



Fraud Sanction and Prosecution Policy

September 2022



Contents

	Page No
1. Policy statement	2
2. Introduction	2
3. Evidential stage test	3
4. Public interest test	3
5. Sanctions	3
6. Prosecution	4
7. Referrals to law enforcement agencies, professional bodies or regulators	5
8. Publicity	5
9. Reporting and review	5



1. Policy statement

- 1.1 Lancashire County Council (the council) will use the full range of sanctions available to deter financial crime including, fraud, bribery, corruption, money laundering, and any other associated offences. These sanctions may include criminal prosecution, civil recovery, internal discipline, and referral to professional bodies. The council will utilise its own Legal Services or agent solicitors and the Crown Prosecution Service to conduct prosecutions where appropriate. The council will refer matters to the police and other law enforcement agencies or regulators where appropriate and support those agencies in bringing proceedings.

2. Introduction

- 2.1 The council's fraud, bribery and corruption policy and its anti-money laundering (AML) policy both set out the council's aims and objectives with regard to tackling fraud, money laundering and associated offences. The council will seek the strongest possible sanction against any individual or organisation that defrauds or seeks 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 just and consistent manner;
- To ensure that sanctions are applied in an effective and cost efficient manner; and
- To ensure that the sanction decision making process is stringent, robust and transparent.

- 2.2 This policy provides a framework to ensure the most appropriate resolution to a case is reached. The sanction decision will always have regard to the council's fraud, bribery and corruption policy and anti-money laundering objectives, the individual circumstances of each person concerned and the overall impact of the sanction to both the individual and the community.

- 2.3 A range of sanctions are available to the council. These include disciplinary action, civil recovery, criminal proceedings, and civil penalties or pension forfeiture. In appropriate cases the council may take more than one form of action. For example, if an employee defrauds the council, disciplinary action, prosecution, and civil recovery action may all be taken.

- 2.4 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 2018. The evidential stage test must be considered prior to the public interest stage.



3. Evidential stage test

- 3.1 Investigators and 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.
- 3.2 To ensure that a “realistic prospect of conviction” exists, Investigation Officers 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. An investigator must always work to the highest jurisdiction standards for a case. I.e., criminal case standards should be used at the start of an investigation as these will always meet the lower standards for civil or tribunal cases.
- 3.3 The evidence gathered will be examined by the Head of Service – Internal Audit and, if 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, agent solicitors, or the Crown Prosecution Service. All prosecutors will then apply their own inspection of the evidence to ensure that both tests are met. Alternatively, the case file may be passed to the police, other law enforcement agencies or regulators if appropriate.

4. Public interest test

- 4.1 A prosecution will usually take place unless the prosecutor is sure that public interest factors tending against prosecution outweigh those tending in favour. 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. Sanctions

- 5.1 Cases may be referred to the police or other law enforcement agencies for investigation. This may subsequently result in referral to the Crown Prosecution Service or another prosecutor. The decision to refer cases to the police or take other actions will normally be made by the Head of Service – Internal Audit. This decision may be taken in consultation with the



Monitoring Officer and/or the Chief Executive Officer. Other actions that may be taken by the council include:

- Instigating prosecution proceedings with Lancashire County Council acting as the prosecution body;
- Civil recovery or debt collection proceedings to recover the loss (including the cost to the Council for investigating the case);
- Referral to other agencies, regulators, or professional bodies;
- Disciplinary proceedings;
- Pension forfeiture.

5.2 A local government pension scheme (“LGPS”) employer can apply to forfeit the employee’s pension or to recover some or all of their pension benefits. Funds can be recovered or retained relating to money owed in the following circumstances:

- The pension scheme member has committed an act of grave misconduct or a criminal, negligent or fraudulent act or omission;
- The member has, as a result, left the employment through which they were a member;
or
- The member owes money as a result of their misconduct, act or omission to their former scheme employer.

6. Prosecution

6.1 Prosecution proceedings will usually be instigated only after the evidential and public interest tests are satisfied as detailed in the Code for Crown Prosecutors. Examples of when a prosecution will be considered include:

- When the offender is an employee, or the case involves a breach of trust or abuse of position;
- The fraud has been deliberate and calculated;
- The fraud had continued over a long period;
- The fraud has resulted in a large financial loss;
- The person has failed to attend an interview under caution; or
- There were other persons involved in the fraud.

6.2 The council recognises that prosecution is a serious step to take and the decision to refer cases for prosecution will not be taken lightly. The ultimate decision on a prosecution will be taken by the prosecuting body. In some cases, this will be the council, through the council’s Legal Services or agent solicitors, and in other cases the Crown Prosecution Service. The decision to refer cases to a prosecuting body will be taken by the Head of Service – Internal



Audit. This decision may be taken in consultation with the Monitoring Officer and/or the Chief Executive Officer.

7. Referrals to law enforcement agencies, professional bodies or regulators

7.1 Referrals may occur in cases of staff fraud or when the fraud is complex and/or of a serious nature. The decision to refer cases to the police or other agencies for investigation will be taken by the Head of Service – Internal Audit.

8. Publicity

8.1 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.

9. Reporting and review

9.1 An annual report on fraud and corruption matters will be produced for the Audit, Risk and Governance Committee. This will provide a summary of actions taken under this policy.

9.2 The policy will be subject to periodic review and approval by the Audit, Risk and Governance Committee, which is responsible for monitoring and reviewing the adequacy of the council's anti-fraud and corruption policies and arrangements.

