

Corporate Prosecutions Sanctions and Redress Policy for Fraud

July 2026

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Introduction

The London Borough of Camden has a responsibility to protect public funds. This is achieved in part through its counter fraud work. The work consists of investigation, detection and prevention of fraud and corruption within and against the Council.

The purpose of this policy is to ensure that the decision to sanction or prosecute can be justified as fair, effective and consistent. This overarching policy should be applied in conjunction with the prosecution policies of the individual investigative teams. This policy does not apply to teams who deal with areas outside of the counter-fraud functions of the Council, for example, Community Safety Partnerships, Trading Standards and Licensing who operate under their own policies.

The Council is a signatory to the [Enforcement Concordat](#). This document was published by the Cabinet Office in 1998 and sets out what a business and others being regulated can expect from enforcement officers, and commits us to good enforcement policies and procedures. The Council must also adhere to the [Regulators' Code](#) which is a statutory code of practice. This policy confirms its commitment to implementing the Enforcement Concordat and Regulators' Code principles in all enforcement action. All decisions will also be made with reference to the [Code for Crown Prosecutors](#).

Authorisation

Any fraud cases that have been investigated by the Anti-Fraud and investigations Team (AFIT) and meet the requirements for prosecution will be reviewed by the Head of Internal Audit, Investigations and Risk Management (IAIRM) who will grant authorisation before the case can be referred to either Legal Services or the Police. All Housing Investigations Team (HIT) prosecutions should be advised to the Head of IAIRM for recording and reporting purposes – this is so that they can be included in the annual Counter Fraud Report that is presented to the Audit and Corporate Governance Committee.

Investigations conducted by HIT for tenancy related issues are investigated under relevant legislation and are authorised by the Housing Investigations Manager. This should be recorded using a “decision form” to ensure the rationale is appropriately recorded and authorised, and is in line with their Tenancy and Housing Fraud prosecutions policy.

(Since August 2015, cases for Housing Benefit fraud are investigated and prosecuted by the Department for Work and Pensions' [Single Fraud Investigation Service \(SFIS\)](#) and therefore no longer falls under the remit of the London Borough of Camden.)

For cases referred to Legal Services, the decision to prosecute will be taken by the Borough Solicitor in line with the constitution.

Larger or more complex cases may need to be referred to the Police. Referrals to the Police must be authorised by the Head of IAIRM. Cases involving staff or other Council representatives must be sanctioned by the Section 151 Officer (currently the Director of Finance).

Each case is unique and will be considered on its facts and merits.

Investigations conducted by Trading Standards, Community Safety Partnerships and Licensing teams do not need their prosecutions or referrals to the Police to be authorised by the Head of IAIRM but their respective Head of Service or senior officer will authorise within their own guidelines.

General Policy

In all cases, the following matters will need to be considered when deciding whether to prosecute. These factors are not exhaustive:

Evidence Factors:

- Is there enough evidence to provide a realistic prospect of conviction?
- Is the evidence reliable?
- Is the evidence admissible?
- Is the evidence credible?

Public Interest Factors:

- Was it a singular fraudulent transaction or a series of transactions?
- Was it multiple frauds?
- Was it fraudulent from the outset?
- Was it carried out over a significant period of time?
- Was it carried out professionally or planned?
- Does the defendant have previous convictions, cautions or other sanctions relevant to fraud?
- Was the defendant in a position of authority or trust?
- What was the value of the fraud?
- Is the type of fraud widespread in an area where it was committed?
- Is the offence related to the misuse or fraudulent use of a disabled person's Blue Badge?
- Is the fraud likely to be continued or repeated?
- Has the defendant admitted the fraud prior to investigation?
- Was the offence as a result of a genuine mistake or misunderstanding?
- Would a prosecution have a detrimental effect on the victim?
- Has the defendant put right the loss?
- Is the defendant elderly or infirm?
- Does the defendant suffer from any physical or mental problems?
- Would a prosecution have a significant positive impact on maintaining community confidence?

Local Authority Caution

This disposal can be considered for any case of low-level fraud where the offending is minor and there is very substantial mitigation. The Council may consider issuing a formal caution in the following circumstances, as an alternative to prosecution:

- The individual has not committed an offence previously,
- The offence was admitted during the interview Under Caution (IUC),
- The individual has expressed remorse or regret,
- It may not be in the public interest to prosecute, i.e. there may be social or medical factors to consider,
- There is a strong likelihood that the individual will not commit the offence again.

Prosecution

Cases involving significant amounts of money, protracted and/or organised fraud or the misuse/fraudulent use of a disabled person's Blue Badge should always be considered for prosecution. Blue Badge offences have been included in this consideration due to prevalence within the borough. Officers must consider all issues addressed under the public interest factors above prior to recommending a prosecution.

AFIT will use lawyers within Legal Services for advice and prosecutions.

However, authorisation for prosecution must be at the appropriate level and the final decision for prosecution of an offence when using the Council's Legal Services is the responsibility of the Borough Solicitor.

Internal Fraud

The Head of IAIRM will liaise with relevant heads of service and senior officers if prosecution is to take place against a member of staff, Member or contractor. Any prosecution must be sanctioned by the Section 151 Officer (currently the Director of Finance) in these circumstances. Occasionally, this may be out of the Council's control if an external body, for example, the DWP or Police, is bringing the case.

Disciplinary proceedings may also be taken against members of staff in parallel with any criminal investigations.

Redress

Redress can be defined as the recovery or attempted recovery of assets lost or defrauded. This would include any type of financial recompense for the fraud.

Where possible, the Council would expect to follow cases through to this point. Whilst the Council aims to progress to sanctions, it must also attempt to recover any loss. The recovery process is not within the remit of AFIT. However, instruction and support will be provided where possible to facilitate recovery. There is a fraud recovery cost code incorporated into the debt recovery process to facilitate raising an invoice for fraud debts.

Civil action through the County Court can also be considered and undertaken where appropriate. This will be a decision for the Borough Solicitor.

Types of redress and recovery (the list is not exhaustive)

Housing

- Instigating recovery of property
- Recovery of unlawful profit
- Removal from housing register
- Cancellation of temporary accommodation
- Disallowed from Right to Buy (RTB)
- Sue for loss of rent or RTB/portable discount

Internal and General

- Charges on property
- Third Party e.g. a garnishee Order – this is an order made by the court to allow the Council to recover the judgment debt from the debtor's bank account, wages or from persons owing money to the debtor
- Attachment of earnings
- Freezing injunctions
- Insurance claims (fidelity guarantee)
- Pursuing debts via legal proceedings
- Confiscation orders
- Compensation
- Restitution Orders

Blue Badge Fraud

- Confiscation of Blue Badge

Publicity

Publicity is an important tool in the prevention of fraud as it highlights the Council's counter-fraud efforts and can act as a deterrent.

AFIT will seek to publicise successful prosecutions, after taking into consideration the appropriate Council policies regarding publicity.