



BARNSLEY
Metropolitan Borough Council

Corporate Prosecution Policy

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1 POLICY STATEMENT

- 1.1 The Corporate 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, theft bribery 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. The policy does not cover internal disciplinary procedures which are the subject of the council's Disciplinary Procedure.
- 1.3 This policy should be read in conjunction with the Council's Corporate Anti-Fraud and Corruption Policy, Corporate Anti-Fraud and Corruption Strategy, Corporate Anti-Bribery Policy, Corporate Whistleblowing Policy, Financial Regulations, Contract Standing Orders, and the Corporate Disciplinary Policy and Procedures.

2 PURPOSE OF THE POLICY

- 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.
- 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 Employees 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 employees. Any decision not to prosecute a member of staff for fraud and corruption does not preclude remedial action being taken by the relevant Executive Director or Service Director 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 take into account the circumstances of each case and the nature of the alleged crime when considering whether to prosecute or not.
- 2.5 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 and against the public interest criteria. All cases will be looked at individually and be considered on their particular circumstances.
- 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 (referred to as the **Evidential Test**). Secondly; it must be in the public interest to

proceed (called the **Public Interest Test**). Further guidance on these two tests are shown at Appendix I.

4 MEMBERS AND EMPLOYEES

- 4.1 The Council will invoke disciplinary action in all cases of fraud, theft, financial misconduct, serious and intentional breach of financial regulations and corruption committed by employees of the Council or employees within its maintained schools. The normal recommendation for employees would be gross misconduct. This will include cases of fraud against the Council, other council's and other public sector bodies.
- 4.2 Where a financial loss has been identified the Council will always seek to recover this loss either through the civil or criminal process. In addition, where employees are members of professional bodies or are subject to national codes of conduct such as teaching and social services staff, we will refer cases to the relevant professional body.
- 4.3 The Council will always refer cases to the relevant prosecuting authority for criminal prosecution, where management consider a prosecution to be appropriate, in matters relating to elected Members and employees

5 OTHER FRAUD

- 5.1 Other types of fraud against the Council include, but are not limited to: Direct Care Payments, Grants, Reliefs or other applications for financial assistance or other benefits awarded such as Blue Badges.
- 5.2 In cases where the Council suffers a financial loss, we will always seek recovery. Where an organisation is involved in the fraud, the Council will also make referrals to the relevant governing body e.g. Charities Commission.
- 5.3 The Council 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 attempted fraud e.g. applications for renovation grants where the financial estimates are deliberately misstated or false applications for direct care payments.
- 5.4 Individuals fraudulently claiming a council tax discount / reduction or committing a non-domestic rates fraud will be dealt with under the Benefits and Taxation Sanction and Penalty Policy.
- 5.5 The Corporate Anti-Fraud Team in conjunction with Legal Services will consult with South Yorkshire Police in respect of potential criminal acts.

6 MITIGATING FACTORS

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

Voluntary Disclosure

A voluntary disclosure occurs when an offender voluntarily reveals a 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;

Social Factors

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

In certain exceptional circumstances the Council may decide not to prosecute an offender. For example, a lack of sufficient resources to complete the investigation within a reasonable period of time (even after requesting assistance from the police) may be a factor against prosecution action (refer to Appendix I, The Public Interest Test).

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.

7.2 The Council will use the Proceeds of Crime Act 2002, Criminal Justice Act 1988 and the provisions of the Prevention of Social Housing Fraud Act 2013 to obtain Confiscation Orders and Unlawful Profit Orders as well as recovery of the full criminal benefit figure where possible. The Council may use Accredited Financial Investigators attached to other law enforcement agencies in order to conduct an investigation, obtain orders and present evidence.

8 PUBLICITY

8.1 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.

9 REPORTING AND REVIEW

- 9.1 Details of all cases where prosecutions have resulted from investigations conducted by Council Officers will be included in the periodic reports provided to the Council's Audit Committee.
- 9.2 This policy will be reviewed annually, or when changes in legislation require it, by the Head of Internal Audit, Anti-Fraud and Assurance. Any minor or consequential changes will be made with the agreement of the Director of Legal Services.

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Prosecution – The Evidential and Public Interest Test

Each case will be looked at individually to decide what action, if any, is appropriate under this policy. This decision will be based upon 'The Code for Crown Prosecutors' which sets out the general principles prosecutors should look to when they make decisions on cases. The tests are known as the Evidential Test and the Public Interest Test.

The Evidential Test

In making a decision to prosecute, the Council must be satisfied that there is enough evidence to provide a realistic prospect of conviction. A realistic prospect of conviction is an objective test meaning that a jury, magistrate or judge hearing a case which, is properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged offence.

In order to ensure that a “realistic prospect of conviction” exists officers of the Corporate Anti-Fraud Team and prosecutors will at all times ensure that investigations are conducted in accordance with all relevant legislation and Codes of Practice with regard to evidence gathering, interviewing and rules of disclosure.

The evidence gathered will be examined in the first instance by the investigating officer and then line manager. When both are satisfied that sufficient evidence exists to successfully prosecute and that the Public Interest Stage is also satisfied the case file will be passed on to either the council's legal team or the Crown Prosecution Service. All prosecutors will then apply their own inspection of the evidence to ensure that both tests are met.

If a case does not pass an evidential test it must not go ahead no matter how important or serious the offence seems. If the case does pass the evidential stage then it should move on to the second stage to decide if a prosecution is appropriate in the public interest

The Public Interest Test

Having examined the evidential test and established that there is sufficient evidence of a realistic prospect of conviction, the Public Interest Test is then applied to determine whether a prosecution should take place or whether an alternative Sanction may be suitable. The factors for and against prosecution should be balanced carefully. It is a matter of common sense that if there are additional factors that should be taken into account then these factors should be considered.

Factors against prosecution action

- There has been undue delay between the offence taking place and the date of the trial, unless the offence is serious, or the delay has been caused in part by the defendant.
- There are major physical or mental health issues for the defendant, which has been confirmed in writing by a medical practitioner and that the ordeal of a prosecution could have a significant detrimental impact on their wellbeing, unless the offence is serious or there is a real possibility that it may be repeated. Age is not in itself a bar factor against prosecution, but if the customer has poor health because of their advanced years this should also be considered.
- The subject was driven to commit the offence by a difficult domestic situation.
- If prosecuted there exists the possibility of mental injury to a third party, for example where an adopted or fostered child would be made aware of their true status;

Factors In favour of prosecution action

- The defendant is alleged to have committed the offence whilst under an order of the court or suspended sentence.
- The defendant's previous convictions or sanctions are relevant to the present offence.
- The defendant is in a position of trust, where their financial impropriety would have a bearing on their ability to continue in their role e.g. a Council employee or Elected Member.
- There is evidence that the defendant has taken deliberate action or provided false statement/documentation to perpetrate the deception.
- The motivation for the fraud was one of pure financial greed where the perpetrator is in a position of relative prosperity.
- There are grounds for believing that the offences were likely to be continued or repeated e.g. by a history of recurring conduct.
- The offence is alleged to have occurred over a protracted period of time involving more than one period of deception.
- The evidence shows that the suspect has instigated, encouraged, or coerced others to commit fraud.
- Where a person occupies a position in public office and the fraud is considered to have brought their position into disrepute.
- In certain exceptional circumstances, the authorising officers, may decide to recommend proceedings where the normal criteria are not met. These cases will be where there are extenuating/aggravating circumstances and each case will be considered on its merits.
- The fraud appears to involve collusion. Cases involving collusion should be regarded as serious fraud and prosecution may be appropriate irrespective of the amount of the fraud.

The various reasons listed above are not exhaustive. The factors that apply will depend on the facts in each individual case.

The Council will also take into consideration the suitability of evidence obtained and any failures or delays in the investigation. Examples would be where an application form has been wrongly completed by an officer of the Council or when there has been a failure to identify obvious flaws in a statement or document.