensation
- 2.4 An Administrative penalty can only be issued where it has been proven.
- 2.5 A Simple caution (previously known as a police or formal caution) may be considered by the Local authority only where the offence has been proven and fully admitted by the suspect (as per the guidance set out by the Ministry of Justice)
- 2.6 In cases where prosecution is considered most appropriate, the London Borough of Barnet, may prosecute any of these offences.
- 2.7 Where CAFT decides a case should be prosecuted, there are a number of ways the matter can then be pursued:
- The case can be prosecuted by the London Borough of Barnet via the council's Joint Legal Service – HB Public Law
 - The case can be referred to the Police for subsequent prosecution action by the CPS
 - The Department for Work and Pensions (DWP) may prosecute in some cases if a joint investigation involves losses of both Housing/Council Tax Benefits (this is subject to joint working agreements)

3 Sanction Guidelines

- 3.1 Each case will be considered on the merits of the individual circumstances; however, guidelines have been developed to assist in the decision-making process. These guidelines relate to all cases of fraud including but not limited to, council tax related fraud, tenancy fraud, Concessionary travel Fraud and/or employee fraud for example.
- 3.2 Consideration when deciding on an appropriate course of action will be given to:
- The Public Interest Test (based on CPS guidelines)
 - Circumstances of the offence
 - Factors relating to the offender
 - Other relevant factors and mitigating circumstances
- 3.3 Public Interest Test
- Where the decision is made that a matter is not in the public interest to prosecute the following factors will be considered:
- The court is likely to impose a very small or nominal penalty.

- The loss or harm caused was minor and resulted in a single incident resulting from a misjudgement
- The offender is vulnerable, elderly or a juvenile
- The offender is suffering from significant physical or mental health problems
- The value of the loss
- The offender has not previously offended
- The act was calculated or premeditated
- There was no other persons involved

3.4 Circumstances of the offence

The following factors will be considered where prosecution is the most likely course of action:

- The deterrent value of a prosecution.
- The length of time the fraud has continued.
- Whether the offence was calculated and premeditated.
- Sufficient evidence leading to a reasonable prospect of conviction and there are no serious errors in the investigation.
- Evidence of collusion (with landlord, employer or family member etc)
- Administrative penalty or simple caution has been declined
- Offender holds a position of trust
- Previous history relating to fraud

If any of the following factors exist, it may be unlikely that prosecution will be pursued:

- Serious errors in investigation or assessment of loss
- Unacceptable delay in investigation
- Poor publicity may be attracted, or low deterrent factors exist
- Vulnerable person may be put at risk
- Evidence is insufficient to gain conviction
- Case is 'out of time' for prosecution under certain time limited legislation
- Voluntary disclosure of the offence by the offender before the fraud was uncovered.
- Evidence that the person has committed the offence under duress

3.5 Factors relating to the offender

Some factors relating to the offender may exist where the London Borough of Barnet may not wish to prosecute or impose another type of sanction. Examples of these factors are as follows:

- Poor health, either mental or physical, of the offender likely to be considerably and permanently worsened by prosecution
- Young, elderly or vulnerable persons
- Troubled Families
- Terminal illness
- Whether the offender has reasonable understanding of the offence committed.

3.6 Other factors

In all cases, the following other factors should also be considered:

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- Whether the penalty will be substantial or minimal.
- Attitude of the offender
- Character of the offender
- Attitude of the local community
- Prevalence of the offence
- Where it appears that severe hardship or suffering is a contributory factor.

4 Other relevant Barnet Policies

4.1 Counter Fraud Framework Manual and introduction document

- Counter fraud, Bribery Policy Statement
- Whistleblowing Policy Statement
- Regulation of Investigatory Powers (RIPA) Act 2000 Policy Statement and Procedure
- Staff Code of Conduct