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Corporate Sanction and Prosecution Policy

TORBAY
COUNCIL

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2 Introduction

The Council's Corporate Sanction and Prosecution Policy sets out our aims and objectives with regard to tackling fraud and associated offences.

The Policy states that we will seek a possible sanction against any individual or organisation that defraud, or seek 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.

The objectives of this Policy are to ensure that:

- the Council applies a full range of sanctions in a fair and consistent manner.
- sanctions are applied in an effective and cost efficient manner.
- the sanction decision making process is stringent, robust and transparent.

This Policy is designed to provide 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 Corporate Sanction and Prosecution Policy objectives, the individual circumstances of each person concerned and the overall impact of the punishment to both the individual and the community.

A range of sanctions is available to the Council. These include disciplinary action, civil proceedings, criminal proceedings and civil/financial penalties. In appropriate cases we may take more than one form of action. For example, where staff defrauds the Council we may take disciplinary, prosecution and civil recovery action.

One sanction available to the Council is criminal prosecution. We recognise that this 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 Legal Services, in others the Crown Prosecution Service.

Other than where the Crown Prosecution Service is the most appropriate prosecuting authority, we will utilise the Council's internal Legal Services to undertake criminal prosecutions. In these cases the decision to refer cases for prosecution to Legal Services will be taken by either Internal Audit or Corporate Counter Fraud Officer.

The decision to issue civil/financial penalties as alternatives to prosecution, where permitted by certain legislation, will lie with the Internal Audit and Corporate Counter Fraud Officer with guidance from Legal Services.

Alternatively, we may refer cases to the police for investigation who may then refer matters to the Crown Prosecution Service or other prosecutor. This may occur in cases of staff fraud or where the Council is the 'victim' or the fraud is complex and/or of a serious nature.

This Policy outlines various penalties/sanctions or criminal prosecution that can be imposed/offered by the council, and are permitted by legislation, where offending contrary to any of the following has occurred, although this list is not exclusive.

- Theft Acts 1968/ 1978
- Forgery and Counterfeiting Act 1987 (FCA)
- Computer Misuse Use Act 1990
- Social Security Administration Act 1992 (SSAA)
- Local Government Finance Act 1992 (LFGA)
- Data Protection Act 1998 (DPA)
- Identity Card Act 2006
- Fraud Act 2006
- Council Tax Reduction Schemes (Detection of Fraud and Enforcement (England) Regulations 2013
- The Bribery Act 2010

- Welfare Reform Act 2012 (WRA)
- The Prevention of Social Housing Fraud Act 2013. (PoSHFA)

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 2013.

3 Evidential Stage Test

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.

In order to ensure that a “realistic prospect of conviction” exists officers of the Counter Fraud Team and prosecutors 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.

The evidence gathered will be examined in the first instance by the investigator. When 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 team or the Crown Prosecution Service. All prosecutors will then apply their own inspection of the evidence to ensure that both tests are met.

4 Public Interest Test

A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour, or unless the prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal.

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 Members / Staff / Teachers / School Support Staff

In all cases of fraud, theft, financial misconduct, serious and intentional breach of financial regulations and corruption committed by employees of the council or its maintained schools we will seek disciplinary action. The normal recommendation for staff would be gross misconduct. This will include cases of fraud against the council, other councils and other public sector bodies.

Where financial loss has been identified we will always seek to recover this loss either through the civil or criminal process. In addition, where staff are members of professional bodies or are subject to national codes of conduct such as teaching and social services staff, we will refer cases to the relevant professional body.

Where appropriate under this policy we will refer cases to the relevant prosecuting authority for criminal prosecution.

6 Welfare Fraud

In all cases where potential fraud is identified against the Department of Works and Pensions welfare system, the Council will refer cases to the Single Fraud Investigations Service.

The Welfare Reform Act 2012 provided for the abolition of Council Tax Benefit.

7 Council Tax Penalties for Registration, Discounts and Exemptions

Councils are legally entitled to obtain information from residents, owners or managing agents to identify the person(s) liable for payment of Council Tax.

Where a person fails to supply information within a month, a change that affects council tax registration, discounts and exemptions, regulations provide that local authorities may impose a £70 penalty on any occupier, owner or managing agent of a property in the following circumstances

- Negligently made an incorrect statement or without reasonable excuse, fail to give a prompt notification of a relevant change in circumstance affecting their entitlement to Council Tax Support, discount or exemption and fails to take reasonable steps to correct the error.
- Without reasonable excuse, failed to give, (within one month) notification of a relevant change in circumstances, affecting their entitlement to a Council Tax Support, discount or exemption.

In both circumstances the occupier, owner or managing agent must not have been charged with an offence or cautioned or been given a penalty in accordance with the Council Tax Reduction scheme (Detection of Fraud and Enforcement) (England) Regulations 2013.

Where the Council has imposed a penalty and a further request for the same information is made to that person and is not properly complied with, a further penalty of £280 may be imposed.

This penalty may be imposed each time the Council repeats the request and the person does not fulfil their statutory obligations, schedule 3 of the Local Government Finance Act 1992.

Penalties will be added to the appropriate person's Council Tax bill, in all other cases an invoice will be raised.

8 Penalties and Prosecution for Council Tax Support

Since 1 April 2013 local authorities in England have a responsibility for administering their own Council Tax Support Schemes subject to the Council Tax Reduction Schemes (Prescribed Requirements)(England) Regulations 2012 and Council Tax Reduction Scheme (Detection of Fraud and Enforcement)(England) Regulations 2013.

The Council Tax Support Scheme, for working-age customers, is based upon the Council Tax Reduction Scheme Policy. For pension age customers it is based upon national legislation.

Prosecution proceedings for a Council Tax Support Scheme offence may begin at any time within a period of three months from the date on which evidence, sufficient in the opinion of the prosecutor to justify a prosecution for an offence, comes to the prosecutor's knowledge or within a period of twelve months from the commission of the offence, whichever period expires last.

The offences which can be considered are:

- A delay, obstruction, refusal or failure to comply with, requests for information by an authorised officer of Torbay Council. In this case, where found guilty of an offence, they will be liable to a fine not exceeding level 3 on the standard scale and where if they are convicted their refusal or failure to comply continues will result on a summary conviction to a fine not exceeding £40 for each day it is continued.
- False representation for obtaining a reduction - applies to a person who obtains a reduction under the Council Tax Support Scheme by making a statement which they know to be false or provides or knowingly allows to be provided, any false document or information. In this case where found guilty of an offence they will be liable on summary conviction to a fine not exceeding level 4 on the standard scale, or imprisonment for a term not exceeding three months, or to both.
- Failure to notify a change of circumstances - this applies to a person who is entitled to a reduction and has a change in circumstances which they know changes their entitlement to a reduction and fails to give prompt notification of that change. If found guilty of this offence they will be liable on summary conviction, to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 3 months, or to both.
- Penalties as an alternative to prosecution - As an alternative to prosecution, where there are grounds for instituting proceedings against a person, Torbay Council may write to the person inviting them to agree to pay a penalty instead of prosecution action starting.

The amount of the penalty is to be 50 per cent of the amount of the excess reduction of Council Tax Support which has been overpaid to the customer subject to:

- a minimum amount of £100; and
- a maximum amount of £1,000.

If the penalty is accepted by the customer and an agreement for repayment is made no further action will be taken against the customer for this offence.

The customer can withdraw their acceptance within 14 days of their agreement. After this period expires there is no right of appeal. If the customer does withdraw their acceptance prosecution will then be considered.

Penalties for incorrect statements and failing to notify a change of circumstances - In a similar way to Civil Penalties for Council Tax Benefit, if a customer who has applied for or is in receipt of a Council Tax Support either:

- negligently makes an incorrect statement or representation or negligently gives incorrect information or evidence and does not take reasonable steps to correct this error and as a result of this has an excess reduction in their Council Tax Support; or
- without reasonable excuse fails to give a prompt notification of a relevant change of circumstances which results in an excess reduction in their Council Tax Support

In these cases a £70 penalty may be imposed.

9 Housing Tenancy and Homeless Application Fraud

In all cases of fraudulent housing tenancy fraud, the Council will seek to work with the relevant Housing Association. The Council's view is that a housing association tenancy lost to fraud is one less property available to customers on our homeless waiting list.

Fraud and illegal sub-letting committed by Housing Association tenants and homeless applicants will be considered for criminal prosecution using the Theft Act, Fraud Act, Housing Acts and/or the Prevention of Social Housing Fraud Act.

In both instances, the factors that will affect the decision to prosecute will be based on the evidential and public interest tests.

10 Other Fraud

This applies to Direct Care Payments, Grants, Reliefs or non-domestic rates and other benefits awarded such as Blue Badges.

In cases where the Council suffers a financial loss, we will always seek recovery. Where an organisation is involved in the fraud, the Council will also make referrals to the relevant governing body, e.g. Charities Commission, Registrar of Companies.

The Council will also consider criminal prosecution. The factors that will affect our decision to prosecute will be based on the evidential and the public interest test. This will include cases of attempted fraud i.e. applications for renovation grants where the financial estimates are deliberately misstated; false applications for direct care payments.

11 Circumstances in which the Council is less likely to prosecute or impose a penalty

It is probable that the Council will not wish to pursue further action in cases where, although there is sufficient evidence to take further action, the alleged offender or any partner:

- has a significant degree of physical or mental infirmity, such as a terminal illness, severe clinical depression, hearing/sight/speech problems, learning difficulties or extreme old age;
- has made a voluntary disclosure of the alleged offence before the Council had any suspicions. This does not include disclosure during a visit or completion of a review form.
- was driven to commit the offence by a difficult domestic situation.
- if prosecuted there exists the possibility of mental injury to a third party, for example where an adopted or fostered child would be made aware of their true status.
- could be dealt with more effectively without redress to proceedings, for example due to age or immaturity, although youth in itself is not a good enough reason not to instigate proceedings.

The Council will also take into consideration the suitability of evidence obtained and any failures or delays in the investigation or administration. Examples would be when the application form has been wrongly completed by an officer of the Council or when there has been a failure to identify obvious flaws in a statement or document.

The Council will apply the Code for Crown Prosecutors fairly, independently and objectively in each case. Personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness will not influence its decisions. Nor will the Council be affected by improper or undue pressure from any source and will always act in the interests of justice and not solely for the purpose of obtaining a conviction.

12 Proceeds of Crime

The Council will use the Proceeds of Crime Act 2002, Criminal Justice Act 1988 and the provisions of PoSHFA 2013 to obtain Confiscation Orders to include Compensation Orders as well as recovery of the full criminal benefit figure where possible. The council may use its own accredited Financial Investigators or those attached to other law enforcement agencies in order to conduct investigation, obtain orders and present evidence.

13 Recording Penalties Sanctions and Prosecutions

For an effective regime of sanctions to be successful it is a requirement that accurate records of all convictions, penalties and cautions are maintained. This will enable the correct decisions to be made taking full account of the defendant's background. Therefore, it is important that a record of each is maintained.

All sanctions must be recorded by the Council and copies of all documents used to consider and issue the sanction retained, in accordance with the Council's Retention Policy, by the Counter Fraud Team and the affected service. Relevant paperwork must also be sent to the DWP (in benefit fraud cases) and the National Anti-Fraud Network to be retained on its central data-base.

In the case of prosecution all cases that result in successful convictions must be reported to the Police National Computer (PNC) Bureau at Devon & Cornwall Constabulary to update the central databases on sanction activity. Please discuss with the council's Legal Services team first, as this may have automatically been done by the Court if an Arrest Summons Number had been obtained from the Police prior to the issue of Court proceedings.

14 Publicity

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.

15 Reporting and Review

In accordance with the Torbay Council's Corporate Sanction and Prosecution Policy instances of Fraud will be reported annually to the Audit Committee.

This Policy will be reviewed annually.