



# Prosecution Policy

(March 2017)

# **Prosecution Policy**

## **1. Introduction**

- 1.1 Trafford Council is committed to the highest standards of honesty and integrity. The Council is determined to discharge its responsibility to safeguard public funds and is committed to fighting fraud, corruption and misappropriation whether attempted from inside or outside of the organisation.
- 1.2 The Council will seek the strongest possible sanction against any individual or organisation that defrauds, or seeks to defraud the Council. The use of sanctions will be governed by the following policy and the principles of the policy are designed to apply equally to any fraud against the Council or against funds for which the Council has responsibility.

## **2. Objectives**

- 2.1 The objectives of the Prosecution Policy are:
  - To ensure that the Council applies a full range of sanctions in a just and consistent manner;
  - To ensure that sanctions are applied in an effective and cost efficient manner;
  - To ensure that the sanction decision making process is stringent, robust and transparent.
- 2.2 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 Council's Disciplinary Policy and Anti-Fraud and Corruption Policy objectives, the individual circumstances of each person concerned and the overall impact of the punishment to both the individual and the community.
- 2.3 A range of sanctions is available to the Council. These include disciplinary action, civil proceedings, criminal proceedings, official cautions and financial penalties.
- 2.4 The ultimate sanction available to the Council is criminal prosecution. It is recognised that this is a serious step to take and the decision to do so will not be taken lightly.
- 2.5 The Council is able to prosecute using their own legal services, or may, depending on the nature of the case, refer the matter to the Police for investigation and subsequent prosecution via the Crown Prosecution Service (CPS).
- 2.6 The decision to either prosecute via the Council's Legal Services or refer cases to the Police for prosecution via the Crown Prosecution Service will be taken in consultation with the relevant corporate director, head of service and

the Director of Legal and Democratic Services. In appropriate cases, the prosecution arm of other public agencies may be utilised. The Section 151 Officer and Audit and Assurance Manager must be notified of any cases of fraud referred for police prosecution.

### **3. Evidential Test**

- 3.1 The evidential test to be used will be: Is there enough evidence to provide “a realistic prospect of conviction”?

In order to ensure that a “realistic prospect of conviction” exists, members of the relevant Investigations team will at all times ensure that investigations are conducted in accordance with relevant legislation and in line with published codes of practice and guidance with regard to evidence gathering, interviewing and rules of disclosure.

The Council does not have the resources of the police and CPS available to it and to ensure the cost effectiveness of actions, will require the evidence to be of a standard to make the prospect of a conviction highly likely.

- 3.2 The evidence gathered will be examined in the first instance by the investigating officer, in consultation with the relevant head of service. When both are satisfied that sufficient evidence of an offence exists and following consultation with officers as listed in Section 2.6 of the Policy, the case file may be passed on to the police for further investigation, Alternatively, if the investigation has been fully completed by Trafford Council officers and it is considered that sufficient evidence already exists to successfully prosecute and that the Public Interest test is also satisfied, then the case will be passed to the Council’s Legal Services for prosecution action to be taken.

### **4. Public Interest Test**

- 4.1 In order to ensure consistency and correctness when considering a case for sanction or prosecution, the guidelines applied by the Crown Prosecution Service will be followed to consider whether there is enough evidence against the defendant and whether it is in the public interest to take the matter to court.
- 4.2 Public interest factors to be considered include: -
- A conviction is likely to result in a significant sentence;
  - The defendant was in a position of authority or trust;
  - The evidence shows that the defendant was a ringleader or an organiser of the offence;
  - There is evidence that the offence was premeditated;
  - There is evidence that the offence was carried out by a group, of which the defendant was part;
  - There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;

or the offence, although not serious in itself, is widespread in the area where it was committed;

- The fraud has been perpetrated over a significant length of time;
- The fraud has resulted in significant loss of funds;
- The defendant has committed a similar offence previously;
- The defendant has refused the offer of an alternative sanction;
- Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction.

## **5. Employee Fraud**

- 5.1 Employee fraud covers all the relationships an individual may have with the Council, including contractors and all cases will be referred for disciplinary investigation, with support from officers employed within the Human Resources Service and, where appropriate, will be treated as gross misconduct.
- 5.2 Theft, or fraud committed by employees will be reported to the police and considered for prosecution where appropriate. Where a financial loss has been identified, we will always seek to recover this loss either through the civil or criminal process.
- 5.3 The factors that will affect our decision to prosecute will be based on the evidential and the public interest test. We will seek prosecution in all cases involving theft from vulnerable clients or where there is evidence of corruption of public officials.

## **6. Public Funds Fraud**

- 6.1 The Council is also committed to protecting public funds through the prevention, detection, deterrence and investigation of suspected fraudulent applications for assistance in relation to any service which the council delivers. This includes areas such as Council Tax, Non-Domestic Rates, Social Care and Insurance.
- 6.2 If a person makes an incorrect statement or representation, furnishes false documentation or negligently gives incorrect information or evidence, or without reasonable excuse, fails to give a prompt notification of a relevant change of circumstances, then the Council will consider whether legal proceedings are appropriate, with due consideration to the public interest test.
- 6.3 The Council will, where appropriate, investigate to establish whether a fraud has been committed. If fraud investigators have sufficient reason to suspect an offence may have been committed, an interview under caution, in accordance with the Police and Criminal Evidence Act 1984 will be carried out.
- 6.4 Where it is considered that appropriate evidence does exist to sustain a sanction or prosecution, appropriate actions will be considered.