

Report of the Finance Director to the meeting of the Governance & Audit Committee to be held on 27th November 2015

AB

Subject:

A revised Sanctions policy, in respect of those who commit offences of fraud, corruption, theft or other financial irregularity, against the Council.

Summary statement:

The purpose of this report is to seek approval on a revised Council policy in respect of applying sanctions and/or pursuing criminal action, through the Courts, to those who commit offences of fraud, corruption, theft or other financial irregularity against the Council.

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Overview & Scrutiny Area:
Corporate

1. SUMMARY

The purpose of this report is to seek approval on a revised Council policy in respect of applying sanctions and/or pursuing criminal action, through the Courts, to those who commit offences of fraud, corruption, theft or other financial irregularity against the Council.

2. BACKGROUND

Following the introduction of a new Corporate Fraud Unit (CFU), in June 2012, bringing the investigation resources from Internal Audit and the Revenues and Benefits Service together to form a single team, a number of key policies and procedures were identified as requiring revision. One such policy was the Counter Fraud Policy and Strategy that was approved by this Committee on 28th June 2013. Another key policy was the one for applying sanctions, including pursuing criminal action, through the Courts, to those who commit offences of fraud, corruption, theft or other financial irregularity against the Council. This was highlighted to Committee on 28th June 2013 when the Committee resolved that the Director of Finance bring a draft combined sanctions policy to a future Committee for approval.

The Council has been applying sanctions and bringing prosecutions for offences of Housing Benefit (HB) and Council Tax Benefit (CTB) fraud since 1999 under a Committee approved policy (*Appendix B*). Over time offences such as Council Tax Single Person Discount (SPD) and Misuse of Disabled Persons Blue Badge Scheme were added to the policy as the remit of the Revenues and Benefits Investigation team expanded.

As the responsibility for the investigation, sanction and prosecution of Housing Benefit transferred to the Department for Work and Pensions (DWP) Single Fraud Investigation Service (SFIS) in April 2015, the policy now requires revision to both remove reference to Housing Benefit fraud and to account for the types of fraud that the single Corporate Fraud Unit are now investigating. The revised policy also needs to consider the criteria used to determine whether a prosecution or an alternative to prosecution sanction is appropriate.

3. OTHER CONSIDERATIONS

The objectives of the revised policy remain the same in that the policy seeks to ensure that sanctions are applied in a fair and consistent manner and that the sanction decision making process is stringent, robust and transparent.

The principles of the revised policy will apply equally to any fraud corruption, theft or other financial irregularity against the Council or against funds for which the Council has responsibility.

The full revised Sanctions Policy is shown in *Appendix A* and details of the revisions are summarised below:

The revised Council Sanctions policy retains the 3 levels of sanctions that can be applied to those who commit offences of fraud corruption, theft or other financial irregularity. This is the two “alternative to prosecution” sanction options, formal caution or financial penalty, and the third for more serious cases, criminal proceedings in a Court.

Where a Council employee has committed the offence then additional to one of the 3 sanctions options, disciplinary action may also be taken, however it should be noted that this revised Council Sanctions Policy document does not cover disciplinary matters relating to Council employees. Such disciplinary matters fall under the Council’s own disciplinary policy, “Fairness at Work”.

“Alternative to prosecution” sanction – Formal Caution

This is an administrative sanction, offered as an alternative to prosecution, to those who, following investigation, have admitted committing offences of fraud corruption, theft or other financial irregularity.

Once a formal caution has been accepted then the Council will not institute criminal proceedings for that offence, however, should the person commit other subsequent similar offences against the Council then a prosecution may be considered as the first option for that subsequent offence.

Where a formal caution is not accepted or the person fails to respond to invitations to be offered such a sanction then the Council will consider instituting criminal proceedings.

A summary of the criteria for considering whether a formal caution is appropriate is shown in Table A below and compares between current policy and the proposed revised policy.

Table A

	Current policy	Proposed revised policy
The loss or potential loss to the Council is.....	Less than £2,000 <ul style="list-style-type: none"> Covers offences of Housing Benefit and Council Tax Benefit only Does not apply to offences of wrongful use of a Disabled Persons badge 	Less than £5,000 <ul style="list-style-type: none"> Covers all offences of fraud, corruption or theft or other financial irregularity and Offences relating to Council Tax Reduction (CTR) Scheme Does not apply to offences of wrongful use of a Disabled Persons badge
The offence has been admitted at an interview under caution.	√	√ <ul style="list-style-type: none"> and reasonable mitigation has been offered and accepted – in offences of wrongful use of a Disabled Persons badge only

The offence has not been deliberate, planned or committed over a long period of time.	√	√
The person has not committed any similar offences against the Council...	<p>In the last 5 years.</p> <ul style="list-style-type: none"> Covers offences of Housing Benefit and Council Tax Benefit only <p>In the last 2 years</p> <ul style="list-style-type: none"> Applies to offences of wrongful use of a Disabled Persons badge 	<p>In the last 5 years.</p> <ul style="list-style-type: none"> Covers all offences of fraud, corruption or theft or other financial irregularity and Offences relating to Council Tax Reduction (CTR) Scheme and offences of wrongful use of a Disabled Persons badge
The “Evidential Test” is satisfied (i.e. The Council considers there is sufficient evidence to provide a realistic prospect of conviction should a formal caution be refused).	√	√

“Alternative to prosecution” sanction – Administrative Penalty

This is a financial penalty, offered as an alternative to prosecution, to those where, following investigation, the Council believes it has sufficient evidence to prosecute.

No admission of guilt is required before offering an administrative penalty, although there is a statutory requirement to ensure that there are grounds for instituting criminal proceedings for an offence and that a written notice concerning the offer of the penalty and its operation is provided to the person concerned.

Whilst administrative penalties form part of the current Sanctions policy they only apply to offences of Housing Benefit and Council Tax benefit and therefore the revised policy introduces a financial penalty for offences relating to Council Tax reduction (CTR) only in accordance with the Local Government Finance Act 1992 (as amended by the Council Tax Reduction Schemes (Detection and Fraud Enforcement) (England) Regulations 2013).

A summary of the criteria for considering whether a financial penalty is appropriate is shown in Table B below and compares between current policy and proposed revised policy.

Table B

	Current policy	Proposed revised policy
The loss or potential loss to the Council is.....	<p>Less than £2,000</p> <ul style="list-style-type: none"> Covers offences of Housing Benefit and Council Tax Benefit only 	<p>Less than £5,000</p> <ul style="list-style-type: none"> Covers offences relating to Council Tax Reduction (CTR) Scheme only

The offence has not been deliberate, planned or committed over a long period of time.	√	√
The person has not committed any similar offences against the Council...	In the last 5 years.	In the last 5 years.
The "Evidential Test" is satisfied (i.e. The Council considers there is sufficient evidence to provide a realistic prospect of conviction should a penalty be refused).	√	√

Where the Council considers applying a financial penalty, as a first option, would cause severe hardship then a formal caution will be considered.

The financial penalty will be calculated based on 50% of the extra CTR received with a minimum penalty of £100 and a maximum of £1000 in accordance with the Local Government Finance Act 1992 (as amended by the Council Tax Reduction Schemes (Detection and Fraud Enforcement) (England) Regulations 2013).

Prosecution

The Council will only consider instituting criminal proceedings where it considers that there is sufficient evidence to provide a realistic prospect of conviction and the public interest factors have been satisfied.

A summary of the criteria for considering whether a prosecution is appropriate is shown in Table C below and compares between current policy and proposed revised policy.

Table C

	Current policy	Proposed revised policy
The loss or potential loss to the Council is.....	£2,000 or more <ul style="list-style-type: none"> Covers offences of Housing Benefit and Council Tax Benefit only 	£5,000 or more <ul style="list-style-type: none"> Covers all offences of fraud, corruption or theft or other financial irregularity and Offences relating to Council Tax Reduction (CTR) Scheme

	<p>In cases where the potential loss to the Council is below the above amount then prosecution will normally only be considered as a first option when one or more of the following apply;-</p> <ul style="list-style-type: none"> • The offence(s) are considered deliberate or planned • The offence(s) have been committed over a long period of time • The offence(s) involve more than one person • Similar offences have been committed in the last 5 years • An alternative to prosecution sanction has been offered and refused. 	
	<p>For offences of wrongful use of a Disabled Persons badge then prosecution will only be considered as a first option where the offence has not been admitted at an interview under caution or the mitigation offered has not been accepted by the Council or any one of the 5 options above apply.</p>	
<p>The “Evidential Test” is satisfied (i.e. The Council considers there is sufficient reliable evidence to provide a realistic prospect of conviction)</p>	√	√
<p>The “Public Interest” Test is satisfied</p>	√	√

4. OPTIONS

Members approve the revised policy attached at Appendix A or make suggestions for changes they consider appropriate.

5. FINANCIAL & RESOURCE APPRAISAL

The revised policy recommends that the financial loss criteria, used to determine whether a prosecution or alternative to prosecution sanction is appropriate, for offences of fraud, corruption, theft or other financial irregularity and offences relating to Council Tax Reduction (CTR) Scheme, should rise from £2,000 to £5,000.

It should be noted that the financial loss criteria does not apply in determining the appropriate sanction on cases related to offences of the misuse of a Disabled Persons Blue Badge.

In applying these revised criteria the Council would not be suggesting that there is a level of fraud it is prepared to tolerate but would be ensuring that the level of sanction applied to those who commit such offences is proportionate and that prosecution through the Criminal Courts is reserved for those committing the more serious offences of fraud and/or those who have reoffended or have been involved in a deliberate, planned or protracted offence(s) of fraud.

This revision of the financial criteria would bring Council policy in line with the other external organisations it regularly works with, for example, the Police, the DWP etc.

This would also support the Council’s effective use of financial investigation under the Proceeds of Crime Act 2002. In all cases where the suspected potential loss is considered to be in excess of £5,000 the Council will consider cases for financial investigation with a view to recovering monies or property obtained as a result of offences of fraud, corruption, theft or other financial irregularity and any offences relating to Council Tax Reduction (CTR) Scheme. When appropriate, the Council will apply or support applications to the courts for restraint orders in order to freeze and stop the offender from dissipating assets. The Council will seek to recover assets by means of supporting confiscation order proceedings under the Proceeds of Crime Act 2002 or the Criminal Justice Act 1988.

In the 18 month period ending 30th September 2015, the Council investigated 95 cases that were subsequently prosecuted through the Courts and an additional 102 cases where alternative to prosecution sanctions were applied.

Table D below demonstrates the impact the proposed policy changes would have had on both the numbers of prosecution and “alternative to prosecution” cases and on the costs incurred by the Council had the proposed policy been introduced on 1st April 2014.

Table D

	Current policy	Proposed revised policy
Total no. of cases prosecuted through the Courts	<p>95</p> <p><i>Of the 95 cases prosecuted through the Courts, 39 of these were prosecuted by the Council’s Legal Services and the remaining by either the Department for Work and Pensions, who prosecuted the Housing Benefit element on behalf of the Council, or the Crown Prosecution Service (CPS).</i></p>	<p>78</p> <p><i>Of the 78 cases that would have prosecuted through the Courts, 37 of these would have been prosecuted by the Council’s Legal Services.</i></p>
Total prosecution costs incurred by the Council (investigative and legal)	£56,855.76	£47,034.74
Total no. of cases where an “alternative to prosecution” sanction was applied	102	<p>119</p> <p><i>This is the total number of cases closed in the period plus an additional 17 who under this policy may not be prosecuted</i></p>

		<i>through the Courts as the offences related to a loss under £5,000.</i>
Total cost to the Council “alternative to prosecution” sanction	£18,465 <i>This is the investigative costs only (as there are no legal costs) for the 102 cases</i>	£21,542 <i>This is an estimate of the investigative costs for the additional 17 cases</i>
Grand total of cost of prosecutions and sanctions	£75,320.76	£68,576.74

6. RISK MANAGEMENT AND GOVERNANCE ISSUES

Where fraud corruption, theft or other financial irregularity is found proven, Officers nominated by the Section 151 Officer, will consider each case on its own merits and consider and apply the appropriate sanction, which may include authorising a prosecution through the Criminal Courts and/or applications for confiscation and /or restraint orders under the Proceeds Of Crime Act 2002 (POCA). The Council’s Solicitors will undertake appropriate criminal prosecutions referred to them and identify those cases which are not suitable for evidential and/or public interest reasons.

7. LEGAL APPRAISAL

Where fraud, corruption, theft or other financial irregularity is suspected then fully trained Investigators from the CFU, who specialise in criminal investigations, will take immediate action to thoroughly investigate, in accordance with legislation and advice and guidance from the Council’s Legal Services.

The Council’s Legal Services are a key partner in the delivery of the Council’s Sanctions policy providing specialist advice, support and services and ensuring compliance with all relevant legislation.

The Council has power to bring any criminal proceedings before the Court “in the interests of the inhabitants of its district” under section 222 Local Government Act 1972 and will only do this where it is in the public interest.

In bringing criminal proceedings for offences of fraud, corruption, theft or other financial irregularity the Council will normally use the following legislation;-

- Fraud Act 2006
- Theft Act 1968
- Theft Act 1978

- Road Traffic Act 1984 Section 117 – Offences of Misuse of Disabled Persons Blue Badge
- Proceeds of Crime Act 2002
- Conspiracy to defraud contrary to Common Law
- Prevention Of Social Housing Fraud Act 2013
- Local Government Finance Act (as amended) 1992 - Council Tax Reduction Scheme

8. OTHER IMPLICATIONS

8.1 EQUALITY & DIVERSITY

All decisions on investigations and the application of sanctions are made on the individual facts of the case, taking into account the Council's Sanctions Policy.

8.2 SUSTAINABILITY IMPLICATIONS

None

8.3 GREENHOUSE GAS EMISSIONS IMPACTS

None

8.4 COMMUNITY SAFETY IMPLICATIONS

The reduction of all crime, including fraud, corruption and /or theft, contributes to improving community safety.

8.5 HUMAN RIGHTS ACT

The Council's current counter fraud approach complies with the Human Rights Act, in particular in relation to surveillance and the right to privacy. All surveillance operations are formally approved in compliance with the Regulation of Investigatory Powers Act and Council protocols.

8.6 TRADE UNION

None.

8.7 WARD IMPLICATIONS

None

8.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)

None

9. NOT FOR PUBLICATION DOCUMENTS

None

10. RECOMMENDATIONS

10.1 That the Committee approves the revised Sanctions Policy at Appendix A

11. APPENDICES

Appendix A – Revised Sanctions policy
Appendix B – Current Sanctions Policy

12. BACKGROUND DOCUMENTS

None

Bradford Metropolitan District Council Sanctions Policy

1.0 Introduction

The Council's Counter Fraud Policy and Strategy states that *"the Council will ensure that, where fraud, corruption or theft is suspected or detected, it will be thoroughly investigated and any proven cases dealt with consistently and proportionally, applying appropriate sanctions and/or redress for any loss"*.

This document sets out the policy of the Council in respect of applying sanctions and/or pursuing criminal action, through the Courts, against those who commit offences of fraud, corruption, theft or other financial irregularity

The objectives of this policy are to ensure that sanctions are applied in a fair and consistent manner and that the sanction decision making process is stringent, robust and transparent.

The principles of the policy will apply equally to any fraud corruption, theft or other financial irregularity against the Council or against funds for which the Council has responsibility.

2.0 General Policy Principles

Where fraud, corruption, theft or other financial irregularity is suspected then the Council will take immediate action to thoroughly investigate and if proven will apply the appropriate sanction, which may include a prosecution through the Criminal Courts.

Any case that is subject to investigation is considered on its own merits, having regard to all the facts, before an appropriate sanction is administered.

All investigations into fraud, corruption, theft or other financial irregularity will be undertaken by the Council's Corporate Fraud Unit (CFU), and will be in accordance with relevant legislation, Council Policy and advice and guidance from the Council's Legal Services and, where appropriate, Human Resources.

All Corporate Fraud Investigators will be fully trained in undertaking criminal investigations into allegations of fraud, corruption, theft or other financial irregularity and will possess an appropriate Counter Fraud qualification. They will conduct investigations in a professional manner, ensuring that policy and legislation and approved working methods are correctly applied. They will consider each investigation on its own merits and will not let political or personal views about ethnic or national origin, sex, religious beliefs, or the sexual orientation of the suspect, victim or witness influence their actions and will not be affected by improper or undue pressure from any source.

The Council will work closely with the Police and in particular, with the Economic Crime Unit. In all cases where the potential loss to the Council is estimated to be in excess of £5,000, the Council will invite the Police to carry out a joint investigation and where this invitation is accepted the Police will normally take the role of lead investigating and prosecuting body.

In cases where a joint investigation is declined by the Police then the decision to

investigate and apply a sanction will rest with the Council and will be based on the individual facts of the case.

Where necessary, the Council will work in collaboration with other organisations such as the Department for Work and Pensions, Her Majesty's Revenue and Customs and other Local Authorities.

3.0 Financial Investigation

Financial Investigation is an important tool in the fight against crime and it can provide valuable new avenues for investigations. The Proceeds of Crime Act (POCA) 2002 was not intended solely to seize the assets of those committing large-scale financial fraud, but also for those involved in low value, high frequency acquisitive crime.

Bradford Council continues to integrate financial investigation across investigative processes in order to enhance the quality of investigations, disrupt criminality, protect communities and build public trust and confidence sending a strong message to both criminals and the community that "crime will not pay".

Where an investigation into fraud, corruption, theft or other financial irregularity is considered to be likely to result in a conviction, the Council will refer all suitable cases for financial investigation with a view to recovering monies or property obtained as a result of the crime. When appropriate, the Council will apply and/or support applications to the Courts for restraint orders to freeze and stop the offender from dissipating assets. The Council will seek to recover assets by means of supporting confiscation order proceedings under the Proceeds of Crime Act 2002 or the Criminal Justice Act 1988.

4.0 Sanction Recommendations, Approvals and Authorisations

Relevant Officers, exercising delegated authority given by the Council's Section 151 Officer will recommend, approve and authorise the commencement of criminal proceedings and/or applications for confiscation and /or restraint orders under POCA, or apply "alternative to prosecution" sanctions.

5.0 Role of the Council's Legal Services

The Council's Legal Services provide advice and guidance to the Corporate Fraud Unit throughout the investigative process and whilst they will not conduct any part of the investigation they are available to give advice on Investigator obligations and evidential requirements.

Additionally the Council's Legal Services will advise on whether a case is suitable for prosecution. They will undertake appropriate criminal prosecutions referred to them and identify those cases which are not suitable for evidential and/or public interest reasons.

6.0 Role of Internal Audit

In order that the Council's statutory functions can be fulfilled, the Corporate Fraud Unit will work closely with the Internal Audit Service (IAS), who has a responsibility to ensure that, where an irregularity or fraud occurs, the appropriate controls are in place, weaknesses are identified and recommendations made to improve the control environment.

7.0 Sanction application

The Council has a range of sanctions that can be applied to those who commit offences of fraud corruption, theft or other financial irregularity. These include formal cautions or financial penalties, criminal proceedings in a Court and/or disciplinary action, where a Council employee has committed the offence.

The Council will, in certain circumstances, take more than one form of action. For example, where an employee has committed offences of fraud, corruption, theft or other financial irregularity then disciplinary, criminal prosecution and civil recovery action may be appropriate, however the sanction decision will consider every case on its own merits, taking into account factors, such as a person's physical and mental health, their age, financial circumstances and, in considering prosecution as a first option, whether it is in the public interest in addition to assessing the overall impact of the punishment to both the individual and the community.

It should be noted that this Sanction Policy document does not cover disciplinary matters relating to Council employees. Such disciplinary matters fall under the Council's own disciplinary policy, "Fairness at Work".

To ensure a consistent and equitable application of sanctions, the City of Bradford Metropolitan District Council will normally apply the following guidelines.

Formal Caution

This is an administrative sanction offered in certain circumstances, as an alternative to prosecution.

A Formal Caution is normally offered by way of a face to face interview at Council offices and if accepted then the person is admitting to the offence and will be required to sign the appropriate document(s) which will be retained by the City of Bradford Metropolitan District Council.

Once a formal caution has been accepted then the Council will not institute criminal proceedings for that offence, however, should the person commit other subsequent similar offences against the City of Bradford Metropolitan District Council then a prosecution may be considered as the first option for that subsequent offence.

Where a formal caution is not accepted or the person fails to respond to invitations to be offered such a sanction then the City of Bradford Metropolitan District Council will consider instituting criminal proceedings.

Offences of fraud,

The City of Bradford Metropolitan District Council will normally

<p>corruption or theft or other financial irregularity</p>	<p>only consider offering a formal caution when all of the following apply;-</p>
<p>Offences relating to Council Tax Reduction (CTR) Scheme</p>	<ul style="list-style-type: none"> • The loss or potential loss to the Council is less than £5,000 • The offence has been admitted at an interview under caution. • The offence has not been deliberate, planned or committed over a long period of time. • The person has not committed any similar offences against the Council in the last 5 years. • The “Evidential Test” is satisfied (i.e. The City of Bradford Metropolitan District Council considers there is sufficient evidence to provide a realistic prospect of conviction). <p>If the offence has not been admitted during an interview under caution, but all the other criteria have been met, a decision will be made in conjunction with the Council’s Legal Services as to whether a formal caution is appropriate.</p> <p>Where the offence is subject to a financial penalty but this will cause severe hardship the Council can consider a formal caution as the first option.</p>
<p>Offences of wrongful use of a Disabled Persons badge</p>	<p>The City of Bradford Metropolitan District Council will normally only consider offering a formal caution when all of the following apply;-</p> <ul style="list-style-type: none"> • The offence has been admitted at an interview under caution when reasonable mitigation has been offered and accepted. • The offence has not been deliberate, planned or committed over a long period of time • The person has not committed a similar offence in the last 5 years. • The “Evidential Test” is satisfied (i.e. The City of Bradford Metropolitan District Council considers there is sufficient evidence to provide a realistic prospect of conviction).

<p><u>Financial Penalty</u></p> <p>This is a financial penalty, offered in certain circumstances, as an alternative to prosecution. Where a financial penalty is not accepted or the person fails to respond to invitations to be offered such a sanction, then the Council will consider instituting criminal proceedings</p> <p>A financial penalty is normally offered by way of a face to face interview at a Council building and if accepted then the person will be required to sign the appropriate document(s) which will be retained by the City of Bradford Metropolitan District Council. A signed copy will be given to the person at the time of interview.</p> <p>Once a financial penalty has been accepted then the Council will not institute criminal proceedings for that offence, however, should the person commit other subsequent similar offences against the City of Bradford Metropolitan District Council then a prosecution may be considered as the first option.</p>	
<p>Offences of fraud, corruption, theft or other financial irregularity</p>	<p>The City of Bradford Metropolitan District Council will not consider offering financial penalties as an alternative to prosecution for this type of offence.</p>
<p>Offences relating to Council Tax Reduction (CTR) Scheme</p>	<p>The City of Bradford Metropolitan District Council will normally only consider offering a financial penalty when all of the following apply;-</p> <ul style="list-style-type: none"> • The loss or potential loss to the Council is less than £5,000 • The offence has not been deliberate, planned or committed over a long period of time. • The person has not committed any similar offences against the Council in the last 5 years. • The “Evidential Test” is satisfied (i.e. The City of Bradford Metropolitan District Council considers there is sufficient evidence to provide a realistic prospect of conviction). <p>Where the Council considers applying a financial penalty, as a first option, and this would cause severe hardship then a formal caution will be considered.</p> <p>The financial penalty will be calculated based on 50% of the</p>

	<p>extra CTR received with a minimum penalty of £100 and a maximum of £1000*</p> <p>* in accordance with the Local Government Finance Act 1992 (as amended by the Council Tax Reduction Schemes (Detection and Fraud Enforcement)(England)Regulations 2013)</p>
Offences of wrongful use of a Disabled Persons badge	The City of Bradford Metropolitan District Council will not consider offering financial penalties as an alternative to prosecution for this type of offence.
<u>Prosecution</u>	
Offences of fraud, corruption, theft or other financial irregularity	<p>The City of Bradford Metropolitan District Council will normally only consider instituting criminal proceedings when all of the following apply;-</p> <ul style="list-style-type: none"> • The loss or potential loss to the Council exceeds £5,000. • The “Evidential Test” is satisfied (i.e. The City of Bradford Metropolitan District Council considers there is sufficient evidence to provide a realistic prospect of conviction). • The Public Interest test is satisfied. (i.e. The City of Bradford Metropolitan District Council has considered the public interest factors in determining whether to prosecute or consider an “alternative to prosecution”). <p>Some exceptions to this are (not an exhaustive list);-</p> <ul style="list-style-type: none"> • A formal caution has been offered and refused. • There are known previous convictions for fraud related offences against the Council. • The offence has been deliberate, planned, committed over a long period of time or involved more than one person.
Offences relating to the Council Tax Reduction (CTR) Scheme	<p>The City of Bradford Metropolitan District Council will normally only consider instituting criminal proceedings when all of the following apply;-</p> <ul style="list-style-type: none"> • The loss or potential loss to the Council exceeds £5,000. • The “Evidential Test” is satisfied (i.e. The City of Bradford Metropolitan District Council considers there is sufficient evidence to provide a realistic prospect of conviction)

	<ul style="list-style-type: none"> • The Public Interest test is satisfied. (i.e. The City of Bradford Metropolitan District Council has considered the public interest factors in determining whether to prosecute or consider an “alternative to prosecution”). <p>Some exceptions to this are (not an exhaustive list);-</p> <ul style="list-style-type: none"> • A formal caution or financial penalty has been offered and refused • There are known previous convictions for Council Tax related offences • The offence has been deliberate, planned, committed over a long period of time or involved more than one person.
<p>Offences of wrongful use of a Disabled Persons badge</p>	<p>The City of Bradford Metropolitan District Council will normally only consider instituting criminal proceedings as a first option when all of the following apply;-</p> <ul style="list-style-type: none"> • The offence has not been admitted at an interview under caution or the mitigation offered has not been accepted by the Council. • The “Evidential Test” is satisfied (i.e. The City of Bradford Metropolitan District Council considers there is sufficient evidence to provide a realistic prospect of conviction). • The Public Interest test is satisfied (i.e. The City of Bradford Metropolitan District Council has considered the public interest factors in determining whether to prosecute or consider an “alternative to prosecution”). <p>Some exceptions to this are (not an exhaustive list);-</p> <ul style="list-style-type: none"> • A formal caution has been refused • There are known previous convictions for Blue Badge related offences • The offence has been deliberate, planned, committed over a long period of time or involved more than one person.

8.0 Recovery of losses

Where the Council has suffered a financial loss arising from offences of fraud, corruption, theft or other financial irregularity including CTR offences then it will make vigorous attempts to recover the resultant loss, including taking action in the Civil Courts if

necessary, in addition to any sanction that may be imposed in respect of that offence.

In cases where the loss to the Council is estimated to be in excess of £5,000 then the Council will consider instigating a financial investigation – see para 3.0.

Revenues and Benefits Service Sanctions Policy

Introduction

This document sets out the policy of the City of Bradford Metropolitan District Council towards sanctions including criminal prosecutions, for offences relating to revenues and benefit fraud.

General Principles

The City of Bradford Metropolitan District Council is committed to the prevention, detection, correction, investigation and, where appropriate, sanction or prosecution of those making a fraudulent revenues or benefits applications or abusing or misusing a disabled persons Blue Badge.

The City of Bradford Metropolitan District Council wishes to prevent criminal offences occurring by making it clear to the people of the District that they have a responsibility to provide accurate and timely information about their Revenues and Benefits claims, discounts, exemptions, disregards and concessions to punish wrong doing and to deter offending.

Each potential fraud referral is assessed and the assessment will result either in cases being investigated further under criminal investigation standards or referred for compliance action. Compliance action usually consists of an interview where the customer is questioned about any allegations. Further action will depend upon the outcome of the interview.

Each case that is subject to criminal investigation is considered on its own merits, having regard to all the facts, before an appropriate sanction is administered.

Organisation

Both Criminal and Compliance investigations are undertaken by the Council's Revenues and Benefits Service Counter Fraud Team.

Criminal Investigations are undertaken in accordance with:-

- The Police and Criminal Evidence Act 1984 (PACE) and its Codes of Practice
- The Criminal Procedures and Investigations Act 1996 (CPIA) and its Codes of Practice
- All other relevant legislation
- Council Policy
- Guidance from the Department for Work and Pensions
- Advice from the Council's Legal Services
- Advice from the Department for Work and Pensions Solicitors Branch

Counter Fraud officers involved in criminal investigations receive Professionalism in Security (PINS) training which is accredited by the University of Portsmouth. Additional guidance is provided by Counter Fraud Working Practices and the DWP Fraud Procedures and Instructions Manual which are regularly updated to ensure that investigations are

conducted in a legal and professional manner, policy and legislation and approved working methods are correctly applied.

Recommendations to apply sanctions will be made by the Assistant Benefit Manager (Counter Fraud), Section Leader (Counter Fraud) or a Senior Counter Fraud Officer.

All recommendations to institute criminal proceedings will be authorised by the Benefits Manager, Revenues Manager or the Assistant Director - Revenues and Benefits

The Council's Solicitors are a prosecuting authority in their own right and they will advise on whether a case is suitable for prosecution and take the case forward or identify those cases which are not suitable for criminal prosecution for evidential and/or public interest reasons. Most cases are seen before a Magistrates Court although the more serious cases are usually referred to the Crown Court.

The Council's Solicitors provide advice and guidance to the Revenues and Benefits Service Counter Fraud team throughout the investigative and prosecuting process. They do not conduct any part of the investigation but advise on the Counter Fraud Officers obligations, and evidential requirements.

In relation to housing and council tax benefit the Council works closely with the Department for Work and Pensions operating under similar prosecution practices and signs up to a partnership agreement which supports joint working activity. Prosecutions arising from such joint work would normally be prosecuted by the DWP Solicitors Branch who would include Housing Benefit and/or Council Tax Benefits along with any "National" benefit

The Social Security (Local Authority Investigations and Prosecutions) Regulations 2008, introduced under the Welfare Reform Act 2008, gives Local Authorities powers to investigate and prosecute offences against the following national social security benefits alongside HB and / or CTB.

- Income Support (IS)
- Jobseeker's Allowance (JSA)
- Incapacity Benefit (IB)
- State Pension Credit, and
- Employment and Support Allowance (ESA)

Sanction Process

Where an offence has been committed the Council can consider administering a caution, offering a penalty or instigating a prosecution. Every case will be considered on its own merits, taking into account factors, such as a person's physical and mental health, their age, financial circumstances and, in considering prosecution as a first option, whether it is in the public interest. To ensure a consistent and equitable application of sanctions, the City of Bradford Metropolitan District Council will normally apply the following guidelines.

“ Housing Benefit/Council Tax Benefit Alternative to prosecution sanctions”

Formal Caution (housing and council tax benefit)

Introduction

A formal caution is an administrative sanction given in certain circumstances to a person who has committed an offence. The Council will offer this as an alternative to prosecution where certain criteria are met and the case is one that the Council would prosecute if the caution was refused.

Formal cautioning is based on a principle that no prosecuting authority is under an obligation to prosecute. The City of Bradford Metropolitan District Council recognises the need to introduce a meaningful penalty and deterrent for those persons who commit offences considered to be less serious, whilst also being aware of the increasing importance of keeping offenders out of the Courts. The City of Bradford Metropolitan District Council will, therefore, in certain circumstances, consider offering a formal caution.

Criteria

The City of Bradford Metropolitan District Council will normally only consider offering a formal caution when **all** of the following apply;-

- The overpayment is less than £2,000
- The offence has been admitted at an interview under caution.
- The offence has not been deliberate, planned or committed over a long period of time.
- The person has not committed a benefits fraud offence in the last 5 years.
- The “Evidential Test” is satisfied (i.e. The City of Bradford Metropolitan District Council considers there is sufficient reliable evidence to provide a realistic prospect of conviction should a formal caution be refused).

If the offence has not been admitted during an interview under caution, but all the other criteria have been met, the case will be referred to Legal Services who will decide whether a formal caution is appropriate.

The Council may investigate cases jointly with the DWP, in these cases the offering of a Caution may be delegated to either agency.

Administrative Penalty (housing and council tax benefit fraud)

Introduction	<p>Section 115a of the Social Security Administration Act 1992 (as amended by Section 15 of the Social Security Administration (Fraud) Act 1997) introduced administrative penalties as an alternative to a prosecution in Court.</p> <p>The penalty is set at 30% of the gross fraudulent overpayment of benefit. Failure to repay the overpayment or penalty, may result in court action being taken.</p> <p>The Council may investigate cases jointly with the DWP, in these cases the offering of an administrative Penalty may be delegated to either agency.</p>
Criteria	<p>The City of Bradford Metropolitan District Council will normally only consider offering an Administrative Penalty when all of the following apply;-</p> <ul style="list-style-type: none">• The gross adjudicated overpayment is more than £50 but less than £2,000.• The offence has not been deliberate, planned or committed over a long period of time.• The person has not committed a benefit fraud offence in the last 5 years.• The “Evidential Test” is satisfied (i.e. The City of Bradford Metropolitan District Council considers there is sufficient reliable evidence to provide a realistic prospect of conviction should an administrative penalty be refused).• The offer of an administrative penalty would not cause financial hardship.
<u>Fraud Prosecutions</u>	
Introduction	<p>Fraud prosecutions will normally be processed by the Criminal Litigation Department of the City of Bradford Metropolitan District Council, however, in cases where a joint investigation has been carried out with the Department for Work and Pensions Fraud Investigation Service (FIS), the DWP Solicitors Branch will normally process the prosecution on behalf of the City of Bradford Metropolitan District Council. Where this is not possible then the Council will consider using its powers, under</p>

	<p>the Social Security (Local Authority Investigations and Prosecutions) Regulations 2008, to process the prosecution in respect of national and local benefits.</p> <p>In all prosecution cases the Council or DWP Solicitors retain discretion as to whether criminal proceedings are started.</p>
Criteria	<p>The City of Bradford Metropolitan District Council will normally only consider instituting criminal proceedings as a first option when all of the following apply;-</p> <ul style="list-style-type: none"> • The overpayment is over £2,000. • The “Evidential Test” is satisfied (i.e. The City of Bradford Metropolitan District Council considers there is sufficient reliable evidence to provide a realistic prospect of conviction) • The Public Interest test is satisfied. (i.e. The City of Bradford Metropolitan District Council has considered the public interest factors in determining whether to prosecute or consider an “alternative to prosecution”). <p>Some exceptions to this are (not an exhaustive list);-</p> <ul style="list-style-type: none"> • A formal caution or penalty has been refused • Acceptance of an administrative penalty has been withdrawn. • There are known previous convictions for benefit fraud offences • The offence has been deliberate, planned, committed over a long period of time or involved more than one person.
<u>Council Tax Single Person Discount</u>	
<u>Introduction</u>	<p><u>Schedule 3 of Local Government Finance Act 1992 allows penalties to be raised in relation to the failure to supply information or to notify a billing authority. There are two levels of penalty depending on whether it is a first or a repeat offence.</u></p> <p>A criminal prosecution could also be pursued by the Council under Fraud Act 2006 for the same incorrect relevant material or failing to report a change in circumstances.</p>
Criteria	<p>The City of Bradford Metropolitan District Council will normally only consider offering a penalty or consider a prosecution when at least one of the following apply;-</p> <p>Penalty</p> <ul style="list-style-type: none"> • False documents received and evidence proves a change in circumstances was not notified to the council

	<ul style="list-style-type: none"> • The Public Interest test is satisfied. (i.e. The City of Bradford Metropolitan District Council has considered the public interest factors in determining whether to prosecute or consider an “alternative to prosecution”.) • The offence has been deliberate, planned or committed over a long period of time <p>Some exceptions to this are (not an exhaustive list);-</p> <ul style="list-style-type: none"> • A formal caution has been refused • There are known previous convictions for Blue Badge offences
<p><u>Administering formal cautions and penalties for HB/CTB and Blue badge</u></p>	
<p>Who will administer “alternative to prosecution” sanctions?</p>	<p>Most formal cautions and penalties will be administered in-house by dedicated staff, from the counter fraud team or a nominated Officer from Revenues for Council Tax penalties.</p> <p>In certain circumstances of benefit fraud the administration of formal cautions and administrative penalties can be delegated to the DWP who will administer both the LA and DWP sanction simultaneously.</p> <p>Where a customer has moved out of the Bradford district then another LA may be asked to administer the sanction on Bradford’s behalf.</p>
<p>Accepting or rejecting “alternative to prosecution” sanctions</p>	<p>All persons who are to be offered a formal caution or penalty by The City of Bradford Metropolitan District Council will be contacted in writing and in Housing, Council Tax Benefit and Blue Badge cases offered the opportunity of an interview to explain the process.</p> <p>If a formal caution or administrative penalty is accepted then the person will be required to sign the appropriate document(s) which will be retained by the City of Bradford Metropolitan District Council. A signed copy will be given to the person at the time of interview.</p> <p>Once a formal caution or administrative penalty has been accepted then the Council will not institute criminal proceedings for that offence, however, should the person commit other subsequent benefit fraud or Blue Badge offence against the City of Bradford Metropolitan District Council then a prosecution may be considered as the first option.</p> <p>Upon accepting an administrative penalty, a person has 28 days in which to change their mind. If a penalty is not withdrawn within that time then action to recover the administrative penalty will commence.</p> <p>If a formal caution or administrative penalty are;-</p>

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| | <ul style="list-style-type: none">• Not accepted or• Withdrawn within 28 days (administrative penalty cases only), or• Invitations to attend sanction interviews are declined |
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The City of Bradford Metropolitan District Council will consider instituting criminal proceedings.

Recovery of debt

Where an overpayment arising from fraud is identified the City of Bradford Metropolitan District Council will take steps to recover the resultant debt, including taking action in the Civil Courts if necessary, in addition to any sanction it may impose in respect of that fraud.