

NORTH YORKSHIRE COUNTY COUNCIL

FRAUD PROSECUTION AND LOSS RECOVERY POLICY

February 2015

Section

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1 INTRODUCTION

- 1.1 The Fraud Prosecution and Loss Recovery Policy sets out the circumstances in which the County Council may instigate a prosecution in its own right and the associated decision making process. It also sets out the principles to be followed in recovering losses due to fraud. The Policy is designed to ensure that the Council acts fairly and consistently when determining what, if any, action to take against the perpetrators of fraud or corruption.
- 1.2 The Policy forms part of the Council's counter-fraud and corruption policy framework. It should be read in conjunction with the Constitution and relevant policies and procedures including the Financial Procedure Rules, the Counter Fraud Strategy, Anti-Money Laundering Policy and Procedure, Whistleblowing Policy, and the Council's disciplinary policy and procedures for employees and Member ethical framework arrangements.
- 1.3 The Policy is intended to reflect the provisions of the [Code for Crown Prosecutors](#) issued by the Director of Public Prosecutions. It should be read in conjunction with the latest version of the Code, which provides detailed guidance on the factors to consider when making decisions about prosecution.

2 SCOPE

- 2.1 The Policy covers all acts, and/or attempted acts, of fraud or corruption committed by employees, Members of the Council, or members of the public, or other organisations or their employees against the Council. The Policy is intended to be broad ranging to cover any acts, or purported acts, of fraud and corruption and any related acts which chief officers determine are appropriate to be dealt with under it. Offences which are dealt with under other specific powers and policies (for example the enforcement of trading standards regulations) are not covered by this Policy.

3 PRINCIPLES

- 3.1 As part of its measures to deter fraud the Council will take appropriate action against anyone who has committed (or has attempted to commit) a fraudulent or corrupt act, in which the Council has an interest. Those guilty of fraud or corruption must take responsibility for their actions before the courts.
- 3.2 Action to be taken will be determined on a case by case basis and every case will be considered on its own merits. This may include decisions about whether the Council or another agency (for example the Police or Department for Work and Pensions) is best placed to take investigative and/or enforcement action. Where a case is referred to another agency then the Crown Prosecution Service would normally be responsible for the prosecution of any offences. This Policy is therefore intended to cover those situations where the Council itself has investigated the suspected fraud.
- 3.3 Employees and Members who are found to have committed fraud or corruption may be prosecuted in addition to any other action that the Council may decide to take, including disciplinary proceedings in the case of employees and referral to the Monitoring Officer under standards arrangements in the case of Members. Any decision not to prosecute an employee for fraud and corruption does not preclude

remedial action being taken by the relevant Chief Officer in accordance with the Council's disciplinary procedures or other policies.

- 3.4 This Policy is designed to be consistent with Council policies on equalities. The Council will be sensitive to the circumstances of each case and the nature of the alleged fraud when considering whether to prosecute or not.
- 3.5 The Council recognises the value of good publicity in helping to deter fraud and corruption. Information about successful prosecutions or other actions will therefore be made public, so far as it is reasonable to do so, and in accordance with data protection provisions.
- 3.6 Any decision taken to prosecute an individual, or take other action, will be recorded in writing. The reason for the decision being taken will also be recorded (see section 7).
- 3.7 Irrespective of whether action is taken to prosecute the perpetrators of fraud and corruption, the Council may take whatever steps are necessary to recover any losses incurred, including taking action in the civil courts.

4 PROSECUTION

- 4.1 Not every suspected offence should be considered for prosecution. The Council will weigh the seriousness of the offence (taking into account the harm done or the potential for harm arising from the offence) with other relevant factors, including the financial circumstances of the individual concerned, mitigating circumstances and other public interest criteria. All cases will be looked at individually and considered on their own merit.
- 4.2 To consider a case for prosecution the Council must be satisfied that two tests have been passed. Firstly, there must be sufficient evidence. This is called the evidential test. Secondly, it must be in the public interest to proceed – the public interest test¹.
- 4.3 To pass the evidential test, there must be a realistic prospect of conviction based on the available evidence (that is, there must be sufficient admissible, reliable and credible evidence to secure a conviction).
- 4.4 To pass the public interest test, the Council will need to balance, carefully and fairly, the seriousness of the offence and other public interest criteria. The criteria include²:
- the level of culpability of the suspect (for example how deliberate was the crime)
 - who is affected by the offence and the level of harm caused or potential harm
 - the impact of prosecution on the suspect (for example on their future prospects)
 - the impact of the crime on the community
 - whether prosecution is proportionate (for example given the cost and likely outcome).

¹ Decisions will be made by the Corporate Director Strategic Resources in consultation with the Assistant Chief Executive (Legal and Democratic Services) and other relevant officers, as appropriate – see 7.1.

² the Code for Crown Prosecutors contains further guidance.

4.5 Factors favouring prosecution include the following.

- If the actual or potential loss to the Council was substantial.
- The fraud has continued over a long period of time.
- The fraud was calculated and deliberate.
- The suspect has previously committed fraud against the Council (even if prosecution did not result) and/or there has been a history of fraudulent activity.
- The suspect was in a position of trust (for example, a Council employee).
- There has been an abuse of position or privilege.
- The suspect has declined the offer of a caution or other sanction.
- There are grounds for believing the offence is likely to be repeated.
- The Council needs to take action to deter fraud in an area of activity.

4.6 Factors against prosecution include the following.

- The court is likely to impose a nominal penalty.
- The seriousness and the consequences of the offending can be appropriately dealt with by other means.
- The offence was committed as a result of a genuine mistake or misunderstanding.
- The loss or harm was minor, was a one-off occurrence and was the result of misjudgement.
- Undue delay between the offence taking place and/or being detected and the date of the trial (though this depends, for example, on the seriousness of the case, whether the delay was caused by the suspect, if the complexity of the case required a long investigation, or if the offence has only recently come to light).
- Prosecution is likely to have an adverse effect on the suspects physical or mental health.
- The suspect has put right the loss or harm which was caused.

4.7 The following factors (4.8 – 4.11) will also be taken into account when determining whether to prosecute.

Voluntary Disclosure

4.8 A voluntary disclosure occurs when a suspect voluntarily reveals fraud about which the Council is otherwise unaware. If this happens, then the fraud will be investigated but the suspect will not be prosecuted unless in exceptional circumstances. However, any person colluding in the crime will still be prosecuted. A disclosure is not voluntary if the:

- admission is not a complete disclosure of the fraud
- admission of the fraud is made only because discovery of the fraud is likely (for example, the suspect knows the Council is already undertaking an investigation in this area and/or other counter fraud activity)
- the suspect only admits the facts when challenged or questioned
- the offence comes to the Council's attention other than through a direct admission to the offence (for example if it comes to light on submission of information for Council services or through a third party).

Ill Health or Disability

- 4.9 Where the suspect is suffering from prolonged ill health or has a serious disability or other incapacity then the suspect will not normally be prosecuted. Evidence from a GP or other doctor will be requested if the condition is claimed to exist, unless it is obvious to the investigator. It is also necessary to prove that the person understood the circumstances and was aware that their action was wrong. This may not be possible where, for instance, the suspect has serious learning difficulties. However, simple ignorance of the law will not prevent prosecution.

Social Factors

- 4.10 A wide range of social factors may make a prosecution undesirable.

Exceptional Circumstances

- 4.11 In certain exceptional circumstances the Council may decide not to prosecute a suspect. Such circumstances include:
- an inability to complete the investigation within a reasonable period of time
 - the prosecution would not be in the interests of the Council
 - circumstances beyond the control of the Council make a prosecution unattainable.

5 ALTERNATIVES TO PROSECUTION

- 5.1 Where evidence is sufficient for prosecution, but there are factors which tend to indicate that prosecution may not be in the public's or Council's interest, then the Council may consider the offer of a sanction instead. The sanctions available will depend on the nature of the offence but may include, for example, fines or denial of service³. Decisions will be made on a case by case basis taking into account the specific circumstances and sanctions available.
- 5.2 In addition, or as an alternative, the Council may also give a simple caution. A simple caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. A simple caution is a serious matter and all such cautions will be recorded by the Council. Where a person offends again in the future then any previous cautions will influence the decision on whether to prosecute or not. A simple caution will normally be offered where all of the following apply.
- There is sufficient evidence to justify instituting criminal proceedings.
 - The person has admitted the offence.
 - It was a first offence.
- 5.3 Only in very exceptional circumstances will a further caution be offered for a second or subsequent offence of the same nature.
- 5.4 If a caution is offered but not accepted then the Council will usually consider the case for prosecution. In such cases the court will be informed that the defendant was offered a simple sanction but declined to accept it.

³ The nature of the sanctions available will depend on the regulations governing the service area where the fraud has occurred.

6 RECOVERY

- 6.1 Alongside any criminal proceedings, the Council will also take all reasonable measures to recover any losses arising from fraud. Recovery may be undertaken if there is sufficient evidence to demonstrate a loss/debt and irrespective of whether there is sufficient evidence to prove a criminal case.
- 6.2 Methods of recovery may include (but are not limited to):
- recovery of pension contributions from employees or ex-employees who are members of the North Yorkshire Pension Fund
 - civil action through the courts
 - bankruptcy if it is believed an individual has a poor history of paying debts
 - recovery of losses through salary payments if an individual remains an employee of the Council.
- 6.3 Where the assessed loss is to be pursued as a debt, then an invoice will be raised. Recovery will be undertaken in accordance with the Council's normal policy and procedures for recovering debts.
- 6.4 The Council may use powers under the Proceeds of Crime Act 2002 to apply to the courts for restraint and/or confiscation of identified assets where appropriate.

7 RESPONSIBILITIES

- 7.1 During the course of fraud investigation cases, recommendations about prosecution or other appropriate courses of action will be made to the Council by Veritau (the Council's counter fraud service provider). Decisions about the action to be taken in response to these recommendations will be made by the Corporate Director Strategic Resources in consultation with the Assistant Chief Executive (Legal and Democratic Services) and other relevant chief officers, as appropriate. Veritau will maintain records of decisions.
- 7.2 Cautions given under this Policy will be administered by a senior Veritau officer, on behalf of the Council. Veritau will also maintain records of cautions.