



Fraud Prosecution Policy

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**Next review required by 14/08/2028, or earlier if
relevant legislation, guidance or local procedures
change.**

1. Legal framework

1.1 This policy will be applied in accordance with current legislation and guidance, including the Fraud Act 2006, Theft Act 1968 where relevant, Social Security Administration Act 1992, Welfare Reform Act 2012, Local Government Finance Act 1992, Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, Police and Criminal Evidence Act 1984 and current PACE Codes of Practice, Criminal Procedure and Investigations Act 1996, Human Rights Act 1998, Regulation of Investigatory Powers Act 2000 where applicable, Investigatory Powers Act 2016 where applicable, Data Protection Act 2018 and UK GDPR.

2. Statement of intent

2.1 Reigate and Banstead Borough Council (RBBC) is a public body and a Prosecution Authority. RBBC will not tolerate any form of fraud and corruption in the administration of its responsibilities, whether from inside or outside the authority and will consider taking Civil and/or Criminal action against any person or company suspected of committing any offences against the authority.

2.2 Cases deemed suitable for prosecution will be passed to the Internal Legal department within Reigate and Banstead Borough Council.

2.3 Cases where the offence suspected is more serious, or where it is necessary to carry out an arrest, may be referred to the Police who will submit suitable cases to the Crown Prosecution Service for prosecution.

2.4 The initial decision on the appropriate action to be taken in each case lies with the Fraud Manager. This will depend on the evidence that has been gathered and the seriousness of fraud.

2.5 The final decision on whether a case should be taken forward for Criminal Proceedings will be made by the Legal Team.

3. Recovery of debts, overpayments and fines

3.1 Regardless of whether any sanction action is taken Reigate and Banstead Borough Council will attempt to recover all overpayments, debts, and fines.

3.2 Any recovery of a benefit overpayment will be dealt with by the Recovery Team or by the Benefit Team if benefit remains in payment.

3.3 Any recovery of nonpayment of Council Tax will be dealt with by the Council Tax Department.

3.4 Any recovery of fines issued by way of an alternative sanction to prosecution will be detailed in the fine outcome correspondence.

3.5 All the above will be pursued using appropriate and lawful methods of recovering the debt, overpayment or fine, including civil action where necessary.

4. No further action

4.1 Reigate and Banstead Borough Council may consider closing the case without any further action if:

4.2 To the Authority's knowledge, the suspect has not previously offended

4.3 The suspect has not made any false declarations

- I. There was no planning involved in the process
- II. There was no other person involved in the commission of the offence
- III. The offence is minor
- IV. The period over which the offence has been committed is very short
- V. The cost arising from the offence is very low

5. Evidential criteria

5.1 Reigate and Banstead Borough Council may consider sanction action if the case is serious enough to warrant it.

5.2 For any sanction or prosecution to be considered, the case must meet the evidential stage of the Full Code Test. There must be sufficient admissible, reliable and credible evidence to provide a realistic prospect of conviction for each offence under consideration.

5.3 In making this decision, the following factors will be considered.

- I. How clear is the evidence?
- II. How long the offence was committed over
- III. If there has been any failure in the investigation
- IV. If there has been any administration or policy failure by Reigate & Banstead Borough Council.

6. Public interest criteria

6.1 If the evidential stage is met, the Authority will consider whether sanction action or prosecution is required in the public interest. This decision will be made fairly, objectively and proportionately, balancing factors for and against action and having regard to the Code for Crown Prosecutors.

- I. Age, where relevant to culpability, vulnerability, capacity, safeguarding or proportionality

- II. Health, disability, vulnerability, mental capacity or other personal circumstances where relevant to reasonable adjustments, safeguarding or proportionality
- III. Other social factors

6.2 If these still indicate that a sanction is appropriate, then the other Public Interest Criteria will be looked at to decide the appropriate sanction.

7. Cautions

7.1 The Authority may consider issuing a Formal Caution if:

- I. The suspect has been interviewed under caution in accordance with current PACE requirements and local procedures.
- II. The defendant has never previously offended.
- III. There was no planning involved in the process.
- IV. There was no other person involved in the offence.
- V. Criminal proceedings are not the first option.
- VI. Fine and/or Penalty action is not appropriate.
- VII. The offence is minor.
- VIII. The amount of overpayment is relatively low.
- IX. The person has fully admitted the offence during an IUC.
- X. The person's subsequent attitude, including whether they express genuine regret for what they have done.

7.2 If the person refuses the Caution the case will be referred for prosecution.

8. Administrative penalties (Benefit and Council Tax Reduction investigations only)

8.1 The Authority may consider issuing an Administrative Penalty if:

- I. The suspect has been interviewed under caution in accordance with current PACE requirements and local procedures.
- II. The defendant has been in receipt of Housing or Council Tax Reduction paid by Reigate and Banstead Borough Council or connected to a claim where an offence has been identified.
- III. The defendant has never previously offended.
- IV. There was no planning involved in the process.
- V. There was no other person involved in the offence.
- VI. Criminal proceedings are not the first option.
- VII. A Caution is not appropriate.
- VIII. The offence is minor.
- IX. The amount of overpaid benefit is relatively low.
- X. The person has not admitted the offence during an IUC.

8.2 The Administrative Penalty for Council Tax Reduction will be 50% of the overpaid reduction with a minimum of £100 up to a maximum of £1000.

8.3 If the person refuses the Administrative Penalty the case will be referred for prosecution.

9. Interviews under caution

9.1 All interviews under caution must be conducted in accordance with the Police and Criminal Evidence Act 1984, current PACE Codes of Practice, the caution, legal advice requirements, recording requirements, voluntary interview safeguards and any local procedures in force at the time of interview.

10. Cases not suitable for penalty or fine

10.1 Even if the criteria for Cautions and Penalties were satisfied Reigate and Banstead Borough Council may decide that a Formal Caution or Administrative Penalty is not appropriate if the person:

- I. Has been prosecuted for an offence in the last 5 years.
- II. Has been cautioned one or more times in the past 5 years.

10.2 This is because this would indicate that

- I. Previous sanctions have not deterred them from re-offending
- II. Their lack of contrition for the offences committed.
- III. Their disregard for the legislation.
- IV. A deliberate and repeated intent to commit offences against Reigate & Banstead Borough Council
- V. Their apparent belief that these offences are not serious.

10.3 RBBC will instead consider referring the case for prosecution.

11. Civil penalties for Council Tax

11.1 Schedule 3 of the Local Government Finance Act 1992 allows Councils to impose a £70 penalty on any person who:

11.2 A further penalty may be considered for repeated failure to provide requested information within the statutory period where permitted by the legislation. Any penalty decision must be recorded, notified in writing and include information about appeal or review rights.

- I. Fails to notify the council that an exemption on a dwelling should have ended within 21 days of the change
- II. Fails to notify the council that a discount (including a single person discount) should have ended within 21 days of the change

- III. Fails to notify the council of any change in circumstances that would affect their Council Tax
- IV. Fails to notify the council of a change of address or fails to notify the council of a change in the liable party within 21 days of the change.
- V. fails to provide information requested to identify liability within 21 days of the request
- VI. Deliberately provides false information.

12. Civil penalties for Housing Benefit (alternative to prosecution)

12.1 As a local authority, Reigate & Banstead Borough Council has a duty of care to all its taxpayers. We are committed to a proactive approach in preventing and reducing the level of council tax, housing benefit and council tax support fraud and has a duty to protect the public funds that we administer.

12.2 The Social Security Administration Act 1992 and sections of the Welfare Reform Act 2012 allow a civil penalty of £50 to be added to the amount of an overpayment of benefit if the overpayment is more than £100 and where the claimant is viewed to be at fault.

- I. Where a person has been overpaid because of negligently making an incorrect statement or representation or negligently giving incorrect information or evidence.
- II. Where a person has been overpaid because of failing, without reasonable excuse, to provide information or evidence required in connection with a claim for benefit within one calendar month of it being requested.
- III. Where a person has been overpaid because of failing, without reasonable excuse, to notify the council of a relevant change of circumstances within one calendar month of it occurring.

12.3 The Benefit decision letter that we issue also clearly states that failure to advise the Authority of changes in circumstances that may affect their entitlement to housing benefit may result in an overpayment and the imposition of a penalty.

13. Prosecution

13.1 The investigating manager may recommend prosecution, but the final decision to commence criminal proceedings will be made by Legal Services following review of the evidence, public interest factors and relevant prosecution guidance.

13.2 In addition to the evidential criteria and Public Interest criteria outlined above the following will also be taken into consideration

- I. Whether any false or misleading representation has been made.
- II. Whether there was planning in the process.
- III. Whether the suspect was the organiser of the offence.
- IV. Any previous incidence of offences against Reigate & Banstead Borough Council.
- V. Whether there has been any abuse of position or privilege.
- VI. The amount of any loss caused to the Authority following the commission of the offence.
- VII. The duration of the alleged offence.
- VIII. Whether there are grounds for believing that the offence is likely to be continued or repeated, based on the person's previous history.
- IX. Whether the offence is widespread in the area where it was committed and so prosecution may act as a deterrent.
- X. Any voluntary disclosure.
- XI. Has the person refused to accept a Formal Caution or Administrative Penalty or any alternative fine related to the offence which has been committed?

14. Disciplinary procedure

14.1 Where it appears that there has been a breach of Internal Staff discipline, an appropriate Manager will undertake a disciplinary investigation in line with the Internal Disciplinary Procedure.

14.2 Gross misconduct offences will be considered serious enough for instant dismissal, such offences include assault, stealing, falsification, serious negligence, serious breaches of health and safety, breaches of confidentiality, engaging in unauthorised employment, conviction of a criminal offence, The unauthorised removal or use of Council property and equipment, failure to report an accident, under the influence of alcohol or drugs, loss of driving licence if employed as a driver or sexual offence or misconduct

14.3 Where matters involve allegations or evidence of a criminal nature, investigation proceedings need not be delayed until the outcome of the criminal case is known. Criminal offences unconnected with employment may not automatically be treated as reason for investigative action. The main consideration will be how the alleged offence impacts on the individual's ability to undertake their work, whether this makes the individual unsuitable for their type of work or unacceptable to other employees, customers, or clients.

15. Data protection, information sharing and record keeping

15.1 Fraud investigations may involve personal data, special category data and criminal offence data. Processing must have an identified lawful basis, be necessary and proportionate, be documented, and comply with the UK GDPR, Data Protection Act 2018, retention requirements, information security standards and any relevant privacy notices or information sharing agreements.

15.2 Where criminal offence data is processed, the Authority must identify its official authority or applicable condition, maintain appropriate safeguards, consider whether an Appropriate Policy Document is required, and complete a Data Protection Impact Assessment where processing is likely to be high risk.

16. Equality, vulnerability and reasonable adjustments

16.1 The Authority will consider equality duties, vulnerability, safeguarding concerns, mental capacity, language needs, interpreter requirements and reasonable adjustments at each stage of an investigation, sanction decision or prosecution recommendation.

17. Decision records, appeal rights and monitoring

17.1 All decisions to take no further action, issue a caution, impose a penalty, recommend prosecution or refer a matter to another agency must be recorded with the reasons for the decision, evidence considered, public interest factors, proportionality assessment, authorisation and any appeal or review rights notified to the person concerned.

17.2 The policy will be monitored through periodic management review, quality assurance and legislative updates.