

# Prosecution and Sanction Policy (Fraud and Corruption)

**DRAFT: March 2020**



Essex County Council

## Prosecution and Sanction Policy (Fraud and Corruption)

### Introduction:

Essex County Council (ECC) is committed to delivering public services in an efficient and effective way and takes its responsibility for protecting public funds seriously. ECC has a duty to reduce fraud and corruption to a minimum, the strategy for doing so is detailed within the Counter Fraud and Anti-Bribery Strategy.

The use of sanctions is governed by this policy and principles.

### Objectives:

The objectives of this policy are to ensure that:

- Sanctions are applied fairly and consistently
- Sanctions are applied in an effective and cost effective way
- Sanctions are proportionate
- The sanction decision making process is robust, transparent and fair.

The sanction decision will have regard to ECC's Counter Fraud & Anti-Bribery Strategy and the overall impact of any decision on the individual and public interest.

### Legislation:

ECC will ensure that the relevant legislation is complied with:

**Human Rights Act 1998** – ECC is a public authority for the purpose of the Human Rights Act 1998 and all enforcement decisions take account of the provisions within the Human Rights Act 1998, specifically Article 6, the right to a fair trial and Article 8, the right to respect for private and family life.

**General Data Protection Regulation and Data Protection Act 2018** – where ECC share information with other agencies, this will adhere to the principles of the Data Protection Act 2018.

**The Code for Crown Prosecutors** – in the event that ECC consider prosecution, regard will be given to The Code for Crown Prosecutors issued by the Director of Public Prosecutions, specifically the two tests that need to be satisfied, referred to as the Evidential Test and the Public Interest Test as set out later in this document.

**ECC has a range of sanctions at its disposal that will be considered as appropriate:**

- Written advice / warnings
- Disciplinary action and/or referral to professional bodies
- Civil proceedings
- Criminal proceedings
- Parallel sanctions (i.e. combination of the above options)

## Written advice / warnings

Where evidence is not strong enough or it is not felt appropriate to pursue formal or legal proceedings written advice or warnings may be considered in an attempt to educate and deter future contraventions.

## Disciplinary action

In the event that an allegation is made against an ECC employee, the Counter Fraud Team will consult with ECC Human Resources, in accordance with the Disciplinary Policy and the relevant Head of Service. Any disciplinary action will be taken with the support of ECC Organisation Development and People. If the matter is criminal, consideration will be given whether to refer the issue to any other enforcement agencies, for example, Essex Police or HM Revenue and Customs.

Sanctions may include warnings or dismissal.

## Civil Proceedings

Where it is decided that a criminal prosecution will not be pursued, as evidence is not sufficient to prove a case beyond reasonable doubt, ECC may consider civil proceedings to recover any asset lost.

For civil proceedings the standard of proof is on the balance of probabilities.

Where ECC has suffered a financial loss caused by fraud or corruption the lost assets may be preserved through civil proceedings without notice to the subject, by the following measures:

- Freezing/tracing injunctions – an interim measure which restrains a person from removing or dealing with assets located within the jurisdiction
- Search order – an interim order for the preservation of evidence.

Regardless of whether or not any sanction action is taken, Essex County Council, will always seek to recover any overpayments or misused monies.

The ECC Income Collection Team will be consulted and their usual procedures applied, including civil action when necessary.

## Criminal proceedings

ECC is empowered, under Section 222 of the Local Government Act 1972, to prosecute or defend or appear in legal proceedings and, in the case of civil proceedings, institute them in their own name.

Where ECC consider that there is sufficient evidence to indicate that a criminal act has taken place, the Counter Fraud Team may decide to:

- Seek a prosecution, in conjunction with Essex Legal Services;

- Refer the matter to the local Police or Action Fraud

In making a decision regarding a potential prosecution, the Evidential Test and the Public Interest Test will be considered.

### Evidential Test

The Evidential Test is the first stage in the decision to prosecute. For a case, to progress to prosecution, there must be sufficient admissible evidence to provide a realistic prospect of conviction against each defendant on each charge, i.e to prove a case 'beyond all reasonable doubt,'. The evidence must be reliable and able to be used. If the case does not pass the Evidential Test then it will not proceed.

### Public Interest Test

The Public Interest Test is the second test that is considered, after concluding that the case meets the Evidential Test. Each case is considered on its own merits. In order for the Public Interest Test to be met, the following points should be considered (the list is not exhaustive):

- The seriousness of the offence committed;
- The level of culpability of the suspect
- The age of the perpetrator and any prevailing medical conditions
- The level and nature of harm to the victim
- The vulnerability of the victim and perpetrator
- The impact of the crime on the community
- Whether prosecution is a proportionate response.

If criminal activity has resulted in loss of assets to ECC via acquisitive crime, ECC will seek to recover funds via the use of the Proceeds of Crime Act 2002 (POCA), working collaboratively with Financial Investigators accredited by the National Crime Agency. See ECC [Proceeds of Crime Policy](#)

### Parallel Sanctions

In some cases, more than one sanction may need to be applied e.g. prosecution and financial recovery or prosecution and disciplinary action. It is preferable for the appropriate sanctions to proceed simultaneously. However due consideration must be given to all proceedings to ensure that one does not impact improperly upon another.

The decision to run parallel sanctions will be determined on a case by case basis by the Head of Assurance, in consultation with ECC Organisational Development and People and Essex Legal Services if required. Where prosecution is a possibility this will be the highest priority.

# **This information is issued by**

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Published March 2020