

Manchester City Council
Council Tax & Business Rates
Prosecution Policy
2017/18



MANCHESTER
CITY COUNCIL

1. Introduction

This policy statement provides the agreed framework for Council officers involved in the investigation, sanction and prosecution of fraud, relating to:

- Council Tax reductions, discounts, exemptions and evasion of liability;
- The Council Tax Support Scheme (CTS);
- The Discretionary Council Tax Payment Scheme; or
- Business Rates reliefs, discounts and exemptions.

The Council is committed to protecting the public funds it administers:

- By making it clear that residents and businesses have a responsibility to provide accurate and timely information about claims for reductions, reliefs, discounts and /or exemptions,
- Through the investigation of suspected fraudulent claims, and
- Through the subsequent sanctioning and prosecution of offenders.

2. Sanctions and Prosecution

At the conclusion of an investigation Council staff will consider whether there is sufficient evidence to instigate criminal proceedings or offer an alternative sanction. Each case will be considered on its own merits having full regard to the requirements of the Code for Crown Prosecutors and Council policy.

To ensure a consistent and equitable application of sanctions and prosecutions the following guidelines will normally apply.

2.1 Prosecution

The Council will normally institute proceedings where the “Evidential Test” and “Public Interest Test” detailed in the Code for Crown Prosecutors are satisfied (summary extract at Appendix 1) and any of the following apply:

- The offence(s) has been committed over a long period of time;
- The offence(s) was planned or systematic;
- There were other persons involved in the fraud; or
- It was not a first offence.

In addition, where Council employees or elected members are involved in the commission of the offence(s) the Council will consider prosecuting the offender and other persons directly involved in the offence.

Each case will be considered on its own merits and action will be considered as appropriate. It is noted that it may still be necessary to instigate proceedings for some cases falling outside the criteria above, where it is considered in the best interests of the public to do so.

2.2 Administrative Penalty

Where the Council has sufficient evidence to consider prosecution it may choose to offer the offender an Administrative Penalty (section 15 of the Social Security Administration Act). It will be considered as an alternative to prosecution in cases where:

- There is no factor which warrants prosecution as the first option;

- The offence(s) was not planned or systematic, and
- The person has not committed a similar offence in the last 5 years;
- There was no other person involved in the fraud;
- It is possible to recover the Administrative Penalty.

2.3 Simple Caution

A Simple Caution is a warning given in certain circumstances as an alternative to prosecution. It is offered to a person who has committed an offence, and is intended to be a meaningful penalty and deterrent for those persons where criminal proceedings are not a first option and penalty action is not appropriate. The ability to offer a Caution is based on the principle that a prosecuting authority is not under any obligation to prosecute.

Where the Council has sufficient evidence to consider prosecution it may choose to offer the offender a Simple Caution, (known as a Formal Caution prior to the introduction of Conditional Cautions in 2005), as an alternative to prosecution in cases where:

- There is no factor which warrants prosecution as the first option;
- The offence(s) were not planned or systematic, and
- The person has not committed a similar offence in the last 5 years;
- There was no other person involved in the fraud.

3. Suitability of suspects for prosecution

When deciding whether it is appropriate to instigate proceedings, consideration will be given as to whether there is sufficient admissible evidence to justify bringing a prosecution and if the prosecution is in the public interest.

The following paragraphs outline factors that will be considered, to ensure consistent and equitable treatment of those accused of fraud.

3.1 Financial limits

Careful consideration will be given to commencing a prosecution where the fraudulent activity has not resulted in 'significant financial gain' to the suspect. For example the amount of the reduction or discounts fraudulently obtained is less than the cost of proceedings.

Where there is no significant financial gain, a prosecution could still be considered if it is felt that the fraud was a deliberate attempt to gain (if, for example, the fraud has been discovered after a relatively short space of time and a significant financial gain has not yet occurred), or in the case of a persistent offender or any other case where prosecution would be warranted.

3.2 Physical / mental factors

Consideration will be given to the defendant's mental and physical condition (including age) when deciding whether to prosecute. The investigating officer will consider whether there are significant personal physical or mental health issues that may have contributed to the reasons for committing the offence. In addition, due consideration will be given where there is any evidence to suggest that the Suspect or partner or a third party (for example a child) is vulnerable and would be severely adversely affected by the action.

3.3 Voluntary disclosure

The Council will also consider whether it is appropriate to prosecute those, whose disclosure of their own free will, has led to the identification of a fraud of which the council was not aware. Admissions made after enquiries or an investigation had commenced do not constitute voluntary disclosure.

3.4 Previous incidence of fraud

Any evidence of previous fraudulent activity will form part of the overall "prosecution assessment", regardless of whether any previous offences resulted in prosecution.

3.5 Social factors

If it is considered that the defendant's failure to declare the correct circumstances has been caused by significant extenuating social or financial factors these would be fully evaluated. (The fact that an individual was in debt or has limited assets would not in itself meet this requirement.)

3.6 Adequacy of evidence

Substantive evidence is essential to secure any conviction. Proceedings would not be sought if there is any doubt that the required evidence is not available. Satisfying the requirements of the Code for Crown Prosecutors Evidential Test will ensure that evidence is of the standard required by the courts.

3.7 Failure in investigation

It should be evident on the case file that all appropriate procedures have been adhered to with regard to satisfying the requirements of the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigations Act 1996 and other relevant legislation. Particular consideration will also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.

3.8 Failure in administration

Full account will be taken of remiss administration or fault on the part of the Council that has contributed to the processing of the fraudulent claim and subsequent award of discount or reduction in liability.

4. Post-investigation Considerations

Once the investigation is complete the case will be passed to either the Corporate Revenues Manager, the Corporate Assessments Manager or the Head of Internal Audit and Risk Management as appropriate. They will consider each case on its merits, applying the criteria in this policy and the Code for Crown Prosecutors as well as any other circumstances relevant to the case and decide whether there is sufficient evidence to provide a realistic prospect of securing a conviction. Cases meeting the criteria will be passed to City Solicitors to instigate proceedings.

Cases involving elected members or Council employees will also be referred to the City Solicitor or appropriate senior manager so that any standards issues can be addressed.

Cases may also referred to the police where it is considered that the nature of the offence, or the procurement of evidence require them to undertake or assist in the investigation.

5. Proceeds of Crime Act 2003

The Council will refer all suitable cases for financial investigation with a view to applying to the courts for restraint and/or confiscation of identified assets. A restraint order prevents a person from dealing with specified assets. A confiscation order enables the Council's agents to seek to recover its losses from assets found to be the proceeds of crime.

6. Recovery of Debt

In addition to any criminal proceedings or sanction it may impose in respect of offences committed, the Council will use all methods available to vigorously recover any overpayment or reduction of liability arising from fraud, including taking action in the civil courts if necessary.

7. Publicity

Press releases will be issued in suitable cases to seek to maximise the deterrent effect and raise the level of public fraud awareness. Consideration will be given to the amounts involved, the nature of the offence, public interest and the deterrent value of publicising a particular case.

8. Review of policy

In addition to an annual review, the policy will be reviewed in the light of any legislative changes; trends or other factors that impact on the effectiveness of the policy.

Appendix 1

Extract from 'The Code for Crown Prosecutors'

The Full Code Test

4.1 The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.

4.2 In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.

4.3 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test set out in this section.

The Evidential Stage

4.4 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.

4.5 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

4.6 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

Can the evidence be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

- a) the likelihood of that evidence being held as inadmissible by the court; and
- b) the importance of that evidence in relation to the evidence as a whole.

Is the evidence reliable?

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

The Public Interest Stage

4.7 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

4.8 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.

4.9 When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.12 a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.

4.10 The explanatory text below each question in paragraphs 4.12 a) to g) provides guidance to prosecutors when addressing each particular question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

4.11 It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.

4.12 Prosecutors should consider each of the following questions:

a) How serious is the offence committed?

The more serious the offence, the more likely it is that a prosecution is required.

When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect's culpability and the harm to the victim by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect's age or maturity (see paragraph d) below for suspects under 18).

Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?

The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim.

A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim's health it may make a prosecution less likely, taking into account the victim's views.

However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) Was the suspect under the age of 18 at the time of the offence?

The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that

out-of-court disposals which might have addressed the offending behaviour are not available.

e) What is the impact on the community?

The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.

f) Is prosecution a proportionate response?

Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

- The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.12 a) to g), but cost is a relevant factor when making an overall assessment of the public interest.)
- Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

g) Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

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