

## **Sanctions Policy**

### **1. Policy Statement**

- 1.1 We will use the full range of sanctions available to us, including, simple caution, criminal prosecution, civil recovery, internal disciplinary procedures and referral to regulatory bodies in order to deter fraud, bribery and corruption.
- 1.2 Slough Borough Council Legal Services (or our designated legal service provider, in accordance with the scheme of delegation) and or the Crown Prosecution Service will be used to undertake prosecutions; and we will refer all relevant cases to the appropriate professional bodies and other law enforcement agencies. We will assist external organisations if they decide to bring their own prosecution cases.
- 1.3 Our fraud and corruption strategy states that we will seek the full range of sanctions against anyone found to have committed fraud against the Council: and they will apply to any fraud committed either, against the Council or, against money or services for which the Council has responsibility.

### **2. Deciding what sanction to apply**

- 2.1 We have a range of sanctions that we can use, including internal disciplinary procedures, simple cautions and criminal and civil prosecutions; and we have this policy to make sure that we apply all available sanctions:
  - consistently;
  - efficiently;
  - robustly; and
  - in a transparent manner.
- 2.2 In some cases, we may apply more than one sanction e.g. if a member of staff has stolen money from us, we may take internal disciplinary proceedings, refer the matter to the police, and undertake civil recovery procedures.
- 2.3 We may decide to pursue a criminal prosecution in some cases; these will be reserved for the most serious. SBC has the power to undertake prosecutions using our Legal Services (or our designated legal services provider). Alternatively, where the Council has jointly investigated any offence with an external investigative body, such as the Police or The Department for Work and Pensions (DWP), the most appropriate prosecuting agency will be selected. This is likely to be Crown Prosecution Service (CPS); moreover, the CPS has the authority to assume any prosecution instituted in England and Wales.

2.4 All cases, which are considered for prosecution, will apply the CPS "Full code Test". The test has two elements, firstly the 'Evidential Test'; and secondly the 'Public Interest Test'. The Full Code Test is set out in the Code for Crown Prosecutors 2013 and further information is available at:

[https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/codetest.html](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html)

- **Evidential Test** - The investigator will consider the following questions in assessing whether there is sufficient evidence to prosecute the case: Can the evidence be used in court? Is the evidence reliable? Is the evidence credible?
- **Public Interest Test** - If the Evidential Test has been met, the investigator will then consider whether or not a prosecution would be in the public interest. Each case will be assessed on its own merits and a review will include: How serious the offence is; the level of culpability of the suspect; the circumstances of and the harm caused to the victim; if the suspect was under the age of 18 at the time of the offence; the impact on the community; whether prosecution is a proportionate response; and whether sources of information require protecting.

2.5 Prosecution may not always be appropriate, alternative out-of-court disposals include:

- simple cautions; or
- penalties relating to benefits or council tax provided by enabling legislation.

Where an out-of-court disposal is considered, SBC undertake to apply:

- the appropriate evidential standard and admission of guilt, where required;
- that the public interest would be properly served by such a disposal; and
- apply the disposal no greater than 6 months after the completion of the investigation, unless exceptional circumstances apply.

2.6 The range of sanctions applied by the Corporate Fraud and Investigations Team will be determined by the following scheme of delegation:

- Slough Borough Council Legal Services (or our designated legal service provider in accordance with the scheme of delegation) commence all criminal prosecutions.
- The Chief Finance Officer/Section 151 authorises a prosecution file to be considered by Slough Borough Council Legal Services for prosecution.
- The Risk and Assurance Manager authorises a prosecution file to be considered by the Chief Finance Officer/Section 151 officer for prosecution.

- The Risk and Assurance Manager authorises alternative 'out of court' disposals.

### **3. Types of fraud and the possible sanctions**

#### **3.1 Employees, Councillors, Teachers, School Staff**

If we find that any of our employees or councillors have attempted or committed fraud or have been involved in corruption, we will undertake disciplinary proceedings in accordance with our disciplinary policy and procedure. If we identify that the Council has suffered any financial loss, we will seek to recover losses through civil proceedings and/or criminal prosecutions and the associated application of asset recovery proceedings under any relevant legislation including The Proceeds of Crime Act 2002. Where employees are members of professional bodies, or have to comply with national codes of conduct (teachers, social care staff etc.) we will refer any cases of fraud and corruption to these bodies

#### **3.2 Benefit Fraud**

The DWP is responsible for investigating housing benefits fraud, but the Council is still responsible for registering, assessing and paying for some DWP benefits and social fund payments. SBC is wholly responsible for council tax registration, discounts and exemptions. Available sanctions include:

- criminal prosecution for any council tax related fraud or attempt; administrative penalties - S11 Council Tax Reductions Scheme Regulations 2013;
- civil penalties for council tax registration, discounts and exemptions - Regulation 14(2) and Schedules 2-3 of the Local Government Finance Act 1992;
- civil penalties for housing benefit overpayments, categorized as claimant error - The Social Security (Civil Penalties) Regs 2012 SI 2012/ 1990;
- A de minimis overpayment of £50 is required before any of the above sanctions are considered.

### 3.3 Housing and Right to Buy Fraud

In all cases where anyone has fraudulently applied for Right to Buy, housing support, or a tenancy from the Council, we will always seek recovery of the property and any financial losses. Where we identify a criminal attempt or offence has been committed, we will use any relevant legislation, including the Social Housing Fraud Act 2013, to prosecute and recover any criminal proceeds. As an alternative to prosecution, SBC may offer any suspected defendant a simple caution.

### 3.4 Other fraud

There are a number of other areas, including but not restricted to: insurance claims, direct care payments, grants to organisations, exemptions and reliefs from non-domestic rate payments, and applications for financial and other assistance where theft and fraud may occur. We will always seek to recover any money lost and consider a caution, criminal or civil prosecution. Where an external organisation is involved, we will make a referral to any relevant governing body such as the Law Society, Charities Commission, or the Registrar of Companies.

## 4. Proceeds of Crime Act 2002

4.1 The Proceeds of Crime Act 2002 (POCA) was put in place to demonstrate that crime does not pay. We will use POCA (and its predecessor legislation, such as the Criminal Justice Act 1988 (as amended)) wherever we can, to obtain confiscation orders, including compensation, as well as recovery of the full overpayment of benefits. We will use our own Accredited Financial Investigators (AFI) or those employed by an external partner, such as the police or DWP.

4.2 All monies recovered using POCA or predecessor legislation (excluding compensation), will be distributed by the Home Office to SBC under the "Asset Recovery Incentivisation Scheme" (ARIS). The ARIS scheme apportions funds in the following way:

- 50% to HM Treasury;
- 18.75% to the investigating body;
- 18.75% to the prosecuting authority; and
- 12.5% to Her Majesty's Court Service.

4.3 All monies recovered through ARIS will be used, in accordance with Home Office guidance, namely:

- funding the cost of asset recovery;
- crime reduction initiatives;
- community projects;
- miscellaneous activities supporting the above.

4.4 The Chief Finance/151 Officer will determine the allocation of funds.

## **5. Monitoring**

5.1 The Council's Section 151 Officer is responsible for the maintenance and operation of the SBC Corporate Fraud Team and this policy. The S151 Officer will liaise with The Monitoring Officer and the Risk and Assurance Manager when the policy is subject to review in order to ensure all relevant employment requirements are taken into account.