
Elmbridge Borough Council

Sanctions Policy

Annexe E

Policy statement

Elmbridge Borough Council will ensure that:

- Appropriate sanctions are applied in all proven cases of fraud, theft and corruption;
- Public funds are recovered wherever possible; and
- The sanction decision making process is robust, transparent and fair.



Elmbridge
Borough Council

... bridging the communities ...



Contents

1.	Introduction	3
2.	Sanction options.....	3
3.	Leaving the Council.....	6
4.	Publicity.....	6

1. Introduction

- 1.1 The Council takes its responsibility to protect public funds seriously and expects its business to be conducted to the highest ethical and legal standards. Where there is evidence of fraud, theft or corruption against the Council, those responsible, whether internal or external to the Council, will be held accountable for their actions using the full range of sanctions available.
- 1.2 This policy forms part of the Council's counter fraud framework and sets out:
- The range of sanctions available; and
 - Guidance on determining the appropriate action to take.
- 1.3 This policy is not prescriptive. A range of factors will require consideration before deciding on the appropriate sanction, including the individual circumstances of each case and the seriousness of the offence.

2. Sanction options

- 2.1 Where there is evidence of fraud, theft or corruption, the following options will be considered:
- No further action
 - Referral to professional bodies
 - Disciplinary action

 - Civil proceedings
 - Criminal prosecution
- 2.2 These options are not mutually exclusive and parallel sanctions may be pursued. Sanctions for Council Tax and Housing Assistance Fraud include additional options to the above.
- No further action***
- 2.3 The Council may consider closing a case without taking any further action. This may be due to the following factors:
- Evidence is not robust or reliable
 - The offence is minor
 - The cost to pursue the case is not proportionate to the offence committed

Referral to professional bodies

- 2.4 Where there is adequate evidence that a person or entity has breached professional duties or responsibilities, the Council will refer the matter to the relevant professional body. This may include the Disclosure and Barring Service if there is evidence of a safeguarding concern.

Disciplinary action

- 2.5 In the event that an allegation is made against a Council employee, the investigating officer will consult with Human Resources and the employee's line manager regarding risk assessments and disciplinary action. Any disciplinary action will be in accordance with the Council's Disciplinary Policy. Sanctions may include warnings or dismissal on the grounds of gross misconduct.
- 2.6 Additional sanction options will be considered alongside any disciplinary action including referral to professional bodies, civil proceedings and criminal prosecution.

Civil proceedings

- 2.7 Where evidence is not sufficient to prove a case beyond reasonable doubt, and therefore successful criminal prosecution is unlikely, the Council may consider civil proceedings for which the standard of proof is on the balance of probability.
- 2.8 Regardless of whether any sanction action is taken, the Council will always seek recovery of overpaid, misused or unfairly gained monies. The following measures may be considered in the pursuit of financial recovery:
- Consultation with the Council's Payroll and Pensions Teams to redress financial loss caused by employees;
 - Application of the Credit Control Team's usual procedures, which includes civil action when necessary;
 - Legal action such as search orders and freezing/tracing injunctions to preserve evidence and assets; and
 - Recovery of money through appropriate legal proceedings.

Criminal prosecution

- 2.9 Where there is sufficient evidence to indicate that a criminal act has taken place, the case may be referred to the police. The decision to refer the issue to enforcement agencies, such as Surrey Police, will be taken by the Strategic Director & Deputy Chief Executive and / or the Monitoring Officer as advised by the Head of Internal Audit and Counter Fraud.
- 2.10 The police or Crown Prosecution Service will provide a final decision on whether to pursue the case. This decision will consider the following:
- **Evidential criteria** such that the evidence must be:
 - Clear, reliable and admissible in court
 - Strong enough for a realistic chance of prosecution; to prove a case 'beyond reasonable doubt'

- Whether prosecution is in the **public interest**, taking into account:
 - Seriousness and/or monetary value of the offence
 - Cost and proportionality of the prosecution
 - Age, health and level of culpability of the suspect
 - Circumstances of and harm caused to the victim
 - Other factors such as community impact

2.11 Where the Council considers it “expedient for the promotion or protection of the interests” of its residents, Section 222 of the Local Government Act 1972 empowers the Council to:

- Prosecute or defend or appear in legal proceedings and, in the case of civil proceedings, institute them in their own name; and
- In their own name, make representations in the interests of residents at any public inquiry held by or on behalf of a public body under any enactment.

2.12 The Council will only consider undertaking prosecutions through this route under exceptional circumstances and any decision to do so will be taken by the Strategic Director of Resources & Deputy Chief Executive and the Monitoring Officer as advised by the Head of Internal Audit and Counter Fraud.

2.13 Any criminal proceedings will include an attempt to recover money under the Proceeds of Crime Act 2002.

Sanctions for Council Tax or Housing Assistance Fraud

2.14 Where fraud is established, Elmbridge Council is firmly committed to apply timely sanctions which include, but is not limited to

- Prosecution,
- Financial Penalties as an alternative to prosecution or
- Formal Cautions,
- Recovery of any overpayments created as a result of fraud.
- Withdrawal of housing assistance

2.15 Elmbridge Council is firmly committed to undertake criminal court prosecutions against the most serious fraudsters. We will also work in partnership with Registered Housing Providers, seeking to recover tenancies that have been fraudulently obtained. Action will be considered in all cases by reference to the principles of The Code for Crown Prosecutors, in particular the evidential and public interest tests. It also looks at the duration and severity of the offences. This ensures a fair and consistent approach to each individual case.

- 2.16 Where alternative sanction is considered more appropriate than prosecution, officers will consider the alternative action in the form of a Financial Penalty (fine) or Formal Caution (providing the offence has been admitted). This course of action will be recommended by the Team Leader for Counter Fraud and must be supported by the Head of internal Audit and Counter Fraud or the Housing Benefits Manager.
- 2.17 Cases that are considered appropriate for prosecution action are prepared and passed to Legal Services. Legal Services use the Sanctions Decision Making Procedure to make a decision on commencing action through the courts for a case.
- 2.18 In addition, where substantial assets have been gained through criminal activity, the authority will seek to take action to recover these monies via the Proceeds of Crime Act 2002 (POCA).

3. Leaving the Council

- 3.1 During the course of an investigation or disciplinary action, the employee(s) suspected of fraud, theft or corruption may choose to resign from their employment with the Council. In this case, following a review of evidence, the Council may continue to pursue referral to professional bodies, civil proceedings or criminal prosecution.
- 3.2 The employee's line manager will also consult with Human Resources to determine whether it will be appropriate to provide a reference to future employers.

4. Publicity

- 4.1 The decision to publicise outcomes will consider the following criteria:
- 4.2
- Interests of Elmbridge Borough Council;
 - Interests of Elmbridge residents; and
 - Deterrent value to others.