

PROSECUTION AND SANCTION POLICY 2022/23

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1. Policy Statement:

- 1.1 ELWA will use the full range of sanctions available to it, including criminal prosecution, civil recovery, internal disciplinary and referral to professional bodies in order to deter fraud, corruption, bribery and associated offences.
- 1.2 ELWA will utilise its commissioned legal services through LB Barking and Dagenham or agent solicitors to conduct prosecutions, as well as the Crown Prosecution Service, where appropriate.
- 1.3 ELWA will refer matters to other law enforcement agencies or regulators where appropriate and support those agencies in bringing proceedings.
- 1.4 This policy only relates to investigations undertaken by the London Borough of Redbridge's Counter Fraud Team working on behalf of ELWA and complies fully with ELWA's existing 'Anti-Fraud and Corruption Strategy'.

2. Introduction:

- 2.1 ELWA's Anti-Fraud and Corruption Strategy sets out our aims and objectives with regard to both deterring and tackling fraud and associated offences. The Anti-Fraud and Corruption Strategy states that ELWA will seek the appropriate sanctions against any individual or organisation that defraud, or seek to defraud, it. The use of sanctions will be governed by this policy and the principles of this policy shall apply equally to any fraud against ELWA or against funds for which ELWA has responsibility.
- 2.2 The objectives of this policy are:
 - To ensure that ELWA 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-effective manner
 - To ensure that the sanction decision making process is stringent, robust, transparent and properly considers the public interest
 - To make it clear that ELWA will not tolerate fraud and will take appropriate action to punish those who to seek to defraud public funds.
- 2.3 This policy is designed to provide a framework to ensure the most appropriate resolution to a case is reached. The sanction decision will have regard at all times to the objectives of the Anti-Fraud and Corruption Strategy, the individual circumstances of the persons concerned, and the overall impact of the punishment to both the individual and the community.
- 2.4 A range of sanctions is available to ELWA in relation to identified fraud and corruption. These sanctions include disciplinary action, civil proceedings, criminal proceedings and civil/financial penalties. Where appropriate, ELWA may take more than one form of action. For example, where staff commit fraud or corruption, disciplinary, prosecution and civil recovery action may all be appropriate.
- 2.5 One sanction available to ELWA is criminal prosecution. We recognise that this is a serious step to take and the decision to refer cases for prosecution will not be taken lightly. The ultimate decision on prosecution will be taken by the prosecuting body.

In some cases, this will be London Borough of Barking and Dagenham or ELWA, through one of its prosecuting lawyers, in others the Crown Prosecution Service.

- 2.6 Other than where the Crown Prosecution Service is the most appropriate prosecuting authority, London Borough of Redbridge and ELWA will utilise its commissioned legal services through the London Borough of Barking and Dagenham or approved external solicitors to undertake criminal prosecutions.
- 2.7 The decision to refer cases suitable for prosecution to legal services will be taken by the London Borough of Redbridge's Counter Fraud Manager and Head of Audit and Investigations. In cases of Employee and Contractor fraud the ELWA Directors will be notified. In cases involving Members, ELWA's Monitoring Officer will be consulted before any appropriate actions are taken forward. The decision to recommend the issue of civil proceedings including disciplinary matters will lay with the appropriate ELWA Director.
- 2.8 The London Borough of Redbridge's Counter Fraud Team working on behalf of ELWA may refer cases to the police for investigation who may then refer matters to the Crown Prosecution Service or other prosecutor. This may occur in cases where the fraud is complex and/or of a very serious nature or linked to safeguarding issues.
- 2.9 This policy outlines various penalties/sanctions or criminal proceedings that may be considered by ELWA, as permitted by legislation, where offending contrary to any of the following has occurred, although this list is not exclusive.
- Theft Acts 1968/ 1978
 - Criminal Attempts Act 1981
 - Forgery and Counterfeiting Act 1987 (FCA)
 - Computer Misuse Use Act 1990
 - Data Protection Act 2018 (DPA)
 - Fraud Act 2006
 - The Bribery Act 2010
 - Proceeds of Crime Act (2002)

3. The decision to prosecute:

- 3.1 The London Borough of Redbridge's Counter Fraud Team and ELWA will apply the Director for Public Prosecutors' 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 1984), the PACE Codes of Practice and the Code for Crown Prosecutors.
- 3.2 When considering a case for prosecution London Borough of Redbridge's Counter Fraud Team and ELWA 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.
- 3.3 The two stages of the Full code test will be considered as follows:

The Evidential Stage

- 3.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 3.5 If the case passes the evidential stage it will then be considered under the Public Interest Stage.

Public interest test

- 3.6 A prosecution will usually take place unless:
- The prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour
 - The prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out of court disposal.
- 3.7 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.
- 3.8 Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction as set out in the Code for Crown Prosecutors.

4. Members / Staff:

- 4.1 In all cases of the following acts committed by staff, ELWA will seek disciplinary action:
- a) fraud, and / or
 - b) theft, and / or
 - c) financial misconduct, and / or
 - d) serious and intentional breach of financial regulations, and /or
 - e) corruption.
- 4.2 Any breach or alleged breach by a Member of the Code of Conduct arising from activities in that Member's capacity as a Member of ELWA will be referred by the Managing Director to that Member's council for action in accordance with its Code of Conduct. Full copies of each Constituent Council's Members' Code of Conduct are available from the respective Council's websites. This will be as well as considering prosecution or any other financial or civil redress.
- 4.3 Where a financial loss has been identified we will always 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 we will refer cases to the relevant professional body.
- 4.4 Where appropriate under this policy we will refer cases to the relevant prosecuting authority for criminal prosecution.

5. Other Fraud including Contractors and Agency Staff:

- 5.1 In cases where ELWA suffers a financial loss, or risk of loss, we will always seek recovery of that loss. Where an outside organisation is involved in the fraud, ELWA will also make referrals to the relevant regulator as and when appropriate.
- 5.2 ELWA will also consider criminal prosecution. The factors that will affect our decision to prosecute will be based on the evidential and the public interest test. This will include cases of both actual fraud and cases of attempted fraud.

6. Proceeds of Crime:

- 6.1 ELWA will consider the use of the Proceeds of Crime Act 2002 and the Criminal Justice Act 1988 to obtain Confiscation/Restraint Orders to include Compensation Orders as well as recovery of the full criminal benefit figure where possible.
- 6.2 ELWA may use an accredited Financial Investigator (such as the Counter Fraud Manager at the London Borough of Redbridge, accessed through ELWA agreement for Internal Audit and Counter Fraud Services) or those attached to other law enforcement agencies in order to conduct investigation, obtain orders and present evidence.

7. Recording Penalties Sanctions and Prosecutions:

- 7.1 For an effective regime of sanctions to be successful it is a requirement that accurate records of all convictions, penalties and cautions are maintained. This will enable the correct decisions to be made taking full account of the defendant's background. Therefore, it is important that a record of each is maintained.
- 7.2 All sanctions must be recorded by the London Borough of Redbridge's Counter Fraud Team on behalf of ELWA, and copies of all documents used to consider and issue the sanction should be retained, in accordance with the relevant retention policies.
- 7.3 In the case of prosecution, all cases that result in successful convictions will be reported to the Metropolitan Police for recording on the Police National Computer (PNC) central databases.
- 7.4 In any case where the 'evidential' and 'public interest' tests for prosecution are met in full consideration will be given to recording the details of that case on either the National Fraud Database or Internal Fraud Database hosted by the Credit Industry Fraud Avoidance Service (CIFAS) regardless of whether the matter is subsequently referred for prosecution or not.

8. Publicity:

- 8.1 It is ELWA's intention to positively promote this policy as well as the outcome of any prosecutions, which will deter others from fraudulent activity.

9. Reporting and Review:

- 9.1 Summary information on active cases and action taken will be reported to ELWA senior management. An annual report will be produced for the Managing Director, Finance Director, Monitoring Officer, and ELWA Authority members of all cases where sanctions or prosecutions have resulted from investigations conducted by the Counter Fraud Team.

9.2 This policy will be reviewed annually, or when changes in legislation require it, by London Brough of Redbridge’s Counter Fraud Manager and Head of Audit and Investigations. Any minor or consequential changes will be made with the agreement of Finance Director, in consultation with the Chair.

10. Further reading and guidance that supports this policy:

1. Anti-Fraud and Corruption Strategy
2. Anti-Bribery and Anti Money Laundering policies
3. Staff/Members – Codes of Conduct
4. Whistleblowing Policy