

Fraud Sanction and Prosecution Policy

1. Policy Statement

- 1.1 Halton Borough Council (the Council) will use the full range of sanctions available to it in order to deter fraud, bribery and any other associated offences. These sanctions may include criminal prosecution, civil recovery, internal discipline and referral to professional bodies. The Council will utilise its own Legal Services or agent solicitors and the Crown Prosecution Service to conduct prosecutions where appropriate. The Council will refer matters to the police and other law enforcement agencies or regulators where appropriate and support those agencies in bringing proceedings.

2. Introduction

- 2.1 The Council's Anti-Fraud, Bribery and Corruption Policy sets out the Council's aims and objectives with regard to tackling fraud and associated offences. The Council will seek the strongest possible sanction against any individual or organisation that defrauds, or seeks to defraud the Council. The use of sanctions will be governed by this policy and the principles of the policy shall apply equally to any fraud against the Council or against funds for which the Council has responsibility.
- 2.2 The objectives of this policy are:
- To ensure that the Council applies a full range of sanctions in a just and consistent manner;
 - To ensure that sanctions are applied in an effective and cost efficient manner;
 - To ensure that the sanction decision making process is stringent, robust and transparent.
- 2.3 This policy provides a framework to ensure the most appropriate resolution to a case is reached. The sanction decision will have regard at all times to the Council's Anti-Fraud, Bribery and Corruption Policy objectives, the individual circumstances of each person concerned and the overall impact of the sanction to both the individual and the community.
- 2.4 A range of sanctions are available to the Council. These include disciplinary action, civil recovery action, criminal proceedings and civil penalties. In appropriate cases the Council may take more than one form of action. For example, if an employee defrauds the Council, disciplinary action, prosecution and civil recovery action may all be taken.
- 2.5 When considering a case for prosecution it is generally accepted that there are two "tests" to be applied – the evidential test and the public interest test. These are currently set out in the Code for Crown Prosecutors 2018. The Evidential Stage test must be considered prior to the Public Interest Stage.

3. Evidential Stage Test

- 3.1 Investigators and prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and 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. The evidence must be acquired in a form which can be used by the court and be admissible and there must be enough evidence to form a realistic prospect of conviction.
- 3.2 In order to ensure that a “realistic prospect of conviction” exists, Investigation Officers will at all times ensure that investigations are conducted in accordance with all relevant legislation and Codes of Practice with regard to evidence gathering, interviewing and rules of disclosure.
- 3.3 The evidence gathered will be examined in the first instance by the investigator and their manager. When both are satisfied that sufficient evidence exists to successfully prosecute and that the Public Interest Stage is also satisfied the case file will be passed on to either the Council’s Legal Services, agent solicitors, or the Crown Prosecution Service. All prosecutors will then apply their own inspection of the evidence to ensure that both tests are met. Alternatively the case file may be passed to the police, other law enforcement agencies or regulators if appropriate.

4. Public Interest Test

- 4.1 A prosecution will usually take place unless the prosecutor is sure that public interest factors tending against prosecution outweigh those tending in favour. The more serious the offence or the offender’s record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest. Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction as set out in the Code for Crown Prosecutors.

5. Sanctions Available

- 5.1 Legislation enables the Council to apply formal sanctions where appropriate these include:
- Imposing a financial penalty where a person has supplied incorrect information, failed to supply information requested or failed to notify the Council of a change of circumstances.
 - Offering a financial penalty as an alternative to a prosecution, or
 - Instigating prosecution proceedings.

The Council will only apply a formal sanction where permitted by certain legislation. Cases may however, be referred to the police or other law enforcement agencies for investigation. This may subsequently result in referral to the Crown Prosecution Service or other prosecutor.

5.2 **Penalty as Alternative to Prosecution**

5.2.1 A financial penalty can be offered as an alternative to prosecution. This will be offered usually in circumstances not deemed serious enough for prosecution and where the evidence indicates that:

- It was a first offence, or
- There was no planning involved, or
- There was no other person involved, and
- The person's circumstances and demeanour towards the offence indicates that a financial penalty would be the most appropriate action.

5.2.2 In these circumstances the Council may make an offer of a financial penalty as an alternative to prosecution in addition to requiring full repayment of the overpayment. However, there must be sufficient evidence to justify a prosecution. An individual does not have to admit an offence has been committed for a financial penalty to be offered as an alternative to prosecution. If a person refuses the offer of a financial penalty as an alternative to prosecution the case will be recommended for prosecution. The decision to issue a financial penalty as an alternative to prosecution, where permitted by certain legislation, will lay with the Divisional Manager – Audit, Procurement & Operational Finance.

5.3 **Financial penalty**

5.3.1 A financial penalty is a penalty that can be imposed where a person has negligently supplied incorrect information or failed to supply information that affects the amount of council tax support paid or council tax billed. An individual does not have to admit an offence has been committed for a Financial Penalty to be applied.

5.3.2 The decision to issue a financial penalty, where permitted by certain legislation, will lay with the Divisional Manager – Audit, Procurement & Operational Finance.

5.4 **Prosecution**

5.4.1 Prosecution proceedings will usually be instigated only after the evidential and public interest tests are satisfied as detailed in the Code for Crown Prosecutors.

5.4.2 Prosecution will be considered where:

- It was not a first offence, or
- The fraud has been deliberate and calculated, or
- The fraud had continued over a long period; or

- The person has failed to attend an interview under caution; or
- There were other persons involved in the fraud, or
- The person has declined the offer of a Financial Penalty or withdrawn agreement to pay a Financial Penalty.

5.4.3 The Council recognises that prosecution is a serious step to take and the decision to refer cases for prosecution will not be taken lightly. The ultimate decision on prosecution will be taken by the prosecuting body. In some cases this will be the Council, through the Council's Legal Services or agent solicitors, and in others the Crown Prosecution Service. The decision to refer cases to a prosecuting body will be taken by the Operational Director – Finance, the Strategic Director – Enterprise, Community and Resources or the Chief Executive.

5.5 **Referrals to police, other law enforcement agencies or regulators**

5.5.1 Referrals to police, other law enforcement agencies or regulators may occur in cases of staff fraud or the fraud is complex and/or of a serious nature. The decision to refer cases to the police or other agencies for investigation will be taken by the Operational Director – Finance, the Strategic Director – Enterprise, Community and Resources or the Chief Executive.

6. **Publicity**

6.1 It is the Council's intention to positively promote this policy as well as the outcome of any prosecutions, which will deter others from fraudulent activity.

7. **Reporting and Review**

7.1 An annual report on fraud and corruption matters will be produced for the Audit and Governance Board. This will provide a summary of actions taken under this Policy.

7.2 The Policy will be subject to periodic review and approval by the Audit and Governance Board, which is responsible for monitoring and reviewing the adequacy of the Council's anti-fraud and corruption policies and arrangements.