

Counter Fraud

Lancaster City Council

Sanction Policy

February 2023

This policy is reviewed annually
Next policy review February 2024

Lancaster City Council is committed to protecting public funds through its investigations into cases of fraud. The Oxford English Dictionary defines fraud as “*Wrongful or criminal deception intended to result in financial or personal gain*”. Fraud may also occur by failure to disclose information where there is a legal duty to do so.

This policy is intended to cover any form of fraud that the Council may consider necessary to investigate. The Council will consider taking enforcement action against any individual or organisation which commits a criminal offence against the Council, (including criminal conduct related to the systems administered by the Authority or any of its partners) or the wider local community.

Areas in which the Council faces the risk of fraud include: (the list should not be considered exhaustive):

- Business Rates
- Council Tax
- Council Tax Reduction Scheme
- Employee Fraud
- Grants
- Insurance
- Mandate Fraud
- Procurement
- Social Housing Fraud

The Council may work with other organisations such as the Department for Work and Pensions, the Police, Home Office, HM Revenues and Customs and other local authorities in order to detect and deter fraud. The work may include joint investigations with them and, where appropriate, assist in any prosecution.

The Council recognises that the use of Simple Cautions, Penalties (as prescribed in the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013 and the Social Security Administration Act 1992 (as amended) and prosecutions have a key role to play in deterring offenders.

In **all** cases where fraud is identified the Council will consider commencing legal processing to cover the debt from the fraudulent party

This document replaces the Lancaster City Council’s Sanction Policy for the Council Tax Reduction Scheme.

Course of Action

The initial decision on what appropriate action may be taken lies with (1) the Fraud Manager who will submit a report to (2) the Director of the service affected, making recommendations on the appropriate sanction. If approved, the report will be counter signed by the Director and the approved action will be followed. If it is not approved, a case conference will take place between the recommending officer and the Director to discuss what action, if any, is appropriate.

In the event of the case being submitted for prosecution, the report, together with the investigation evidence, will be submitted to the Council's Governance (Legal) Team who in turn will determination on the institution of legal proceedings.

Consideration will be given to the individual circumstances of each case in deciding the appropriate enforcement action from a range of sanctions.

A) Simple Caution

Where the evidential requirement for a prosecution is satisfied and the offender has admitted the offence, a caution is one of the enforcement actions available to the Council.

Whether an offer of a caution is suitable is an operational decision based on the specific circumstances of the individual case.

The Council may offer a Simple Caution if:

- The case involves low-level, mainly first-time, offending
- There is an absence of previous warnings, penalties, cautions or convictions
- A penalty is not appropriate
- The overall value of the fraud is below £5,000
- The person's subsequent attitude is one of penitence (e.g. genuine expression of remorse for their actions and/or co-operation with the investigation)
- The person is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished
- There are no significant aggravating factors such as the person being in a position of trust, sophisticated nature of the offence or significant planning

If the person refuses the offer of a simple caution the case will usually be referred for prosecution.

B) Alternative Penalties

The Council may offer an alternative penalty where appropriate and where legislation allows the offer of a penalty. The Council will have particular regard to:

- Circumstances where the case does not involve factors that make prosecution the only realistic option (such as collusion, abuse of position, sophisticated nature or significant planning);
- The loss to public funds;

- Whether the person has no unspent previous convictions; and
- Whether the person has no cautions or alternative penalties within the last two years.

Council Tax Support Scheme

Regulation 11 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 allows the Council to offer a penalty of 50% of the amount of excess reduction/overpayment (rounded down to the nearest whole penny) subject to a minimum penalty of £100 and a maximum penalty of £1000 as an alternative to prosecution. The penalty is levied in addition to the amount of excess reduction/ overpayment. Upon accepting the penalty, the person has 14 days in which to change their decision.

A penalty may be offered in cases of attempted fraud, as an alternative to prosecution, where an offence of Council Tax Support Scheme fraud has been committed but the fraud is discovered and stopped before any award of Council Tax Support is made. In these cases, the amount of the penalty would be £100.

Housing Benefit, Council Tax and National Benefits

Powers to investigate and prosecute benefit fraud now lie with The Department for Work and Pensions. Where an overpayment of Housing Benefit, Council Tax Benefit or National Benefits is also being considered for the offer of a penalty these will be dealt with under the provisions contained in the Social Security Administration Act 1992 (as amended). These penalties will be administered by The Department for Work and Pensions.

If a penalty is not accepted, or it is withdrawn, the Council must consider whether to prosecute, therefore all cases must be up to prosecution standard.

The offer of a penalty should happen at a **special interview**. The person should be told at the interview that:

- It is not an interview under caution
- In light of the evidence available, it is believed there are grounds for instigating criminal proceedings for the alleged offence
- It has been decided to offer them the alternative of agreeing to pay a penalty instead of their case being referred for prosecution
- They will be expected to make a decision on whether to agree to pay a penalty, by the end of the interview
- Acceptance of the penalty is not an admission of guilt

- Recovery of the penalty will occur in the same way as recovery of the overpayment
- They have 14 days in which to change their mind should they accept the penalty

Failure to repay the penalty or default on instalments will result in the person facing civil proceedings for recovery.

The officer who conducted the interview under caution will not conduct the special interview.

The Council may consider issuing a penalty if:

- To the Council's knowledge the person has no previous unspent convictions
- The person has no cautions or alternative penalties within the last two years
- The person has not admitted the offence during an interview under caution
- The excess reduction/overpayment is under £5,000
- A Simple Cautions is not appropriate
- The person is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished

If the person refuses the offer of a penalty, the case will usually be referred for prosecution.

C. Prosecution

The Decision to Prosecute – additional factors:

- The Council shall always consider the principles set out in the Code for Crown Prosecutors. Accordingly, a prosecution will only be started when the case has passed both stages of the Full Code Test: the evidential test; followed by the public interest test.
- Each case will be considered on its own merits to determine the most appropriate course of action.
- In all cases considered for sanction, it is essential that each case is subject to scrutiny on the basis of its own particular details. The circumstances of each individual case will ultimately determine the eventual outcome of this exercise
- It should be noted that it may be appropriate to prosecute or take other sanction action against a person who has attempted to commit a fraud.