

CITY OF YORK COUNCIL
FRAUD AND CORRUPTION PROSECUTION POLICY

1 Scope and Purpose

- 1.1 The fraud and corruption prosecution policy forms part of the council's overall counter-fraud and corruption strategy. The policy covers all acts, and/or attempted acts, of fraud or corruption committed by officers or members of the council, or committed by members of the public, or other organisations or their employees, against the council.
- 1.2 The policy sets out the circumstances in which the council will take legal action against the perpetrators of fraud or corruption. It also sets out the circumstances when it is appropriate to consider alternative courses of action such as offering a caution. The policy does not cover internal disciplinary procedures which are the subject of the council's separate disciplinary policy and procedures.
- 1.3 This policy should be read in conjunction with the council's constitution, financial regulations, contract procedure rules, the counter fraud and corruption policy, the whistleblowing policy and the council's disciplinary policy and procedures.
- 1.4 Housing and council tax benefit fraud is the most common type of fraudulent act committed against the council. The policy contains specific guidelines for determining the most appropriate course of action when fraud of this kind has been identified. Offences other than fraud and corruption (for example those relevant to the enforcement of regulations and/or the collection of taxes) are dealt with by the appropriate service departments under other policies and relying on specific legal powers.
- 1.5 Where fraud or corruption is proven, decisions about whether to prosecute will be made in accordance with this policy by officers or agents of the council as set out below.

Housing and Council Tax Benefit Cases:

- a) **Routine Cases:** Decisions about prosecution will be made by appropriate staff within Veritau, in consultation with the council's legal services department (who are responsible for undertaking prosecutions). Decisions about alternative sanctions (see below) will be made by Veritau.
- b) **Other Cases**¹: Decisions about prosecution will be made by the Assistant Director (Customer Services and Governance) or the Director of Resources following a recommendation by Veritau.

Non Benefit Cases:

A recommendation about prosecution, or other action that may be appropriate will be made by Veritau. Decisions will be made by the

¹ For example where a case is complex, where the costs of prosecution could be significant, or where there are other risks associated with a case.

Assistant Director (Customer Service and Governance) or the Director of Resources in consultation with legal services, and the relevant service director(s).

2 Principles

- 2.1 The council is committed to an effective anti-fraud and corruption strategy. The strategy is designed to encourage the prevention and detection of fraud and corruption. As part of the strategy the council is also committed to taking appropriate action against anyone believed to have attempted and/or committed a fraudulent or corrupt act against it. The council considers that those guilty of fraud or corruption must take responsibility for their actions before the courts.
- 2.2 The policy is designed to ensure that the council acts fairly and consistently when determining what action to take against the perpetrators of fraud or corruption.
- 2.3 Staff and members who are found to have committed fraud or corruption may be prosecuted in addition to such other action(s) that the council may decide to take, including disciplinary proceedings in the case of staff and referral to the council's Standards Committee and/or the Standards Board for England in the case of Members. Any decision not to prosecute a member of staff for fraud and corruption does not preclude remedial action being taken by the relevant director(s) in accordance with the council's disciplinary procedures or other policies.
- 2.4 This Policy is also 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 crime when considering whether to prosecute or not.
- 2.5 The consistent application of the policy will provide a means for ensuring that those who have perpetrated fraud and corruption are appropriately penalised. It will also act as a meaningful deterrent to those who are contemplating committing fraud or corruption. The council recognises the deterrent value of good publicity and therefore information regarding successful prosecutions and sanctions will be made public.
- 2.6 Any decision taken by an authorised officer to prosecute an individual or to offer a formal sanction (HB/CTB cases only) will be recorded in writing. The reason for the decision being taken will also be recorded.
- 2.7 Irrespective of the action taken to prosecute the perpetrators of fraud and corruption, the council will take whatever steps necessary to recover any losses incurred, including taking action in the civil courts.

3 Prosecution

- 3.1 The policy is intended to ensure the successful prosecution of offenders

in court. However, not every contravention of the law 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 defendant, mitigating circumstances and other public interest criteria. All cases will be looked at individually and be considered on their own merit.

- 3.2 To consider a case for prosecution the council must be satisfied that two tests have been passed. Firstly, there must be sufficient evidence of guilt to ensure conviction. This is called the **evidential test**. Secondly, it must be in the public interest to proceed – the **public interest test**.
- 3.3 To pass the evidential test, the authorised officer must be satisfied that there is a realistic prospect of conviction based on the available evidence (that is, there must be sufficient admissible, substantial and reliable evidence to secure a conviction).
- 3.4 To pass the public interest test, the authorised officer will balance, carefully and fairly, the public interest criteria against the seriousness of the offence. The public interest criteria include;
 - the likely sentence (if convicted);
 - any previous convictions and the conduct of the defendant;
 - whether there are grounds for believing the offence is likely to be repeated;
 - the prevalence of the offence in the area;
 - whether the offence was committed as a result of a genuine mistake or misunderstanding;
 - any undue delay between the offence taking place and/or being detected and the date of the trial;
 - the likely effect that a prosecution will have on the defendant;
 - whether the defendant has put right the loss or harm caused.
- 3.5 It will generally be in the public interest to prosecute if one or more of the following factors applies, subject to any mitigating circumstances;
 - the actual or potential loss to the council was substantial (and for benefit related fraud exceeds the thresholds set out in the financial guidelines which form part of this policy);
 - the fraud has continued over a long period of time;
 - the fraud was calculated and deliberate;
 - the person has previously committed fraud against the council (even if prosecution did not result) and/or there has been a history of fraudulent activity;

- the person was in a position of trust (for example, a member of staff);
- there has been an abuse of position or privilege;
- the person has declined the offer of a caution or administrative penalty, or has withdrawn the offer to pay an administrative penalty (HB/CTB cases only);
- the case has arisen from a collusive employer or landlord investigation (HB/CTB cases only);
- the case has involved the use of false identities and/or false or forged documents (HB/CTB cases only);

4 Mitigating Factors

- 4.1 The following mitigating factors will be taken into account when determining whether to prosecute;

Voluntary Disclosure

- 4.2 A voluntary disclosure occurs when an offender voluntarily reveals fraud about which the council is otherwise unaware. If this happens, then the fraud will be investigated but the offender 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 offender knows the council is already undertaking an investigation in this area and/or other counter fraud activity);
- offender only admits the facts when challenged or questioned;
- offender supplies the correct facts when making a claim to Legal Aid;
- disclosure comes to light in some other way, for example, by the issue of a Housing Benefits review form (HB/CTB cases only).

Ill Health or Disability

- 4.3 Where the perpetrator (and/or their partner in HB/CTB cases) is suffering from prolonged ill health or has a serious disability or other incapacity then the offender will not be prosecuted unless in exceptional circumstances. Evidence from a GP or other doctor will be requested if the condition is claimed to exist, unless it is obvious to the investigator.

For HB/CTB cases it is also necessary to prove that the person understood the rules governing receipt of benefit and was aware that their action is wrong. This may not be possible where, for instance, the offender has serious learning difficulties. However, simple ignorance of the law will not prevent prosecution.

Social Factors

- 4.4 A wide range of social factors may make a prosecution undesirable. The test is whether the court will consider the prosecution undesirable, and go on to reflect that in the sentence.

Exceptional Circumstances

- 4.5 In certain exceptional circumstances the council may decide not to prosecute an offender. Such circumstances include;
- the lack of sufficient resources to complete the investigation within a reasonable period of time (even after requesting assistance from the police and the DWP);
 - the prosecution would not be in the interests of the council.

5 Alternatives to Prosecution (HB/CTB cases only)

- 5.1 If a housing or council tax benefits case is considered strong enough for prosecution but there are mitigating circumstances which cast a doubt as to whether a prosecution is appropriate then the council may consider the offer of a sanction instead. The two sanctions available are;
- formal cautions, or;
 - administrative penalties.

Formal Cautions

- 5.2 A formal caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. A formal caution is a serious matter and all cautions are recorded by the DWP. Where a person offends again in the future then any previous cautions will influence the decision on whether to prosecute or not.
- 5.3 Subject to the thresholds set out in the financial guidelines below, a formal 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, and;

- an administrative penalty is not considered to be appropriate.

Only in very exceptional circumstances will a further caution be offered for a second or subsequent offence of the same nature.

- 5.4 Cautions will be administered by the Head of Internal Audit, Audit and Fraud Manager, Fraud Team Leader, or a senior fraud investigator. 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 penalty but declined to accept it.

Administrative Penalties

- 5.5 Section 115A of the Social Security Administration Act 1992 as amended by Section 15 of the Social Security Administration (Fraud) Act 1997, permits an administrative penalty to be offered to claimants as an alternative to prosecution. The penalty is set at a rate of 30% of the total benefit overpayment. Once an administrative penalty is accepted, the claimant has 28 days to change their mind.

- 5.6 Subject to the thresholds set out in the financial guidelines below, an administrative penalty will normally be offered by the council in the following circumstances;

- the council believes that there is sufficient evidence to prosecute;
- it was a first offence or a previous offence was dealt with by way of a caution, and;
- in the opinion of the council, the circumstances of the case mean it is not overwhelmingly suitable for prosecution, and;
- the claimant has the means to repay both the overpayment and the penalty, and;
- there is a strong likelihood that both the overpayment and the penalty will be repaid.

- 5.7 It is important to note that the claimant does not need to have admitted the offence for an administrative penalty to be offered. Administrative penalties will be administered by the Head of Internal Audit, Audit and Fraud Manager, Fraud Team Leader, or a senior investigator. If an administrative penalty is not accepted or is withdrawn then the council will usually consider the case for prosecution. In such cases the court will be informed that the defendant was offered a penalty but declined to accept it.

6 Financial Guidelines (HB/CTB cases only)

- 6.1 Where the authorised officer considers that justice can be best served with a caution or administrative penalty where the overpayment is higher

than the figures shown below then discretion may be applied. Equally, discretion may be applied where it is considered reasonable to prosecute but the overpayment is lower than the limit prescribed.

6.2 The following guidelines apply in helping to determine the appropriate action to take;

- A formal caution or an Administrative Penalty may be offered where the overpayment is under £2,000. The decision on which to offer will depend on the circumstances of the case and whether the offence has been admitted or not by the accused.
- If the overpayment is over £2,000 and it is considered to be in the public interest then prosecution proceedings will generally be instigated.
- The council will not normally consider prosecution or a formal sanction in cases where the total overpayment is less than £100 (unless there are particular circumstances which make this desirable) although the overpayment will still be recovered from the claimant.

6.3 Where the size of the overpayment is such that the council would normally prosecute but there are mitigating factors which make such a prosecution undesirable then a formal sanction may be offered instead.

6.4 Serious attempted fraud which is discovered before benefits have been put into payment (and where there is no overpayment of benefit as a result) will also be considered for prosecution or sanction. The criteria for determining whether a prosecution is appropriate will be the potential seriousness of the fraud as opposed to the value of the overpayment. Each case will be considered on its own merits and action will be taken as appropriate.

7 Proceeds of Crime Act 2002 (POCA)

7.1 In addition to the actions set out in this policy, the council reserves the right to refer all suitable cases for financial investigation with a view to applying to the courts for restraint and/or confiscation of identified assets. A restraint order will prevent a person from dealing with specific assets. A confiscation order enables the council to recover its losses from assets which are found to be the proceeds of crime.

8 Implementation Date

8.1 This revised policy is effective from 9 March 2010 and covers all decisions relating to prosecutions and sanctions after this date.