

NORTH YORKSHIRE COUNTY COUNCIL

AUDIT COMMITTEE

5 MARCH 2015

COUNTER FRAUD AND ASSOCIATED MATTERS

Report of the Head of Internal Audit

Discussion of Appendices 3 and 4 to this report are likely to include exempt information of the description in paragraph 7 of Part 1 of Schedule 12A to the Local Government Act 1972 as amended by the Local Government [Access to Information] [variation] Order 2006

1.0 PURPOSE OF THE REPORT

- 1.1 To report on the number and type of investigations undertaken by Veritau Limited during 2014/15 to date.
- 1.2 To consider proposed changes to the County Council's Fraud Strategy and a new fraud Prosecution and Loss Recovery Policy prior to approval.
- 1.3 To consider the Annual Fraud and Loss Risk Assessment for the County Council.

2.0 BACKGROUND

- 2.1 In the current economic climate, all organisations are at an increased risk of fraud and corruption. In its final annual fraud report '*Protecting the Public Purse*', published in October 2014, the Audit Commission estimated that fraud costs local government £2.1 billion, but this figure was probably an underestimate. The main types of local government fraud continue to be housing tenancy and council tax, procurement, social care and 'internal' fraud.
- 2.2 Changes in the way in which public services are being delivered mean that the risk profile for fraud is also changing. The increased arm's length delivery of services by private sector, voluntary or not-for-profit organisations as well as greater use of personal budgets for social care mean that fraud is more difficult to prevent and identify. Reduced resources also mean that local authorities have less capacity to investigate suspected fraud or undertake proactive counter fraud activities. In addition, local authorities are now responsible for managing individual local council tax support schemes in place of council tax benefits and are entitled to retain half of locally raised business rate revenues. There is therefore a continuing financial incentive for councils to work together to minimise overall fraud losses.
- 2.3 The Audit Commission reported that the value of detected non-benefit fraud in local government increased by 2% in 2013/14, to £59m. The notable changes in the past 5 years include the number of right to buy fraud cases which have increased five-fold, social care fraud cases which have more than trebled and insurance fraud cases which have similarly trebled. Increases have also been seen in housing

tenancy, procurement, blue badge and maintained school fraud cases. Council tax discounts however remain the area where the most fraud is detected with nearly 50,000 cases nationally in 2013/14, equivalent to a potential loss of £16.9m in funding.

2.4 In July 2014, CIPFA established a new 'centre of excellence' to combat fraud. The new centre is headed by Rachel Tiffen, who was previously deputy director of the now disbanded National Fraud Authority. The centre will work closely with the Department for Communities and Local Government (DCLG), the Cabinet Office, the National Crime Agency (NCA) and other agencies to develop policies, tools and guidance to help public sector organisations to identify and address fraud. One of its first outputs has been a Code of Practice on managing the risks of fraud and corruption. The Code highlights five key principles which public sector organisations should consider:

- Acknowledge responsibility

Corporate leaders should acknowledge their responsibility for ensuring that the risks associated with fraud and corruption are managed effectively across all parts of the organisation;

- Identify risks

Fraud risks should be identified in order to understand specific exposures to risk, changing patterns in fraud and corruption threats and the potential consequences to the organisation and its service users;

- Develop a strategy

Each organisation should adopt a counter fraud strategy setting out its approach to managing its risks and defining responsibilities for action;

- Provide resources

Each organisation should make available appropriate resources to support the counter fraud strategy;

- Take action

Each organisation should put in place the policies and procedures to support the counter fraud and corruption strategy and take action to prevent, detect and investigate fraud.

2.5 Whilst the County Council has a good record in maintaining standards of probity and propriety, it is essential that its arrangements for reducing the risk of loss from fraud and corruption remain effective. As a consequence the Counter Fraud Strategy and the associated policies are kept under review, and updated as required.

2.6 In addition, the County Council in partnership with the City of York Council, Ryedale District Council, Richmondshire District Council, Hambleton District Council, and Selby District Council has recently successfully bid for additional government funding to combat fraud. The funding has been made available by the Department

for Communities and Local Government (DCLG) and is intended to improve capacity in this area. The total allocation is £170k to fund the investigation of non-benefit fraud over the next two years. The additional money will be used to investigate social care, council tax/NNDR and procurement related fraud across the partner councils. Data matching across all the partner councils will be used to identify potential fraud cases requiring further investigation.

3.0 THE COUNTER FRAUD POLICY FRAMEWORK

Background

- 3.1 The counter fraud policy framework includes the Counter Fraud Strategy, the Whistleblowing Policies and the Anti Money Laundering Policy.
- 3.2 The Counter Fraud Strategy has been reviewed to ensure that it reflects the best practice guidance contained in the new Code of Practice. A copy of the Strategy with the proposed amendments shown as tracked changes is attached as **appendix 1**. In addition, a new Fraud Prosecution and Loss Recovery policy has been prepared. The policy is intended to clarify the circumstances when the County Council might wish to instigate a prosecution in its own right and the associated decision making process. The policy also sets out the measures that can be taken to potentially recover losses caused by fraud. The draft policy is attached as **appendix 2**.
- 3.3 The Whistle blowing Policy was updated in March 2014 to reflect recent legislative changes. The Anti Money Laundering Policy has also been recently updated. No further amendments are therefore considered necessary to either policy.

4.0 INVESTIGATIONS UNDERTAKEN IN 2014/15

- 4.1 Concerns and allegations of possible fraudulent or corrupt working practices are raised with Veritau via the County Council's whistleblowing arrangements or directly by management and staff. Not all investigations result in sufficient evidence being obtained to support the allegations whilst other concerns prove to be unfounded. However, where evidence is found of fraud or wrongdoing, the following factors are often relevant:
- the need for managers and staff to remain vigilant and to question unusual transactions or patterns of behaviour;
 - the need for staff to protect physical and information assets;
 - the importance of sharing information about possible fraud risks with other councils and/or with other agencies;
 - the importance of pro-active counter fraud measures to help prevent and detect fraud;
 - the need for managers and staff to report concerns to Veritau at the earliest opportunity.

4.2 **Appendix 3** provides a summary of the number and type of investigations undertaken by Veritau during 2014/15 to date. Details of the cases investigated in the previous three years are provided for comparison purposes.

5.0 **FRAUD AND LOSS RISK ASSESSMENT**

5.1 Internal Audit completes an annual Fraud and Loss Risk Assessment, designed to identify the activities and areas within the County Council, which present the greatest risk of loss. This Risk Assessment is informed by the history of events and losses suffered by the County Council together with the results of recent investigations into suspected fraud, corruption and other irregularities. National issues and trends are also taken into account. The results of the Assessment are used by:

- management to develop or strengthen existing fraud prevention and detection measures;
- Veritau to further revise the Counter Fraud Policy Framework;
- Veritau to focus future audit and counter fraud work (as set out in the Annual Audit Plan).

5.2 **Appendix 4** provides the outcomes of the 2014/15 Annual Fraud and Loss Risk Assessment exercise.

6.0 **RECOMMENDATIONS**

Members are asked to:

6.1 note the investigations carried out by Veritau in 2014/15 to date, and the outcome of the annual Fraud and Loss Risk Assessment.

6.2 approve the proposed changes to the County Council's Counter Fraud Strategy.

6.3 approve the new Fraud Prosecution and Loss Recovery Policy.

M A THOMAS
Head of Internal Audit

BACKGROUND DOCUMENTS

Relevant audit reports kept by Veritau Ltd at 50, South Parade

Report prepared and presented by Max Thomas, Head of Internal Audit.

County Hall
Northallerton

11 February 2015

NORTH YORKSHIRE COUNTY COUNCIL

COUNTER FRAUD STRATEGY

February 2015²

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1.0 INTRODUCTION

1.1 The County Council is committed to maintaining an effective Counter Fraud Strategy which is designed to minimise the risk of fraud and corruption by adopting measures which:-

- encourage fraud prevention
- pro-actively detect fraud, and
- enable cases to be investigated promptly and thoroughly.

1.2 Any fraud committed against the County Council effectively constitutes a theft of taxpayers' money. It is unlawful and deprives the County Council of resources which should be available to provide services to the public. [Fraud may also cause reputational damage to the organisation, potentially resulting in a loss of confidence amongst the public or stakeholders, and an adverse effect on staff morale.](#) By putting in place effective measures to counter the risk of fraud and corruption the County Council can reduce losses which impact on service delivery. The County Council therefore expects the highest standard of probity, propriety and conduct from Members, employees and contractors. This includes requiring those concerned to act lawfully and to comply at all times with the County Council's policies, regulations and procedures.

1.3 This Counter Fraud Strategy [follows the principles contained in the Code of Practice on Managing the Risk of Fraud and Corruption published by the Chartered Institute of Public Finance and Accountancy \(CIPFA\). The Code consists of the following five key principles:](#)

- [To acknowledge the responsibility of the governing body for countering fraud and corruption](#)
- [To identify the fraud and corruption risks](#)
- [To develop an appropriate counter fraud and corruption strategy](#)
- [To provide resources to implement the strategy](#)
- [To take action in response to fraud and corruption.](#)

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1.4 [The Strategy](#) is based on a series of interrelated policies and procedures designed to frustrate any attempted fraudulent or corrupt act. These policies and procedures cover:-

- the Counter Fraud culture of the County Council
- prevention arrangements and controls
- fraud awareness and training
- [the detection and investigation of suspected fraud and corruption](#)

- [the prosecution of individuals suspected of perpetrating fraud and the recovery of losses](#)

1.54 The County Council is subject to a high degree of external scrutiny of its affairs by a variety of bodies including:-

- Local Government Ombudsman
- The Care Quality Commission
- ~~Audit Commission~~ / [The appointed external auditor](#)
- Ofsted
- the public/service users (through the County Council's Complaints Procedures)
- Central Government Departments
- HM Revenue and Customs

1.65 The Corporate Director ~~– Strategic Resources Finance and Central Services~~ is the Section 151 officer for the County Council as defined by the Local Government Act 1972. He has an overriding and statutory responsibility to ensure that there are adequate and effective financial procedures in place. He is also responsible for ensuring that the County Council has an effective internal audit function.

1.76 For the purpose of this Strategy the term “fraud” is used broadly to include (but is not limited to):

- any acts which would fall under the definition in the Fraud Act 2006
- anything which would be deemed fraudulent in accordance with the generally held view of fraud as causing loss or making a gain at the expense of someone else by deception and dishonest means
- any act of bribery or corruption including specific offences covered by the Bribery Act 2010
- acts of theft
- any other irregularity which is detrimental to the County Council whether financial or otherwise, or by which someone gains a benefit to which they are not entitled.

1.87 Whilst the County Council has a good record in preventing fraud and corruption, cases do occur which require further investigation. In recent years such cases have included:

- The falsification of financial records by an employee, in order to divert funding to a fraudulent bank account.
- Theft from County Council service users committed by staff employed by external organisations.

- The theft of money belonging to service users whilst they are attending or resident in County Council establishments.
- The theft of cash and/or equipment from County Council establishments.
- An employee not working their contracted hours.
- An employee who benefited financially by undertaking private work gained through their employment with the County Council.
- Fraudulent invoices submitted to the County Council for payment.
- An attempt to change creditor bank account details, in order to divert payments to a fraudulent bank account.
- Misuse of the County Council's e-mail and internet facilities.

2.0 POLICY FRAMEWORK FOR PREVENTING FRAUD

2.1 This document sets out the County Council's strategic objectives in relation to combating fraud and corruption, and its overall arrangements for preventing and detecting fraud. It forms part of the County Council's overall counter-fraud Policy Framework and should be read in conjunction with the Constitution, the Contract, Financial and Property Procedure Rules, disciplinary policies, Standards of Conduct Procedure for Employees and other related policies and procedures. The Terms of Reference for the Audit Committee specifically include reference to reviewing the effectiveness of anti-fraud and corruption arrangements throughout the County Council. To support the Audit Committee in this role the Corporate Director – Strategic Resources Finance and Central Services reports on the Policy Framework and level of fraud detected within the County Council each year. This Committee, within its terms of reference, will approve any changes to the counter-fraud Policy Framework.

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2.2 The key documents comprising the counter-fraud Policy Framework are:-

(a) Counter Fraud Strategy

This document sets out the Strategy which the County Council has adopted to prevent loss due to fraud and corruption. The County Council will be both proactive in detecting suspected fraud and corruption and will deal effectively with all identified instances of loss. The aim of the Strategy is to align responsibilities and actions with identified fraud risks.

(b) Whistleblowing Policy

Whistleblowing remains the most common way that frauds are detected in large organisations such as the County Council. The policy explains how members, employees, contractors and agency staff can raise concerns about suspected fraud and other malpractice in a confidential manner. In 2006/07 this Policy was extended to allow contractors (and their staff) to raise allegations in a confidential manner.

(c) Anti-Money Laundering Policy

This Policy defines the responsibilities of officers in respect of the Proceeds of Crime Act 2002 and Money Laundering Regulations 2007. The Head of Internal Audit is the Money Laundering Reporting Officer for the County Council and the Monitoring Officer is the Deputy Money Laundering Reporting Officer. This Policy explains how any allegations of such practice will be dealt with.

(d) Prosecution and Loss Recovery Policy

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This policy determines the circumstances in which the suspected perpetrators of fraud may be prosecuted by the County Council. Before any case can be considered for prosecution, it must meet the evidential and public interest criteria contained in the Code for Crown Prosecutors, the aim of which is to ensure that fairness and consistency is achieved in the decision making process. The policy also explains the actions the County Council may take to recover any losses suffered as a result of fraud.

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(ed) Fraud and Loss Risk Assessment

This is an annual assessment which sets out the fraud risks facing the County Council based on events which have occurred, intelligence of events occurring elsewhere and issues which may represent a potential future threat. The risk assessment is also informed by the County Council's corporate and service risk registers which may highlight specific fraud risks. Its aim is to analyse the fraud ~~/loss~~ risks facing the County Council and then direct internal audit work resources to specific areas to help prevent and detect those risks occurring. ~~fraud and loss.~~ This Assessment will be reviewed by the Audit Committee on an annual basis and its results fed into the preparation of the annual Audit Plan.

3.0 KEY OFFICERS AND CORPORATE GROUPS

3.1 There are a number of officers and Corporate Groups which have a key role in protecting the County Council from fraud / loss. These include:

- the **Management Board (MB)** recognises the threat of fraud and corruption and the harm it can cause to the County Council, its aims and objectives and to its service users. The MB is therefore responsible for promoting a culture within the County Council which is resilient to the threat and which addresses~~which is responsible for addressing any~~ issues highlighted in the Fraud and Loss Assessment as areas of high risk
- the **Corporate Director – Strategic Resources**~~Finance and Central Services~~, as the Section 151 officer, has a specific legal responsibility to ensure adequate and effective anti-fraud/loss arrangements are in place
- the ~~Outposted Accountants from the Finance and Central Services Directorate are responsible for ensuring that the Section 151 role of the Corporate Director – Finance and Central Services is discharged in each Directorate. This includes identifying and reporting any matters they consider to be of concern~~

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- the **Head of Internal Audit, Veritau Ltd** (HIA) is responsible for developing the Counter Fraud Strategy of the County Council, including raising awareness of fraud risks, arranging a programme of fraud prevention activities and providing advice to managers in the design and application of anti-fraud measures, being the Money Laundering Reporting Officer. The HIA is also the Money Laundering Reporting Officer and investigating officer for any issues reported under the Whistleblowing Policy, and is responsible for publishing fraud statistics required by the Local Government Transparency Code.
- the **Corporate Governance Officers Group** is responsible for ensuring that the organisation has fraud and corruption procedures which comply with Good Governance Standards
- the **Corporate Procurement Group Board**, whose role includes improving the overall procurement arrangements of the County Council, has a responsibility for developing procedures to detect and prevent fraud in the area of contracting and procurement
- the **Head of Insurance and Risk Management** is responsible for ensuring that the potential for losses due to fraud and corruption risks are considered by managers as part of the County Council's risk management processes and mitigating actions are taken as necessary included in the creation of Risk Registers where appropriate
- the **Assistant Chief Executive (Legal and Democratic Services)** as Monitoring Officer has a statutory responsibility under the Local Government and Housing Act 1989 to ensure that the County Council, its officers and Members act lawfully in the discharge of the authority's functions.

4.0 CULTURE

4.1 The employees of the County Council can undertake an important role in identifying possible fraud and corruption and they are therefore positively encouraged required to raise-report any concerns that they may have to their line manager immediately. They can do this in the knowledge that such concerns will be treated in confidence, be properly investigated and are fairly dealt with. If necessary a route, other than a their normal line manager or Directorate finance officer may be used to raise such concerns. Examples of such routes are via:-

- a Corporate Director
- the S151 Officer (Corporate Director – Strategic Resources)
- Internal Audit Service – Veritau Ltd
- the Monitoring Officer
- 24 Hour Anti-Fraud Confidential Hotline (see below)

4.2 The County Council has two separate Whistleblowing Policies (one applies to the County Council and the other to Primary Schools) in place in accordance with the Public Interest Disclosure Act. Information leaflets have been distributed to employees and reminders of the Policy's existence will be issued at intervals. Copies of the Policy are available on the intranet and to any employee on request. The

County Council operates a hotline number for members of staff or contractors to report concerns [via this route](#). The hotline is operated by **Veritau Ltd**, the provider of the Internal Audit Service to the County Council, and every attempt is made to protect the confidentiality of callers. ~~However, it is acknowledged that the process of investigating a complaint or allegation may inevitably lead to colleagues speculating on the identity of the source of that allegation.~~ The telephone number for the hotline is 01609 760067. [Alternatively, employees may report concerns by e-mail to: counter.fraud@veritau.co.uk](#)

~~4.3 The County Council has two separate Whistleblowing Policies (one applies to the County Council and the other to Primary Schools) in place in accordance with the Public Interest Disclosure Act. Information leaflets have been distributed to employees and reminders of the Policy's existence will be issued at intervals. Copies of the Policy are available on the intranet and to any employee on request. Employees are encouraged to report concerns to management, and a number of alternative reporting mechanisms are available if an employee feels unable to raise a matter with their immediate line management. Employees may also use the hotline number if they wish.~~

~~4.4 Employees or members of the public may report concerns by either e-mail or by the completion of an e-form if they wish. The email address is: whistle.blower@northyorks.gov.uk.~~

4.35 The County Council, including Members, will be robust in dealing with [fraud or financial malpractice](#). Senior service managers are expected to deal swiftly and firmly with those who defraud, [or intend to defraud](#), the County Council or who commit corrupt acts involving the County Council.

4.46 Senior service managers are responsible for ensuring that all suspected or reported irregularities are dealt with promptly and in accordance with proper practice. They should ensure that:-

- any case of suspected or reported fraud, corruption or similar irregularity is reported at the earliest opportunity to the Corporate Director – [Strategic Resources Finance and Central Services](#) and/or to the Head of Internal Audit (Veritau)-
- any evidence that may have come into their possession is kept safely and securely (taking advice from Veritau if appropriate)
- the Head of Insurance and Risk Management is notified so that any appropriate insurance claim can be initiated and the irregularity is recorded in the County Council's Risk Registers
- the County Council's disciplinary procedures are implemented when and where appropriate.

4.57 Internal Audit (Veritau) will ensure that:-

- any case of suspected or reported fraud or corruption or other irregularity is dealt with promptly

- the Monitoring Officer will be informed as soon as Internal Audit becomes aware of any circumstances where the County Council, its officers or members may have acted unlawfully.
- a log is maintained by Veritau that records details of all concerns raised formally via whistleblowing arrangements
- all evidence is sound, properly recorded, and adequately secured
- the outcome of investigations is reported to senior service management
- all matters warranting referral to the Police are reported as soon as is practicable and that there is adequate liaison with the Police thereafter
- all investigation reports are followed up to ensure that systems weaknesses and disciplinary action identified as appropriate have been progressed as intended
- an Annual Report outlining the level of fraud and corruption within the County Council is submitted to the Audit Committee. This report will summarise the number and types of allegations being communicated to Veritau via the whistleblowing arrangements-
- the Counter Fraud Strategy, the Whistleblowing Policy, ~~and~~ the Anti-Money Laundering Policy, and the Prosecution and Loss Recovery Policy are reviewed annually and updated as required
- emerging risks to the County Council are identified on an annual basis in the Fraud and Loss Risk Assessment
- an annual review will be carried out into the significance and type of concerns being raised via whistleblowing arrangements to identify patterns and trends or indications that the purpose of the Policy is misunderstood by the County Council's staff and/or contractors-
- the promotion of staff awareness of the County Council's counter fraud and whistleblowing arrangements and the dissemination of lessons learned (subject to Data Protection constraints).

5.0 PREVENTION

Fraud Risk Management and Control Framework

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5.1 Senior service managers are responsible for the management of fraud risks in their area and should implement appropriate and robust controls and security measures to prevent or mitigate identified fraud risks. It is also their responsibility to maintain the effectiveness of these controls. Proposed changes to the control framework should therefore be carefully considered to avoid any unacceptable fraud risks arising. Senior service managers should also identify any factors that might not be fraud and corruption risks in their own right but could assist in the perpetration of fraud. For example, weak IT controls might allow a fraudster to gain unauthorised access to a system which then enables them to commit fraud.

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5.2 The County Council will also publicise its anti-fraud and corruption stance and the specific actions it takes against fraudsters.

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Members

5.34 Members are required to operate within:

- ~~the~~ the Members' Code of Conduct
- [the Localism Act 2011 and associated legislation](#)
- ~~the~~ County Council ~~Standing Orders~~ Constitution
- ~~Sections 94-96 of the Local Government Act 1972~~
- ~~Local Authorities Members Interest Regulations 1992 (SI.618)~~

5.42 These matters and other guidance are specifically brought to the attention of Members [as part of their induction in the Member's Handbook](#).

Employees

5.53 The County Council recognises that a key preventative measure in the fight against fraud and corruption is to take effective steps at the recruitment stage to establish, as far as possible, the previous record of potential employees, in terms of their propriety and integrity. In this regard, temporary and contract employees should be treated in the same manner as permanent employees.

5.64 Employee recruitment should therefore be undertaken in accordance with the Recruitment and Selection procedures laid down by the Assistant Chief Executive ([Business Support HR and OD](#)). In particular, written references covering the honesty and integrity of potential employees should be obtained before employment offers are made. Other clearances, for example, [Disclosure and Barring Service \(DBS\)](#) ~~Criminal Records Bureau~~ checks, should be obtained where necessary.

5.75 Employees are expected to abide by a ~~Code Standards~~ of Conduct ~~Procedure~~ which sets out the County Council's requirements ~~regarding on~~ personal conduct. Employees are also expected to follow any Code of Conduct related to their personal Professional Regulating body.

5.86 The County Council has in place a Disciplinary Procedure [for employees](#).

5.97 The role that employees are expected to play in the County Council's framework of internal control will feature in employee induction procedures. Induction procedures should also be used to raise awareness of the Whistleblowing arrangements and how any suspected concern may be raised.

5.108 The County Council has in place a Constitution containing Contract, Financial and Property Procedure Rules ~~that which~~ provide a framework of control. Employees must operate within these Rules at all times.

5.119 The County Council maintains a register of ~~business~~ interests for all key staff (Grade Band 12 and above, ~~or below this grade where the nature of the post warrants the registration of post holder interests~~) and there is an expectation that all relevant interests will be declared. [All employees are also required to declare offers](#)

of gifts and hospitality in accordance with the Council's Gifts and Hospitality Protocol for Employees. Any gifts and hospitality offered/declined will must be recorded, in accordance with the Protocol, in the Directorate a register and a copy of the registration also sent to the Monitoring Officer for inclusion in the central Register of Officers' Gifts and Hospitality.

Contractors

5.120 The County Council expects the highest standards of conduct from all its contractors and the staff they employ. They are consequently covered by the Council's Whistleblowing Policy. has been extended to covers all these staff, and work is ongoing with the Corporate Procurement Group to improve existing procedures for detecting fraud during the procurement process.

Joint workingCombining with other agencies

5.134 Arrangements are in place, and continue to be developed, to encourage the exchange of information and intelligence between the County Council and other public agencies on national and local fraud and corruption activity in relation to local authorities. Any such exchange of information is undertaken in accordance with the principles contained in the Data Protection Act 1998 and the Information Commissioner's Office Code of Practice on Data Sharing. Where appropriate, the County Council will also participate in national or regional initiatives designed to prevent and detect fraud, such as data matching.

5.142 These public agencies include:-

- the Police
- the Society of County Treasurers
- local, regional and national auditor networks
- the National Anti Fraud Network
- the CIPFA counter fraud centre
- Audit Commission
- The National Fraud Authority
- Office of Fair Trading
- Department for Works and Pensions
- Other local and public authorities

6.0 DETECTION AND INVESTIGATION

6.1 The County Council has in place an array of preventative systems, particularly internal controls designed to provide indicators of any fraudulent activity. These measures are generally also sufficient in themselves to deter fraud.

- 6.2 It is the responsibility of Corporate Directors/Heads of Service Units and their line managers to prevent and detect fraud and corruption. However, it is often the alertness of employees and members of the public to such indicators that enables fraud to be detected and the appropriate action to be taken.
- 6.3 Despite the best efforts of managers and auditors many frauds are discovered by chance or "tip-off" and the County Council has in place arrangements to enable such information to be properly dealt with.
- 6.4 It is a requirement of the Financial Procedure Rules that all suspected irregularities are reported to the Head of Internal Audit. Reporting is essential to the Counter Fraud Strategy and:-
- ensures the consistent treatment of information relating to suspected fraud and corruption
 - facilitates proper investigation by an experienced Internal Audit team
 - ensures the proper implementation of a fraud response plan (including proportionate measures to prevent any recurrence)
- 6.5 The County Council will also undertake targeted counter fraud activities (for example data matching exercises) to detect potential fraud and corruption. This proactive work will be carried out by Veritau as part of its annual work plan. The work will be prioritised based on the annual Fraud and Loss Risk Assessment, and where appropriate, may involve joint exercises with other agencies, including other local councils.
- 6.6 Depending on the nature and anticipated extent of the allegations, Veritau normally work closely with management, HR, and other external agencies such as the Police to ensure that all allegations and evidence are properly investigated and reported upon. All staff involved in the investigation of fraud will be appropriately trained. They will be required to comply with any relevant legislation and codes of practice. For example the Police and Criminal Evidence Act (PACE), Regulation of Investigatory Powers Act (RIPA), the Data Protection Act, and the Criminal Procedures Investigations Act.
- 6.7 The County Council's Disciplinary Procedures will be used where the outcome of the audit investigation indicates improper behaviour by a member of staff.
- 6.8 Where impropriety is discovered and there is evidence that a criminal offence may have occurred, the County Council's policy is that the Police or other relevant law enforcement agency will be informed where appropriate but that this will not delay the matter being dealt with on an internal basis. Referral to the Police or other relevant law enforcement agency is a matter for the Head of Internal Audit following consultation with the Chief Executive Officer, the Corporate Director – Strategic Resources Finance and Central Services, the Monitoring Officer and or the relevant Service Corporate Director(s) as appropriate.
- 6.9 The External Auditor also has powers to independently investigate fraud and corruption, and the County Council can use his services for this purpose, if considered appropriate.

7.0 RECOVERY OF LOSSES INCURRED

7.1 When the County Council can demonstrate that it has suffered financial loss and, where it is practical, action will be taken to recover the loss from the individual or organisation concerned. Where criminality has been proven then the Proceeds of Crime Act 2002 may be used to recover funds, where appropriate.

7.2 Other mMethods of recovery include, but are not confined to:-

- recovery of pension contributions from employees who are members of the North Yorkshire Pension Fund
- an assessment of what assets are held by an employee or third party, who has committed fraud and whether the losses incurred by the County Council can be recovered through civil proceedings~~there from~~
- bankruptcy if it is believed an individual has a poor history of paying
- if an individual remains an employee of the County Council any assessed losses can be recovered from future salary payments

7.3 Where potential criminal offences ~~may have been committed are involved~~ then cases involving employees will normally be referred to the Police or other relevant law enforcement agency. ~~However, such investigations often take time.~~ The County Council may ~~also~~ decide not to pursue matters further until ~~the such external investigations and/or enforcement action~~ Police investigation case is concluded. ~~and the matter has come to court.~~ However, such investigations often take time. If the Police decide to charge the employee, the matter can also take a long time to come to court. In such circumstances, Veritau's internal auditors will therefore work with Human Resources, within the rules of the disciplinary process, to minimise the ongoing salary payments made to ~~such~~ staff who are subject to investigation.

8.0 FRAUD AWARENESS AND TRAINING

8.1 Training, particularly of line managers, is an effective method of raising awareness of the risk of fraud. Veritau will use the outcomes from the annual fraud and loss risk assessment, and other indicators, to determine what counter fraud training may be appropriate, and arrange the delivery of ~~that~~ such training. In addition, Veritau will coordinate other measures to raise awareness including the use of newsletters, posters, the intranet and key messages. The effectiveness of training and other fraud awareness activities will be periodically evaluated. This will include the use of the companies online training package. A Guide for Managers will also be made available on the Intranet.

9.0 CONCLUSIONS

9.1 The County Council has in place a clearly defined network of systems and procedures to assist in the fight against fraud and corruption. It is determined recognised that these arrangements ~~will~~ must keep pace with any future developments in both preventative and detection techniques regarding fraudulent or corrupt activity ~~that which~~ may affect its operational activities.

9.2 To this end the County Council maintains a continuous overview of such arrangements in particular, through its Corporate Director – [Strategic Resources Finance and Central Services](#), the Financial Procedure Rules, Finance Manual and internal audit arrangements.

10.0 REVIEW OF STRATEGY

10.1 This Strategy will be reviewed every year and updated as required.

NORTH YORKSHIRE COUNTY COUNCIL

FRAUD PROSECUTION AND LOSS RECOVERY POLICY

February 2015

Section

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1 INTRODUCTION

- 1.1 The Fraud Prosecution and Loss Recovery Policy sets out the circumstances in which the County Council may instigate a prosecution in its own right and the associated decision making process. It also sets out the principles to be followed in recovering losses due to fraud. The Policy is designed to ensure that the Council acts fairly and consistently when determining what, if any, action to take against the perpetrators of fraud or corruption.
- 1.2 The Policy forms part of the Council's counter-fraud and corruption policy framework. It should be read in conjunction with the Constitution and relevant policies and procedures including the Financial Procedure Rules, the Counter Fraud Strategy, Anti-Money Laundering Policy and Procedure, Whistleblowing Policy, and the Council's disciplinary policy and procedures for employees and Member ethical framework arrangements.
- 1.3 The Policy is intended to reflect the provisions of the [Code for Crown Prosecutors](#) issued by the Director of Public Prosecutions. It should be read in conjunction with the latest version of the Code, which provides detailed guidance on the factors to consider when making decisions about prosecution.

2 SCOPE

- 2.1 The Policy covers all acts, and/or attempted acts, of fraud or corruption committed by employees, Members of the Council, or members of the public, or other organisations or their employees against the Council. The Policy is intended to be broad ranging to cover any acts, or purported acts, of fraud and corruption and any related acts which chief officers determine are appropriate to be dealt with under it. Offences which are dealt with under other specific powers and policies (for example the enforcement of trading standards regulations) are not covered by this Policy.

3 PRINCIPLES

- 3.1 As part of its measures to deter fraud the Council will take appropriate action against anyone who has committed (or has attempted to commit) a fraudulent or corrupt act, in which the Council has an interest. Those guilty of fraud or corruption must take responsibility for their actions before the courts.
- 3.2 Action to be taken will be determined on a case by case basis and every case will be considered on its own merits. This may include decisions about whether the Council or another agency (for example the Police or Department for Work and Pensions) is best placed to take investigative and/or enforcement action. Where a case is referred to another agency then the Crown Prosecution Service would normally be responsible for the prosecution of any offences. This Policy is therefore intended to cover those situations where the Council itself has investigated the suspected fraud.
- 3.3 Employees and Members who are found to have committed fraud or corruption may be prosecuted in addition to any other action that the Council may decide to take, including disciplinary proceedings in the case of employees and referral to the Monitoring Officer under standards arrangements in the case of Members. Any decision not to prosecute an employee for fraud and corruption does not preclude

remedial action being taken by the relevant Chief Officer in accordance with the Council's disciplinary procedures or other policies.

- 3.4 This Policy is designed to be consistent with Council policies on equalities. The Council will be sensitive to the circumstances of each case and the nature of the alleged fraud when considering whether to prosecute or not.
- 3.5 The Council recognises the value of good publicity in helping to deter fraud and corruption. Information about successful prosecutions or other actions will therefore be made public, so far as it is reasonable to do so, and in accordance with data protection provisions.
- 3.6 Any decision taken to prosecute an individual, or take other action, will be recorded in writing. The reason for the decision being taken will also be recorded (see section 7).
- 3.7 Irrespective of whether action is taken to prosecute the perpetrators of fraud and corruption, the Council may take whatever steps are necessary to recover any losses incurred, including taking action in the civil courts.

4 PROSECUTION

- 4.1 Not every suspected offence 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, including the financial circumstances of the individual concerned, mitigating circumstances and other public interest criteria. All cases will be looked at individually and considered on their own merit.
- 4.2 To consider a case for prosecution the Council must be satisfied that two tests have been passed. Firstly, there must be sufficient evidence. This is called the evidential test. Secondly, it must be in the public interest to proceed – the public interest test¹.
- 4.3 To pass the evidential test, there must be a realistic prospect of conviction based on the available evidence (that is, there must be sufficient admissible, reliable and credible evidence to secure a conviction).
- 4.4 To pass the public interest test, the Council will need to balance, carefully and fairly, the seriousness of the offence and other public interest criteria. The criteria include²:
- the level of culpability of the suspect (for example how deliberate was the crime)
 - who is affected by the offence and the level of harm caused or potential harm
 - the impact of prosecution on the suspect (for example on their future prospects)
 - the impact of the crime on the community
 - whether prosecution is proportionate (for example given the cost and likely outcome).

¹ Decisions will be made by the Corporate Director Strategic Resources in consultation with the Assistant Chief Executive (Legal and Democratic Services) and other relevant officers, as appropriate – see 7.1.

² the Code for Crown Prosecutors contains further guidance.

4.5 Factors favouring prosecution include the following.

- If the actual or potential loss to the Council was substantial.
- The fraud has continued over a long period of time.
- The fraud was calculated and deliberate.
- The suspect has previously committed fraud against the Council (even if prosecution did not result) and/or there has been a history of fraudulent activity.
- The suspect was in a position of trust (for example, a Council employee).
- There has been an abuse of position or privilege.
- The suspect has declined the offer of a caution or other sanction.
- There are grounds for believing the offence is likely to be repeated.
- The Council needs to take action to deter fraud in an area of activity.

4.6 Factors against prosecution include the following.

- The court is likely to impose a nominal penalty.
- The seriousness and the consequences of the offending can be appropriately dealt with by other means.
- The offence was committed as a result of a genuine mistake or misunderstanding.
- The loss or harm was minor, was a one-off occurrence and was the result of misjudgement.
- Undue delay between the offence taking place and/or being detected and the date of the trial (though this depends, for example, on the seriousness of the case, whether the delay was caused by the suspect, if the complexity of the case required a long investigation, or if the offence has only recently come to light).
- Prosecution is likely to have an adverse effect on the suspects physical or mental health.
- The suspect has put right the loss or harm which was caused.

4.7 The following factors (4.8 – 4.11) will also be taken into account when determining whether to prosecute.

Voluntary Disclosure

4.8 A voluntary disclosure occurs when a suspect voluntarily reveals fraud about which the Council is otherwise unaware. If this happens, then the fraud will be investigated but the suspect 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 suspect knows the Council is already undertaking an investigation in this area and/or other counter fraud activity)
- the suspect only admits the facts when challenged or questioned
- the offence comes to the Council's attention other than through a direct admission to the offence (for example if it comes to light on submission of information for Council services or through a third party).

Ill Health or Disability

- 4.9 Where the suspect is suffering from prolonged ill health or has a serious disability or other incapacity then the suspect will not normally be prosecuted. Evidence from a GP or other doctor will be requested if the condition is claimed to exist, unless it is obvious to the investigator. It is also necessary to prove that the person understood the circumstances and was aware that their action was wrong. This may not be possible where, for instance, the suspect has serious learning difficulties. However, simple ignorance of the law will not prevent prosecution.

Social Factors

- 4.10 A wide range of social factors may make a prosecution undesirable.

Exceptional Circumstances

- 4.11 In certain exceptional circumstances the Council may decide not to prosecute a suspect. Such circumstances include:
- an inability to complete the investigation within a reasonable period of time
 - the prosecution would not be in the interests of the Council
 - circumstances beyond the control of the Council make a prosecution unattainable.

5 ALTERNATIVES TO PROSECUTION

- 5.1 Where evidence is sufficient for prosecution, but there are factors which tend to indicate that prosecution may not be in the public's or Council's interest, then the Council may consider the offer of a sanction instead. The sanctions available will depend on the nature of the offence but may include, for example, fines or denial of service³. Decisions will be made on a case by case basis taking into account the specific circumstances and sanctions available.
- 5.2 In addition, or as an alternative, the Council may also give a simple caution. A simple caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. A simple caution is a serious matter and all such cautions will be recorded by the Council. Where a person offends again in the future then any previous cautions will influence the decision on whether to prosecute or not. A simple caution will normally be offered where all of the following apply.
- There is sufficient evidence to justify instituting criminal proceedings.
 - The person has admitted the offence.
 - It was a first offence.
- 5.3 Only in very exceptional circumstances will a further caution be offered for a second or subsequent offence of the same nature.
- 5.4 If a caution is offered but not accepted then the Council will usually consider the case for prosecution. In such cases the court will be informed that the defendant was offered a simple sanction but declined to accept it.

³ The nature of the sanctions available will depend on the regulations governing the service area where the fraud has occurred.

6 RECOVERY

- 6.1 Alongside any criminal proceedings, the Council will also take all reasonable measures to recover any losses arising from fraud. Recovery may be undertaken if there is sufficient evidence to demonstrate a loss/debt and irrespective of whether there is sufficient evidence to prove a criminal case.
- 6.2 Methods of recovery may include (but are not limited to):
- recovery of pension contributions from employees or ex-employees who are members of the North Yorkshire Pension Fund
 - civil action through the courts
 - bankruptcy if it is believed an individual has a poor history of paying debts
 - recovery of losses through salary payments if an individual remains an employee of the Council.
- 6.3 Where the assessed loss is to be pursued as a debt, then an invoice will be raised. Recovery will be undertaken in accordance with the Council's normal policy and procedures for recovering debts.
- 6.4 The Council may use powers under the Proceeds of Crime Act 2002 to apply to the courts for restraint and/or confiscation of identified assets where appropriate.

7 RESPONSIBILITIES

- 7.1 During the course of fraud investigation cases, recommendations about prosecution or other appropriate courses of action will be made to the Council by Veritau (the Council's counter fraud service provider). Decisions about the action to be taken in response to these recommendations will be made by the Corporate Director Strategic Resources in consultation with the Assistant Chief Executive (Legal and Democratic Services) and other relevant chief officers, as appropriate. Veritau will maintain records of decisions.
- 7.2 Cautions given under this Policy will be administered by a senior Veritau officer, on behalf of the Council. Veritau will also maintain records of cautions.