



Derby City Council

COUNCIL CABINET 12 July 2017

ITEM 9

Report of the Cabinet Member for Finance and Governance

Corporate Fraud Prosecution Policy

SUMMARY

- 1.1 The Council has a zero tolerance to fraud. The Council's Anti-Fraud and Corruption Strategy 2013 sets out the corporate commitment to the prevention, detection and investigation of all forms of fraud and corruption. Since early 2017, this commitment has been further enhanced with the creation of the Corporate Fraud Team, which sits within the Finance Department.
- 1.2 In 2011, the Council approved its Corporate Prosecution Policy. This sets out the high level principles that the Council uses to react to instances of fraudulent or criminal activity committed against it. The Policy applies to all staff, elected members, contractors, agents and the public at large.
- 1.3 This report introduces the Corporate Fraud Prosecution Policy. This will sit beneath the Corporate Prosecution Policy and sets out the Corporate Fraud Team's approach to assisting in the prosecution of offenders. It also provides consistent guidelines for making decisions to prosecute, and the administration of other sanctions. The Policy is at Appendix 2.
- 1.4 A change will need to be made to the Council's Constitution, to delegate to relevant members of the Corporate Fraud Team the authority to fully investigate and take appropriate action relating to all corporate fraud matters within their remit.
- 1.5 An Equalities Impact Assessment (EIA) was conducted on 23 May 2017. A copy of the results is at Appendix 3.

RECOMMENDATION

- 2.1 To approve the Corporate Fraud Prosecution Policy.
- 2.2 To recommend to Council that changes resulting from the adoption of the Policy detailed at recommendation 2.1 be made to the Scheme of Delegations.

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| REASONS FOR RECOMMENDATION |
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- 3.1 To ensure the Council has robust processes in place to deter and prevent fraud.
- 3.2 To give the Corporate Fraud Team a consistent framework for their activities in preventing and deterring fraud being committed against the Council.
- 3.3 To ensure that the Corporate Fraud Team has the necessary delegated authority to utilise the full powers of the law when appropriate to do so as part of the investigation and prosecution process.
- 3.4 To provide more financial resilience to the Council and enable more effective targeting of money and resources to customers. The prevention and deterrence of fraud helps the Council to target money and services to those people in the community who are most in need, and not to anyone who seeks to defraud the Council by dishonestly claiming money or services they are not entitled to.



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Report of the Chief Executive

SUPPORTING INFORMATION

- 4.1 The Council's zero tolerance approach to fraud is set out in the Council's Anti-Fraud and Corruption Policy and Strategy. It states that

"Derby City Council is committed to the prevention, detection and investigation of all forms of fraud and corruption. The Council aims to prevent theft, fraud and corruption by:

- developing an anti-fraud and corruption culture among staff and the public to deter such acts;*
- encouraging the reporting of reasonably held suspicions;*
- designing and operating systems, procedures and policies which minimise the risk of fraud, theft, corruption, misappropriation and misuse of assets; and*
- assisting other government bodies, where appropriate, in their investigations into theft, fraud and corruption."*

- 4.2 The Corporate Fraud Team is a newly created team within the Council. It was created to ensure that non-benefit related fraud investigation work continues, following the transfer of the Benefits Fraud Team to the Fraud and Error Service (FES) at the Department for Work and Pensions (DWP) on 1 December 2015.

- 4.3 In 2011, the Council adopted its Corporate Prosecution Policy which sets out the high level principles and broad guidance that officers will follow when detecting and investigating fraud. The Corporate Fraud Prosecution Policy will sit beneath this and will align to it unless specifically set out. The key features of the Corporate Fraud Prosecution Policy are set out in paragraph 4.4 below.

- 4.4 Key features of the Policy are:

- the range of sanctions open to the Council, from taking no action to prosecuting offenders, together with broad examples of when such action may be taken;
- the introduction of Civil Penalties for Council Tax;
- details about liaison and co-operation with other agencies;
- how customer feedback and disputes are handled.

- 4.5 Whilst a key feature of the Corporate Fraud Prosecution Policy is to provide consistency, when deciding whether to apply a sanction, or which sanction is to be applied, each case will be determined on its own merits. This includes considering the evidence and ensuring sufficient evidence is available “the evidential test”, and whether the public interest would be best served by taking the action “the public interest test”.
- 4.6 When deciding whether a prosecution is to be undertaken, the Corporate Fraud Team will work with Legal Services to establish whether both the evidential test and the public interest test are satisfied. Only if they are, will a prosecution ever ensue.
- 4.7 The Section 151 Officer is responsible for appointing any members of staff to act as authorised or proper officers under the following Acts, insofar as the appointment relates to the following functions:
- Social Security Administration Act 1992;
 - Council Tax Reduction Scheme (Detection of Fraud and Enforcement)(England) Regulations 2013;
 - Prevention from Social Housing Fraud (Power to Require Information)(England) Regulations 2014.
- 4.8 The amendments required to the Constitution as a result of adopting this Policy will allow for officers in the Corporate Fraud Team to be authorised as authorised officers with the relevant legislation as set out in 4.7; this will enable them to fully investigate the corporate fraud matters within their remit.
- 4.9 An EIA was conducted on 23 May 2017 and found that the Policy would have positive impacts by protecting everyone in all the equality groups. This was because the Policy would deter and prevent fraud and ensure that Council services and resources were being targeted to those who most need them.

OTHER OPTIONS CONSIDERED

- 5.1 Do not have a Corporate Fraud Prosecution Policy. The Corporate Fraud Team needs to have the means to fully conduct investigations and apply relevant sanctions where appropriate, if a robust approach to preventing and deterring fraud is to be delivered. Therefore, this option is discounted.

This report has been approved by the following officers:

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| Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s) | Lucie Keeler, Solicitor – Legal Services Toni Nash, Head of Finance David Cox, Head of HR John Sadler, Strategic Asset Manager Mark Taylor, Interim Director of Finance Ann Webster, Lead on Equality and Diversity Liam Salmon, Team leader – Housing, Organisation and Governance Richard Boneham, Chief Audit Executive/Head of the Audit Partnership |
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| For more information contact: Background papers: List of appendices: | John Massey 01332 643774 john.massey@derby.gcsx.gov.uk None Appendix 1 – Implications Appendix 2 – Corporate Fraud Prosecution Policy Appendix 3 – Equalities Impact Assessment |
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| IMPLICATIONS |
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Financial and Value for Money

- 1.1 The prevention and deterrence of fraud helps the Council to target money and services to those people in the community who are most in need and have a genuine entitlement to help or support. The Council will seek to recover all money fraudulently claimed together with any penalties, fees or court orders applied as a result of a successful investigation. As such, this may result in additional income being received by the Council.

Legal

- 2.1 By virtue of the Regulatory Enforcement and Sanctions Act 2008, Legislative and Regulatory Reform Act 2006 and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended), the Regulator's Code 2014 was issued under parliamentary approval. As specified, regulators must have regard to the Code when determining policies, setting standards or giving guidance in relation to their duties. By creating and maintaining the Corporate Fraud Prosecution Policy, the Council will ensure its compliance with the Regulator's Code 2014 and other legislation.
- 2.2 The Corporate Prosecutions Policy sits above the Corporate Fraud Prosecution Policy. Where any conflict between the two potentially arises, unless specifically identified and set out within the Corporate Fraud Prosecution Policy, the Corporate Prosecution Policy will always take precedence.
- 2.3 Amendments will be required to be made to the Constitution so that officers can be authorised by the 151 Officer to act as Authorised Officers and utilise the legislative investigatory powers contained within the Acts in 4.7 of this report so that they may fully investigate the matters within their remit.

Personnel

- 3.1 The Council's legal team currently works on non-benefit fraud cases where appropriate. If fraud investigation increases, this will require more prosecution work being undertaken by legal staff.
- 3.2 In the situation where an employee is suspected of fraud which may arise as part of a different process, such as Disciplinary or Whistleblowing and so on, HR staff will work closely with Corporate Fraud Team colleagues to ensure the Council meets its legal and procedural requirements, while operating within the Corporate Fraud Policy.

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- 4.1 None.

Equalities Impact

- 5.1 The EIA identified that the Policy would have positive impacts on those people in the equality groups; it would deter and prevent fraud and ensure that Council services and resources were being targeted to those who most need them.

Health and Safety

- 6.1 None

Environmental Sustainability

- 7.1 None.

Property and Asset Management

- 8.1 Whilst there are no direct Property and Asset management implications in this report, the adoption of this Policy will provide indirect benefits to the Council in the management of its property portfolio. This will be realised by ensuring prosecutions are undertaken against any tenants, building users and building maintenance contractors, following investigation of fraudulent activities being conducted against the Council.

Risk Management and Safeguarding

- 9.1 The Council's Anti-Fraud and Corruption Strategy 2013 sets out the corporate commitment to the prevention, detection and investigation of all forms of fraud and corruption. It is vital that the Council has an effective mechanism to investigate instances of corporate fraud to protect the public purse and instil public confidence in the Council's commitment to undertake these activities effectively going forward.

Corporate objectives and priorities for change

- 10.1 This links to the corporate vision in the Derby Plan 2030: a safe, strong and ambitious city.
- 10.2 Further, it will enhance the Council's reputation for strong governance.