

Prosecutions & Sanctions Policy



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1. Introduction

- 1.1 This policy sets out the London Borough of Hillingdon's decision making process for when a prosecution is undertaken or another sanction/penalty is applied by the Council. This is within the Council's remit as a Prosecution Authority under section 222 of the Local Government Act 1972 and Regulator under the Legislative and Regulatory Reform Act 2006 and Regulators' Code.
- 1.2 All Council officers, or individuals not directly employed by the Council, that are carrying out a Council function involving prosecution and/or the application of statutory or non-statutory sanctions or enforcement (in relation to criminal offences and/ or unlawful activity) must apply the principles of this **Prosecutions & Sanctions Policy** as part of that function. All other policies or guidance relevant to the application of criminal or civil sanctions by the Council shall refer to this Policy where it is determined appropriate to do so.

2. Prosecutions & Sanctions

- 2.1 The Council will prosecute any person or organisation who commits a criminal offence against the systems, processes and functions of the Council and/or assaults or threatens any member or employee of the Council. The Council will also prosecute, or take enforcement action against, any person or organisation that commits an offence or is otherwise acting unlawfully, where the Council has a statutory or other responsibility for enforcement in respect of that offence or unlawful activity. Any person who commits such an offence will be prosecuted if there is sufficient evidence and if, in the opinion of the Council, it is in the public interest to do so. In the case of unlawful activity, statutory enforcement action will be taken where appropriate and the law allows.
- 2.2 When deciding if it is in the public interest, all officers of sufficient authority who decide whether to prosecute on behalf of the Council, will be guided by the Code for Crown Prosecutors (CCP), and consider each case on its own merits. Whenever it is appropriate, consideration will be given to applying other sanctions, such as a civil penalty, as an alternative to prosecution if it is in the public interest to do so and an alternative to prosecution is available.
- 2.3 If it is the case that a specific statutory or regulatory process, rule or code, applies to the decision to prosecute or apply a sanction to an offence or unlawful activity, other than, or in addition to, the CCP or general law applicable to prosecution or sanctions, the relevant statutory or regulatory process, rule or code will take precedence over this policy in that decision. The Council will, where appropriate, produce guidance applicable to such circumstances.
- 2.4 If it is the case that the Council, and/or other individual, has suffered a material/financial loss as a result of, or in relation, to a criminal offence to which this policy applies, the Council may take separate action to stop further loss and/or recover money or assets, including taking action under the Proceeds of Crime Act 2002, irrespective of any criminal proceedings.

3. Alternatives to Prosecution

- 3.1 **Cautions** - In the issuing of Cautions, LBH will always be guided by the relevant statutory guidance; currently the Ministry of Justice – “*Simple Caution for Adult Offender*” guidance.
- 3.2 **Statutory Sanctions/Enforcement** - The Council may consider a Statutory Sanction or Enforcement action, whether a monetary penalty or otherwise, as an alternative to prosecution for an offence, where the imposition or offer of such a sanction or enforcement action for the specified offence or offences is prescribed by law.

3.3 **Regulatory Alternatives** - If, in conjunction with paragraph 2.3 of this Policy, the Council's role as a regulatory body determines that a specific alternative to prosecution for a specified offence or regulatory breach is required, this will be applied over any alternative as per paragraphs 3.1 to 3.3 of this Policy.

4. Code for Crown Prosecutors

4.1 **The Evidential Test** - When making a decision on whether to prosecute, the Council will first consider whether there is sufficient evidence by considering the following:

- is there sufficient evidence of the commission of an offence to provide a realistic prospect of conviction?; and
- is the evidence reliable and able to be used in court?

4.2 **The Public Interest Test** - Once the Evidential Test has been satisfied, the Council will then consider whether the Public Interest Test is satisfied. The Public Interest Test will be assessed following the guidance in the "*Code for Crown Prosecutors*" to ensure that any prosecution is in the public interest.

5. Other Sanctions or Penalties

5.1 Where a person engages in conduct which is not criminal, but is otherwise prohibited by law or regulation applicable to the functions of the Council, or fails in their legal obligation to the Council, the Council may consider the imposition or offer of a sanction or monetary penalty where to impose a monetary penalty or sanction for the given circumstances is prescribed by law.

6. Other Relevant Policies

6.1 Other relevant Council policies etc include:

- Counter Fraud Strategic Plan;
- [Whistleblowing Policy](#);
- [Corporate Investigations Protocol](#);
- [Anti-Bribery Policy](#);
- [Anti-Money Laundering Policy](#); and
- [Surveillance Policy](#).

7. Review Cycle of the Prosecutions & Sanctions Policy

7.1 The Council's Prosecutions & Sanctions Policy will be updated periodically (as and when required) and be subject to a detailed review every 3 years to ensure it is up to date with best practice in this area. The next detailed review is planned for December 2021.

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