

**North Somerset Council
Prosecution Policy Statement
December 2013**



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NORTH SOMERSET COUNCIL

1. Prosecution Policy Statement

North Somerset Council has an Anti-Fraud and Corruption Policy Statement which outlines its commitment to protecting public funds, its assets, and other resources from loss, fraud or misappropriation.

That policy states:

- North Somerset Council recognises the responsibility it has for dealing with millions of pounds of public money. This money must be used for delivering public services to the community of North Somerset;
- the Council will not accept fraud of any kind being attempted against it and will act to prevent and detect any person who attempts fraud;
- Any identified fraud against the Council, either external or by employees, will be taken very seriously and dealt with promptly. Action will be taken against the perpetrator in every case, and with the Police where criminal action is suspected.

The above principles still apply and are therefore incorporated into this **Prosecution Policy Statement**.

This Prosecution Policy Statement encompasses the action to be considered in respect of both external fraudsters (e.g. suppliers, contractors (and their staff) and service providers) and internal employees or elected members.

It is designed to deter others from committing offences against the Council whilst also recognising that it is not always in the public interest to refer cases for criminal proceedings.

The Council reserves the right to seek restitution of money and goods obtained as a result of theft. The s151 Officer should consider the stage at which it is appropriate to initiate such action.

This document sets out North Somerset Council's policy on the prosecution of persons who have committed criminal offences against the Council.

It takes into account fraud and irregularities in respect of;

Benefits & Reductions; Benefit claimants who have dishonestly obtained Housing Benefit and/or Council Tax Reductions from North Somerset Council to which they are not entitled;

and;

Non-Benefits; Addressing all other cases, including employees who have stolen from or otherwise defrauded the Council.



2. Key Risk Areas

General

The Anti-fraud and Corruption Policy Statement identified a number of Key Risk areas where it is considered that fraud was most likely to be perpetrated. In addition to this list is the area of Housing Benefit and Council Tax Reduction claims.

The Council is aware of the necessity to protect the public purse from abuse and also recognises the responsibility it has for dealing with millions of pounds of public money and is aware of the high risk within the areas identified, including the benefits and reductions systems, for fraud to be perpetrated or for an error or irregularity to exist.

In addition, Section 222 of the Local Government Act 1972 provides that a local authority may prosecute, defend or appear in any legal proceeding where it considers it is expedient for the promotion of the inhabitants of the area.

In order to protect the Council benefit/reduction and non benefit/reduction systems from abuse, it has a Corporate Fraud Team situated within the Internal Audit Service of the Corporate Services Directorate, who are dedicated to identifying, investigating and preventing cases of suspected fraud.

Housing Benefit and Council Tax Reduction Cases

The deliberate abuse of the benefit system and council tax reduction scheme by an individual or individuals, to obtain money to which they have no legal entitlement is likely to amount to a criminal offence.

The Council gives serious consideration to every fraudulent claim that is identified and where there is enough evidence to sustain a prosecution it will be referred to the Council's s151 Officer.

The s151 Officer and the Council's Legal Services department will review each case individually and make a recommendation as to whether there is sufficient evidence to achieve a realistic prospect of conviction and whether it is in the public interest to take the case to prosecution.

Each case is reviewed entirely on its merits and an alternative to prosecution, by way of an Administrative Penalties will be considered.

The Code of Practice for Crown Prosecutors is considered at both levels of review, (Audit and Legal) which is generally applicable to local authority prosecutions to ensure fairness and consistency.

Criminal proceedings and other related codes of practice are applicable to persons other than police officers who are charged with the duty of investigating offences or charging offenders and should, in the discharge of that duty, have regard to any relevant provisions of a code of practice.



3. Relevant Legislation

In general, most Housing Benefit prosecutions will be carried out under:

- ↪ The Social Security Administration Act 1992; *
Section 111 and 111(A);
Section 112 and 112(1A);
- ↪ The Social Security Fraud Act 2001; **
- ↪ The Theft Act 1968;
- ↪ The Forgery and Counterfeiting Acts 1981;
- ↪ The Fraud Act 2006.

* **Section 111A and 112** encompass a number of offences which relate to Housing Benefit fraud.

** The Social Security Fraud Act 2001 amended these section(s) to create additional offences.

Any person who may influence the decision of a claimant not to notify a change of circumstance can now also be guilty of an offence.

Section 112 of the Social Security Administration Act requires the proof of knowledge of provision of false information; usually by falsification of details on the Application Forms, it does not involve dishonesty.

To summarise the legislation;

- makes a false statement or misrepresentation;
- produces or furnishes, knowingly or allowing any document or information that is false in a material particular;
- fails to give prompt notification of a change;
- causes or allows another person to fail to give prompt notification of a change;
- the recipient on behalf of the claimant fails to give prompt notification of a change;
- the person other than the recipient of a claimant causes or allows the recipient to fail to give prompt notification of a change.

The Theft Act provides a number of potential offences e.g. obtaining money transfers by deception, false accounting, securing the remission of a liability by deception.

The Fraud Act 2006 established a general offence of fraud with a maximum penalty of 10 years imprisonment, as consisting of;

- Fraud by false representation;
- Fraud by failing to disclose information;
- Fraud by abuse of position.



Council Tax Reduction Fraud prosecutions will be carried out under:

- ↪ Statutory Instrument SI 501/2013 which provides new regulations and powers in relation to the investigation by Local Authorities of fraud in claims made under the new Local Council Tax Reduction Schemes (LCTR schemes) from April 2013.

Offences created by this legislation in relation to claims under a LCTR scheme include;

- to intentionally delay or obstruct an authorised officer in the exercise of any such powers to require the provision of information.
- for a person to refuse or fail (without reasonable excuse) to comply with a requirement to enter into arrangements for access to electronic records.
- for a person to make a statement or representation which he or she knows to be false for the purpose of obtaining a reduction under a council tax reduction
- for a person to provide or knowingly cause or allow to be provided a document or information which that person knows to be false
- for a person to fail to give a notice of a relevant change in circumstances which they know will affect their entitlement to a reduction, as required by an authority's scheme by virtue of the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012. It also provides that it is an offence to cause or allow a person to fail to give this notification.
- Maximum sentences for offences are a fine at level 4 or 3 months imprisonment

4. Guidelines

This Policy forms a guideline on what course of action the Council will normally consider in a particular situation rather than define an absolute course of action.

The Policy is flexible in order to allow the relevant circumstances of each specific case to be considered and judged on its own individual merits.

The initial criteria to be applied in determining whether the Council should prosecute will, in general, be based on the level of overpayment, for benefit cases, giving due consideration to the nature of the offence; and in the cases of non-benefit cases a similar level of financial loss, giving due consideration to the test of public interest.

Fraud may be widened to embrace all fraud against the Council, including procurement, corruption and may be either financial in value or can be services, resources, time as well as monetary.

The s151 Officer will use his/her discretion when deciding what action to take before making a formal recommendation to the Chief Executive.



5. Recovery of Overpayments

Housing Benefit Cases

The rules concerning the administration of benefit overpayments are contained in the Housing Benefit Regulations and other subsequent legislation. The Council is required to implement these provisions and has a duty to recover overpayments from tenants and landlords.

This Council will always attempt to recover any overpayment made as a result of any failure to provide complete and accurate information regardless of whether a decision to prosecute has been made.

Recovery will generally be sought from the recipient of the benefit whether it is the landlord or the claimant. Where a prosecution is brought the Council will consider confiscation action if appropriate.

Proceeds of Crime Act (POCA) should also be considered where appropriate.

It would not be the Council's intention to place a claimant in financial hardship, but failure to agree a reasonable arrangement for repayment may result in civil recovery action through the courts.

Council Tax Reduction Cases

This Council will always attempt to recover any overpayment made as a result of any failure to provide complete and accurate information regardless of whether a decision to prosecute has been made.

Recovery will be sought from the recipient of the reduction. Where a prosecution is brought the Council will consider confiscation action if appropriate.

Proceeds of Crime Act (POCA) should also be considered where appropriate.

It would not be the Council's intention to place a claimant in financial hardship, but failure to agree a reasonable arrangement for repayment may result in civil recovery action through the courts.

Non Benefit/Reduction Cases

This Council reserves the right to seek restitution of any monies or goods taken from it and will always attempt to recover any losses regardless of whether a decision to prosecute has been made.

The Audit & Corporate Governance Manager will agree any arrangement with the s151 Officer.

The Audit & Corporate Governance Manager should consider the stage at which it is appropriate to initiate such action.



Where an insurance claim can be made, the Audit & Corporate Governance Manager must inform the Council's Technical Insurance Officer who will, instigate action to recover as soon as possible without prejudicing the investigation.

The Proceeds of Crime Act (POCA) should be considered where appropriate.

6. Procedures

Each investigating officer will have been trained to ensure compliance with the relevant legislation.

In order for a prosecution or caution to be considered, there must be sufficient evidence to provide a realistic prospect of conviction. Failure to comply with the relevant legislation may jeopardise a prosecution.

Investigating Officers must abide by the terms of the Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedure and Investigations Act 1996 and associated codes of practice, where these are relevant to an investigation by a Local Authority.

They should also be aware of the Human Rights Act 1998, the Regulation of Investigation Powers Act 2000 (RIPA) which applies to surveillance of individuals as part of an operation and the codes of practice which relate to the Social Security Fraud Act.

The Democratic and Legal Services Department will be available to advise on issues arising where necessary.

Particular care must be taken to:

- Ensure that the caution is properly administered during conversations with the suspect and during interviews;
- Significant statements are put to the suspect at the time that they are made, or as soon as practicable thereafter, and (s) he should be asked to sign these;
- All information must be collected fairly;
- All information must be recorded in the appropriate manner and retained;
- Clear reports must be compiled at every stage of the investigation;
- If the suspect has literacy problems including learning difficulties, the investigating officer should ensure that, where possible, the suspect is accompanied by a solicitor, social worker, work colleague or companion at the time the sanction is explained or signed.
- If there is doubt about the person's ability to communicate because of language, hearing, or other difficulties the investigating officer must take reasonable steps to make relevant provision of an interpreter or adviser.



7. Housing and Council Tax Reduction Cases - Summary of Appropriate Sanctions

There are essentially two sanctions available;

- Administrative Penalty and;
- Prosecution.

Depending on the individual facts of the case and subsequent criteria outlined below, a determination as to the appropriate sanction will be made.

The Council will ensure that all persons subject to investigation regarding suspected fraud against the Council will be treated fairly and courteously at all times.

The amount of overpayment is indicative only and is one factor that is taken into account when deciding on the appropriate course of action.

8. Housing and Council Tax Reduction Cases - Administrative Penalties

Administrative Penalties were introduced under the Social Security Administration (Fraud) Act 1997 and can also be applied under Statutory Instrument SI 501/2013.

An Administrative Penalty is the offer to a person to pay a financial penalty amounting to either 30% or 50% of the benefit/reduction overpayment as an alternative to consideration for Prosecution, dependant on the period over which the offence took place.

Any case where prosecution is a possibility but not the preferred option at the outset may be suitable for the offer of an Administrative Penalty.

There is no requirement for the person to admit to the offence before an Administrative Penalty can be offered.

However, an administrative penalty can only be offered where the Local Authority is satisfied that there are grounds for instituting criminal proceedings. This means that an investigation must have been carried out as if it was the intention to prosecute.

It would be serious misuse of this power to offer an Administrative Penalty in a case where a prosecution is unlikely to succeed in Court.

Criteria for offering an Administrative Penalty:

- The offer of an Administrative Penalty may only occur during a special interview. Penalties can only be offered if the case could be brought for prosecution, although admission of guilt is not required.
- The Offender must be told at the interview that:
 - It is not an interview under caution;
 - Acceptance of the penalty is not a declaration of guilt;
 - Recovery of the penalty will occur in the same way as the recovery of the overpayment. However, the Administrative Penalty will be recovered prior to the recovery of the overpayment;



- They have 28 days in which to change their mind should they voluntarily accept the Administrative Penalty, there is no subsequent right of appeal;
- Failure to repay the debt or default on instalments will result in them facing civil proceedings for recovery.

9. When to Prosecute

Housing and Council Tax Reduction Cases

The decision whether or not to refer matters for prosecution, whether it is through North Somerset Council's Democratic and Legal Services Department, the DWP Solicitors or the Police rests with the s151 Officer.

A review of the file will take place once the file is received by the Democratic and Legal Services Department and they will have the opportunity to refer back to the s151 Officer to discuss the merits of any particular case in respect of which they have concerns.

In certain cases, a prosecution will always be the appropriate option from the outset.

However, under other circumstances where a person has been offered an Administrative Penalty and has declined the offer, a prosecution must be considered unless exceptional circumstances apply, e.g. the deterioration of the defendant's health.

The guideline is that where the fraudulent claim is in excess of £2,000 and the duration of the fraudulent activity is in excess of three months, a prosecution is appropriate.

However, this criteria is subject to review in certain circumstances.

Factors that mitigate in favour of a prosecution include:

- Where several misrepresentations have occurred;
- Where several different benefits are involved;
- Where the Defendant was a ring leader or organiser of an offence;
- Where the offence was premeditated;
- Where the fraud has been perpetrated over a long period of time;
- Deterrence value of publicity where the offence is widespread in the area.

Non Benefit/Reduction Cases

Where the Council has established that a potential theft, fraud or corruption has occurred, it will act accordingly against the perpetrators.

Where it has been determined that a criminal offence may have been committed against the Council by a third party or by one of its employees, the Audit and Corporate Governance Manager will meet with the s151 Officer to determine whether to take the matter further.

The guideline is similar to that of a benefit case, whereby the value of the loss is in excess of £2,000. However, this does not preclude cases being referred for prosecution that are of a lesser value but are of public interest.



This also does not preclude informal approaches to the police by the Audit & Corporate Governance Manager.

Where appropriate, the Council will take disciplinary action against an employee. Theft, fraud and corruption constitute gross misconduct, and therefore the Council will pursue a dismissal in all cases.

If an individual has committed a criminal offence, and where appropriate, the Council will pursue prosecution.

10. Who Takes the Prosecution?

Housing Benefit Cases

The Council has the necessary powers in respect of Housing Benefit to carry out criminal proceedings and will usually do so.

However, where appropriate the Council may use either the DWP Solicitors or the Crown Prosecution Service.

In cases where other Benefit fraud or crime has been committed the Council will liaise with other agencies at the earliest opportunity to consider joint investigations or prosecutions.

Council Tax Reduction Cases

The Council has the necessary powers in respect of Council Tax Reductions to carry out criminal proceedings and will usually do so.

However, where appropriate the Council may use the Crown Prosecution Service.

Non Benefit Cases

Where a criminal offence has been committed against the Council (other than Housing Benefit and Council Tax Reduction cases) the matter will be referred to the Police.

The Council also has the necessary powers to carry out criminal proceedings and will do so.

Alternatively cases will be referred for prosecution to the Police.

11. Who to Contact About This Statement

For any further information or advice please contact Peter Cann (Audit and Corporate Governance Manager) or Tammy Weeks (Senior Auditor Fraud) based at Castlewood Offices, Tickenham Road, Clevedon and can be contacted on 01934 634750 or 01934 634762.



12. Review of the Prosecution Policy Statement

The Prosecution Policy Statement will be subject to annual review to ensure that it remains current and will be presented for approval by the Executive Member.



Appendix A –Public Interest Tests

The Public Interest Test

The public interest test is discretionary, based on the principle that not everyone should be automatically subject to prosecution and that the following factors should be taken into account when making a decision:

- The value of any money, property or advantage obtained as a result of the offence;
- The physical and mental condition of the alleged offender;
- Failures of the administration process which may have exacerbated the offence;
- Concerns over the manner in which the investigation had been carried out;
- Aggravating factors such as the involvement of third parties or the forgery of documents;
- Voluntary disclosure;
- Local significance;
- The individual was in a position of trust;
- Previous sanctions/prosecutions;
- The offender has declined the offer of an alternative sanction in accordance with the policy;
- Abuse of process or unnecessary delay;
- Mitigating factors put forward by or on behalf of the individual.

This list is not exhaustive.

The Prosecution Policy is intended to take into account all the above in a clear, understandable and unambiguous manner.