

Counter Fraud Prosecution & Sanctions Policy

[Subject]



Document Control

Document Title: Counter Fraud Prosecution & Sanctions Policy

Summary

Publication Date	May 2020
Related Legislation / Applicable Section of Legislation	Local Government Finance Act 1992 Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013 Police and Criminal Evidence Act 1984 The Welfare Reform Act 2012 The Social Security Administration Act 1992 Social Security (Loss of Benefit) Regulations 2001 The Fraud Act 2006 Chronically Sick and Disabled Persons Act 1970 Disabled Persons' Parking Badges Act Road Traffic Regulation Act 1984, Forgery and Counterfeiting Act 1981
Related Policies, Strategies, Guideline Documents	Anti-Fraud and Corruption Strategy
Replaces	Counter Fraud Prosecution & Sanction Policy January 2018
Joint Policy (Yes/No)	No
Name of Partner(s) if joint	N/A
Policy Owner (Name/Position)	Louise Steel (Counter Fraud Team Leader)
Policy Author (Name/Position)	Louise Steel (Counter Fraud Team Leader)
Applies to	All Members and officers

Review of Strategy

Last Review Date	May 2020
Review undertaken by	Louise Steel (Counter Fraud Team Leader) and Ian Corbridge (Head of Internal Audit)
Next Review Date	May 2022

Document Approvals

This document requires the following approvals.

Name	Title	Date of Issue	Version Number
Louise Steel	Counter Fraud Team Leader	12 th May 2020	
Ian Corbridge	Head of Internal Audit	13 th May 2020	

Counter Fraud Prosecution & Sanctions Policy

1. Introduction

1.1 There are over **94,500** residential properties within the Borough which attract a Council Tax charge. Rochdale Borough Council provides residents with the opportunity to apply for discounts and exemptions on their Council Tax, as well as the option to claim Local Council Tax Support. Government changes abolished Council Tax Benefit at the end of March 2013 and introduced Council Tax Reduction schemes for Local Authorities. Rochdale Borough Council's scheme has been called Local Council Tax Support and currently administers support to over **21,500** claimants. In addition, there are also **8,000** properties within the Borough which attract a Business Rates charge. The Council is also responsible for the administration of Blue Badge applications, Direct Payments and Personal Budgets and Disability Grants.

1.2 The Council is committed to providing these services in a professional manner and is aware of the high risk from fraud and error, and the necessity to protect the public purse from abuse. Rochdale Borough Council is committed to protecting public funds through the prevention, detection, deterrence and investigation of fraud. This includes:

- Fraud in the commercial rented sector;
- Fraud by Owner/Occupiers;
- Local Council Tax Support fraud linked to Income Support, income based Job Seekers Allowance and other State Benefits;
- Blue Badge Fraud;
- **Adult Care Fraud** (Social Care);
- Council Tax Discounts and Exemptions;
- Disability Grants;
- Business Rate Fraud; and
- Tenancy Fraud.

1.3 The Council recognises that prosecution, the use of Administrative Penalties as defined by the Fraud Act 1997, the issuing of Local Authority Formal Cautions and Fraud Penalties as defined in the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013 are an essential part of this commitment and have a key role to play in deterring offenders.

1.4 Where the Council believes that there are grounds to suspect that a criminal offence may have been committed, an interview under caution will be carried out in accordance with the Police and Criminal Evidence Act 1984, to determine the correct circumstances. Interviews under caution will only be carried out if there is a definite possibility that further action will be taken.

1.5 If sufficient evidence is established, the case will be referred to the Counter Fraud Team Leader before any further action is initiated. The Counter Fraud Team Leader will review all of the evidence available and decide on the appropriate course of action to be taken.

1.6 If prosecution appears to the Counter Fraud Team Leader be appropriate, the case will be investigated, a disclosure officer appointed and a file prepared as a formal file with witness statements, exhibits and unused material not intended to be used as evidence. This will be referred to legal services who will then make the formal decision to prosecute in accordance with the Prosecution of Offences Act and the Code for Crown prosecutors.

1.7 If the investigating officer requires legal advice on the progress of the investigation and sufficiency of evidence prior to the formal file being submitted to the solicitor then it is prudent for the Counter Fraud

Counter Fraud Prosecution & Sanctions Policy

Team to either seek advice in writing or to arrange a meeting after submitting to the solicitor such evidence as has been obtained so far.

1.8 Each individual case will be considered on its own merits, although a full set of criteria has been established as to when a prosecution will be considered and when it will not. Investigators will assess all cases in the light of these criteria before developing the case for further action.

2. Prosecution Criteria

2.1 The four main areas affecting the decision on whether a prosecution should be considered or not are as follows:

2.2 Amount and Period of Fraud

2.2.1 Where the fraudulent activity has not resulted in a significant financial gain to the claimant, prosecution is less likely to be considered appropriate. This does not necessarily rule out all low value cases. If it appears that the fraud was systematic and a deliberate attempt to gain money by deception or the fraud is discovered after a relatively short space of time and a significant financial gain could have occurred had it continued, then prosecution proceedings may still be considered.

2.2.2 If clear evidence of fraud has been established but the loss to the Authority is not a significant amount, i.e. the amount of the fraud is less than the cost of prosecution proceedings would be, then a Formal Caution or Financial Fraud penalty may be considered in cases of Local Council Tax Support fraud. However, if the claimant refuses to accept a Financial Penalty or Formal Caution then a prosecution **will** be pursued.

2.2.3 One clear factor to take into consideration will be the length of time that the fraud has continued. If the deception has continued for a number of years then the financial value will not be as important, as clearly the offender will have had ample opportunity to declare the correct circumstances.

2.3 Physical/Mental Health Factors

2.3.1 Prosecution will not be pursued where it is considered that physical or mental health issues have contributed to the reasons for committing the offence. Furthermore, we will not pursue cases where there is clear evidence to suggest that the health problems of the claimant, partner or a third party (e.g. a child), would be severely adversely affected by our action.

2.3.2 Obvious examples of physical or mental health issues include severe medical conditions, any threat / suspicion of suicide, infirm or bedridden individuals, or individuals with learning difficulties or perceived / known impairment to their mental health. Confirmation of these conditions would need to be obtained, such as checking with their doctor or carer and well-trained members of staff would sensitively handle this.

2.4 Insufficient Evidence

2.4.1 The Council has the burden of proof and must prove all elements of any offence beyond reasonable doubt. Prosecution proceedings will not be considered if there is any doubt in the evidence that has been gathered.

2.5 Failure in Administration

2.5.1 It should be evident on the file in relation to the questioning of offenders, that all procedures have been adhered to with regard to satisfying the conditions of the Police and Criminal Evidence Act 1984.

2.5.2 If an investigation is flawed in any way, or there has been any unacceptable delay in the course of enquiries, then the case would not be of sufficient standard to be considered for prosecution.

Counter Fraud Prosecution & Sanctions Policy

2.6 In addition to the above criteria, the following factors will also be considered when deciding whether prosecution action is appropriate:

- Any previous Financial Fraud Penalties, Administrative Penalties, Formal Cautions or Fraud convictions;
- The level of deliberate intent, e.g. if evidence submitted in support of a claim appears to have been deliberately falsified or altered;
- The involvement of a collusive employer or landlord – these will be regarded as serious fraud and prosecution may be appropriate irrespective of the amount of overpayment; and
- Whether or not the offender is in a position of trust e.g. a Local Authority employee or an Elected Member. Disciplinary proceedings may also be initiated for employees that are found to be in breach of the Council's Code of Conduct for Employees.

2.7 Offences of a serious nature e.g. involving systematic abuse may be referred to the Police.

2.8 The Council may report successful prosecution cases to the media and formal press releases may be issued to act as a deterrent.

3. Formal Caution

3.1 A Formal Caution is an oral warning (of which a written record is made), given in certain circumstances to a person who has committed an offence.

3.2 A caution can only be considered when:

- there is sufficient evidence to justify instituting criminal proceedings;
- the person has admitted the offence during an interview under caution and agrees to the caution;
- there are no previous convictions or cautions for fraud; and
- there was no other person involved in the fraud.

3.3 If the person is subsequently prosecuted for another fraud offence, the caution may be cited in court.

4. Local Council Tax Support Fraud Penalties as an alternative to prosecution

4.1 From 1st April 2013 Regulation 11 of the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013, introduced penalties as an alternative to prosecution in cases of Local Council Tax Support fraud.

4.2 A Penalty as an alternative to prosecution will only be considered where there is sufficient evidence to justify the prosecution of an offence, where the offence is not so serious and where the overpayment is low enough that it would not be in the public interest to prosecute.

4.3 If a person enters into a Fraud Financial Penalty they will be required to pay a penalty to the Council in addition to repaying the overpayment. The penalty will be collected at the same time as the overpayment. The Service will recover overpayments and penalties in accordance with any relevant legislation but in doing so will not place any one in hardship.

4.4 The amount of the Penalty is to be £100 where a fraudulent Local Council Tax Support claim could have resulted in a reduction of Council Tax, to which the person was not entitled.

4.5 The amount of Penalty is to be 50% of the amount of the excess reduction. This applies to cases where there is a minimum overpayment of £100: The maximum fine being £1,000.

Counter Fraud Prosecution & Sanctions Policy

4.6 The Penalty is payable in addition to the overpayment and is recoverable by the same methods as those by which the overpayment is recoverable.

4.7 Failure to repay the debt or default on instalments will result in civil proceedings being taken, although regard will be given to the claimant's financial circumstances.

5. Working in Partnership with other Agencies

5.1 The Council may investigate cases involving state benefits with agreement from the Department for Works and Pensions, or jointly with them.

5.2 Where necessary, the Council will also work closely with other organisations such as the Police, Home Office, HM Revenues & Customs and other local authorities in order to develop and promote an anti-fraud culture and to further prevent, detect and deter benefit fraud. In this respect, the Counter Fraud Investigators now form part of the Partnership Enforcement Team (PET) based at Rochdale Police Station, along with investigators and enforcement officers from other functions and organisations. The PET facilitates the sharing of knowledge, skills and powers to support joint investigations and prosecutions with a view to achieving more effective outcomes.

6. Civil Penalties for Incorrect Statements – Local Council Tax Support Scheme

6.1 Regulation 12 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) 2013 allows Rochdale Borough Council to impose a penalty of £70 where an incorrect statement or representation has been made.

6.2 The £70 penalty can only be imposed where a person has not been charged with a Local Council Tax Support offence or been offered a Formal Caution or Financial Penalty under regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

7. Civil Penalties for failing to notify a change of circumstances – Local Council Tax Support Scheme

7.1 Regulation 13 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) 2013 allows Rochdale Borough Council to impose a penalty of £70 where without reasonable excuse; there is a failure to report a relevant change of circumstances promptly.

7.2 The £70 penalty can only be imposed where a person has not been charged with a Local Council Tax Support offence or been offered a Formal Caution or Financial Penalty under regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

8. Civil Penalties for failure to supply information – Council Tax

8.1 Schedule 3 of the Local Government Finance Act 1992 allows Rochdale Borough Council to impose a penalty of £70 where a person fails to comply with certain requirements as to the supply of information.

8.2 A penalty can be imposed on any person who –

- has been requested by the Council to supply information to identify the liable person for Council Tax and has failed to supply this information; or
- has knowingly supplied information, with regard to identifying the liable person, which is inaccurate in a material particular; or
- has failed, without reasonable excuse, to notify the Council that the dwelling will not be, or was no longer an exempt dwelling; or
- has failed, without reasonable excuse, to notify the Council that the chargeable amount is not subject to a discount, or is subject to a discount of a lesser amount

Counter Fraud Prosecution & Sanctions Policy

9. SFIS – Single Fraud Investigation Service

9.1 The Welfare Reform Act 2012 has introduced a Single Fraud Investigation Service (SFIS); this is governed by the Department for Work and Pensions (DWP). All investigators operating under SFIS will investigate all Social Security Benefit Fraud including Universal Credit, Housing Benefit and historic Council Tax Benefit, as well as Tax Credit Fraud. SFIS investigators will adhere to the Prosecution Policy laid down by DWP.

9.2 Local Authorities are responsible for the investigation of all other fraud including Local Council Tax Support, Council Tax Discounts and Exemptions, Disability Grants, **Adult Care Fraud**, Tenancy Fraud, Blue Badge Fraud, Business Rates Fraud.

9.3 Local Authorities will still be responsible for the authorisation of any Housing Benefit and historic Council Tax Benefit Administrative Penalties.

10. Administrative Penalty

10.1 The Social Security Administration Act 1992 provides that Councils may offer an Administrative Penalty (a fixed penalty fine) as an alternative to prosecution in cases of Housing Benefit and Council Tax Benefit Fraud.

10.2 The offer of an Administrative Penalty may be made where there is sufficient evidence to justify the prosecution of an offence, where the offence is not so serious and where the overpayment is low enough that it would not be in the public interest to prosecute.

10.3 Administrative Penalties will only be offered in cases where it is clear that the offender can afford to pay a penalty.

10.4 An Administrative Penalty can be offered in respect of an overpayment or part overpayment that accrued after the date the power to offer a penalty came into force. In the case of any employer, this is 30th April 2002 and in all other cases, 18th December 1997.

10.5 If a person enters into an Administrative Penalty Agreement they will be required to pay a penalty to the Council in addition to repaying the overpayment. The penalty will be collected at the same time as the overpayment. The level of penalty depends on the offence and the date the offence was committed.

10.6 For offences committed wholly on or after 1 April 2015, overpayments from £0.01 to £700 can incur a penalty of £350. For overpayments over £700 the penalty is 50% of the overpayment, up to a maximum penalty of £5,000. The maximum penalty of £5,000 will only be offered in exceptional circumstances. The cooling off period is 14 days.

10.7 The Welfare Reform Act 2012 amended sections 115A and 115B of the Social Security Administration Act 1992 and a minimum penalty applies where an offence is committed wholly on or after 8th May 2012.

10.8 The penalty will be equivalent to £350 or 50% of any recoverable overpayment that has been fraudulently received, whichever is greater (up to a maximum penalty of £2,000).

10.9 A penalty of £350 applies where attempted fraud is committed on or after 8th April 2012, but the fraud is stopped before any overpayment of benefit has been made.

10.10 For offences committed before 8th May 2012, or where the offence spans the 8th May 2012, a penalty equivalent to 30% of any recoverable overpayment that may have been fraudulently received will apply.

Counter Fraud Prosecution & Sanctions Policy

10.11 The Administrative Penalty is payable in addition to the overpayment and is recoverable by the same methods as those by which the overpayment is recoverable.

10.12 Failure to repay the debt or default on instalments will result in civil proceedings being taken, although regard will be given to the claimant's financial circumstances.

10.13 In the case of an employer, the amount of the penalty is based on the circumstances of the offence.

11. Loss of Benefit Provision

11.1 The Welfare Reform Act 2012 contains a new loss of benefit provision effective from April 2013. These provisions are designed to strengthen and toughen the existing loss of benefit provision for benefit fraud offences introduced from April 2010 known as "one strike".

11.2 If a claimant accepts an Administrative Penalty or Formal Caution as an alternative to prosecution, any social security benefit they receive now or in the future may be the subject of a four week loss of benefit provision in accordance with the Social Security (Loss of Benefit) Regulations 2001, as amended by the Social Security (Loss of Benefit) Amendment Regulations 2010 and now amended by the Welfare Reform Act 2012.

11.3 Offences which result in a first conviction for benefit Fraud may be subject to the 13 week loss of benefit provision for any social security benefit they receive now or in the future in accordance with the Social Security (Loss of Benefit) Regulations 2001, as amended by the Social Security (Loss of Benefit) Amendment Regulations 2010 and now amended by the Welfare Reform Act 2012.

11.4 Two offences of benefit fraud which are committed within a set period, the second offence resulting in a conviction may be subject to the 26 week loss of benefit provision for any social security benefit they receive now or in the future in accordance with the Social Security (Loss of Benefit) Regulations 2001, as amended by the Social Security (Loss of Benefit) Amendment Regulations 2010 and now amended by the Welfare Reform Act 2012.

11.5 A conviction involving a serious case of organised benefit or identity fraud will be subjected to a 3 year loss of benefit. In addition three offences of benefit Fraud committed, the third resulting in a conviction may be the subject of a 3 year loss of benefit now or in the future in accordance with the Social Security (Loss of Benefit) Regulations 2001, as amended by the Social Security (Loss of Benefit) Amendment Regulations 2010 and now amended by the Welfare Reform Act 2012.

12. Blue Badge Fraud

12.1 The Disabled Persons' Parking Badge Scheme was introduced in 1972, under Section 21 of the Chronically Sick and Disabled Persons Act 1970. Under this scheme if you or a child you care for is disabled or has a health condition which affects your mobility, you can apply for a Blue Badge. You may also be eligible for a Blue Badge if you suffer from a hidden illness such as stress, anxiety or other mental health issues. However, it is against the law to use a cancelled, expired, fake or deceased persons Blue Badge, to use a Blue Badge without the badge holder present or to obtain a blue badge through providing false information. The Counter Fraud Team will investigate any such fraud allegations received.

12.2 During the course of their daily duties, Rochdale Borough Council Civil Enforcement Officers may witness Blue Badge Fraud. Should this happen, the incident will be recorded on their body camera, electronic hand held device or pocket notebook. The Civil Enforcement Officer will then issue a penalty charge notice and/or send a fraud referral, with all evidence, to the Counter Fraud Team.

Counter Fraud Prosecution & Sanctions Policy

12.3 Counter Fraud Investigators have been authorised to inspect and retain a blue badge under the Disabled Persons' Parking Badges Act 2013 under the following circumstances: If it is fake, has already been cancelled (due to the badge being reported as lost or stolen), has expired and should have been returned or is being misused without the holder being present. Please see website https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/244810/blue-badge-enforcement-changes.pdf

12.4 If there is sufficient evidence that an offence under Road Traffic Regulation Act 1984, Forgery and Counterfeiting Act 1981 or the Fraud Act 2006, may have been committed: The alleged offender may be asked to attend an interview under caution or may be sent a written interview under caution to complete.

12.4 If it is decided criminal action is not appropriate, a warning letter may be sent to the alleged offender and Blue Badge holder. Whilst this list is not exhaustive, examples could include;

- Not being in the public interest to pursue criminally;
- Misuse of the blue badge occurred due to a genuine mistake;
- The person committing the offence would be eligible for a blue badge in their own right; and
- Health problems that would be severely adversely affected by criminal action.

12.5 A warning letter should not be sent if a letter has previous been sent to the alleged offender or Blue Badge holder. In such circumstances the matter should be considered for prosecution.

12.6 If there is sufficient evidence of an offence prosecution proceedings will be considered if one or more of the following apply:

- There is a realistic prospect of a conviction from the evidence gathered;
- It is deemed to be in the public interest;
- The badge has been misused on one or more occasions;
- There are no serious aggravating health factors;
- The level of deliberate intent;
- Fraud of a similar nature has previously been committed;
- The person fails to respond or attend an interview under caution; and
- The person is in a position of trust, e.g. Council employee or councillor.

12.7 A caution maybe considered as an alternative to prosecution proceedings if:

- There are serious aggravating health factors;
- The person has admitted the offence during an interview under caution;
- The badge was misused on no more than one occasion and there was no deliberate attempt;
- There are no previous warning letters or sanctions issued; and
- There are no previous convictions.

12.8 The above list are not exhaustive and each case will be judge on its own merits.

12.9 This policy should be read in conjunction with the Council's Counter Fraud Prosecution & Sanctions Policy. If there is a conflict between the Council's blue badge fraud policy and any other policy, the Council's blue badge fraud policy will take precedent in relation to blue badge fraud.

12.10. For further information regarding the Blue Badge scheme, please refer to <http://www.rochdale.gov.uk/social-care-and-support/Pages/blue-badges.aspx>
<https://www.gov.uk/government/collections/blue-badge-scheme>

13. Conclusion

13.1 The Council will seek to deter fraud via the pursuit of prosecution or the imposition of Financial Penalties and Formal Cautions in cases where all the criteria has been met. The criteria that have been established are designed to ensure that the correct cases are brought to court, and that the Council acts in a positive way to actively deter the genuine and deliberate fraudster.



Counter Fraud Prosecution & Sanctions Policy

Rochdale Borough Council
Number One Riverside
Smith Street
Rochdale OL16 1YH

 rochdale.gov.uk

 01706 647474

 council@rochdale.gov.uk

