

PROSECUTION POLICY

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Policy Statement

THIS POLICY IS INTENDED TO ENSURE THAT THE COUNCIL APPLIES THE APPROPRIATE PROCESS WHEN DECIDING TO COMPLETEING PROSECUTIONS AGAINST THOSE INDIVIDUALS THAT COMMIT IMPROPER CONDUCT THAT CAN RESULT IN PROSECUTION ACTION BEING ADOPTED.

Scope of the Policy

1. Introduction

- 1.1 Waverley Borough Council is committed to conducting its business properly through the application of a range of policies and procedures this policy relates to the prosecution of individuals who have breached regulatory or legislative requirements. Waverley Borough Council has a zero tolerance policy towards fraud, corruption and bribery. This commitment to preventing fraud and corruption is reinforced through the development of the Council's 'Anti-Fraud, Anti-Corruption and Anti-Bribery Strategy' in order to prevent and minimise its occurrence.
- 1.2 The Council will constantly review and monitor its systems and amend procedures as required.
- 1.3 This policy does not supersede other internal disciplinary codes implemented by the Council, and internal offenders (e.g. Council employees or elected Members) will be subject to general disciplinary procedures in addition to potential prosecution. Where the offender is a contractor or subcontractor the Council would potentially prosecute, and this could result in the cessation of the relevant contract.

2. GENERAL

- 2.1 The Council's policy on fraud is to:
- ❖ Deter it in the first instance
 - ❖ Detect it quickly
 - ❖ Investigate it efficiently and in accordance with the law; and
 - ❖ Prosecute offenders when appropriate
 - ❖ Make it as easy as possible for staff, Members and the Public to report concerns

2.2 In order to prosecute;

- The evidence must be collected according to local procedures and in accordance with the necessary laws, which currently include the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedures Investigations Act 1996 (CPIA), the Regulation of Investigatory Powers Act 2000 (RIPA) and Prevention of Social Housing Fraud Act 2013.
- The Council must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction', meaning that a jury or bench of magistrates or a judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
- If there is sufficient evidence to provide a realistic prospect of conviction, the Council must also be satisfied that it is in the public interest to prosecute.

2.3 The council will when considering a prosecution, and throughout the course of a case, always adhere to the principles contained in the Code for Crown Prosecutors issued by the Director of Public Prosecutions.

2.4 In most cases, the Director of Finance and Resources and the Internal Audit Client Manager, and where appropriate in consultation with the Executive Director, or another designated officer, will decide whether reporting the matter to the Police is appropriate. In exceptional circumstances the Internal Audit Client Manager may, after consultation with the Council's Borough Solicitor/Legal Services, refer a matter to the Police direct without prior consultation with the Director of Finance and Resources or the Executive Director. Cases will also be discussed with the Leader of the Council, ~~and~~ the relevant Portfolio Holder and the Audit Committee Chairman will be kept informed of progress.

2.5 In deciding whether a fraud should be reported to the Police, the following factors will be taken into consideration;

- The extent of the fraud/corruption in financial terms and how long the offence has lasted.

- The sufficiency and appropriateness of evidence.
- How the public interest will be best served.

2.6 In general, all cases will be reported to the Police. However, the decision as to whether to prosecute or not ultimately rests with the Police and the Crown Prosecution Service, although the Council reserves the right to instigate proceedings itself if it is considered necessary. Any action will be taken in accordance with underlying principles, which include the following:

Each case will be examined on its own merits;

All persons under suspicion will be treated fairly;

Decisions will only be taken when the facts are known;

The rules of Natural Justice will always prevail.

2.7 The Director of Finance and Resources (Section 151 Officer) in consultation with the Internal Audit Client Manager and the Borough Solicitor/Legal Services, will decide on the sanctions to be imposed should the case be deemed serious. These sanctions can include disciplinary action, criminal prosecution, civil litigation or referral to professional accredited bodies.

2.8 In respect of Housing Benefit fraud, this type of fraud is now investigated by the DWP as part of the Single Fraud Investigation Service.

3. **Publicity**

3.1 The Council's aim, and statutory responsibility, is to prevent the waste, theft and fraud of public money. With that in mind the Council has in place a wide range of measures aimed at preventing fraud, corruption and bribery. These include measures to prevent and deter the commission of offences.

3.2 No details of any fraudulent activity perpetrated against the council will be reported in the public domain until the results of any criminal proceedings have been concluded to prevent the risk of prejudicing the outcome. However as a One such deterrent measure the council will consider the appropriateness of is the publicising cation of the details after aof convictions is obtained. by the Council. The publicity surrounding a conviction for fraud has two positive effects. First, it deters others who may be seeking to commit such offences, and second it generates confidence in the general public that the Council takes a serious view of fraud and is proactive in seeking to prevent it.

- 3.3** The Council will therefore consider publishing the name and address of each person convicted of fraud, together with details of the offence(s) in question. In reaching a decision as to whether to publish the name(s) and address(es), the Council will take the following factors into consideration;
- The specific details of the offence committed.
 - The public interest in disclosing personal information (for example, the deterrent effect referred to above).
 - Whether the publication would be proportionate.
 - The personal circumstances of the offender.
 - Whether any other person may be affected by the publication (for example, family members).
- 3.4** This list is not exhaustive and other factors may be relevant in the circumstances of each individual case.
- 3.5** When having considered the above factors, it is considered appropriate to publish details of a conviction, the Director of Finance and Resources, as Section 151 Officer to the Council, will record the reasons for the publication, and the Monitoring Officer, will maintain a central register of the records.

THIS POLICY IS NOT EXHAUSTIVE AND MAY BE SUBJECT TO CHANGE

The council welcomes comments and feedback on its policies and procedures. Please contact Gail Beaton, Internal Audit Client Manager of the Internal Audit and Investigation Team if you have any comments.