

# ANTI FRAUD, BRIBERY & CORRUPTION STRATEGY

## 32.1 INTRODUCTION

- (1) This Strategy sets out the Council's commitment to preventing, detecting and deterring fraud, corruption or other irregularity, and to taking action where this is suspected or detected. It aims to:
  - enhance and maintain an anti-fraud culture;
  - actively encourage prevention;
  - act as a deterrent to fraudulent and corrupt acts, including bribery;
  - promote detection;
  - provide clear guidance on roles and responsibilities; and
  - identify a clear pathway for investigation and remedial action; and
  - provide policy and advice in dealing with bribery and suspected bribery.
  
- (2) This strategy is supplemented with more detailed documents:
  - Appendix A: Offences under the Bribery Act 2010;
  - Appendix B: Response and Investigation Plan; and
  - Appendix C: Prosecution and Sanctions Policy.

## 32.2 POLICY STATEMENT – YOUR RESPONSIBILITIES

- (1) The Council is committed to the highest ethical standards and requires Members, Senior Managers and all other staff, including contractors, to make themselves aware of, and comply with, the seven principles of public life as defined in the 'Nolan Report'. These principles are:
  - selflessness
  - integrity
  - objectivity
  - accountability
  - openness
  - honesty
  - leadership

- (2) The Council expects everyone involved in providing Council services to act with integrity at all times, to be totally honest and trustworthy, and to comply with all laws and regulations applicable to the Council's business. Fraud, corruption and other irregularity will not be tolerated.
- (3) Further information on the required standards is set out in the Employees' Code of Conduct, Employees' Handbook, and Members' Code of Conduct.

### **32.3WHAT IS FRAUD AND CORRUPTION?**

- (1) The legislation in this area is very complex but the term "fraud and corruption" includes acts involving:
  - theft;
  - deception;
  - bribery;
  - forgery;
  - extortion;
  - conspiracy;
  - embezzlement;
  - misappropriation;
  - false representation;
  - concealment of material facts;
  - collusion;
  - giving or accepting of an advantage; and
  - abuse of position.
- (2) This can be broadly defined as the offering or acceptance of inducements, gifts, favours, payment or benefit-in-kind which may influence the action of any person. Corruption does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give some advantage to another.
- (3) It is a common law offence of corruption to bribe the holder of a public office and it is similarly an offence for the office holder to accept a bribe.

### **32.4WHAT IS BRIBERY?**

- (1) The Bribery Act 2010 defines **bribery** as:

“the inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages whether monetary or otherwise”.

- (2) The Bribery Act states that bribery and corruption are punishable for individuals by up to ten years’ imprisonment and if an organisation is found to have taken part in corruption, the organisation could face an unlimited fine and damage to its reputation.
- (3) Under Section 7 of the Act, it is an offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf. It is a defence if the organisation has adequate procedures in place to prevent bribery. A public body would not be a commercial organisation for the purposes of the Act. However, the Council strives to meet the highest standards of behaviours and as such have reviewed its policy and procedures to ensure any such risks are minimised.
- (4) If a bribery offence is committed with the consent / connivance of a senior officer of the local authority, then that person is also personally guilty of an offence. This will potentially include all those working at manager level and upwards.
- (5) Appendix A is an extract of examples of cases of bribery as defined in the Bribery Act 2010.

### **32.5 WHO IS COVERED BY THE POLICY?**

- (1) This policy applies to all individuals working at all levels including:
  - Directors;
  - employees (permanent, fixed-term, temporary/agency staff, interns);
  - consultants/agents;
  - contractors;
  - seconded staff;
  - volunteers;
  - sponsors; or
  - any other person associated with the Council or any of its subsidiaries.
- (2) Elected members are also covered by the policy.

## **PREVENTION AND DETECTION**

### **32.6 Roles and Responsibilities of Members**

32.6.1 All Members agree to abide by the Members' Code of Conduct, which sets out a number of general principles and required standards of conduct.

32.6.2 The Code stipulates that Members should "promote and support those principles by leadership, and by example, and should act in a way that secures or preserves public confidence".

32.6.3 The remit of the City Council's Audit & Performance Committee includes:

- Overseeing the production of the Council's Annual Governance Statement which sets out the arrangements in place for maintaining sound internal control systems, responding to suspicions of fraud, and promoting ethical behaviour and compliance with laws and regulations.
- Monitoring the effectiveness of the Council's internal control systems, anti-fraud and corruption strategy, and levels of compliance through regular reports from internal audit.
- Reviewing the proposed work plans of internal audit and external audit, to ensure appropriate coverage of the Council's key internal control systems, compliance activities and anti-fraud arrangements.
- Considering the outcomes of internal audits and investigations, and the key findings from external audit work.
- Conducts selected detailed reviews of the Council's anti-fraud arrangements.
- Providing assurance to external audit on the Committee's arrangements for overseeing management processes for identifying and responding to the risks of fraud, and the controls put in place to mitigate those risks.
- To be able to call externally appointed contractors to account, where concerns of fraud, error or maladministration have emerged.

32.6.4 In addition, the Audit and Performance Committee maintains an overview of the arrangements in place for maintaining high ethical standards throughout the Council and receives an annual report which includes details of anti-fraud activities.

### **32.7 Roles and Responsibilities of Senior Managers**

32.7.1 Senior Managers have responsibility for ensuring that there are sound systems of internal control within their units and, in respect of contracted services, to determine the risk of fraud, corruption and irregularity and incorporate appropriate controls and safeguards within tender documentation and in the process of tender evaluation.

32.7.2 Controls should be designed and implemented to reduce the risks posed by fraud and ensure, as far as possible, its detection should it occur. Senior Managers must implement audit recommendations within agreed timescales to ensure that systems are maintained appropriately to prevent and detect fraud.

32.7.3 As part of that responsibility, line managers need to:

- inform staff of the Council's code of business conduct, gifts and hospitality, declaration of interest and Anti-Fraud, Bribery and Corruption policy as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms;
- ensure that all employees and contractors for whom they are accountable are made aware of the requirements of the policy;
- assess the types of risk involved in the operations for which they are responsible;
- ensure that adequate control measures are put in place to minimise the risks. This must include clear roles and responsibilities, supervisory checks, staff rotation (particularly in key posts), separation of duties wherever possible so that control of a key function is not invested in one individual, and regular reviews, reconciliations and test checks to ensure that control measures continue to operate effectively;
- be aware of the Council's Anti-Fraud, Bribery and Corruption Policy;
- identify sensitive/at-risk posts;
- ensure that controls are being complied with;
- contribute to their Executive Director's assessment of the risks and controls within their business area, which feeds into the Council and the Auditor's overall statements of accountability and internal control;
- report back swiftly to their Executive Director and contractors where faults and errors are detected or exposed; and
- ensure immediate preventative action is taken to prevent further loss of public funds where fault and error has been detected.

## 32.8 Roles and Responsibilities of Contractors

The role of contractors is no different from that of Senior Managers in relation to controls operated on behalf of the Council. As such, contractors must ensure they have adequate systems and controls to ensure the prevention and detection of fraud and corruption. Contractors must also implement audit recommendations within agreed timescales.

## 32.9 **Roles and Responsibilities of Internal Audit**

32.9.1 The City Council has a statutory responsibility to maintain an adequate and effective internal audit function. This responsibility rests with the Chief Finance Officer, who arranges the internal audit of the Council's internal control systems and ensures appropriate planning, direction, standards and coverage.

32.9.2 Internal Audit is responsible for reviewing and appraising the adequacy, reliability and effectiveness of the Council's systems of internal control and reporting to Senior Managers. Coverage is risk based and the annual planning cycle provides Senior Managers with the opportunity to draw attention to any concerns.

32.9.3 Internal Audit is responsible for following up recommendations to confirm that these have been implemented by Senior Managers in accordance with agreed timescales.

32.9.4 Internal Audit will also periodically check the level of compliance across the Council with the Anti-Fraud, Bribery and Corruption policy and report on it. This will aim to identify the level of effectiveness so that controls can be improved if the policy is not being implemented effectively.

## 32.10 **Roles and Responsibilities of the Fraud Investigation Team**

32.10.1 The Fraud Investigation Team will regularly report to the Tri-Borough Director of Audit and Fraud on the progress of the investigation of actual or suspected bribery if and when referral to the police is required.

32.10.2 The Fraud Investigation Team and the Tri-Borough Director of Audit and Fraud will decide who will conduct the investigation and when/if referral to the police is required.

32.10.3 The Fraud Investigation Team will also:

- Ensure that other relevant parties are informed where necessary e.g. Human Resources will be informed where an employee is a suspect.
- Ensure that the Council incident and losses reporting systems are followed.
- Ensure that any system weaknesses identified as part of the investigation are followed up with management or Internal Audit.

## 32.11 **Roles and Responsibilities of the Bribery Act Compliance Officer**

32.11.1 The Council has appointed the Director of Law as the Senior Officer who will be responsible for implementing the Anti-Bribery Policy and these guidelines, providing guidance and training, monitoring compliance and sanctioning violation of the policy. The officer will review annually the suitability, adequacy and effectiveness of the Council's anti-bribery arrangements and implement improvements as and when appropriate.

32.11.2 The Senior Officer will be supported by the Tri-Borough Director of Audit and Fraud and report the results of any fraud cases to the Audit & Performance Committee through the Internal Audit and Fraud report.

## 32.12 **Roles and Responsibilities of the Procurement Team**

32.12.1 Procurement practices will be conducted in a fair and transparent manner and not deal with contractors or suppliers known or reasonably suspected to be paying bribes.

32.12.2 The Council will contractually require contractors and suppliers to comply with this Anti-Fraud, Bribery and Corruption policy and to make available HR data for security screening in-line with Council Employees as requested.

32.12.3 The Council will monitor performance and, in case of non-compliance, require the correction of deficiencies, apply sanctions, or eventually terminate the agreement.

## 32.13 **Recruitment of Staff and Staff Vetting**

32.13.1 It is important to ensure that the integrity of Council systems is maintained. A key element of this is to ensure that the Council employs staff of the appropriate quality and integrity. The Recruitment Code of Practice, which is part of the Council's HR Framework, provides guidance on the appointment process.

32.13.2 The Council will ensure staff provide adequate proof of identity and permission to work in the UK. Staff are appointed subject to satisfactory references and care must be taken to ensure that employment references and qualifications are genuine. Copies of appropriate qualifications will be requested and be held on the relevant personal file. For certain posts, checks to the Police Criminal Records Bureau and List 99 will be necessary and carried out. Records of these checks and their outcome will be maintained.

32.13.3 In addition, the Council's employment application form includes an "Applicant's Declaration". This requires confirmation by each applicant of their understanding that if false information is provided which leads to their appointment, or it is subsequently discovered that false information has been supplied, it will render them liable to dismissal without notice. Due regard will also be had to the rehabilitation of offenders in relation to 'spent' and 'unspent' convictions. The Council's Recruitment Code contains specific information on the way in which this sensitive area is to be handled.

32.13.4 The Council also requires contractors to properly vet applicants who will be working on Council contracts as staff or sub-contractors. The precise requirements are included within the contract terms and conditions.

32.13.5 HR will take steps at the recruitment stage to establish, as far as possible, the previous record of potential employees as well as the veracity of

required qualifications and memberships of professional bodies, in terms of their propriety and integrity. In this regard, temporary and fixed term contract employees are treated in the same manner as permanent employees.

32.13.6 New joiners will be bound by a contractual obligation in the employment contracts not to engage in bribery as defined in this policy.

## 32.14 **Anti-Money Laundering**

32.14.1 The Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007, place obligations on the Council and its employees with respect to suspected money laundering. The following actions constitute money laundering:

- Concealing, disguising, converting, transferring or removing criminal property;
- Becoming concerned in an arrangement in which someone knowingly or suspects or facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person; and / or
- Acquiring, using or possessing criminal property.

32.14.2 Detailed guidance on money laundering is included in the Council's Financial Regulations and communicated regularly to those staff most likely to be exposed to money laundering situations.

32.14.3 The Council's Money Laundering Reporting Team is responsible for reporting suspicious circumstances to the Serious Organised Crime Agency (SOCA).

## 32.15 **Proactive Anti-Fraud Initiatives**

32.15.1 In addition to undertaking reactive investigations, the Internal Audit service also undertakes an annual risk based proactive anti-fraud programme, which targets resources to specific areas where there is a higher risk of fraud.

32.15.2 Data matching is used both within and outside the Council and is a successful means of identifying fraud. The Council participates in anti-fraud initiatives established by the Department for Work and Pension's (DWP) Housing Benefit Matching Service and the Audit Commission's National Fraud Initiative. Where appropriate, it also undertakes specific fraud drives and exchanges information with other external agencies including the Police, Benefit Agencies, HM Revenues and Customs, other Local Authorities and specialist counter fraud data matching organisations and agencies.

32.15.3 The Council may also run data matching exercises against its own databases. This may include systems holding information about Council employees (payroll and personnel), claimants of housing / council tax benefit and residents parking. Contractors' data must also be used.

32.15.4 In conducting data matching exercises, the Council will comply with relevant legislation, e.g. Data Protection Act 1998.

### 32.16 **Redress and Recovery**

32.16.1 Disciplinary action and / or other legal action including prosecution, will be taken against those found and proven to be defrauding the Council. The Council may, in certain circumstances, offer an alternative to prosecution in the case of Housing Benefit fraud in accordance with its Prosecution and Sanctions Policy.

32.16.2 In addition, all appropriate financial and other redress will be pursued to recover assets that have been lost as a result of fraudulent acts.

### 32.17 **Publicity and Awareness Raising**

32.17.1 The Council places a high emphasis on ensuring that the Anti-Fraud and Corruption Strategy is well publicised and that obligations are understood. Information is included within the Council's corporate induction programme and its governance training programme.

32.17.2 The Council also uses publicity to promote the message that it will not tolerate fraud, corruption or any other form of irregularity and is committed to countering any that is perpetrated. This includes the use of warnings on Council application forms, local newspaper advertisements, articles and features through radio, television and other relevant media, newsletters to staff and Members and press releases on successful prosecutions.

## **REPORTING**

### 32.18 **Whistleblowing**

32.18.1 The Council's Whistleblowing Policy encourages employees (and those of contractor and partner organisations) to report any misconduct, suspected misconduct, malpractice, illegal acts or omissions by Members or employees, or by the public in relation to the services they receive from the Council.

32.18.2 The Policy sets out the mechanisms through which whistleblowers may raise their concerns and the types of conduct that should be reported. For example:

- A criminal act;
- Disregard for legislation, Council rules, policies and procedures;
- A miscarriage of justice;
- Danger to health and safety;
- Any damage to the environment; or
- An attempt to cover up any of these.

32.18.3 The Council will not tolerate the victimisation or harassment of anyone raising a genuine concern, and employees are afforded protection from such by the Public Interest Disclosures Act 1998. This legislation aims to ensure employees who may be worried about coming forward can do so in the knowledge that it is safe to do so. Any harassment or victimisation of a whistleblower is treated as a serious disciplinary offence, which will be dealt with under the Disciplinary Code.

### 32.19 **Fraud and Whistleblowing Hotline & Report a Fraud (Council's Website)**

32.19.1 The Council operates a 'freephone' Fraud and Whistleblowing hotline (**0800 028 9888**). It is answered by trained fraud investigators within Internal Audit and staffed during normal office hours (an answering service operates at all other times).

32.19.2 Staff and the public alike, are encouraged to ring the hotline with any information about known or suspected fraudulent activity. All information is treated in the strictest confidence and if callers wish to remain anonymous, then that will be respected.

32.19.3 Frauds can also be referred anonymously through the Report a Fraud facility on the Council's website. Both the online and hotline facilities are regularly publicised.

## **INVESTIGATION**

### 32.20 **Who Investigates Fraud within the Council**

32.20.1 It is the responsibility of the Council's appointed Internal Audit contractor, Baker Tilly Ltd, to investigate all cases of suspected fraud and corruption. Within Internal Audit, there is a dedicated Fraud Investigation Team. The overall aim of the team is to deliver a quality investigative service with the objective of preventing, detecting and deterring fraud throughout the Council, thereby securing the "public purse". The specific scope and objectives of the team are to:

- Carry out investigation of "reactive" housing benefit and corporate fraud referrals to determine whether fraud has occurred;
- Carry out investigation of "proactive" housing benefit and corporate fraud referrals, including those arising from the Housing Benefit Matching Service and the National Fraud Initiative, to detect where fraud or overpayment has occurred;
- Apply appropriate sanctions and redress where it is proven that fraud has taken place in accordance with the Council's Prosecution and Sanctions policy;
- Identify appropriate means to further tackle Housing Benefit and corporate fraud including the development of new and innovative proactive exercises;

- Encourage referrals of suspected fraud from both internal and external sources;
- Evaluate all referrals to determine whether resources could be effectively deployed to investigate them;
- Carry out all investigations in accordance with prevailing legislation;
- Adhere to any published performance standards and any other recognised best practice in respect of fraud investigation;
- Liaise with the Head of Legal Services, the Police and Crown Prosecution Service and the DWP's solicitors branch in all prosecution cases;
- Liaise with the Director of Human Resources in the event of serious allegations against existing employees;
- Provide feedback to the Benefits Service on cases of successful sanctions, and obtain publicity in the press for successful prosecution cases;
- Report counter fraud activity to the Internal Audit Client and City Council members as directed;
- Liaise with the Counter Fraud Investigation Service of the DWP in accordance with prevailing Partnership Agreements;
- Liaise with partners in the Housing Benefits Service and other Council units where appropriate;
- Ensure Housing Benefit Investigation officers are appropriately trained and qualified;
- Participate in local and / or national forums regarding Housing Benefit and corporate fraud;
- Respond to and comply with directives issued by the DWP in the form of Circulars;
- Comply with the investigators' Code of Conduct;
- Maintain an up to date working knowledge of changes in legislation and best practice and to act accordingly;
- Regularly review anti-fraud policies and strategies taking on board changes in legislation and any emerging best practice; and
- Alert elected Members and Directors where systemic abuse or failure is suspected or where systematic criminal or unusual patterns of potential fraudulent activity.

## 32.21 **Training for Investigators**

32.21.1 The Council's Internal Audit provider ensures that its investigators are fully trained in carrying out their responsibilities and that this training is

maintained to ensure continuous improvement. This includes, where appropriate, relevant qualifications such as the Professionalism in Security (PINS) accreditation.

32.21.2 All investigators are also required to sign up to and comply with a Code of Conduct for investigations

## **TRAINING**

- 32.22 The Council will provide training to all relevant employees on a regular basis to make them aware of our Anti-Fraud, Bribery and Corruption policy and guidelines, in particular of possible types of bribery, the risks of engaging in bribery activity, and how employees may report suspicion of bribery.
- 32.23 If any specific training is needed, please contact Andrew Hyatt (Tri-Borough Head of Fraud) for further information.

**Any abuse or non-compliance with this policy or procedures will be subject to a full investigation and appropriate disciplinary action.**

## **APPENDIX A: OFFENCES UNDER THE BRIBERY ACT 2010**

The following business practices constitute criminal offences under the Bribery Act 2010 and are therefore prohibited:

### **OFFENCES OF BRIBING ANOTHER PERSON**

**1. Case 1** is where an employee offers, promises or gives a financial or other advantage to another person *and* intends the advantage:

- (i) to induce that or another person to perform improperly a relevant function or activity, *or*
- (ii) to reward that or another person for the improper performance of such a function or activity.

**2. Case 2** is where an employee offers, promises or gives a financial or other advantage to another person *and* knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity by that person.

The bribery must relate to:

- (i) a function of a public nature,
- (ii) an activity connected with a business,
- (iii) an activity performed in the course of a person's employment, *or*
- (iv) an activity performed by or on behalf of a body of persons (whether corporate or non-corporate).

The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust. It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is/are in the public or private sector and whether the advantage is offered, promised or given directly by the employee or through a third party, e.g. an agent or other intermediary.

### **OFFENCES RELATING TO BEING BRIBED**

**3. Case 3** is where an employee requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by him-/herself or another person).

**4. Case 4** is where an employee requests, agrees to receive or accepts a financial or other advantage, *and* the request, agreement or acceptance itself constitutes the improper performance by him-/herself of a relevant function or activity.

**5. Case 5** is where an employee requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by him-/herself or another person) of a relevant function or activity.

**6. Case 6** is where, in anticipation of or in consequence of an employee requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly:

- (i) by that employee, *or*

(ii) by another person at his/her request or with his/her assent or acquiescence.

Again, the bribery must relate to:

- (i) a function of a public nature,
- (ii) an activity connected with a business,
- (iii) an activity performed in the course of a person's employment, or
- (iv) an activity performed by or on behalf of a body of persons (whether corporate or non-corporate).

The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust.

It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is/are in the public or private sector, whether the employee requests, agrees to receive or accepts the advantage directly or through a third party, e.g. an agent or other intermediary, and whether the advantage is for the benefit of a employee or another person.

In Cases 4 to 6, it does **not** matter whether the employee knows or believes that the performance of the function or activity is improper.

#### **BRIBERY OF FOREIGN PUBLIC OFFICIALS**

**7. Case 7** is where an employee bribes a foreign public official and intends:

- (i) to influence that official in his/her capacity as a foreign public official *and*
- (ii) to obtain or retain a business or an advantage in the conduct of business. A foreign public official is someone who holds a legislative, administrative or judicial position of any kind or exercises a public function of a country outside the UK, or is an official or agent of a public international organisation.

**8.** *The following paragraph will apply if any part of the organisation is considered as a 'commercial' one.*

*Failure of commercial organisations to prevent bribery (applicable only to corporates and partnerships - included for information)*

A corporate or partnership is guilty of a corporate bribery offence if an employee, agent, subsidiary or any other person acting on its behalf bribes another person intending to obtain or retain business or an advantage in the conduct of business for the corporate or partnership For a definition of bribery, please refer to Cases 1, 2 and 7 above.

It should be the policy of a corporate or partnership not to tolerate any bribery on its behalf, even if this might result in a loss of business for it. Criminal liability must be prevented at all times.

## **APPENDIX B: RESPONSE AND INVESTIGATION PLAN**

This Response & Investigation Plan provides detailed guidance and information on the fraud investigation process.

### **1. ROLE OF INTERNAL AUDIT**

- 1.1 It is the responsibility of the Council's appointed Internal Audit contractor to investigate all cases of suspected fraud and corruption. The Council's Financial Regulations require that Internal Audit *"shall have access to all documents and records of the Council's units and shall be afforded all facilities and co-operation by Senior Managers and members of their staff who shall provide whatever information or explanation deemed necessary"*.
- 1.2 In carrying out investigations due regard, where appropriate, will be given to the following:
  - The Council's policies on Equal Opportunities;
  - The Council's Disciplinary Code;
  - Police and Criminal Evidence Act 1984;
  - Data Protection Act 1998;
  - Criminal Procedure and Investigations Act 1996;
  - Human Rights Act 1998;
  - Regulation of Investigatory Powers Act 2000;
  - Freedom of Information Act 2000;
  - Proceeds of Crime Act 2002;
  - Fraud Act 2006;
  - Money Laundering Regulations 2007; and
  - Bribery Act 2010.

### **2. FRAUD REFERRALS – THE NEED TO REPORT CONCERNS**

- 2.1 The Council's Financial Regulations require that any suspected irregularity involving Council funds, cash, stores or other property or any material weakness which has been identified in any system or control, must be reported immediately to Internal Audit who will investigate the circumstances as a matter of urgency.
- 2.2 The scope of fraud that should be referred to Internal Audit for investigation is not limited to that which has a direct financial impact upon the Council.
- 2.3 For example, the unauthorised access and / or release of confidential information held on strategic decisions, commercial information relating to contracts let or being let and personal information on staff and / or customers could have a damaging or undermining effect, are also reportable.

- 2.4 The Internal Audit provider employs dedicated, trained and skilled fraud investigators. It is essential that contact is made with Internal Audit, who act independently of specific Council activities, as soon as any fraud or irregularity is suspected and the risk of inappropriate action is minimised.

**3. WHAT TO DO IF YOU SUSPECT FRAUD, CORRUPTION OR OTHER WRONGDOING**

- 3.1 If you suspect fraud, corruption or any misconduct directed against the Council, or directed at others by staff and contractors of the Council, you should use the freephone Fraud and Whistleblowing hotline or the anonymous, Report a Fraud facility on the Council website.
- 3.2 Investigators will then consider the merits of investigation and will communicate the intention so that reported complaints are clearly responded to and acted upon.
- 3.3 You have the option of referring your concerns directly to Internal Audit if you wish to do so. This would normally be the case only when:
- it is inappropriate or not possible to inform a line manager; or
  - when a line manager has been informed and has taken no action.
- 3.4 The same applies when considering a referral to the Council's external auditors, which should only be made after having followed other internal procedures including referral to Internal Audit.

3.5 If you suspect fraud or corruption, as soon as you are aware of the problem:

✓	<b>DO</b> make a written note of your concerns and record all details of the people, documents and circumstances involved.
✓	<b>DO</b> pass any documents or other relevant materials and evidence relating to your suspicions that has come into your possession to your line manager (if appropriate) or the Internal Audit Anti-Fraud Team immediately.
✓	<b>DO</b> act promptly as delays could lead to further losses or the prospect of the destruction or contamination of evidence.
✗	<b>DO NOT</b> do anything that is likely to cause suspicion on the part of those you suspect, i.e. approach individuals or discuss your concerns with anyone apart from your line manager (if appropriate) or the Internal Audit Anti-Fraud Team.
✗	<b>DO NOT</b> ignore your suspicions – genuine concerns will not be reproached (see the Council's Whistleblowing Policy above).
✗	<b>DO NOT</b> carry out any investigation yourself, however reasonable it may seem to do so. At best the evidence may be lost or compromised, and at worst you could accidentally implicate yourself in the fraud.
✗	<b>DO NOT</b> put yourself at risk by attempting to obtain 'evidence' of your suspicions.
✓	<b>ALWAYS</b> consider approaching the Internal Audit Anti-Fraud Team for any advice on the matter before taking any further action.

3.6 Further information on reporting suspicions is contained in the Council's Whistleblowing Policy.

**4. HOW THE CITY COUNCIL WILL RESPOND TO YOUR CONCERNS**

- 4.1 When fraud, corruption or other wrongdoing is suspected, it is critical that any investigation is conducted in a professional manner aimed at ensuring that the current and future interests of both the Council and the suspected individual(s) or parties are protected. The latter is viewed as equally important as protected the Council, as a suspicion should not be seen as guilt until proven.
- 4.2 It is also crucial that those notifying their suspicions do not feel threatened. The Council seeks to protect the identity of such employees and does not release the source of notification at any time during the investigation, unless required to do so on a confidential basis, under a legal obligation.
- 4.3 It is recognised that in some cases, it will be necessary to talk to the person making allegations so as to clarify matters and to establish how this information came to light. The manner in which this is handled will depend on how the referral has initially been made and the willingness of the informant to be interviewed.

**5. ACTION FOLLOWING REFERRAL – HOW THE COUNCIL WILL RESPOND TO ALLEGATIONS**

- 5.1 The stage at which allegations or suspicions are referred, the available evidence and the strength of the suspicions are some factors that determine what action will be taken in any case of suspected fraud, corruption or other irregularity.
- 5.2 The Anti-Fraud Team Manager, or their appointed Investigator, will carry out a preliminary evaluation in order to identify a course of action and to decide on the reporting processes. This may include interviews of those raising concerns.
- 5.3 Each referred case will create a file to record chronologically all aspects of an investigation. The file will typically record the following:
- The original referral details;
  - Records of initial telephone conversations and face to face discussions and interviews;
  - Copies of relevant documents and records to be used as evidence;
  - Details of tests undertaken, their results, and conclusions drawn;
  - Decisions on and, where appropriate, authorisation for undertaking any specialist investigative techniques;
  - Records of the advice provided by the Director of Human Resources in cases where disciplinary action may be considered;
  - Records of advice provided by the Head of Legal Services or the Police; and
  - Transcripts of formal interviews undertaken with due regard to the Police and Criminal Evidence Act 1984.
- 5.4 In cases where a criminal act is suspected, the manner in which evidence is collated and retained will be in accordance with the requirements of the Criminal Procedures and Investigations Act 1996.

**6. THE COURSE OF INVESTIGATION AND POTENTIAL OUTCOMES**

- 6.1 There are many factors that will determine the course of an investigation and the potential outcomes.
- 6.2 Where it is appropriate to do so, the Investigation Team will involve the Police to assist with investigation or to assume responsibility for investigation in its entirety.
- 6.3 Any request for Police involvement will normally follow the conclusion of any initial investigation by the Internal Audit Investigating Officer.
- 6.4 The referral of a matter to the Police will be dependent on a number of factors including the nature of the suspicions, those suspected of being involved and resources required to investigate.
- 6.5 If the Police decide that a formal criminal investigation is necessary by them, all staff will co-operate fully with any subsequent requests or recommendations. All contact with the Police following their initial involvement will usually be via the Internal Audit Investigating Officer. If the Police decide to investigate formally, this

will not prejudice any internal disciplinary action that could be taken by the Council. In such circumstances, the Police and Director of Human Resources will be consulted to ensure that one investigation does not prejudice or otherwise hamper the other.

- 6.6 A decision by the Police not to undertake a formal investigation does not preclude subsequent criminal prosecution taking place should evidence of an offence emerge.

## **7. POSSIBILITY OF DISCIPLINARY OFFENCE BY COUNCIL STAFF**

- 7.1 The decision as to whether or not disciplinary action should be taken rests with line management.
- 7.2 Internal Audit will advise the appropriate line manager when it is considered that there may have been a breach of the Council's Disciplinary Code by an employee.
- 7.3 Any investigation (and decision about suspension from duty, pending completion of the investigation) and resulting disciplinary action under the Council's Disciplinary Code, will be separate from the audit investigation, but it may be used as evidence. As such, Internal Audit may be required to assist with proceedings under the Disciplinary Code.

## **8. OFFENCES COMMITTED BY EMPLOYEES OF A CONTRACTOR**

- 8.1 There are a wide variety of contractors carrying out the business of the Council. Many, if not all, of the staff fall outside the scope of the Council's Disciplinary Code, although many contractors adopt the same or a similar code.
- 8.2 Where it is proven that a member of staff working for a contractor has committed an offence that would otherwise fall within the Council's Disciplinary Code, the Council will expect the contractor's own disciplinary code to be invoked.
- 8.3 This includes the possibility of a suspension of the individual from their duties, where appropriate.
- 8.4 In addition, the Council will expect that the contractor responsible for any individual found guilty of an offence, will take appropriate disciplinary action, including dismissal. In cases involving members of contractors' staff, the investigating officer will liaise closely with the appropriate Council (clientside) officer responsible for the contractor.

## **9. LIAISON WITH EXTERNAL BODIES**

- 9.1 In some circumstances, the Investigation Team will liaise with or work jointly with external bodies such as the Police, DWP, Immigration, and other Local Authorities.
- 9.2 If any specific training is needed, please contact Andy Hyatt (Tri-Borough Head of Fraud) for further information.

## **10. SPECIALIST INVESTIGATION TECHNIQUES**

- 10.1 When appropriate, the Investigation Team will employ specialist investigative techniques. These techniques will depend on the nature of the investigation and the evidence required to substantiate or refute allegations.

- 10.2 Such techniques will be conducted in line with legislative requirements and may include surveillance, forensic computer analysis, chemical analysis and handwriting analysis.

#### **11. AUDIT AND PERFORMANCE COMMITTEE**

- 11.1 The Audit & Performance Committee will receive regular reports on Internal Audit's work in relation to fraud and corruption.
- 11.2 In certain circumstances, Internal Audit may consider it necessary to report directly to the Chief Executive and / or Cabinet. This applies, in particular, to cases of suspected fraud involving senior employees or Members.
- 11.3 Such notification will be carried out in a manner consistent with the Council's Code of Conduct.
- 11.4 This is to ensure that Senior Managers maintain their independence in respect of appeals from employees against disciplinary action.

#### **12. EXTERNAL AUDIT**

- 12.1 Details of completed investigations will be shared with external audit as part of regular liaison and monitoring.
- 12.2 In addition, all cases of proven fraud valued at £10,000 and above will be formally reported to the Fraud section.

#### **13. CONCLUDING THE INVESTIGATION**

- 13.1 By the conclusion of the investigation it will be known what action is to be taken.
- 13.2 This will be dependent on the extent to which evidence supports the allegation(s) and in cases of criminal activity, the level of admissible evidence that has / can be obtained.
- 13.3 The appropriate action following an investigation is not limited to that taken against an individual or individuals, and may include recommendations for changes to systems of control.
- 13.4 The possible outcomes of investigation include:
- No further action;
  - Decision by management to conduct Disciplinary Code investigation;
  - Criminal Prosecution (by Crown Prosecution Service / in-house / DWP);
  - Sanctions (as an alternative to prosecution in Housing Benefit cases only);
  - Civil proceedings for recovery of lost assets; and
  - Recommendations made for improved systems of control.

## **14. REPORTING ARRANGEMENTS**

- 14.1 Arrangements will vary but, at the conclusion of the investigation, a report will usually be prepared for the relevant Senior Manager and any other appropriate line management. Typically this will include:
- how the investigation arose;
  - whose actions have been called into question;
  - their position within the organisation and their responsibilities;
  - how the investigation was undertaken;
  - the facts and evidence which were identified;
  - whether fraud or irregularity was proven;
  - the action taken or ongoing; and
  - a summary of findings and recommendations, both regarding the allegations themselves and any additional work required on the system weaknesses identified during the investigation. The report will recognise any system weaknesses and action taken to correct these that have already been addressed a result of the interim report.
- 14.2 On occasions, such as when it is necessary to correct a fundamental system weaknesses, an interim report may be issued setting out:
- the findings to date;
  - the interim conclusions drawn from those findings; and
  - recommendations for immediate system control improvements.

## **15. OTHER RELATED ISSUES AND CONSIDERATIONS**

### **15.1 Confidentiality**

- 15.1.1 No investigation report or supporting documentation is to be made available to any person except as outlined in the Anti-Fraud and Corruption Strategy and this procedure document, or as required for any legal reason.
- 15.1.2 All copies of audit reports dealing with allegations of misconduct will be endorsed "Confidential" or "Strictly Confidential".

### **15.2 Feedback to Person Who Raised Suspicion**

- 15.2.1 In some circumstances, it may be appropriate to provide feedback to the person who made the initial allegations.
- 15.2.2 Such feedback will be restricted to that information which is rightly in the public domain and will comply with the obligations of the Data Protection Act 1998.

### **Prosecution of offenders**

- 15.2.3 The Council is committed to protecting public funds through its action on fraud. As a deterrent to others, prosecution will be considered in all cases with wide publicity given to successful prosecutions.
- 15.2.4 There is an alternative to prosecution available to the Council i.e. Official Cautions and Administrative Penalties in cases involving Housing Benefit fraud.
- 15.2.5 Administrative Penalties and Official Cautions are detailed below and their use is to be considered on an individual case by case basis and in line with the Council's Prosecution and Sanctions Policy.
- 15.2.6 The Council's Prosecution and Sanctions Policy will be used by Internal Audit to determine what action should be taken against those who commit offences against the Council.

### **15.3 Investigators Code of Conduct**

- 15.4.1 The Council is keen to ensure that the Investigators employed by Internal Audit, act in a proper manner at all times in accordance with the "Investigators Code of Conduct".

### **15.4 Defamation**

- 15.4.1 All investigative work must be substantiated by the strongest evidence. Reports must avoid content that could be considered to be defamatory in the event of the report being made public.
- 15.4.2 Defamation in law is defined as:  
"The publication (i.e. communication) of an untrue statement, which tends to lower a person in the estimation of right-thinking members of society generally, or which tends to make them shun or avoid that person".

## **USEFUL CONTACTS**

The following is a list of useful contact points in the event that you require any advice or assistance, or you want to report a suspected fraud or irregularity.

### **Baker Tilly (Internal Audit Contractor)**

Steve Barry (Investigations Manager)

020 7641 3421

[sbarry.rsmt@westminster.gov.uk](mailto:sbarry.rsmt@westminster.gov.uk)

33 Tachbrook Street, London SW1V 2JR

### **Westminster City Council**

Peter Large (Head of Legal and Democratic Services)

020 7641 2711

[plarge@westminster.gov.uk](mailto:plarge@westminster.gov.uk)

15<sup>th</sup> floor, City Hall, 64 Victoria Street, London SW1E 6QP

Moyra McGarvey (Tri-Borough Director of Audit and Fraud)

020 7361 2389

[Moyra.McGarvey@rbkc.gov.uk](mailto:Moyra.McGarvey@rbkc.gov.uk)

Kensington Town Hall, Hornton Street, London, W8 7NX

Andy Hyatt (Tri-Borough Head of Fraud)

[Andy.Hyatt@lbhf.gov.uk](mailto:Andy.Hyatt@lbhf.gov.uk)

Hammersmith Town Hall, King Street, London W6 9JU

### **KMPG (External Auditor)**

Sally-Anne Eldridge (Audit Manager)

[s-eldridge@audit-commission.gov.uk](mailto:s-eldridge@audit-commission.gov.uk)

Fraud & Whistleblowing Hotline 0800 028 9888

## **APPENDIX C: PROSECUTION AND SANCTIONS POLICY**

### **1. INTRODUCTION**

- 1.1 This Policy specifically relates to the work carried out by the City Council's Internal Audit contractor.
- 1.2 The Council takes fraud committed against it very seriously. This document sets down the criteria which determines when the Council will or will not normally pursue criminal prosecution proceedings.
- 1.3 In relation to cases involving Housing Benefits the document also sets down the alternatives to prosecution and when these will and will not normally be considered appropriate.
- 1.4 The decision to prosecute someone is a serious step. The aim of this Policy is to provide a framework and guidance that investigators and those prosecuting offences use to ensure fair and consistent decisions are made.
- 1.5 This Policy forms part of the City Council's Anti-Fraud and Corruption Strategy although decisions about the course of action to take in any case can be made in reference to this Policy alone.

### **2. DECIDING TO PROSECUTE**

#### **2.1 When Prosecution will normally be pursued**

- 2.1.1 This Policy should be applied in all cases of fraud investigated by the Council's Internal Audit contractor.
- 2.1.2 As stated in the City Council's Anti-Fraud and Corruption Strategy, each case will be judged on its merits and where appropriate, advice will be sought from the Police, the Crown Prosecution Service (CPS) or the Head of Legal Services.
- 2.1.3 The majority of prosecution cases will be dealt with by the Council's Legal Services Team. However, it should be noted that where the CPS or the Solicitors branch of the DWP are responsible for prosecuting fraud committed against the Council, their respective prosecution policies would prevail.
- 2.1.4 The Code for Crown Prosecutors will be used to determine whether it is appropriate to prosecute: a two-stage test regarding evidence and the public interest.
- 2.1.5 Where there is sufficient admissible evidence and it is in the public interest to do so, the Council will normally pursue criminal proceedings against an offender.
- 2.1.6 However, the Council will not in all cases wish to pursue criminal proceedings. The following paragraphs set out the circumstances under which the Council is more likely, or less likely to prosecute in cases where there is sufficient evidence.

2.1.7 The ultimate decision on whether to prosecute rests with the Council's Head of Legal Services or, where cases are being prosecuted by an external body, the Crown Prosecution Service or the Solicitors branch of the Department for Work and Pensions.

## **2.2 Circumstances where the City Council is likely to pursue proceedings**

2.2.1 Any case meeting one or more of the following criteria is likely to result in the Council pursuing criminal proceedings:

- The offence was pre-planned and / or deliberate;
- The offender has had a reasonable opportunity to rectify the fraud during its commission but has not done so;
- The offence has continued for a sustained period;
- The offence is committed by a person or persons in a position of authority or trust;
- The person has previous convictions for dishonesty or has been formally warned for a similar offence within the past 5 years;
- In the case of Housing Benefit fraud only, the person has been offered but has refused an alternative to prosecution (Administrative Penalty or Local Authority Formal Caution); and / or
- The fraud was as a result of collusion or conspiracy.

## **2.3 Circumstances where the City Council is unlikely to pursue proceedings**

2.3.1 Any case meeting one or more of the following criteria is likely to result in the Council **not** pursuing criminal proceedings:

- The offender is seriously or terminally ill and there is evidence to support this;
- The offender has serious mental health problems and there is evidence to support this;
- The offender is a juvenile;
- The offender made a voluntary disclosure of the offence before the City Council had any suspicions and the offender was not prompted to make disclosure;
- The offender has caused a small or nil loss to public funds;
- The offender has social factors which the City Council deem are relevant; and / or
- To prosecute would place a vulnerable person at risk (such as an informant).

### **3. ALTERNATIVES TO PROSECUTION IN RESPECT OF HOUSING BENEFIT**

#### **3.1 Background**

- 3.1.1 In cases involving offences relating to welfare benefits, the Council has the option of offering an alternative to prosecution in specified circumstances. There are two alternatives: a Local Authority Formal Caution or an Administrative Penalty.
- 3.1.2 These alternatives will only be considered where the Authority believes an offence to have been committed that could be prosecuted.
- 3.1.3 The following paragraphs set down the criteria when these alternatives would be considered appropriate.

#### **3.2 Formal Caution**

- 3.2.1 The Council would normally consider it appropriate to administer a Formal Caution as an alternative to prosecution in the following circumstances:
- The fraud is a failed attempt to obtain benefit or the value<sup>1</sup> of fraudulently obtained benefit is low; AND
  - It is known to be a first offence; AND
  - The offender has admitted the offence; AND
  - A Formal Caution or Administrative Penalty has not been previously accepted or refused.
- 3.2.2 When an Official Caution is administered, the offender must provide his / her written admission to the offence(s) after having admitted the offence verbally at a formal interview.
- 3.2.3 If the offender is found guilty or pleads guilty to an offence in the five years after the written admission is made, the offence(s) listed on the Formal Caution can be cited and used for sentencing purposes at court.
- 3.2.4 In addition, the DWP maintains a central record of all Formal Cautions. Local Authorities and the DWP investigators have access to these records which are checked before determining what action to take.
- 3.2.5 It is unlikely where a Formal Caution has already been issued for a welfare benefit offence in the preceding five years that a further Formal Caution would be issued. In such cases consideration would be given to prosecution.

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<sup>1</sup> It is not possible to state exactly what value threshold should be applied in these cases because the value of benefits obtained can differ widely depending upon an individual's circumstances and the nature of the fraud committed. However, to balance this, consideration would be given specifically to the period the fraud had been taking place and other relevant factors mentioned in this Policy.

### 3.3 Administrative Penalty

3.3.1 The Council would normally consider it appropriate to offer an Administrative Penalty as an alternative to prosecution in the following circumstances:

- A Formal Caution is not considered appropriate; AND
- The value of fraudulently obtained benefit is relatively low<sup>2</sup>; AND
- It is known to be a first offence; AND
- There is a realistic prospect of the overpayment and Penalty being paid; AND
- A Formal Caution or Administrative Penalty has not been previously accepted or refused.

3.3.2 The Administrative Penalty is offered in accordance with section 115A of the Social Security Administration Act 1992 (as amended).

3.3.3 The offer of an Administrative Penalty does not require an admission to offences by the individual but there must be grounds for instituting prosecution proceedings. In accordance with the legislation, the offender must pay a financial penalty (a percentage of the recoverable overpayment) at the rate specified by the prevailing legislation. The DWP maintains a central record of all Administrative Penalties.

3.3.4 Local Authorities and the DWP investigators have access to these records which are checked before determining what action to take. It is unlikely, where an Administrative Penalty has already been issued for a welfare benefit offence in the preceding five years that a further Administrative Penalty would be issued. In such cases consideration would be given to prosecution.

## 4. BLUE / WHITE DISABLED BADGE AND RESIDENTS PERMIT PROSECUTIONS

### 4.1 Background

4.1.1 The Council provides parking concessions to people with disabilities through the national Blue Badge scheme and the Council's own White Badge scheme.

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<sup>2</sup> It is not possible to state exactly what value threshold should be applied in these cases because the value of benefits obtained can differ widely depending upon an individual's circumstances and the nature of the fraud committed. However, to balance this, consideration would specifically be given to the period the fraud had been taking place and other relevant factors mentioned in this Policy. Having said this it would be unlikely that the City Council would offer an administrative penalty where the value of fraudulently obtained Benefit is very low or similarly very high unless other circumstances dictate.

- 4.1.2 The Council also provides both on and off street parking concessions for Westminster residents, referred to collectively in this document as “Residents’ Permit” schemes. These schemes are there to provide help for people who genuinely require assistance with parking due to a disability (blue / white badges) or are genuinely a resident in Westminster.
- 4.1.3 They provide a significant financial benefit when compared with paid for parking. Due to this financial benefit, the Council does experience an element of fraud in this area. To combat this, the Council’s Internal Audit undertakes a programme of investigations. This Policy applies to all cases of Blue Badge, White badge and Residents Parking scheme frauds investigated by Internal Audit investigators.

#### 4.2 Abuse of Badge

- 4.2.1 In order to understand the occasions on which prosecution may be considered it is necessary to understand the various ways in which Blue Badge, White Badge and Residents Permits might be abused.
- 4.2.2 The vast majority of those applying for these schemes are not acting fraudulently and do not misuse these facilities.
- 4.2.3 However, the following is a list (though not exhaustive) of the potential ways in which Blue Badges, White Badges and Residents Permits can be abused and the actions that will be undertaken on discovery of the abuse.
- 4.2.4 These actions are based on the Internal Audit contractor’s experience of fraud in this area together with information in “The Blue Badge Scheme Local Authority Guidance (England)” issued by the Department for Transport.

a) **Use of a Blue badge or White Badge or Residents Permit that is no longer valid.**

If an investigation reveals the use of an expired or illegible badge, then arrangements will be made for a Penalty Charge Notice to be issued for any parking offences that have occurred. If possible, the user of the badge will be required to surrender it. Consideration will be given to prosecuting the non-badge holder and the badge holder.

b) **Misuse of a valid Blue/White badge by a non-badge holder.**

Where a badge holder has allowed another person to use their badge arrangements will be made for a Penalty Charge Notice to be issued for any parking offences that have occurred. If possible the user of the badge will be required to surrender the badge. Consideration will be given to prosecuting the non-badge holder and the badge holder.

c) **Use of a Blue/White badge or Residents Permit that has been reported as lost/stolen.**

Where an investigation reveals a non-badge holder is using another person’s Blue / White badge or Resident’s Permit that has been lost or

stolen, arrangements will be made for a Penalty Charge Notice to be issued for any parking offences that have occurred. If possible the user of the badge will be required to surrender the Blue/White badge or Residents Permit. Consideration will be given to prosecuting the non-badge holder.

d) **Use of a forged, copied or amended Blue/White badge or Residents Permit.**

Where an investigation reveals the use of a forged or copied Blue / White badge or Residents Permit, arrangements will be made for a Penalty Charge Notice to be issued for any parking offences that have occurred. If possible, the user of the badge will be required to surrender the badge. Consideration will be given to prosecuting the badge holder if the investigation has revealed evidence that they are involved in the forging/copying of the badge.

e) **A Blue/White badge or Residents Permit that is obtained with a bogus application.**

If an investigation reveals that false information or documents has been provided in respect of a Blue Badge, White Badge or Residents permit application, consideration will be given to prosecuting the applicant

f) **Use of Residents Permit by a person who does not reside in Westminster**

If an investigation reveals that the holder of a Residents Permit is using the permit but they are not resident at their declared home address then consideration will be given to prosecution.

4.2.5 Where an investigation reveals that the misuse of a Blue badge, White badge and Residents permit appears to have occurred due to a mistake then the badge / permit holder will be provided with details of the correct use.

4.2.6 The Council may give consideration to withdrawing a Blue badge, White badge or Residents permit if there is repeated misuse.

## **5. DECISIONS OUTSIDE THE SCOPE OF NORMAL OPERATIONS**

5.1 There may be a small number of cases where, although the value / duration of the fraud would normally results in prosecution, there are extenuating circumstances. In these exceptional cases, an alternative to prosecution will be considered.

5.2 To provide transparency in the decision making process, such cases will be brought to the attention of the Tri-Borough Director of Audit and Fraud and the Head of Legal and Democratic Services by the Internal Audit contractor for approval. The decision on whether or not to prosecute rests with the Head of Legal and Democratic Services.