

Meeting of:	Governance and Audit Committee
Date of Meeting:	Monday, 11 December 2023
Relevant Scrutiny Committee:	Corporate Performance and Resources
Report Title:	Corporate Fraud Enforcement Policy
Purpose of Report:	To provide members of the Committee with the Council's draft Corporate Fraud Enforcement Policy ("the Policy") for consideration prior to submission to Cabinet for approval.
Report Owner:	Head of the Regional Internal Audit Service
Responsible Officer:	Head of Finance & Section 151 Officer
Elected Member and Officer Consultation:	Consultation has been undertaken with the Strategic Leadership Team and there are no matters in this report which relate to an individual ward
Policy Framework:	This is a matter for Executive decision
<p>Executive Summary:</p> <ul style="list-style-type: none"> • One of the core functions of an effective Governance and Audit Committee is to consider the effectiveness of the Council's risk management arrangements, the control environment and associated anti-fraud and corruption arrangements. • The Counter Fraud Strategy and Framework underpins the Council's commitment to prevent all forms of fraud, bribery, and corruption, whether it be attempted externally or from within. Key policies are in place to support the Council's commitment, and the Anti-Fraud and Corruption Policy states that the Council will seek the appropriate sanctions against any individual or organisation that defraud or seek to defraud it. • This draft Policy aims to ensure that the Council can apply a full range of sanctions in a just and consistent manner, ensuring they are applied effectively, and are proportionate, and cost-efficient. This policy will ensure that the sanction decision making process is stringent, robust, transparent and properly considers the public interest. • The decision to refer cases for prosecution or to recommend another form of sanction as an alternative to prosecution, where permitted by certain legislation, will be taken by the Council's Sanction Panel. 	



- The use of sanctions will be governed by the principles of this policy and will specifically cover Elected Members and Council Staff, Welfare Fraud such as Council Tax Reduction, Social Housing Fraud and any other fraud investigated by the Regional Internal Audit Service.
- It should be noted that the Shared Regulatory Service (SRS) has its own Compliance and Enforcement Policy to cover SRS areas of work.

Recommendations

1. That members of the Committee consider and comment on the draft Corporate Fraud Enforcement Policy.
2. That the draft Corporate Fraud Enforcement Policy along with the Committee's recommendation be referred to Cabinet for approval.

Reasons for Recommendations

1. To ensure Governance and Audit Committee members have the opportunity to comment on the Policy.
2. To ensure Cabinet receives the comments of the Governance and Audit Committee

1. Background

- 1.1 One of the core functions of an effective Governance and Audit Committee is to consider the effectiveness of the Council's risk management arrangements, the control environment and associated anti-fraud and corruption arrangements.
- 1.2 The Council's Counter Fraud Strategy and Framework 2021 to 2024 provides a strategy which identifies roles and responsibilities, aims and objectives, fraud risks, an action plan and a fraud response plan flowchart. Key policies such as the Anti-Fraud, Bribery and Corruption Policy, Whistleblowing Policy, Anti -Money Laundering Policy and an Anti-Tax Evasion policy are also in place to support the Council's commitment of developing a culture of honesty, integrity and opposition to fraud, corruption and bribery.
- 1.3 The Anti-Fraud and Corruption Policy states that the Council will seek the appropriate sanctions against any individual or organisation that defraud or seek to defraud it. The draft Corporate Fraud Enforcement Policy at **Appendix A** aims to ensure that the Council can apply a full range of sanctions in a just and consistent manner, ensuring they are applied effectively, and are proportionate, and cost-efficient.
- 1.4 This policy will ensure that the sanction decision making process is stringent, robust, transparent, and properly considers the public interest.
- 1.5 It should be noted that the Shared Regulatory Service (SRS) has its own Compliance and Enforcement Policy to cover SRS areas of work.

2. Key Issues for Consideration

- 2.1 The use of sanctions will be governed by the principles of this policy and will specifically cover:
- Elected Members and Council Staff,
 - Welfare Fraud such as Council Tax Reduction,
 - Social Housing Fraud
 - any other fraud investigated by the Regional Internal Audit Service.

As previously stated, the Shared Regulatory Service (SRS) has its own Compliance and Enforcement Policy to cover SRS areas of work which are excluded from the remit of this policy.

- 2.2 A range of sanctions are available in relation to identified fraud and corruption. These include disciplinary action, civil proceedings, criminal proceedings, and civil/financial penalties. Where appropriate, the Council may take more than one form of action eg) where staff commit fraud or corruption, disciplinary action, prosecution, and civil recovery may all be appropriate.
- 2.3 The decision to refer cases for prosecution or to recommend another form of sanction as an alternative to prosecution, where permitted by certain legislation, will be taken by the Council's Sanction Panel. The Sanction Panel will consist of the Head of Finance, Monitoring Officer/Head of Legal & Democratic Services and the Head of Human Resources supported by the Head of the Regional Internal Audit Service (or nominated representatives).
- 2.4 Summary information on cases and action taken will be reported to the Council's Communications team in line with the Procedures for Publishing Press Releases Referencing Criminal Convictions. It is the Council's intention to positively promote this policy as well as the outcome of any prosecutions. This may deter others from fraudulent activity and reassure the public that the Vale of Glamorgan Council will take action to prevent fraud.
- 2.5 The Council's Annual Corporate Fraud report will highlight cases where sanctions or prosecutions have resulted from investigations conducted by the Counter Fraud Officer or the Regional Internal Audit Service.
- 2.6 The draft Policy at **Appendix A** also includes **Annex A** which is the Local Authority Welfare Benefit Fraud Decision Making Process. This annex outlines the sanctions available in these circumstances and the conditions to be satisfied including financial limits. It should be noted that if DWP benefits are involved a joint working case may be undertaken.
- 2.7 Subject to the report being approved by Cabinet, the Council's Constitution will require amendment to delegate authority to relevant officers to undertake the functions set out elsewhere in the report including the decision to refer cases for prosecution or to recommend another form of sanction as an alternative to prosecution, where permitted by legislation.
- 2.8 This draft Policy has been shared with the Council's Senior Leadership Team for comments.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** These measures aim to prevent or reduce the risk of fraud, bribery, and corruption occurring.

4. Climate Change and Nature Implications

- 4.1** None

5. Resources and Legal Considerations

Financial

- 5.1** To ensure that the Council funds and resources are used appropriately.

Employment

- 5.2** There is a resource impact in relation to the investigation and resolution of potential fraud, bribery, and corruption matters. The impact is borne by Directorates and Internal Audit.

Legal (Including Equalities)

- 5.3** Public Service organisations have a responsibility to embed effective standards for countering fraud, corruption, and bribery into the organisations. This supports good governance and demonstrates effective financial stewardship and strong public financial management. This will help to ensure that crime committed by members of the public, Council employees and Members against the Council will be suitably addressed.

6. Background Papers

None



Corporate Fraud Enforcement Policy

Section 1 - Introduction

- 1.1 The Vale of Glamorgan Council is committed to protecting public funds through its action to prevent and detect fraud and the Council's Anti-Fraud and Corruption Policy sets out its aims and objectives regarding both deterring and tackling fraud and associated offences. The Anti-Fraud and Corruption Policy states that the Council will seek the appropriate sanctions against any individual or organisation that defraud or seek to defraud it.
- 1.2 The objectives of this policy are:
- To ensure that the Council can apply a full range of sanctions in a just and consistent manner.
 - To ensure that sanctions are applied in an effective, proportionate, and cost-efficient manner.
 - To ensure that the sanction decision making process is stringent, robust, transparent and properly considers the public interest.
 - To make it clear that the Council will not tolerate fraud and will take appropriate action.
 - To penalise those who to seek to defraud public funds.
- 1.3 The use of sanctions will be governed by this policy and the principles of this policy and will specifically cover:
- Elected Members and Council Staff
 - Welfare Fraud such as Council Tax Reduction
 - Social Housing Fraud
 - Other fraud investigated by the Regional Internal Audit Service.
- 1.4 ***It should be noted that the Shared Regulatory Service (SRS) has its own Compliance and Enforcement Policy to cover SRS areas of work.***

Section 2 - Determining the Appropriate Sanction Route

- 2.1 This policy is designed to provide a framework to ensure the most appropriate resolution to a case is reached. The sanction decision will always have regard to the Anti-Fraud, Bribery and Corruption Policy objectives, the individual circumstances of the persons concerned and the overall impact of the sanction to both the individual and the community.
- 2.2 A range of sanctions are available in relation to identified fraud and corruption. These include disciplinary action, civil proceedings, criminal proceedings, and civil/financial penalties. Where appropriate, the Council may take more than

one form of action. For example, where staff commit fraud or corruption, disciplinary action, prosecution and civil recovery may all be appropriate.

- 2.3 The decision to refer cases for prosecution or to recommend another form of sanction as an alternative to prosecution, where permitted by certain legislation, will be taken by the Council's Sanction Panel. The Sanction Panel will consist of the Head of Finance, the Monitoring Officer/Head of Legal & Democratic Services and the Head of Human Resources supported by the Head of the Regional Internal Audit Service (or nominated representatives).
- 2.4 The Sanction Panel may refer cases to the police for investigation who may then refer matters to the Crown Prosecution Service. This can occur in cases of staff fraud or where the fraud is complex and/or of a very serious nature or linked to Safeguarding issues.
- 2.5 The Sanction Panel will apply the Director for Public Prosecutor's Guidance on Charging to ensure that decisions to charge criminal offences and other prosecution decisions are fair and consistent and fully comply with the Police and Criminal Evidence Act (PACE), the PACE Codes of Practice and the Code for Crown Prosecutors.
- 2.6 When considering a case, the Sanction Panel will apply the most recent edition of the Code for Crown Prosecutors and ensure that all cases accepted for prosecution meet the Full Code Test namely that there is sufficient evidence to have a realistic prospect of a conviction and that it is in the public interest to prosecute.
- 2.7 The two stages of the Full Code Test will be considered as follows: -

- **The Evidential Stage**

- There is sufficient evidence to provide a realistic prospect of conviction.

A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. If the case passes the evidential stage, it will then be considered under the Public Interest Test.

- **Public Interest Test**

- A prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh those tending in favour.

- 2.8 The more serious the offence, or the offender's record of criminal behaviour, the more likely it is that a prosecution will be required to meet the public interest. Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction as set out in the Code for Crown Prosecutors.

Section 3 - Types of Fraud Covered by this Policy

3.1 Elected Members and Council Staff

3.1.1 In all cases of fraud, theft, corruption, financial misconduct or serious and intentional breach of financial regulations committed by employees or elected members of the Council, the Council will seek disciplinary action in accordance with the Council's Disciplinary Policy and/or prosecution as appropriate.

3.1.2 Where a financial loss has been identified the Council will seek to recover this loss either through the civil or criminal process. In addition, where staff are members of professional bodies or are subject to national codes of conduct such as teaching, social services staff, cases will be referred to the relevant professional body.

3.1.3 Where appropriate under this policy, cases will be referred to the relevant prosecuting authority for criminal prosecution.

3.2 Welfare Fraud

3.2.1 This includes any local or national benefit/allowance administered by the Council or on behalf of central government, for example, housing benefit, council tax reduction support, social fund, direct payments, some council tax discounts/exemptions and any national benefits which the Council is empowered to investigate, such as job seekers allowance, income support and employment support allowance (under any pilots or agreed partnership).

3.2.2 Under amendments to the Local Government and Social Security legislation there are often options to consider financial penalties as an alternative to prosecution and these should always be considered.

3.3 Social Housing Fraud

3.3.1 Where a false statement is made on a housing or homeless application, or where false information is provided during the tenancy, the Council will consider prosecution. Fraud and illegal subletting committed by applicants will be considered for criminal prosecution using the Theft Act, Fraud Act, Housing Acts and/or Prevention of Social Housing Fraud Act.

3.3.2 The factors that will affect the decision to prosecute will be based on the evidential and the public interest test.

3.4 Other Fraud

3.4.1 This includes grants, reliefs and exemptions, council tax or non-domestic rates and other applications for financial assistance. This will include cases of attempted fraud, i.e. applications for grants where the financial estimates are deliberately misstated and false applications for direct care payments.

Falsifying travel claims, timesheets or procurement documentation to gain a financial benefit is also covered by this Policy.

- 3.4.2 In cases where the Council suffers a financial loss, or risk of loss, it will always consider seeking recovery. Where an organisation is involved in the fraud, the Council will also make referrals to the relevant governing body as and when appropriate, i.e. Charities Commission, Registrar of Companies.
- 3.4.3 The Council will also consider criminal prosecution. The factors that will affect the decision to prosecute will be based on the evidential and the public interest test.

Section 4 – Investigations

- 4.1 All investigations will be carried out with due regard to the following legislation and any associated guidance or codes of practice, in so far as they relate to the fraud:
- the Criminal Procedure and Investigations Act 1996
 - the Police and Criminal Evidence Act 1984
 - the Regulation of Investigatory Powers Act 2000
 - the Criminal Justice and Police Act 2001
 - the Human Rights Act 1998
 - The Protection of Freedoms Act 2012
- 4.2 These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.
- 4.3 The procedures for interviewing alleged defendants follow the principles set out in the Police and Criminal Evidence Act 1984, as amended, and the relevant associated Codes of Practice.
- 4.4 The Council may work with other organisations such as the Department for Work and Pensions, the Police, Home Office, HM Revenues and Customs and other local authorities in order to detect and deter fraud. The work may include joint investigations with them and, where appropriate, assist in any prosecution.

Section 5 – Types of Sanction

- 5.1 In all cases where fraud is identified the Council will consider commencing legal processing to cover the debt from the fraudulent party.
- 5.2 When considering cases for sanction, it is essential that each case is subject to scrutiny based on its own merits. The circumstances of each individual case will ultimately determine the eventual sanction route.
- 5.3 The Sanction Panel will consider any previous prosecutions, cautions or financial / administrative penalties from the Council, other local authorities, the Department for Work and Pensions, the Police or other enforcement agencies. Having considered all the relevant facts and circumstances of an individual case, the Sanction Panel will recommend a course of action.
- 5.4 **Annex A** contains the decision making process to be used for Local Authority Welfare Benefit fraud.
- 5.5 Simple Caution**
- 5.5.1 A simple caution (previously known as a formal caution) is an alternative to prosecution, where the circumstances are such that the caution is likely to be effective and its use is appropriate to the offence. It is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction.
- 5.5.2 There is no legal obligation for a person to accept the offer of a simple caution, but failure to accept a caution will normally result in prosecution for the offence. Where the offence committed is a recordable offence, a simple caution will appear on an offender's criminal record. It is likely to influence how any similar breaches will be dealt with in the future and may be cited if it is relevant to any proceedings. Simple cautions will be used in accordance with the Ministry of Justice guidance on the cautioning of adult offenders.
- 5.6 Financial / Administrative Penalty (Relates specifically to Housing Benefit / Council Tax Reduction Fraud)**
- 5.6.1 The Social Security Administration Act, Section 115A and Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013, provide for financial/administrative penalties as alternatives to prosecution. The legislation allows for financial penalties amounting to 50% of the gross overpayment (of benefit) subject to a minimum penalty of £100 to a maximum of £1,000 as an alternative to prosecution.
- 5.6.2 A fixed penalty of £70 can also be imposed in less serious cases in accordance with Regulation 13 of the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (Wales) Regulations 2013.

5.6.3 In those instances where the claimant refuses to sign the Administration Penalty, the Council will consider the case for prosecution.

5.7 Proceeds of Crime

5.7.1 The Council will use the Proceeds of Crime Act 2002, Criminal Justice Act 1988, and the provisions of Prevention of Social Housing Act 2013 to obtain Confiscation Orders to include Compensation Orders as well as recovery of the full criminal benefit figure where possible. The purpose is to recover the financial benefit that the offender has obtained from their crimes. Proceedings only take place after a criminal conviction has been obtained, but they are conducted according to the civil standard of proof. Where appropriate, compensation orders can also be sought from the court.

5.7.2 The Council may use its own accredited Corporate Fraud Officer or those attached to other law enforcement agencies to conduct investigation, obtain orders and present evidence.

5.8 Prosecution

5.8.1 The Council can prosecute breaches of legislation, particularly in respect of those who flout the law or who act irresponsibly or where other enforcement actions, such as a caution have failed to secure compliance.

5.8.2 The decision as to whether prosecution is the most appropriate course of action in a particular case will be made :

- In accordance with this Policy.
- In accordance with the Code for Crown Prosecutors; and
- In accordance with statutory requirements, taking into consideration all relevant codes of practice and without any unnecessary delay.

5.8.3 In following the Code for Crown Prosecutors, a prosecution will only be commenced where the Sanction Panel is satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the defendant(s). In addition, the Sanction Panel must be satisfied that having considered all the relevant facts and circumstances of the case and having regard to the criteria established by the Code for Crown Prosecutors, a prosecution would be in the public interest.

5.8.4 The ultimate decision on prosecution will be taken by the prosecuting body. In some cases, this will be the Council, in others it will be the Crown Prosecution Service. Other than where the Crown Prosecution Service is the most appropriate prosecuting authority, the Council will utilise internal legal services to undertake criminal prosecutions.

5.8.5 A successful prosecution will result in a criminal record. There is a range of sanctions available to the court depending on the charge and the circumstances

of a case and the offender. These include a discharge, a fine or a community order.

Section 6 - Recording Sanctions

- 6.1 All sanctions will be recorded by the Council's Corporate Fraud Officer and copies of all documents used to consider and issue the sanction will be retained, in accordance with the relevant Retention Policies.
- 6.2 An accurate record of all convictions, penalties and cautions will enable the correct decisions to be made whilst taking full account of previous information.

Section 7 - Reporting and Review

- 7.1 Summary information on cases and action taken will be reported to the Council's Communications team in line with the Procedures for Publishing Press Releases Referencing Criminal Convictions. It is the Council's intention to positively promote this policy as well as the outcome of any prosecutions. This may deter others from fraudulent activity and reassure the public that the Vale of Glamorgan Council will take action to prevent fraud.
- 7.2 The Council's Annual Corporate Fraud report will highlight cases where sanctions or prosecutions have resulted from investigations conducted by the Counter Fraud Officer.
- 7.2 This policy will be reviewed every 3 years or when changes in legislation require it.

Local Authority Welfare Benefit Fraud - Decision Making Process

Where enough evidence has been gathered to provide a realistic prospect of conviction through the courts and regard has been given to the requirements of all relevant legislation (including the Human Rights Act), then a prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour.

If DWP benefits are also involved a joint working case may be undertaken.

The Test of Public Interest

If an attempt has been made to claim benefit or an overpayment of under £500 has occurred, and

- the person has never previously offended, and
- there was no planning and criminality involved in the process, and
- there was no other person involved in the fraud, and
- the person falls into at least one of the following categories:
 - genuine financial hardship
 - single parent
 - pensioner
 - under the age of 16 years
 - in need of Social Services assistance
 - has been certified by a GP or relevant medical practitioner as suffering from a long term serious or terminal illness.

the Council believes that, in most instances, it is not in the public interest to prosecute, or offer a Financial Penalty or Caution.

Simple Caution

Where the evidential requirement for a prosecution is satisfied and the offender has admitted the offence, a caution is one of the enforcement actions available to the Council.

Whether an offer of a caution is suitable is an operational decision based on the specific circumstances of the individual case.

- The offender admits their guilt,
- The person has never previously offended
- The overall value of the fraud is below £5,000

In addition the overpayment will be recovered in full.

Financial / Administrative Penalty

Where grounds exist for instituting criminal proceedings the Council may offer an alternative penalty. It is not necessary for the person to have admitted the offence.

- The person has no unspent previous convictions
- The person has not received any cautions within the last two years
- No Financial Penalty has been agreed for any previous offence.
- The offence has been committed over a short period of time (less than 6 months),
- The person offered such a penalty can repay it within a reasonable timescale and the imposition of such a penalty will not overburden them if they have existing priority debts
- the overall value of the fraud is below £5,000

Prosecution

In all other cases the Council will consider prosecution.

The Public Interest factors that are relevant to establish a decision to prosecute will often depend on the potential seriousness of the offence or the circumstances of the offender, examples of this are:

- The previous history of the offender
- Any statutory defence available
- Action taken to avoid recurrence
- Any explanation offered, and if the law allows the circumstances and attitude of the offender
- What course of action will best serve the public interest
- Whether there is a realistic prospect of conviction

Some factors may increase the need to prosecute while others may suggest an alternative course of action.

If there are additional factors that should be taken into account, then those factors should be considered and noted.

It should be emphasised that the decision on whether to prosecute in the public interest is very much a matter of common sense and the above factors are only a guide in reaching a decision. All decisions to prosecute will be taken in line with the Code for Crown Prosecutors.