

# Counter Fraud Service Fraud Response Plan

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## 1. INTRODUCTION

1.1 This plan details the processes to be followed by Herefordshire Council when investigating referrals or allegations of suspected:

- Fraud
- Theft
- Irregularity
- Bribery
- Corruption

These allegations and/or referrals can be against any service within the authority (including maintained schools).

All allegations received will be taken seriously and if appropriate, investigated in an appropriate manner, subject to requirements of the law.

## 2. HOW TO REPORT A MATTER

2.1 Referrals can be made by:

- Any member of the public
- Any council employee (including agency staff and temporary employees)
- Elected members
- Any outside organisation (such as the Police)
- Any person that has a concern Herefordshire Council may be the victim of an offence mentioned in point 1.

Referrals can be raised as a direct report of fraud or through the Whistleblowing process, if appropriate. Any direct report of fraud, theft, bribery, corruption and irregularity should be made to the Herefordshire Counter Fraud Service (CFS).

2.2 Reports can be made through any of the following channels:

- Call the CFS fraud hotline on **01432 260698**
- Complete an online form at **[www.herefordshire.gov.uk/counter-fraud](http://www.herefordshire.gov.uk/counter-fraud)**
- Writing to us at: **Counter Fraud Department, Corporate Services, Plough Lane Offices, Hereford, HR4 0L**
- Arranging a visit directly in person with the CFS
- Raising a concern through the Whistleblowing process

Internally, employees can also raise any concerns they have directly with their manager, if appropriate. However, the manager must then refer the matter to the CFS as detailed above.

2.3 The Council will not reveal the identity of any person that reports a suspected matter of fraud, unless the person is a witness and provides a witness statement. However, the Council cannot prevent suspects drawing their own conclusions rightly or wrongly as to the source of the allegation – although this information will never be confirmed by the CFS Investigation Officer.

2.4 In addition to allegations or referrals being reported by employees, elected members and members of the public, matters may arise through other channels such as data matching exercises (for example the National Fraud Initiative - NFI), during internal and external audit work, or through the day-to-day course of Council business.

### 3. HOW WILL THE COUNCIL RESPOND

3.1 The CFS's response will depend on the seriousness of the suspected fraud or irregularity and the level of information that is provided. The CFS will initially decide whether an investigation is required into the matter and whether Herefordshire Council has the jurisdiction to investigate.

3.2 If allegations are received which are outside the remit of the Council's CFS, then these will be passed to the appropriate service area (for example Trading Standards) or an external organisation. If a case is however within the Council's remit to investigate, then the CFS uses a traffic light system to undertake preliminary checks and to assess the overall risk of the allegation. Cases are then prioritised accordingly based upon this risk analysis.

### 4. THE INVESTIGATION PROCESS

4.1 The purpose of an investigation is to gather information and evidence upon which a course of action can be based. The decision to pursue the matter as a criminal case or a non-criminal case will depend on the potential loss to the Council, the circumstances of the alleged deception and depth of the information provided in the referral. It is possible that a non-criminal investigation may be commenced but during the process of the investigation the information that is uncovered means that the investigation becomes a criminal case.

4.2 Please refer to the Fraud Response Flowchart in Appendix A for further details of the investigation flow process.

## 5. CRIMINAL CASES

5.1 If the CFS decides to pursue the investigation as a criminal matter, then the Investigation Officer will conduct a thorough professional investigation adhering to all relevant legislation such as, but not limited to, the Criminal Procedure and Investigations Act 1996, the Police and Criminal Evidence Act 1984 and the Regulation of Investigatory Powers Act 2000. The investigation may require a formal interview under caution (PACE interview) to be conducted.

5.2 At the conclusion of an investigation, if sufficient evidence is obtained that suggests a criminal offence has been committed, a decision will be made on whether a prosecution or other appropriate sanction, such as a simple caution is sought. The decision to pursue prosecution in a case will be made by the Council's Section 151 Officer or Deputy Section 151 Officer who are the authorised decision makers. The Council's [Enforcement and Prosecution Policy](#) will be followed in this event. The investigating officer will liaise with a solicitor from Legal Services to help prepare the matter for court when required.

5.3 In some criminal cases, the CFS may choose to refer the investigation onto a relevant investigating body such as the Police to investigate allegations of offences on their behalf. In these instances the decision is made based upon a number of factors which are referred to within section 8 of the fraud response plan.

5.4 The Council may also pursue prosecution under Section 222 of the Local Government Act 1972, or work alongside the Crown Prosecution Service (CPS). Repayment of any fraudulently obtained funds will be sought. If appropriate, the authority will seek compensation for its loss at court. This could be through the Proceeds of Crime Act 2002.

## 6. NON-CRIMINAL CASES

6.1 If the case is not pursued as a criminal matter, then the investigation will still be conducted in a thorough professional manner by the CFS. This could involve interviewing witnesses and suspects. However, no criminal prosecution will be sought at the conclusion of the investigation. Repayment of any wrongly obtained funds from the authority will still be pursued.

6.2 All managers and officers from all teams are expected to assist the investigating officer in any investigation of fraud and irregularity, whether prosecution is sought at the end of the investigation or not. Evidence will often be sought from teams and individual Council officers can be required to attend court. Managers must assist in this process.

6.3 Dependent on what is uncovered during the investigation (whether criminal or non-criminal), a report may be provided, if it is deemed necessary, to the Service Manager or Director of the relevant service area, detailing the findings of the investigation and any recommendations in order to reduce the risk of fraud and error in the future.

## 7. COUNCIL TAX FRAUD

7.1 Within the Revenues Service, the Council Tax Reduction Schemes (Detection of Fraud & Enforcement) (England) Regulations 2013 and Schedule 3 of the Local Government Finance Act 1992 outlines civil penalties that the Council can apply in cases where false or incorrect information is provided or there is a failure to provide information which leads to incorrect claims to Council Tax Support or an incorrect liability for council tax.

7.2 Council tax investigations (such as that into Council Tax Reduction 'CTR', discounts and exemptions fraud, will follow the investigations process outlined.

## 8. HOUSING BENEFITS FRAUD

8.1 Any referral for suspected Housing Benefit fraud can be made directly to the Department for Work and Pensions (DWP) by using the national fraud hotline 0800 854440, or online reporting mechanism. Any internal referral for Housing Benefit fraud that has occurred from processing an application by Benefit staff can be made using the recognised reporting form which can be passed to the CFS to refer to the DWP through established channels. Housing Benefit fraud is investigated by DWP and the Council have no jurisdiction to investigate Housing Benefit fraud, unless this forms part of a wider joint working investigation with DWP benefits and Council tax discounts, reductions and exemptions.

## 9. BLUE BADGE FRAUD

9.1 In relation to any misuse or fraud identified with disability parking permits (blue badges), the council's Parking Enforcement team will actively investigate these cases. Where appropriate and within the public interest, penalty fines can be issued and prosecution may be pursued. A referral for alleged blue badge misuse and fraud can be made through the council website directly to the Parking Enforcement team.

## 10. CYBER FRAUD

9.1 The Information Security department is responsible for the council's process in relation to dealing with cyber fraud, which includes monitoring the effectiveness of controls in the prevention and detection of cyber fraud. An example of cyber fraud could be a ransomware attack or a phishing email. The Information Security team promotes safe online behaviour and provides training to staff to recognise and respond appropriately to cyber threats.

## 11. FRAUD INVESTIGATIONS INVOLVING EMPLOYEES OF THE COUNCIL

11.1 Unfortunately some investigations may involve employees (as the suspect) of the Council. This can either be as a direct result of their employment with the Council or they could be involved in the defrauding of one of the Council services that they access as a member of the public.

11.2 The investigation to establish whether fraud or theft has been established is different to a disciplinary investigation. However, the findings of the investigation may feed into any potential disciplinary investigation, which will be conducted independently of this process..

11.3 If the investigation involves an employee, then the employee concerned will be informed that an investigation is underway, except where to do so would compromise the effectiveness of the investigation. This is usually the case with a criminal investigation. An investigation without the employee's knowledge must not be used deliberately to allow or encourage an employee to commit a more serious disciplinary offence.

11.4 The relevant Service Manager and Human Resources Officer must be made aware of an investigation into an employee. They must be kept informed of the investigation. If a criminal investigation is conducted involving an employee, the Investigation Officer will conduct the investigation in the same manner as any other criminal investigation, adhering to all relevant legislation. If the investigation is conducted as a non-criminal matter then the Investigation Officer will follow the same process as any other non-criminal investigation.

11.5 An investigatory meeting is not a disciplinary hearing and there is no formal right of representation. However, should an employee wish for a trade union representative or work colleague to attend, an employee may request that the Investigation Officer grants permission for you to be accompanied by a Trade Union representative.

11.6 In cases where deliberate fraud, theft or irregularity is proven against an employee a report will be prepared by the Investigating Officer, detailing the outcome of the investigation. This will allow any relevant internal disciplinary action to be taken. The report may also make recommendations for the Service Manager to implement, in order to reduce the risk of fraud or irregularity in the future.

11.7 The decision to instigate criminal proceedings or other appropriate sanction against an employee of the authority, will be determined by whether the deception was committed internally as an employee or against a service they have accessed as a member of the public.

11.8 If they have committed an offence in their role as an employee, then the decision to instigate criminal proceedings or other appropriate sanction will be made by the Director of the area that the employee works in based on the recommendation of the Investigation Officer. If an employee has committed an offence against a service that they have accessed as a member of the public, then the decision to instigate criminal proceedings will be made by the Council's Section 151 Officer or Deputy Section 151 Officer, following receipt of a report from the investigating officer. However, the employee's Director will be made aware of this decision.

## 12. SUSPENSION OF AN EMPLOYEE

12.1 During the course of a fraud investigation involving an employee, it may become necessary to suspend the employee. Staff will only be suspended from duty in line with the council's [suspension guidance](#). Suspension does not constitute disciplinary action, nor does it suggest that the employee is guilty of any wrongdoing. Suspensions are likely to be appropriate in a fraud investigation when:

- The investigation would not be able to continue unimpeded. For example, necessary evidence may potentially be destroyed or altered. This may be the case in some investigations involving a potential data breach.
- The employee has been charged with a serious criminal offence. At some stage during the investigation it may become clear that there are serious causes for concern which may give reason for dismissal on the grounds of gross misconduct. At this point the Investigating Officer should consider whether it is necessary to suspend the employee from duties.
- If an Investigation Officer believes that there is evidence that the employee has committed an act of gross misconduct which has fundamentally breached the trust and confidence of the employment relationship, it is unlikely that it would be appropriate for the employee to remain in work before the outcome of the investigation is reached.

This list is not exhaustive and there may be other occasions where suspension during an investigation is considered appropriate.

## 13. DISCIPLINARY ACTION

13.1 Any disciplinary action will be in line with the Council's Disciplinary Policy. This will usually follow a separate disciplinary investigation.



## 14. REFERRING MATTERS TO THE POLICE

14.1 Most cases of alleged fraud against the Council will be investigated by an officer from the Investigation Team. However, on occasions it may be necessary to refer some matters to the Police. Below is a list of circumstances when Police assistance may be sought:

- The alleged offence falls outside the authority's jurisdiction but falls under Police jurisdiction
- The offence is of such a serious nature that the authority may not have the resources to fully establish the facts.
- The offence not only involves offences against the authority but also includes offences that fall under Police jurisdiction (a joint investigation may be conducted in such instances).
- It is believed that organised crime may be involved in the commission of the offence
- There is a serious risk to the safety of Council officers if the matter is investigated by them

14.2 The decision to refer the matter to the police will usually be made by the CFS, however in more serious cases, the decision may be escalated to the Section 151 officer or Deputy 151 Officer. The CFS will obtain a crime reference number from the police and act as the point of contact between the police and the authority.

14.3 If the matter requires a joint working approach between the Police and the authority then the CFS will undertake the investigation jointly with the Police.

14.4 The Section 151 Officer will be responsible for keeping the Chief Executive and appropriate member(s) informed of the progress of any Police investigation, where applicable.

## 15. RECOVERY OF LOSSES

15.1 The council will always attempt to recover losses incurred as a result of fraud, theft, bribery and corruption.

15.2 If anyone under investigation offers money in settlement of any losses to the council, it should be made clear that any monies offered will only be accepted, through the appropriate process:

- Without prejudice to any other actions the council may wish to take;
- That acceptance is only in respect of losses identified to date; and
- That the council reserves the right to seek recovery in any further losses that may come to light in the future.

15.3 In some civil cases, losses may be sought through a repayment plan, in these instances the investigation officer will refer the debt onto the debt recovery department and the losses will be pursued following the council's Debt Recovery Policy and procedures.

15.4 In a criminal investigation, if appropriate, the authority may seek compensation for its losses at court. This could be through the Proceeds of Crime Act 2002.

## 16. JOINT WORKING

16.1 In certain cases, it may be appropriate to work jointly with outside partner agencies where linked offences affect partner organisations. These agencies could include:

- The Police (as detailed above)
- The Department for Work and Pensions (DWP)
- His Majesty's Revenues and Customs (HMRC)
- National Investigation Service (NATIS)
- Integrated Care Board (ICB) or NHS Counter Fraud Authority (NHSCFA)
- Other Local Authorities

16.2 The above list is not exhaustive. Any decision to jointly work with the outside organisation will have a formal agreement approved at the start of the investigation (apart from working with the Police).

16.3 At the conclusion of such joint investigations criminal action may be taken. The joint partner will often (but not exclusively) lead the prosecution and in such circumstances, their prosecuting agents will proceed to take the matter to court. In some cases, the Council may be the designated lead.

16.4 The Council's Section 151 Officer or Deputy 151 Officer will make the decision to authorise prosecution or other appropriate sanction, which will be taken by the outside agent based upon the recommendation of the investigating officer (unless the suspect is an employee where the process for recommending further action against employees will be followed) However, advice from legal services may be sought during this process.

## 17. COMMUNICATIONS

17.1 The Corporate Communications Team will be informed about the progress of any matters that are to be heard at court so that appropriate communication can be provided. Publicity of court cases is an effective fraud prevention measure.

## **18. REPORTING AND REVIEW**

- 16.1 Audit reports relating to fraud investigations will be included in audit updates presented to the Audit Committee as part of the standard procedure for audit reporting to the committee.
- 16.2 The Fraud Response Plan will be reviewed as and when is necessary but as a minimum will be formally reviewed once every 3 years.