

Cheshire West & Chester Council Corporate Fraud Team Prosecution and Sanction Policy

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1. Introduction

- 1.1. Cheshire West & Chester Council is committed to protecting public funds and any person(s) found to have claimed or attempted to claim any discounts, exemptions, grants, advantage and/ or payments fraudulently will be pursued in line with this Policy.
- 1.2. This Policy will be applied to any third party, which includes (but not limited to) customers, landlords, employees, employers and creditors engaged in offences against the Council and will apply to the work carried out by the Council's Corporate Fraud team (based within Internal Audit).
- 1.3. This Policy will assist in determining the most appropriate course of action to be taken in each case. However, this Policy is intended for guidance only and each case will be decided upon its own merits.
- 1.4. It is necessary to regularly review the Policy taking into account changes within the Criminal Justice System, new legislation and best practice guidance.
- 1.5. The Corporate Fraud Team will consider the appropriateness of investigating all allegations of fraudulent abuse against Cheshire West and Chester Council that is not to say that all allegations will result in a full investigation.
- 1.6. The Corporate Fraud Team will regularly promote fraud awareness campaigns and training to all staff within Cheshire West and Chester, internal and external partners.
- 1.7. Cheshire West and Chester operate during office hours a fraud and a whistleblowing hotline and any information received is treated in the strictest of confidence.

2. Suitability for sanction

- 2.1 Having concluded an investigation, a full case report will be collated and a recommendation made to the Responsible Officer. This will be a suitably qualified senior officer, who has authority to decide on the appropriate course of action. The Responsible Officer will review the file in line with Policy below and make a recommendation. Where the recommendation is for prosecution, the matter will be referred to the appropriate officer in Legal Services.
- 2.2 See Section 10 for key contact details.
- 2.3 The Responsible Officer must be satisfied that
 - The investigation is not flawed and has been conducted in a timely manner
 - There has not been any failure on the part of the Council in the administration of schemes, discounts, exemptions and/or payments (this list is not exhaustive)
 - At the conclusion of a PACE (Police and Criminal Evidence Act 1984) interview, guilty action, knowledge and intent have been addressed.
 - The evidential test for Crown Prosecutors is satisfied (is there sufficient admissible and reliable evidence of an offence for there to be a realistic prospect of conviction if prosecuted)

- The Public Interest test in the Crown Prosecutors code has been applied (is it in the public interest to prosecute/administer a sanction against an offender when such factors as their health, previous convictions, social and domestic circumstances are weighed against the seriousness of the offence)
- The offence is serious enough to warrant sanction/further action, taking into consideration the loss to public funds
- Any previous convictions have been considered

3. The sanction options

- 3.1 Any case being considered for sanction action can only be considered where there is sufficient evidence to justify instituting criminal proceedings and as such investigated to this standard.
- 3.2 At the conclusion of all investigations and having satisfied the above tests, the options available to the Council are: -

Simple Caution

Financial Penalty (Council Tax Local Scheme only)

Criminal Prosecution

Closure/ no further action

Financial/ Civil Penalty

Internal Action such as Disciplinary Action

- 3.3 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which the Council must approach every case.
- 3.4 The Council must be fair, independent, and objective. It must not let any personal views about race, disability, sex, religious beliefs, political views or the sexual orientation, gender reassignment, Marriage and civil partnership, pregnancy and maternity of the suspect, victim, or witness influence their decisions. It must not be affected by improper or undue pressure from any source.
- 3.5 The Council must always act in the interests of justice and not solely for the purpose of obtaining a conviction, sanction, fine or disciplinary action.
- 3.6 All investigations conducted by the Corporate Fraud Team will be undertaken in accordance with legal requirements and relevant government guidance.

4. Which sanction is appropriate?

- 4.1 Before considering which sanction is appropriate, all of the previous requirements mentioned in this Policy must be satisfied.

5. Simple Cautions:

Any offer of a Simple Caution will follow guidance issued by the Ministry of Justice – Simple Cautions for Adult Offenders.

- 5.1 Primary consideration of a **Simple Caution** should be given to cases that fit any of the following criteria. This list is intended as guidance only and is not intended to be prescriptive:
- The person has admitted the offence and demonstrated remorse for their actions.
 - It is in the public interest to offer a Simple Caution i.e. consideration must have been given to the seriousness of the offence and/or the circumstances of the person
 - There is no previous sanction history
 - The extent of the loss to public funds should be low-level
 - The offering of the Caution should reduce the likelihood of re-offending (kept on record for 5 years)
 - The offence is not planned or systematic
 - There is no other person involved in the fraud
- 5.2 Refusal to accept a Simple Caution will not prevent full consideration being given to further action, which includes prosecution.
- 5.3 A Simple Caution is not a criminal conviction but may be referred to in any subsequent proceedings.

6. Financial Penalty:

Council Tax Reduction Scheme (CTRS) only

- 6.1 Regulation 11 of The Council Tax Reduction Scheme (Detection of Fraud and Enforcement (England) Regulations 2013, allows The Council to offer a person the opportunity to pay a financial penalty as an alternative to prosecution where certain conditions are satisfied.
- 6.2 The penalty is laid down in legislation and is 50% of the excess reduction to:
- A minimum of £100 and
 - A maximum of £1000
 - In cases where an offence has been committed but the fraud was discovered before any benefit was paid the penalty as laid down in legislation is £100
- 6.3 Primary consideration of a Financial Penalty administered by Cheshire West and Chester should be given to cases that fit any of the following criteria. This list is intended as guidance only and is not intended to be prescriptive:
- That the investigation has been carried out as a result of and into a claim for Council Tax Reduction Scheme (CTRS)
 - There is no requirement for the person to have admitted the offence
 - The period of the overpayment is after 01 April 2013
 - It is in the public interest to offer a Financial Penalty i.e. consideration must have been given to the seriousness of the offence and/or the circumstances of the person
 - The extent of the loss to public funds should be low-level
 - The offering of the Financial Penalty should reduce the likelihood of re-offending
- 6.4 A penalty will be offered to an offender at a specifically arranged interview

- 6.5 If the offender accepts the penalty, and following the 'cooling off period', an invoice will be raised for the repayment of the penalty amount.
- 6.6 If the offender refuses to accept the Financial Penalty then consideration will be given to further action, including prosecution.

Housing Benefit (HB) & Council Tax Benefit (CTB) (old scheme)

- 6.7 From 01 December 2015 responsibility for the investigation of allegations of fraud in relation to HB and/or CTB (up to 31 March 2013) falls under the remit of the Department for Work & Pensions (DWP)
- 6.8 Sanction action to be taken by DWP in relation to HB and/or CTB must be authorised by a Responsible Officer within the Council.
- 6.9 Sanction action will include Administrative Penalties and Prosecutions (DWP no longer apply Simple Cautions).
- 6.10 Prior to authorisation the Responsible Officer must be satisfied that:
- The DWP investigation is not flawed and has been conducted in a timely manner
 - There has not been any failure on the part of the Council in the administration of Housing Benefit and/or Council Tax Benefit
 - At the conclusion of a PACE (Police and Criminal Evidence Act 1984) interview, guilty action, knowledge and intent have been addressed by DWP.
 - Whether it is in the public interest to prosecute/administer an Administrative Penalty against an offender when such factors as their health, previous convictions, social and domestic circumstances (this might include financial situation particularly in relation to an Administrative Penalty) are weighed against the seriousness of the offence.
 - The offence is serious enough to warrant sanction/further action, taking into consideration the loss to public funds
 - Any previous convictions have been considered
- 6.11 Decisions made by the Responsible Officer in relation to DWP sanction action may be made according to DWP recommendation and be based upon limited information. In making any decision, DWP will apply their own policy in relation to rights/best interest of individuals and this includes any consideration under the Equality Act.
- 6.12 DWP makes use of the "Loss of Benefit Penalty" in relation to their benefits, including HB. This is designed to be a deterrent against the abuse of the benefit system. The level and period of reduction will depend upon the benefit in payment and will be decided by DWP and the Council notified via normal channels.
- 6.13 The loss of benefit penalty is not applied for the purposes of Council Tax Reduction Scheme

7. Criminal Prosecution;

- 7.1 Primary consideration of a **Criminal Prosecution** should be given to cases that fit any of the following criteria. This list is intended as guidance only and is not intended to be prescriptive:

- The person has refused to accept a Simple Caution or Administrative Penalty
- It is in the public interest to prosecute i.e. consideration must have been given to the seriousness of the offence and/or the circumstances of the person
- The person was in a position of authority or trust e.g. Council Employee, Councillor
- There may be a record of previous convictions
- The offence was planned and systematic
- There were other people involved in the fraud
- The person might have made a significant financial gain

7.2 Particular consideration will also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.

7.3 This policy provides clear guidelines to Investigators and ensures that the appropriate sanction is applied in accordance with the law.

7.4 Maximum publicity will be sought for cases subject to successful prosecution to act as an effective deterrent to others.

7.5 Any fraud involving a member of staff within Cheshire West and Chester will be considered under this policy as well as considering the need for appropriate disciplinary action.

8. Other Financial Penalties:

Council Tax Reduction Scheme (CTRS)

8.1 Regulations 12 and 13 of The Council Tax Reduction Scheme (Detection of Fraud and Enforcement (England) Regulations 2013, allows The Council to impose a penalty of £70 on a person in such circumstances as:

- when a person negligently makes an incorrect statement in connection with an application for a reduction under a council tax reduction scheme or
- where a person fails to notify a change of circumstances when required to do under the scheme.

8.2 Any penalty imposed is payable to Cheshire West and Chester Council and will be raised and repaid via sundry debt. The penalty currently stands at £70.00

8.3 Primary consideration of any **Civil Penalty** is that:

Incorrect statements:

- The person fails to take reasonable steps to correct the error
- That the failure results in an 'excess reduction' (overpayment) and
- That the person is not charged with an offence or offered an alternative sanction to prosecution.

Failure to notify a change of circumstances:

- The person without reasonable excuse fails to give a prompt notification of a relevant change of circumstances
- That the failure results in an 'excess reduction' (overpayment) and
- That the person is not charged with an offence or offered an alternative sanction to prosecution.

- 8.4 A 'relevant change of circumstances' means a change which the person might reasonably be expected to know might affect their entitlement to, or to the amount of, reduction under the Council's reduction Scheme
- 8.5 Notification of a change is prompt if, and only if, it is given within a period of 21 days beginning with the day on which the change occurs, or as soon as is reasonably practicable after the change occurs, whichever is later.

Council Tax Penalty

- 8.6 Schedule 3 of the Local Government Finance Act 1992 and Statutory Instrument 2008/981 allows the Council to impose a penalty of £70 where a person:
- fails to supply certain information requested by the Council within 21 days of the request for the information **or**
 - within 21 days of a change which affects Council tax registration or an entitlement to a discount or exemption.
- 8.7 The council may impose a penalty of £70 where a person fails to:
- Notify the council without reasonable excuse, on any matter which affects entitlement to a council tax discount.
 - Fails to notify that their dwelling is no longer an exempt dwelling
 - Fails to notify the Council that they are jointly liable for the tax or to supply relevant information requested in order to establish liability
 - Supply relevant information requested following the issue of a Liability Order. Failure to supply could lead to a criminal prosecution and a fine
- 8.8 When a penalty has been imposed and a further request to supply the same information is made. A further penalty of £280 may be imposed for each subsequent failure.
- 8.9 All and any financial penalties must be authorised by the Responsible Officer who must be satisfied that:
- That any investigation conducted is not flawed and has been conducted in a timely manner
 - There has not been any failure on the part of the Council in the administration of Council Tax exemptions and/or discounts
 - Such factors as a person's health, social and domestic circumstances, and financial situation have been considered in reaching the decision to impose a penalty.

9. Financial Investigations:

- 9.1 Investigations conducted by the Corporate Fraud team will be reviewed for any potential financial investigation and suitability for proceedings under the Proceeds of Crime Act 2003 (POCA).
- 9.2 The team will work in partnership with the Council's Financial Investigator to maximise income from POCA.

10. Key Contacts and additional information

<p>Responsible Officer:</p> <p>Corporate Assessment Manager (Transactional Services) – Benefit related matters</p> <p>Senior Manager – Internal Audit (Head of Internal Audit) Non- benefit related matters</p>	<p>Susan Taylor 0151 356 6391 susan.taylor@cheshirewestandchester.gov.uk</p> <p>Ian Kirby 01244 976 959 ian.kirby@cheshirewestandchester.gov.uk</p>
<p>Senior Manager – Transactional Service Centre</p>	<p>Vacant Post (August 2017)</p>
<p>Legal Services Responsible Officer:</p> <p>Head of Governance</p>	<p>Vanessa Whiting 01244 977 802 vanessa.whiting@cheshirewestandchester.gov.uk</p> <p>Karen McIlwaine 01244 977 802 Karen.mcilwaine@cheshirewestandchester.gov.uk</p>
<p>Senior Manager – Internal Audit (Head of Internal Audit)</p>	<p>Ian Kirby 01244 976 959 ian.kirby@cheshirewestandchester.gov.uk</p>
<p>Policy Officer:</p> <p>Fraud & Investigations Manager</p>	<p>Helen Peters 01244 977 375 helen.peters@cheshirewestandchester.gov.uk</p>

11. Personnel responsible for the policy

- 11.1 The Council's Director of Corporate Services (Section 151 Officer) has overall responsibility for this policy, and for reviewing the effectiveness of actions taken under this policy.
- 11.2 The Fraud and Investigations Manager has day-to-day operational responsibility for this policy, and must ensure that all those staff who operate under this policy receive regular and appropriate training.
- 11.3 The Fraud and Investigations Manager, in conjunction with a representative from Legal Services will review this policy from a legal and operational perspective at least once a year.

If you have any questions or suggestions for improvement to **this policy**, please contact:

Internal Audit - Fraud and Investigations Manager– Helen Peters

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