

NORTH YORKSHIRE COUNTY COUNCIL

AUDIT COMMITTEE

25 OCTOBER 2021

COUNTER FRAUD POLICY FRAMEWORK

Report of the Head of Internal Audit

1.0 PURPOSE OF THE REPORT

- 1.1 To consider the outcome the Annual Fraud Risk Assessment
- 1.2 To approve the new Counter Fraud Strategy action plan and to note the results of the annual fraud risk assessment
- 1.3 To consider and comment on the draft revised Counter Fraud and Corruption, and Whistleblowing policies

2.0 BACKGROUND

- 2.1 To protect public funds it is important for the County Council to have a framework in place to prevent, detect and deter fraud, and to recover any losses that may occur. A strong anti-fraud framework that minimises loss through fraud and error will ensure that the Council has more resources available to focus on providing services to residents. This report provides Members with details of the impact of fraud nationally and in particular the risks facing local government.
- 2.2 Fighting Fraud and Corruption Locally is the national counter fraud strategy for local government. The strategy is refreshed periodically and has the support of counter fraud professionals, the LGA, and HM Government. The most recent iteration, Fighting Fraud and Corruption Locally – A Strategy for the 2020s was published in April 2020. The Strategy identifies five areas for local authorities to focus on:
 - **Govern** – having robust arrangements and executive support to ensure counter fraud measures are embedded
 - **Acknowledge** – understanding fraud risks and committing resources to tackle fraud
 - **Prevent** – developing an anti-fraud culture, maintaining controls and using information and technology to help prevent and detect fraud
 - **Pursue** – investigating fraud and recovering losses
 - **Protect** – protecting individuals from becoming victims of fraud, and protecting against the harm that fraud can do to the community (including from serious and organised criminals)
- 2.3 Veritau completes an annual Fraud Risk Assessment, designed to identify the areas of fraud that present the greatest risk to the County Council. The risk assessment is informed by national and regional reports of fraud affecting local authorities as well

as the fraud reported to and investigated by the counter fraud team. The risk assessment helps to prioritise counter fraud work within the County Council.

3.0 **POLICY FRAMEWORK**

- 3.1 The counter fraud policy framework includes the Counter Fraud Strategy, the Counter Fraud and Corruption Policy, the Whistleblowing Policy, and the Anti Money Laundering (AML) Policy. The policy framework is reviewed annually and updated to reflect national guidance and best practice.
- 3.2 This year the Counter Fraud and Corruption, and Whistleblowing policies have been subject to more detailed review and revision. The revised policies are still subject to consultation with HR and Unison so at this stage we are asking the committee to provide comments prior to them being approved. Our intention is to present the final versions to the next meeting of this committee.
- 3.3 The Counter Fraud Strategy action plan and the annual Fraud Risk Assessment have also been updated.
- 3.4 The counter fraud policy framework report is attached as **appendix 1**. The report includes the:
- 2021/22 fraud risk assessment [**annex 1**]
 - updated counter fraud strategy action plan [**annex 2**]
 - draft counter fraud and corruption policy (and associated fraud and corruption prosecution and anti-bribery policies) [**annex 3**]
 - draft whistleblowing policy (and associated guidance for managers) [**annex 4**]

4.0 **RECOMMENDATIONS**

Members are asked to:

- 4.1 note the results of the annual fraud risk assessment
- 4.2 approve the updated counter fraud strategy action plan
- 4.3 comment on the draft revised Counter Fraud and Corruption and Whistleblowing policies

M A THOMAS
Head of Internal Audit

BACKGROUND DOCUMENTS

Relevant audit and fraud reports kept by Veritau Ltd

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

County Hall

Northallerton

7 October 2021



COUNTER FRAUD FRAMEWORK REPORT

25 October 2021



North Yorkshire
County Council

Appendix 1

Assistant Director - Corporate Fraud:
Jonathan Dodsworth

Head of Internal Audit: Max Thomas



INTRODUCTION

- 1 Fraud is a significant risk to the UK public sector. Losses to local government due to fraud results in less funding for public services. It is estimated that the cost of fraud against local authorities is as much as £7.8 billion annually.¹ An estimated 40% of all crime committed in the UK is categorised as fraud.²
- 2 To effectively combat fraud the Council needs to have a counter fraud framework that helps prevent, detect and deter fraud. Counter fraud work also needs to develop at least as quickly as the techniques used by fraudsters.



NATIONAL PICTURE

- 3 The Covid-19 pandemic has created opportunities for fraudsters to attack public sector organisations, private businesses, and members of the public. In March 2021, the National Audit Office (NAO) reported a significant rise in the risk fraud and error due Covid-19.³
- 4 Cybercrime remains a significant risk to all organisations, public and private. High profile attacks across the UK and worldwide have continued throughout the pandemic, and cybercriminals have shown disregard for the effects of their actions. An attack in the United States in May 2021 stemmed from a single compromised password and account, and resulted in the company involved paying a ransom of over £3 million.
- 5 Supply chain attacks have also become prevalent in the last 12 months. These attacks occur when a software or IT supplier is targeted and criminals use the knowledge they gain to attack the end users of the company's software. Several high profile attacks in 2020 resulted in governments and businesses in the United States, the UK, and Europe being affected. This included unauthorised access to email accounts and confidential documents, leading to data breaches. It's essential that oversight of organisational ICT infrastructure is maintained to ensure controls remain up to date and able to reduce the impact of emerging threats.



FRAUD RISK ASSESSMENT

- 6 Veritau completes an annual Fraud Risk Assessment, designed to identify the areas of fraud that present the greatest risk to the County Council. The risk assessment is informed by national and regional reports of fraud affecting local authorities as well as the fraud reported to and investigated by the counter fraud team. The results of the assessment are used by:
 - management to develop or strengthen existing fraud prevention and detection measures;

¹ Annual Fraud Indicator 2017, Crowe Clark Whitehill

² Public Accounts Committee Report – Fraud and Error, June 2021, HM Government

³ Economic Crime Plan 2019-22, HM Government

- Veritau to further revise the Counter Fraud Policy Framework;
 - Veritau to focus future audit and counter fraud work.
- 7 The 2021/22 Fraud Risk Assessment is included at **annex 1**. The assessment identifies the following areas as representing the highest risk for the County Council:
- Adult Social Care fraud
 - Creditor fraud
 - Cybercrime
 - Procurement fraud
- 8 The threat of theft of assets has been downgraded this year as the Covid-19 pandemic has eased and there is a greater presence within Council offices and buildings.
- 9 The fraud risk assessment will be kept under review so that any significant new or emerging risks are addressed.



COUNTER FRAUD FRAMEWORK

- 10 The Council has a robust counter fraud framework which includes a counter fraud strategy and associated action plan, a counter fraud policy, a fraud risk assessment, and a number of related policies (e.g. whistleblowing). A review of the framework is conducted annually.
- 11 A new counter fraud and corruption strategy was adopted last year. The strategy sets out the Council's aims for counter fraud work over the next few years. The strategy also includes actions needed to maintain and develop counter fraud arrangements at the Council. The associated strategy action plan is reviewed and updated annually. This year's update is included at **annex 2**. It details progress made against last year's plan and introduces new priorities for the counter fraud team in 2021/22. New objectives this year include:
- Raising awareness of cyber security issues with members of staff;
 - Promoting the Council's counter fraud framework, raising issues internally relating to bribery, money laundering, and whistleblowing.
- 12 The review determined that the Council's counter fraud and corruption policy, which was last amended in 2015, should be updated. The refreshed policy, included at **annex 3**, has been updated to meet current best practice and latest guidance from the Attorney General.
- 13 The review also found that the Council's whistleblowing policy, adopted in 2016, should also be updated. A revised policy, included at **annex 4**, has been updated to meet best practice. This includes the Government's Whistleblowing: Guidance for Employers and Code of Practice and the National Audit Office's Assessment Criteria for Whistleblowing Policies.

- 14 The revised policy and related guidance builds on the aims, principles and information set out in the current policy. Areas updated include the following:
- Further clarification for employees of the types of issues that may be reported and the protections the law affords them.
 - The introduction of more detailed guidance for managers on how to respond when a whistleblowing report is made to them.
- 15 Once the updated policy has been approved an awareness campaign will be undertaken for both members of staff and managers. Human Resources and Veritau will continue to provide ongoing support and advice to all parties. Veritau will regularly report relevant whistleblowing activities to the Chief Executive, Corporate Director – Strategic Resources, and the Monitoring Officer. Veritau will also report annually to the Audit Committee, detailing numbers of whistleblowing reports, significant trends, and further details of any reports that lead to significant issues being uncovered.

ANNEX 1: Fraud Risk Assessment (October 2021)

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
<p>Adult Social Care Fraud</p>	<p>Fraud within the adult social care system is an area of concern for the Council in terms of loss to the authority and the impact on individuals affected. CIPFA reported a 104% increase in the value of social care fraud detected in 2019 compared to the previous year. The average loss in individual cases of fraud detected in this area is £29k.</p> <p>Losses can occur through deprivation or non-declaration of capital which can involve the transfer or disguise of property in order to avoid paying for residential or domestic care provision. Further fraud occurs through the misuse of the Direct Payment scheme, where monies allocated to meet a customer's assessed needs are not then used to procure these services. Residential homes could also continue to claim for customers who are no longer in residence (e.g. after they pass away).</p>	<p>Applications for care funding are carefully assessed to ensure that recipients meet the eligibility criteria and that any financial contribution for care by the customer is correctly calculated.</p> <p>A range of monitoring and verification controls are operated by the service. This includes requiring customers in receipt of Direct Payments to have a separate bank account for managing these funds and complying with monitoring procedures to verify spending.</p>	<p>High</p>	<p>Counter Fraud Team (CFT) to deliver a rolling programme of fraud awareness training with staff in safeguarding, financial assessments and with relevant legal services team members.</p> <p>Periodic reviews of the control environment through internal audits will further assist the Council in ensuring robust processes are in place.</p> <p>Concerns of fraud should be reported to the CFT who can determine if criminal investigation would be effective.</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
Creditor Fraud	<p>A range of frauds can be committed against the Council as a result of publically available creditor payment data. Criminals undertaking these types of fraud are often found to be operating from overseas.</p> <p>The most common issue is mandate fraud where fraudsters impersonate legitimate suppliers and attempt to divert payments by requesting changes in bank details. Other types of fraud in this area include whaling, where senior members of the Council are targeted and impersonated in order to obtain fraudulent payments.</p> <p>In recent years there have been increased instances nationally of hackers gaining direct access to email accounts of suppliers and then attempting to perpetrate mandate frauds. These attempts are much more difficult to detect and prevent.</p> <p>With increased remote working due to Covid-19, there have been increased opportunities for</p>	<p>The Council has a number of controls in place to identify fraudulent attempts to divert payments from genuine suppliers and to validate any requests to change supplier details.</p> <p>Internal Audit undertake periodic reviews of the controls.</p>	High	<p>The CFT undertake work to raise staff awareness of these types of frauds. Increased awareness provides greater chances of stopping fraudulent attempts before losses occur.</p> <p>All instances of whaling fraud reported to CFT will be reported to the relevant agencies, such as the National Cyber Security Centre, as well as directly to the email provider from where the false emails originated from.</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
	<p>fraudsters to impersonate budget holders or suppliers in electronic communications to divert funds.</p>			
Cybercrime	<p>Cybercrime is a constantly evolving area where criminals are continually refining their techniques in order to overcome controls put in place to protect organisations, to obtain unauthorised access and information, and to frustrate systems.</p> <p>Types of cybercrime experienced by local authorities in recent years include ransomware, phishing, whaling, hacking, and denial of service attacks. Attacks can lead to loss of funds, systems becoming unavailable to use impacting service delivery, and loss of data.</p> <p>There have been a number of high profile cyber-attacks on public and private sector organisations in recent years. Attacks stemming from the hacking of software or IT service providers have become more prevalent. These are known as supply chain attacks and are</p>	<p>The Council has a skilled ICT department which helps mitigate the threat of cybercrime.</p> <p>The Council participates in a regional group with other local authorities to share best practice and information about emerging threats.</p>	High	<p>Raising awareness with staff can be crucial in helping to prevent successful cyberattacks. Any counter fraud training delivered will reinforce cybersecurity messages to members of staff.</p> <p>An awareness campaign for staff is planned for cybersecurity awareness month in October.</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
	used by hackers to target the end users of the software created by the organisations targeted.			
Procurement Fraud	<p>Procurement fraud has been perceived as a high risk by local authorities in the CIPFA fraud tracker for a number of years.</p> <p>Procurement fraud, by its nature, is difficult to detect but can result in large scale loss of public funds over long periods of time. The Competition and Markets Authority (CMA) estimates that having a cartel within a supply chain can raise prices by 30% or more.</p> <p>CIPFA reported losses of £1.5m in 2019/20 for local authorities, due to procurement fraud. It found that 8% of fraud detected in this area involved 'insider fraud'.</p>	<p>The Council has established Contract Procedure Rules. The rules are reviewed regularly and ensure the requirement for a competitive process (where required) through an e-tender system. A team of procurement professionals provide guidance and advice.</p> <p>Contract monitoring is implemented to help detect and deter fraud.</p>	High	<p>Continued vigilance by relevant staff is key to identifying and tackling procurement fraud. The CFT will continue to provide training to raise awareness of fraud risks in this area.</p> <p>CFT and Internal Audit will monitor guidance on fraud detection issued by the Competition and Markets Authority and other relevant bodies.</p> <p>Any suspected procurement fraud should be reported to the CFT for further investigation.</p>
Internal Frauds	There are a range of potential employee frauds including falsifying timesheets and expense claims, abusing flexitime or annual leave systems, undertaking	The Council has a whistleblowing policy through which concerns can be raised. The Council has an anti-bribery policy that asks staff and members to report concerns through	Medium	The CFT will investigate any suspicions of corruption while internal audit ensure that appropriate checks and balances are in place to help

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
	<p>alternative work while sick, or working for a third party on Council time. Some staff have access to equipment and material that may be misused for private purposes.</p> <p>With increased staff working remotely, working hours and associated claims may be more difficult to monitor. It is essential that these issues are tackled as they can cause reputational damage and affect staff morale and performance.</p> <p>Payroll related fraud can involve the setting up of 'ghost' employees in order to divert salary payments to others.</p> <p>Corruption and bribery is a significant risk to all public sector organisations, however, only low levels have ever been detected.</p>	<p>the whistleblowing policy.</p> <p>Controls are in place surrounding flexitime, annual leave and sickness absence.</p> <p>Participation in the National Fraud Initiative helps the Council identify potential cases of internal fraud.</p>		<p>prevent it.</p>
Recruitment Fraud	<p>Recruitment fraud can affect all organisations. Applicants can provide false or misleading information in order to gain employment such as bogus employment history and</p>	<p>The Council has controls in place to mitigate the risk of fraud in this area. DBS checks are undertaken where necessary.</p>	Medium	<p>Where there is a suspicion that someone has provided false information to gain employment, the CFT will be consulted on possible criminal action in tandem with any</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
	qualifications or providing false identification documents to demonstrate the right to work in the UK.	Additional checks are made on applications for roles involving children and vulnerable adults.		disciplinary action that may be taken.
Theft of Assets	<p>The theft of assets can cause financial loss and reputational damage. It can also negatively impact on employee morale and disrupt the delivery of services. The Council owns large numbers of physical items, such as IT equipment, vehicles and tools.</p> <p>The reduction of staff at Council premises during the Covid-19 outbreak increased the risk of theft. This risk has reduced significantly as restrictions have lifted and staff have begun to return to offices.</p>	<p>Specific registers of physical assets (e.g. capital items, property and ICT equipment) are maintained.</p> <p>The Council's whistleblowing arrangements provide an outlet for reporting concerns of theft.</p>	Medium (downgraded from High)	Members of staff should also be vigilant and report all possible thefts promptly to the Police and CFT.
Blue Badge Fraud	<p>Blue Badge fraud doesn't carry a financial risk to the authority but can affect the quality of life for disabled residents and visitors. There is a risk of reputational damage to the Council if abuse of this scheme is not addressed.</p> <p>People using a Blue Badge that</p>	Measures are already in place to control the legitimate issue of blue badges. The Council participates in the National Fraud Initiative which flags badges issued to deceased users, and badge holders who have obtained a blue badge from more than one authority, enabling their recovery to prevent misuse.	Low	n/a

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
	<p>does not belong to them and without the badge holder present are acting contrary to the law. They may also incorrectly be exempted from parking charges or pay reduced fees, in addition to being able to park in restricted areas including on many double yellow lines.</p>			
Fraudulent Insurance Claims	<p>The Council may receive exaggerated or fabricated insurance claims. CIPFA's 2019/20 report estimated that insurance fraud cost local government £3.9m.</p>	<p>The Council's Insurance team report suspicious claims to Veritau and/or the Council's insurers. The Council's insurers have established fraud detection and investigation systems.</p>	Low	n/a

ANNEX 2: COUNTER FRAUD STRATEGY ACTION PLAN

Veritau has responsibility for maintaining, reviewing, and strengthening counter fraud arrangements at the Council. This includes an annual review of the Council’s counter fraud policy framework.

Ongoing counter fraud work is targeted towards the high risk fraud areas (adult social care, creditors, cybercrime and procurement). This work includes both proactive activities (for example conducting a rolling programme of fraud awareness training for officers, sharing fraud alerts and undertaking data matching exercises) and reactive work (for example, investigations, prosecutions and fraud loss recovery).

A number of new developments and initiatives are also planned as follows:

New one off and developmental activity:

Ref	Action Required	Target Date	Responsibility	Notes
1	Raise awareness of cyber security issues and promote good practice.	October 2021	Veritau / Communications Team	Raise awareness of cyber security issues with all staff during cyber security awareness month in October 2021.
2	Refresh the Council’s counter fraud and whistleblowing policies.	October 2021	Veritau / Human Resources	The Council’s policies relating to Counter Fraud and Whistleblowing need to updated to reflect latest guidance and best practice.
3	Promote the Council’s counter fraud policy framework.	June 2022	Veritau / Communications Team	Raise awareness internally of issues such bribery, money laundering, and whistleblowing.
4	Explore the use of new techniques to enhance fraud and error detection in the adult social care	August 2022	Veritau / Adult Social Care Services	Use of new tools could help the Council to complete more accurate financial assessments and reduce the risk of fraud and error.

Ref	Action Required	Target Date	Responsibility	Notes
	financial assessment process.			
5	Increase sharing of counter fraud intelligence to enhance fraud prevention.	March 2022	Veritau	Veritau to promote sharing of counter fraud intelligence from regional and national forums.

Completed activities:

Ref	Action Required	Responsibility	Update
1	Prepare a refreshed counter fraud strategy which acknowledges fraud risks facing the Council and sets overall counter fraud aims. The strategy should set out actions required for developing counter fraud arrangements.	Corporate Director – Strategic Resources / Veritau	In October 2020, the Council adopted a new Counter Fraud Strategy for 2020-2024 with an associated action plan.
2	Develop a communication strategy to publicise counter fraud and corruption news internally.	Veritau / Communications Team	A schedule of fraud awareness is planned for 2021/22 (see action points 2 & 3 in New Activity). This content will be rolled out annually in future.
3	Participate in Fighting Fraud and Corruption Locally (FFCL) working groups.	Veritau	Veritau are organising and participating in an FFCL working group with other councils across the country looking at the issue of Adult Social Care fraud.

Ref	Action Required	Responsibility	Update
4	Undertake specific fraud awareness training for priority service areas identified through the fraud risk assessment.	Veritau	Over the past 12 months Veritau have delivered fraud awareness training to Human Resources, Health and Adult Services, and staff working within schools.

ANNEX 3: Counter Fraud and Corruption Policy



COUNTER FRAUD AND CORRUPTION POLICY

1 Introduction

- 1.1 All organisations are at increasing risk of fraud and corruption. Some commentators estimate that annual fraud losses to local government in the UK could be £7.8 billion. It is therefore a risk that the Council cannot and should not ignore.
- 1.2 Any fraud committed against the Council effectively constitutes a theft of taxpayer's money. It is unlawful and deprives the Council of resources which should be available to provide services to the public. By putting in place effective measures to counter the risk of fraud and corruption the Council can reduce losses which impact on service delivery as a contribution to the achievement of overall Council priorities.
- 1.3 This document sets out the Council's policy in relation to fraud and corruption perpetrated against it, and its overall arrangements for preventing and detecting fraud. It includes the Fraud and Corruption Prosecution Policy contained in **annex A** and an Anti-Bribery Policy in **annex B**. It forms part of the Council's overall policy framework for combating fraud and corruption and should be read in conjunction with the counter fraud and corruption strategy, the constitution, financial regulations, contract procedure rules, the whistleblowing policy, anti money laundering policy, and disciplinary procedures.

2 Definitions and Scope

- 2.1 For the purpose of this policy, the term fraud is used broadly to encompass:
- acts which would fall under the definition in the Fraud Act (2006)
 - anything which may be deemed fraudulent in accordance with the generally held view of fraud as causing loss or making a gain at the expense of someone by deception and dishonest means
 - any offences which fall under the Council Tax Reduction Schemes Regulations (2013) and the Prevention of Social Housing Fraud Act (2013)
 - any act of bribery or corruption including specific offences covered by the Bribery Act (2010)
 - acts of theft
 - any other irregularity which is to the detriment of the Council whether financially or otherwise, or by which someone gains benefit they are not entitled to.
- 2.2 This policy does not cover fraud or corruption against third parties, except where there may be an impact on the service provided by the Council. In addition, it does not cover other acts – for example offences involving

violence - which may affect the Council, and which should in most cases be reported directly to the police.

3 Principles

- 3.1 The Council will not tolerate fraud or corruption in the administration of its responsibilities, whether perpetrated by members, officers, customers of its services, third party organisations contracting with it to provide goods and/or services, or other agencies with which it has any business dealings. There is a basic expectation that members, employees, and contractors' staff will act with integrity and with due regard to matters of probity and propriety, the requirement to act lawfully and comply with all rules, procedures and practices set out in legislation, the constitution, the Council's policy framework, and all relevant professional and other codes of practice.
- 3.2 The Council will seek to assess its exposure to risks of fraud and corruption. It will prioritise resources available to prevent and deter fraud in order to minimise this risk.
- 3.3 The Council will consider any allegation or suspicion of fraud seriously, from whatever source, and if appropriate will undertake an investigation to confirm whether fraud has occurred and determine the appropriate outcome. Any investigation will be proportionate. The Council may refer any incident of suspected fraud to the police or other agencies for investigation, if appropriate.
- 3.4 To act as a deterrent, the Council will take action in all cases where fraud (or an attempt to commit fraud) is proved, in proportion to the act committed. This may include prosecution, application of internal disciplinary procedures, or any other action deemed appropriate to the offence (for example referral to a professional body). Prosecution decisions will be made in accordance with the Fraud and Corruption Prosecution Policy (**annex A**).
- 3.5 As a further deterrent, and to minimise losses, the Council will attempt to recover any losses incurred through civil or legal action. In addition, the Council will seek to apply any appropriate fines or penalties, and recover any costs incurred in investigating and prosecuting cases.
- 3.6 The Council will not tolerate any form of bribery to or by employees, members, or suppliers. Any act of bribery puts the council at risk of committing a criminal offence. Please see the Council's Anti-Bribery Policy which is contained in **annex B**.

4 Responsibilities

- 4.1 Overall responsibility for counter fraud arrangements rests with the Council's Corporate Director – Strategic Resources (Section 151 Officer) on behalf of the Council. The Corporate Director – Strategic Resources has a professional responsibility for ensuring the Council has appropriate measures for the prevention and detection of fraud and corruption, which are reflected in legislation.
- 4.2 The Audit Committee has responsibility to consider the effectiveness of counter fraud and anti-corruption arrangements at the Council. This includes monitoring of Council policies on raising concerns at work and counter fraud and corruption.
- 4.3 Management Board (MB) are collectively responsible for ensuring that the Council has effective counter fraud and corruption procedures embedded across the organisation that comply with best practice and good governance standards and requirements.
- 4.4 Veritau (who provide internal audit and counter fraud services to the Council) is responsible for reviewing the Council's counter fraud and corruption policies on a regular basis and recommending any required changes to those policies. In addition, Veritau leads on fraud prevention and detection issues for the Council and is responsible for investigating suspected cases of fraud or corruption. The internal audit team carries out audit work to ensure that systems of control are operating effectively, which contributes to the reduction in opportunities for committing fraud. The Head of Internal Audit is required to report their professional opinion on the Council's control environment to members of the Audit Committee on an annual basis in accordance with proper practice.
- 4.5 All senior managers have a responsibility for preventing and detecting fraud within their service areas. This includes maintenance of effective systems of internal control and ensuring that any weaknesses identified through the work of internal audit or by other means are addressed promptly.
- 4.6 The Head of Internal Audit is the Council's nominated officer for the purposes of the Money Laundering Regulations (2007), and is responsible for reporting any issues referred to them in this capacity.
- 4.7 All staff have a general responsibility to be aware of the possibility of fraud and corruption, and to report any suspicions that they may have to Veritau. Where appropriate, staff may use the Whistleblowing Policy to raise concerns anonymously.

- 4.8 Officers within human resources have a responsibility to support service departments in undertaking any necessary pre-disciplinary investigation and disciplinary process.

5 Overall Counter Fraud Arrangements

Introduction

- 5.1 The purpose of this section is to set out the Council's overall framework for countering the risk of fraud and corruption. While the Council aims to follow best practice in relation to counter fraud activity¹, it recognises that new and emerging fraud risks will require a dynamic approach to fraud prevention and detection.

Measurement

- 5.2 The Council will assess the potential risks and losses due to fraud and corruption, will use these to prioritise counter fraud activity, and will review the resources available to counter those risks. The review will include an assessment of actual levels of fraud² and the effectiveness of counter fraud activity in reducing losses. The outcome of this review will be reported to the Audit Committee on an annual basis as part of the audit and fraud planning cycle.

Culture

- 5.3 The Council will promote a culture whereby all staff, members, service users, and contractors are aware that fraud or corruption in any form is unacceptable. To do this, it will:
- ensure that there are clear arrangements in place for reporting suspicions about potential fraud or corruption, whether that be by staff, council members, partners, stakeholders, contractors or members of the public;
 - investigate reported suspicions and where evidence of fraud or corruption is found will prosecute where appropriate and take any other action necessary in accordance with the financial regulations, contract procedure rules, fraud and corruption prosecution policy, disciplinary procedures, code of conduct for members, or any relevant legislation or guidance;

¹ For example the CIPFA Code of Practice on Managing the Risk of Fraud and Corruption.

² All suspected fraud should be reported to Veritau. A record of all such information will be maintained on a confidential basis.

- ensure that the consequences of committing fraud and/or partaking in corrupt practices are widely publicised.

Prevention and Detection

Controls

- 5.4 As part of its ongoing operating procedures, the Council seeks to ensure that proper systems of internal control are in place. This includes controls to directly prevent and detect fraud, such as separation of duties and management review, along with other procedures such as vetting as part of recruitment processes and systems for declaration of interests and gifts and hospitality. The effectiveness of systems of control are monitored and a formal report is made as part of the process for preparing the Annual Governance Statement. The Council maintains a system of internal audit to provide independent review of control systems on an ongoing basis, in accordance with a risk assessment.
- 5.5 Services will be encouraged to consider the risk of fraud as part of the Council's risk management process. Any information on risks identified will be used to inform the annual review of counter fraud activity.

Proactive Work

- 5.6 The Council will carry out targeted project work (for example data matching exercises) to identify fraud and corruption in known high risk areas. This work will be carried out by Veritau as part of its annual work plan. Resources will be prioritised based on a risk assessment as part of the annual review of counter fraud activity. Work may include joint exercises with other agencies, including other councils.
- 5.7 The Council will take part in projects led by other agencies such as the Cabinet Office to identify potential fraud e.g. the National Fraud Initiative. Resources will be allocated to follow up high risk data matches, and will include support through the internal audit and counter fraud teams to review potential control issues and suspected fraud. Veritau will work with service departments to ensure that they are aware of the need to include notices to service users stating that any data held may be subject to use for data matching purposes.

Relationships

- 5.8 The Council has established relationships with a number of other agencies. It will continue to support these relationships and develop new ones to further the prevention and detection of fraud. Organisations which the Council will work with include:
- the police
 - the courts

- the Cabinet Office
- the Department for Levelling Up, Housing, and Communities
- the Department for Works and Pensions
- other councils
- registered social landlords
- community groups

5.9 Veritau will work with Council departments to ensure that systems for reporting and investigating suspected fraud and corruption are robust.

Fraud Awareness Training

5.10 As part of its annual work plan, Veritau will provide targeted fraud awareness training to specific groups of staff, based on its annual risk assessment.

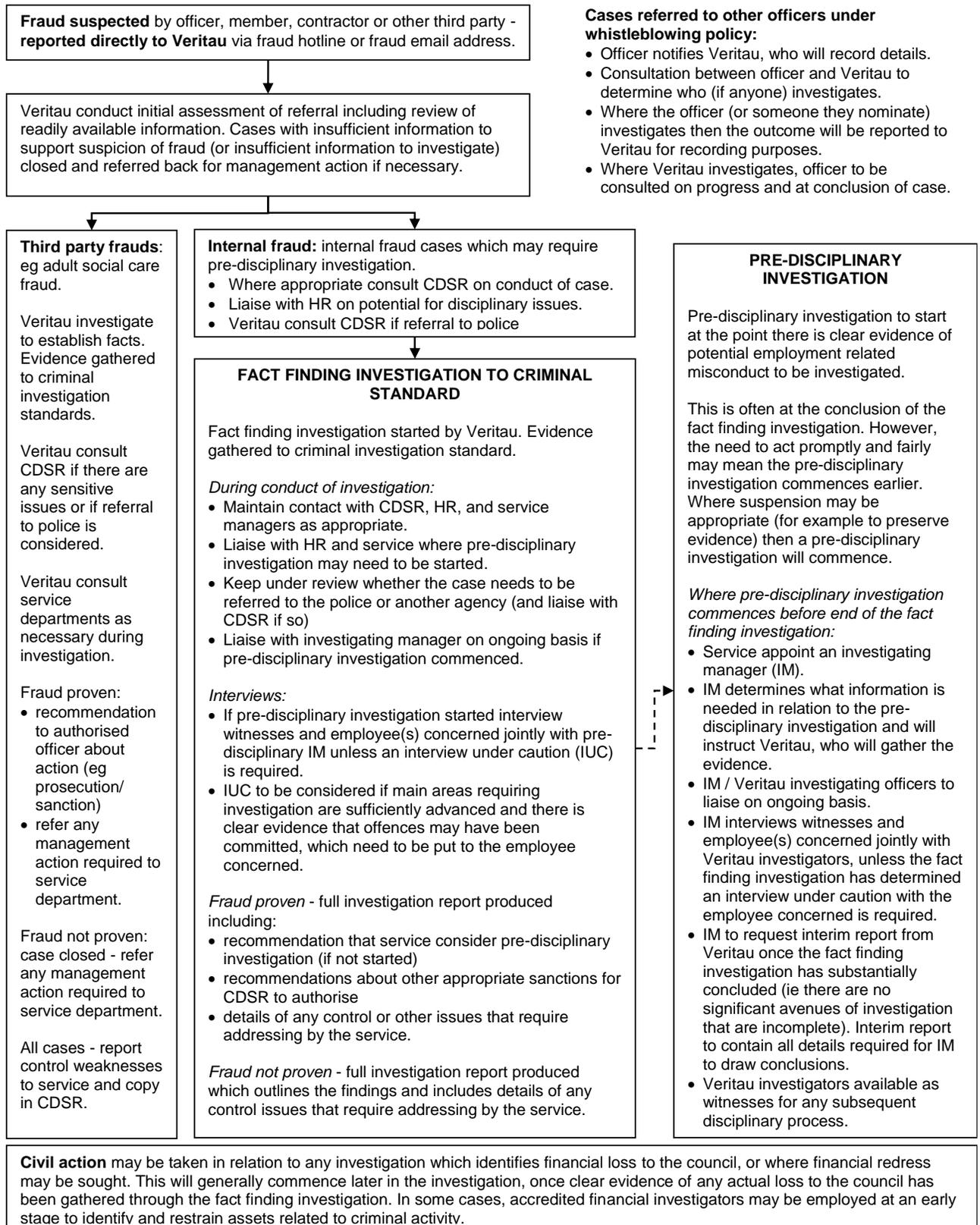
Investigation

5.11 Suspected cases of fraud, corruption, theft or other irregularity that are considered to be of high risk will be investigated. The nature of each investigation will depend on the circumstances of each case. Veritau will act as a first port of call for any suspected fraud and will provide advice on whether other agencies should be notified (e.g. the police). Veritau will determine the extent of the investigation to be carried out in consultation with the Corporate Director – Strategic Resources, service departments and human resources as appropriate. Where necessary, Veritau may refer cases to other agencies (for example the police) at the discretion of the Head of Internal Audit. Figure 1 overleaf outlines the fraud referral and investigation process.

5.12 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 General Data Protection Regulation (GDPR), the Criminal Procedures Investigations Act (CPIA), and any relevant guidance from the Attorney General. Investigators will take into account the individual circumstances of anyone involved in an investigation and adjustments to procedure will be made where necessary to ensure that all parties are treated equitably (where it is appropriate and reasonable to do so).

5.13 As part of the outcome of every investigation, a review of any weaknesses in control will be made and if necessary recommendations will be made to address any issues identified. These will be set out in a formal report to the managers of the service concerned, and will be followed up to ensure the issues are addressed.

Figure 1: North Yorkshire County Council investigation process



- 5.14 The Head of Internal Audit will ensure that systems for investigating fraud are reviewed on an ongoing basis, to ensure that they remain up to date and comply with best practice.

Publicity

- 5.15 The Council will publicise all successful prosecutions undertaken either by itself or by partner organisations, to act as a deterrent against future fraud.

- 5.16 In addition, where appropriate, targeted publicity will be used to raise the awareness of fraud to staff, members, the public, and other agencies. This will consist of both internal and external publicity and will aim to:

- raise awareness about potential fraud and ensure all stakeholders are alert to the possibilities of fraud;
- inform all stakeholders of the procedures to be followed if they have suspicions of fraud;
- ensure that all stakeholders are aware that the Council will not tolerate fraud and the consequences of committing fraud against it.

Recovery of Monies

- 5.17 Where any loss has been incurred by the Council or additional costs have been incurred as a result of fraud or corruption, the Council will seek to recover these from the individual or organisation concerned. This will help to ensure that the financial impact of fraud on the Council is minimised and act as a deterrent. As a further deterrent, the Council will seek to levy any appropriate fines or penalties where it is possible and desirable to do so.

- 5.18 Methods of recovery may include (but are not limited to):

- recovery from assets held by the organisation or individual (using the Proceeds of Crime Act or any other relevant legislation);
- bankruptcy where appropriate;
- recovery from future salary payments if an individual remains an employee of the Council;
- recovery of pension contributions from employees or members who are members of the North Yorkshire Pension Fund.

6 Monitoring & Review Arrangements

- 6.1 The arrangements set out in this policy document will be reviewed on an annual basis as part of the audit and fraud planning cycle and will include the Fraud and Corruption Prosecution Policy (**annex A**) and other related guidance. Veritau will work with other departments to ensure that other related guidance and policy (such as the Whistleblowing policy) are reviewed on a regular basis and any amendments or necessary changes are reported to members for approval.

LAST REVIEWED AND UPDATED: 25 October 2021



FRAUD AND CORRUPTION PROSECUTION POLICY

1 Scope and Purpose

- 1.1 The fraud and corruption prosecution policy forms part of the Council's overall counter fraud and corruption arrangements. The policy covers all acts, and/or attempted acts, of fraud or corruption committed by officers or members of the Council, or committed by members of the public, or other organisations or their employees, against the Council.
- 1.2 The policy sets out the circumstances in which the Council will take legal action against the perpetrators of fraud or corruption. It also sets out the circumstances when it is appropriate to consider alternative courses of action such as offering a caution. The policy does not cover internal disciplinary procedures which are the subject of the Council's separate disciplinary policy and procedures.
- 1.3 This policy should be read in conjunction with the Council's constitution, financial regulations, contract procedure rules, the counter fraud and corruption policy and strategy, the whistleblowing policy and the Council's disciplinary policy and procedures.
- 1.4 The policy contains specific guidelines for determining the most appropriate course of action when fraud has been identified. Offences other than fraud and corruption (for example those relevant to the enforcement of regulations) are dealt with by the appropriate service departments under other policies and relying on specific legal powers.

2 Principles

- 2.1 The Council is committed to deterring fraud and corruption. As part of its overall strategy to do this the Council will seek to take appropriate action against anyone proven to have attempted and/or committed a fraudulent or corrupt act against it. The Council considers that those guilty of serious fraud or corruption must take responsibility for their actions before the courts.
- 2.2 The policy is designed to ensure that the Council acts fairly and consistently when determining what action to take against the perpetrators of fraud or corruption.
- 2.3 Staff and members who are found to have committed fraud or corruption against the Council may be prosecuted in addition to such other action(s) that the Council may decide to take, including disciplinary proceedings in the case of staff and referral to the relevant officer or body in the case of members. Any decision not to prosecute a member of staff for fraud and corruption does not preclude remedial action being taken in accordance with the Council's disciplinary procedures or other policies.

- 2.4 This Policy is also 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 crime when considering whether to prosecute or not.
- 2.5 The consistent application of the policy will provide a means for ensuring that those who have perpetrated fraud and corruption are appropriately penalised. It will also act as a meaningful deterrent to those who are contemplating committing fraud or corruption. The Council recognises the deterrent value of good publicity and therefore information regarding successful prosecutions and sanctions will be made public.
- 2.6 Any decision taken by an authorised officer to prosecute an individual or to offer a formal sanction will be recorded in writing. The reason for the decision being taken will also be recorded.
- 2.7 Irrespective of the action taken to prosecute the perpetrators of fraud and corruption, the Council will take whatever steps necessary to recover any losses incurred, including taking action in the civil courts.

3 Prosecution

- 3.1 The policy is intended to ensure the successful prosecution of offenders in court. However, not every contravention of the law 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 defendant, mitigating circumstances and other public interest criteria. All cases will be looked at individually and be considered on their own merit.
- 3.2 To consider a case for prosecution the Council must be satisfied that two tests have been passed. Firstly, there must be sufficient evidence of guilt to ensure conviction. This is called the **evidential test**. Secondly, it must be in the public interest to proceed – the **public interest test**.
- 3.3 To pass the evidential test, authorised officers must be satisfied that there is a realistic prospect of conviction based on the available evidence (that is, there must be sufficient admissible, substantial and reliable evidence to secure a conviction).
- 3.4 To pass the public interest test, the authorised officer will balance, carefully and fairly, the public interest criteria against the seriousness of the offence. The public interest criteria include;
- the likely sentence (if convicted);

- any previous convictions and the conduct of the defendant;
- whether there are grounds for believing the offence is likely to be repeated;
- the prevalence of the offence in the area;
- whether the offence was committed as a result of a genuine mistake or misunderstanding;
- any undue delay between the offence taking place and/or being detected and the date of the trial;
- the likely effect that a prosecution will have on the defendant;
- whether the defendant has put right the loss or harm caused.

3.5 It will generally be in the public interest to prosecute if one or more of the following factors applies, subject to any mitigating circumstances;

- 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 person has previously committed fraud against the Council (even if prosecution did not result) and/or there has been a history of fraudulent activity;
- the person was in a position of trust (for example, a member of staff);
- there has been an abuse of position or privilege;
- the person has declined the offer of a caution or financial penalty;
- the case has involved the use of false identities and/or false or forged documents.

3.6 Investigating officers and prosecutors will review the appropriateness of pre-charge engagement where prosecution is considered. This is likely to occur where such engagement may lead the defendant to volunteer additional information that may identify new lines of inquiry. Pre-charge engagement may be instigated by the investigating officer, the council prosecutor, the defendant's representative or a defendant themselves (if unrepresented).

4 Mitigating Factors

4.1 The following mitigating factors will be taken into account when determining whether to prosecute;

Voluntary Disclosure

4.2 A voluntary disclosure occurs when an offender voluntarily reveals fraud about which the Council is otherwise unaware. If this happens, then the fraud will be investigated but the offender 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 offender knows the Council is already undertaking an investigation in this area and/or other counter fraud activity);
- offender only admits the facts when challenged or questioned;
- offender supplies the correct facts when making a claim to Legal Aid.

III Health or Disability

4.3 Where the perpetrator (and/or their partner) is suffering from prolonged ill health or has a serious disability or other incapacity then the offender 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 rules governing the type of fraud committed and was aware that their action is wrong. This may not be possible where, for instance, the offender has serious learning difficulties. However, simple ignorance of the law will not prevent prosecution.

Social Factors

4.4 A wide range of social factors may make a prosecution undesirable. The test is whether the court will consider the prosecution undesirable, and go on to reflect that in the sentence.

Exceptional Circumstances

4.5 In certain exceptional circumstances the Council may decide not to prosecute an offender. Such circumstances include;

- the 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 If some cases are considered strong enough for prosecution but there are mitigating circumstances which cast a doubt as to whether a prosecution is appropriate then the Council may consider the offer of a sanction instead. The two sanctions available are;

- a caution, or;
- financial penalty.

Simple Cautions

5.2 A simple caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. All cautions are recorded internally and kept for a period of six years. Where a person offends again in the future then any previous cautions will influence the decision on whether to prosecute or not.

5.3 For less serious offences a simple caution will normally be considered where all of the following apply;

- there is sufficient evidence to justify instituting criminal proceedings;
- the person has admitted the offence;
- there is no significant public requirement to prosecute;
- it was a first offence, and;
- a financial penalty is not considered to be appropriate.

Only in very exceptional circumstances will a further caution be offered for a second or subsequent offence of the same nature.

5.4 Cautions will be administered by the Head of Internal Audit (or deputy), Assistant Director - Corporate Fraud, Corporate Fraud Manager, or a Senior Corporate Fraud Investigator, on behalf of the Council. 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 penalty but declined to accept it.

Financial Penalties

5.5 The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, permit a financial penalty to be offered to claimants as an alternative to prosecution. The penalty is

set at 50% of the amount of the excess reduction, subject to a minimum of £100 and a maximum of £1,000. Once a penalty is accepted, the claimant has 14 days to change their mind.

5.6 Subject to the criteria set out in the guidelines below, a financial penalty will normally be offered by the Council in the following circumstances;

- the Council believes that there is sufficient evidence to prosecute;
- it was a first offence or a previous offence was dealt with by way of a caution, and;
- in the opinion of the Council, the circumstances of the case mean it is not overwhelmingly suitable for prosecution, and;
- the claimant has the means to repay both the overpayment and the penalty, and;
- there is a strong likelihood that both the excess reduction and the penalty will be repaid.

5.7 It is important to note that the claimant does not need to have admitted the offence for a financial penalty to be offered. Financial penalties will be administered by the Head of Internal Audit (or deputy), Assistant Director - Corporate Fraud, Corporate Fraud Manager or a Senior Corporate Fraud Investigator. If a financial penalty is not accepted or is withdrawn then the Council will usually consider the case for prosecution. In such cases the court will be informed that the defendant was offered a penalty but declined to accept it.

6 Proceeds of Crime Act 2002 (POCA)

6.1 In addition to the actions set out in this policy, the Council reserves the right to refer all suitable cases for financial investigation with a view to applying to the courts for restraint and/or confiscation of identified assets. A restraint order will prevent a person from dealing with specific assets. A confiscation order enables the Council to recover its losses from assets which are found to be the proceeds of crime.

7 Implementation Date

7.1 This revised policy is effective from 25 October 2021 and covers all decisions relating to prosecutions and sanctions after this date.



ANTI-BRIBERY POLICY

1 Introduction

- 1.1 The Bribery Act became law in 2011 and was enacted to enable robust action to be taken against all forms of bribery. The Council is committed to protecting the public purse and the services it provides from being abused. The Council has a zero-tolerance approach towards bribery and promotes the prevention, deterrence and detection of bribery.
- 1.2 Bribery is defined as the offering, giving, receiving or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty. The act of bribery is the intention to gain a personal, commercial, regulatory or contractual advantage.
- 1.3 Facilitation payments are unofficial payments made to public officials to secure or expedite actions. These are not tolerated and are illegal.
- 1.4 This policy should be read in conjunction with the Council's Gifts and Hospitality Protocol.

2 Principles

- 2.1 The Council is committed to the prevention, deterrence and detection of bribery.
- 2.2 The Council commits to:
 - Making all employees and associated people aware of their responsibilities to adhere strictly to this policy at all times.
 - Training members of staff so that they are aware of the Bribery Act.
 - Encouraging all employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.
 - Rigorously investigate instances of alleged bribery and assist the police and other authorities in any investigations or prosecutions they undertake.
 - Taking strong action against any individual(s) involved in bribery.

3 Scope

- 3.1 This policy applies to all of the Council's activities, members of staff (permanent and temporary), agency staff, volunteers, consultants, and members.
- 3.2 For partners, joint ventures, and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

- 3.3 All employees and members are required to:
- Raise concerns as soon as possible if it is believed or suspected that this policy has been breached or may be breached in the future.
 - Comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities.
- 3.4 As well as the possibility of civil and criminal prosecution, employees breaching this policy will face disciplinary action, which could result in dismissal in cases of gross misconduct.

4 Offences

- 4.1 There are four key offences under the Bribery Act 2010.

Section 1 – Offence of bribing another person

- 4.2 This section makes it an offence when a person offers, promises or gives a financial or other advantage to another person and intends the advantage to induce a person to perform improperly a relevant function or activity or to reward a person for the improper performance of such a function or activity.
- 4.3 It is also an offence when a person 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.

Section 2 – Being bribed

- 4.4 This section makes it an offence when a person requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly.
- 4.5 It is an offence when a person requests, agrees to receive or accepts a financial or other advantage and the request, agreement or acceptance itself constitutes the improper performance of the person of a relevant function or activity.
- 4.6 It is an offence if a person requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance of a relevant function or activity.

- 4.7 It is also an offence if a person in anticipation of or in consequence of the person requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly.

Section 6 – Bribery of foreign public officials

- 4.8 Under this section of the Act an offence is committed when a person intends to influence a foreign official in their official capacity and intends to obtain or retain business or an advantage in the conduct of business.
- 4.9 It is also an offence to offer, promise or give any financial or other advantage to a foreign public official.

Section 7 – Failure of a commercial organisation to prevent bribery

- 4.10 A relevant commercial organisation is guilty of an offence if a person associated with the organisation bribes another person intending to obtain or retain business for the organisation or to obtain or retain an advantage in the conduct of business for the organisation and the organisation fails to take reasonable steps to implement adequate procedures to prevent such activity.

Corporate Responsibility

- 4.11 North Yorkshire County Council is considered to be a commercial organisation under the Bribery Act. It is therefore important that the Council takes steps to prevent bribery from occurring within the organisation.
- 4.12 If an offence did occur then courts would consider six tests to determine whether the Council was culpable:
- Does the Council have proportionate procedures in place to prevent bribery by persons associated with it? These should be clear, practical and accessible.
 - Is there top level commitment to preventing bribery? This includes members as well as officials.
 - Is the Council's exposure to potential external and internal risks of bribery periodically assessed?
 - Does the Council take a proportionate and risk based approach to mitigate identified bribery risks.
 - Are anti-bribery policies and procedures embedded and understood throughout the organisation? Are they communicated internally and externally?
 - Are procedures monitored and reviewed regularly?

Penalties

- 4.13 A person guilty of an offence under sections 1, 2, or 6 of the Bribery Act is may be sentenced to:
- a maximum imprisonment of 12 month and/or a fine not exceeding £5,000 (if convicted in a magistrates court).
 - a maximum imprisonment of 10 years and/or an unlimited fine (if convicted at a crown court).
- 4.14 An organisation found guilty of allowing bribery offences to occur will be subject to an unlimited fine that is in part determined by the gain that was sought to be made through bribery offences and an assessment of an organisation's culpability by the court.

5 How to raise a concern

- 5.1 We all have a responsibility to help detect, prevent and report instances of bribery. If a member of staff or councillor has a concern regarding a suspected instance of bribery or corruption then please speak up. The sooner you act, the sooner it can be resolved.
- 5.2 Employees who raise concerns or report wrongdoing (e.g. that they have been offered a bribe, have been asked to bribe a third party, or are aware of bribery occurring within the Council or its suppliers) can be concerned that there may be repercussions. The Council aims to encourage openness and will support anyone who raises concerns under this policy, even if those concerns prove to be incorrect.
- 5.3 The Council is committed to ensuring nobody suffers detrimental treatment by refusing to take part in bribery or corruption, or because they report a concern that they believe is true.
- 5.4 Members of staff should consult the Council's Whistleblowing policy which sets out a number of routes for reporting concerns. Any concerns can be reported to the whistleblowing hotline, 0800 9179247 or via email to counter.fraud@veritau.co.uk.
- 5.5 Concerns can be raised anonymously and the Council will still take action. However, it is easier and quicker if concerns are not made anonymously. The Council will take all possible precautions to ensure that the identities of people who raise concerns are protected.

6 What to do if someone reports a concern

6.1 All reports of potential bribery within the Council should be reported to the Council's Corporate Director - Strategic Resources, Monitoring Officer, and Veritau.

Last reviewed and updated: 25 October 2021

ANNEX 4: Whistleblowing Policy



WHISTLEBLOWING POLICY

1.0 INTRODUCTION

- 1.1 North Yorkshire County Council is committed to achieving high standards of integrity and accountability. This policy provides a framework for employees and contractors, to raise concerns which they believe are in the public interest and may relate to illegal, improper or unethical conduct. The whistleblowing policy forms part of the Council's overall counter fraud framework. There are different mechanisms for members of the public or others with concerns to report them to the Council, for example through the counter fraud hotline or complaints procedures. Whilst many of the principles covered in the whistleblowing policy relate to any report of wrongdoing at the Council, this policy is designed solely for the use of employees and contractors.
- 1.2 The Council tries to create an open environment in which employees and those working on behalf of North Yorkshire County Council are encouraged to raise issues with the confidence that they will be acted upon appropriately. Our message to employees is straightforward - if in doubt, raise it!
- 1.3 The Public Interest Disclosure Act 1998 (PIDA) protects employees against detrimental treatment or dismissal as a result of any disclosure of information in the interests of the public. This policy is designed to conform to legislation³ as well as guidance from the government and relevant bodies⁴.
- 1.4 This policy should be used where there are concerns about consequences for other employees or the public, and does not apply to matters relating exclusively to one's own employment.
- 1.5 A guide for managers or other employees on how to proceed if they receive a whistleblowing report is contained in **Appendix A** of this policy.

2.0 AIMS AND SCOPE OF THE POLICY

- 2.1 The policy aims to:
 - encourage employees to raise any serious concerns they have about their workplace or working practices;
 - ensure that employees get a response to their concerns and that they are aware of how to pursue them if they are not satisfied with any action or inaction; and
 - assure employees that if they raise any concerns in the public interest then action will be taken to protect them from possible reprisals or victimisation.

³ PIDA 1998 was updated by the Enterprise and Regulatory Reform Act 2013.

⁴ Whistleblowing guidance has been issued by the Department for Business, Energy & Industrial Strategy, the National Audit Office and the charity, PROTECT.

- 2.2 This policy applies to any person working for the Council. This includes both permanent and temporary staff, staff from maintained schools, and also covers agency personnel and staff seconded to or from a third party. Contractors working for the Council may also use the provisions of this policy to make the Council aware of any relevant concerns.
- 2.3 Protection under PIDA is not provided to job applicants, self-employed workers or volunteers, however concerns can still be reported through whistleblowing channels.
- 2.4 Set out below is a list of circumstances that should be reported through this policy and qualify for protection under legislation:
- a) a criminal offence has been committed, is being committed, or may be committed, e.g. corruption, theft, or fraud⁵;
 - b) a person has failed, is failing, or may fail to comply with any legal obligation to which they are subject, e.g. breach of any statutory Code of Practice;
 - c) a miscarriage of justice has occurred, is occurring, or may occur;
 - d) the health or safety of any individual has been, is being, or may be endangered, e.g. abuse of any vulnerable adult or child;
 - e) the environment has been, is being, or may be damaged; or
 - f) information tending to show any matter falling within any of the above categories has been, is being, or may be deliberately concealed, e.g. failure to take reasonable steps to report or resolve any situation which is likely to cause significant financial loss to the Council.
- 2.5 This whistleblowing policy is intended for people to raise concerns that are in the public interest and where the interests of others or of the organisation itself are at risk. It is intended to supplement, rather than to replace, other employment procedures whereby employees of the Council may already raise complaints or matters of genuine concern relating to their own employment.

3.0 SAFEGUARDS

- 3.1 The Council recognises that the decision to report a concern can be a difficult one to make. In many cases it is employees who are most likely to be in the best position to learn of any malpractice or wrongdoing within the Council or school setting and to identify something which falls below the standards

⁵ If clarification is required as to whether an issue constitutes a criminal offence or comes under any other section on this list then employees and contractors can contact Veritau for advice.

which the Council and the public are entitled to expect. The Council is grateful to all employees who report their concerns.

- 3.2 Employees should have nothing to fear by reporting their concerns, if what they are reporting is true (or they honestly believe the information is true even if it is later found out to be incorrect). No action will be taken against anyone genuinely reporting a concern.
- 3.3 Deliberately providing false or misleading information however is a serious matter which may result in action being taken under the Council's disciplinary policy. Equally, deterring another employee from reporting their concerns is a serious matter and also may result in disciplinary action.
- 3.4 The Council will not tolerate the harassment or victimisation of anyone who has raised a concern. However, it is recognised that an individual may nonetheless want to raise a concern in confidence under this policy. If a member of staff asks the Council to protect their anonymity, efforts will be taken to protect their identity from being disclosed. If a situation arises where a concern cannot be resolved without revealing their identity (for instance, because evidence is needed in court or will be revealed as part of a subsequent investigation) this will be fully discussed with the employee in question.
- 3.5 The policy encourages employees to put their names to allegations. Concerns expressed anonymously will still be considered by the Council, however complaints of this type can be harder to substantiate and therefore have to be treated with a degree of caution. It will also not be possible to provide feedback to the member of staff reporting the concern during or following any investigation. Anonymous reports are preferred to silence however.

4.0 HOW TO RAISE A CONCERN

- 4.1 Whistleblowers should normally raise concerns with their immediate line manager. However, if it is believed that their line manager is involved in the malpractice being reported or has failed to take appropriate action when the matter has been raised previously, then their concern should be raised with their Assistant Director, or in the case of school based staff, the Chair of Governors. Contractors should report concerns to their contract manager.
- 4.2 It is, however, appreciated that there may be times when whistleblowers, including contractors, feel unable to use the above procedure; the issue may involve line managers and senior officers (e.g. Corporate Director or Assistant Director) or the issue was already raised through the normal channels but had not been addressed or resolved. In these cases they can

contact the Council's independent whistleblowing hotline on 0800 9179 247, which is overseen by Veritau.

- 4.3 If anonymous concerns are raised through social media then they will be considered under the more general counter fraud framework or complaints policy unless it is beyond doubt that the person raising the concern is an employee or contractor of the Council.

5.0 HOW THE COUNCIL WILL RESPOND

- 5.1 All whistleblowing reports will be carefully considered and initial enquiries will be made to help decide whether an investigation is appropriate, and if so what form it should take.
- 5.2 The Council will aim to acknowledge all whistleblowing reports within five working days. The officer(s) assigned to carry out the whistleblowing investigation will endeavour to write or speak to the whistleblower promptly to provide additional information on how the investigation will progress.
- 5.3 Officers assigned to investigate a whistleblowing report will be determined by the nature of the report, e.g. safety issues could be investigated by the Health & Safety Team, alleged fraud or criminality by the Counter Fraud Team, employment issues by a manager from another service with support from Human Resources.
- 5.4 The amount of contact between the officers considering the issues and the whistleblower will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information may be sought from the whistleblower.
- 5.5 If a face to face meeting is necessary or desirable the whistleblower has the right, if they so wish, to be accompanied by a Union representative or a colleague who is not involved in the area of work to which the concern relates.
- 5.6 The Council will, as far as it is able, take steps to minimise any difficulties that the whistleblower may experience as a result of raising a concern. For instance, if they are required to give evidence in criminal or disciplinary proceedings, the Council will, where appropriate and as far as it is able to do so, provide advice about the process.
- 5.7 The Council accepts the whistleblower needs to be assured that the matter has been addressed. Thus, subject to any legal constraints, e.g. data protection, information about the outcomes of any investigations will be provided.

5.8 All whistleblowing reports will be logged centrally. The Chief Executive (head of paid service), Corporate Director - Strategic Resources, and Monitoring Officer will be notified of relevant whistleblowing reports. Numbers of whistleblowing reports and significant trends in reporting will also be reported annually to the Audit and Governance Committee.

6.0 HOW MATTERS CAN BE TAKEN FURTHER

6.1 This policy is intended to provide staff with an appropriate avenue to raise concerns within the Council. If employees have reported concerns in accordance with the Council's whistleblowing policy but are not satisfied that the issues have been properly addressed then they may contact:

- the Council's External Auditor - Deloitte⁶;
- the NSPCC or Ofsted (for concerns about children at risk of abuse)⁷;
- relevant professional bodies or regulatory organisations⁸, for example, the Information Commissioner's Office, Care and Quality Commission (CQC), and the Health and Safety Executive.

6.2 Disclosure of a concern to a non-prescribed body (e.g. newspapers or social media) is not covered by whistleblowing legislation and the protections it offers. Before undertaking this type of action it is recommended that staff seek specialist advice.

7.0 INDEPENDENT ADVICE

7.1 Free confidential advice on how to raise a concern about malpractice at work can be sought from the independent charity PROTECT at www.protect-advice.org.uk, or via email info@protect-advice.org.uk. Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

8.0 GENERAL DATA PROTECTION

8.1 When managing whistleblowing reports, the Council processes personal data collected in accordance with its Information Governance policies. Data collected from the point at which a report is made is held securely and accessed by, and disclosed to, individuals only for the purposes of managing and investigating the concern raised.

⁶ Deloitte act as the council's external auditor (Deloitte UK | Audit, Consulting, Financial Advisory and Tax services for further details).

⁷ The NSPCC and Ofsted offer dedicated national whistleblowing hotlines (see www.nspcc.org.uk and www.gov.uk/government/organisations/ofsted for further details).

⁸ The Department for Business, Innovations and Skills maintains a list of prescribed persons and organisations who may be contacted, www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies.

9.0 REVIEW OF THE POLICY

- 9.1 The Policy will be reviewed at least every three years or when significant changes to whistleblowing legislation, the organisation or case law occurs.



Managers' Guidance on Whistleblowing

1.0 **Introduction**

- 1.1 The Council's whistleblowing policy is designed to encourage and support employees and contractors in expressing their concerns about the workplace.
- 1.2 All Council employees in managerial or supervisory positions are expected to take employee concerns seriously and follow the process set out in this guidance.

2.0 **What is a whistleblowing complaint?**

- 2.1 Any concern about working practices or malpractice that is reported in confidence should be considered under the whistleblowing policy. It is not necessary for a member of staff or contractor to use the term "whistleblowing" in order for a report to be considered under the policy.
- 2.2 Whistleblowing relates to concern for others rather than oneself. If a member of staff is reporting that they solely have been mistreated, then this should be considered under other Council policies, e.g. Resolving Issues at Work.
- 2.3 Whistleblowing reports must come from Council workers (including temporary members of staff and contractors). Reports from members of the public are not considered to be whistleblowing and should be directed to the Council's Complaints and Feedback Team or the counter fraud hotline.
- 2.4 Whistleblowing reports are often made anonymously. However, where possible (e.g. where reports are taken over the phone or by email) the person making it should be informed that reporting concerns in this way may make it more difficult to follow up (see section 3.5 of the whistleblowing policy).
- 2.5 Any report that falls within the categories set out by legislation (see section 2.4 of the whistleblowing policy) afford the whistleblower protection under law. It is important to make this determination at an early stage in order to ensure that the whistleblower is given correct advice and the Council acts in accordance with legislation.
- 2.6 Concerns or complaints raised about councillors are not covered by the whistleblowing policy, but rather come under Standards procedures. Any issues relating to councillors should be referred to the Monitoring Officer for advice.

2.7 If, after consulting the whistleblowing policy, there is a doubt as to whether a report constitutes whistleblowing then advice should be sought from Veritau in order to reach a conclusion.

3.0 **Reporting receipt of a whistleblowing concern**

3.1 All whistleblowing reports should immediately be reported to three parties:

- Assistant Director responsible for service area or Chair of Governors in the case of a school.
- Human Resources advisor responsible for area;
- Veritau – Internal Audit & Counter Fraud Service⁹.

3.2 If the report involves any of the people or groups named above then the report should be escalated to a more senior officer, e.g. Corporate Director, Chief Executive or Head of Internal Audit.

3.3 Veritau maintains the Council's central log of all whistleblowing reports. They should be updated at the beginning and the end of any whistleblowing investigation in order to keep a complete record of the report and how it was dealt with. Where managers receive details of whistleblowing concerns raised with external bodies (the prescribed persons and organisations set out at 6.1 in the policy), details should also be forwarded to Veritau for recording in the central log.

3.4 In some cases, the details of the initial report will be sufficient to determine that it will not fall under whistleblowing policy. In this situation the member of staff making the report should be informed of the reasons why their concern is not covered and be signposted to an alternative route. A record of this discussion should be kept and an outline of the matter should be sent to Veritau to be entered in the central log.

4.0 **Taking a concern forward**

4.1 The person who first receives the whistleblowing report (i.e. supervisor or manager) should acknowledge it immediately and arrange a meeting with the whistleblower as soon as possible (see section 5.2 of the whistleblowing policy) to gather additional information on the issues. This meeting should flesh out the initial report and help determine how the issue should be investigated.

4.2 This initial meeting can be done in person, in or outside council offices, or via telephone. It is important to find an environment that the member of staff feels comfortable with. They may be supported by a trade union

⁹ Veritau should be contacted via whistleblowing@veritau.co.uk

- representative or colleague. A note taker can be brought to the meeting with prior agreement from the whistleblower.
- 4.3 If anonymity is requested then every effort should be made to keep the whistleblower's identity concealed. Anonymity however cannot be guaranteed. If there is a possibility due to the circumstances of the report that the whistleblower's identity will become known, then they should be advised of this at the earliest possible stage.
 - 4.4 All information relating to a whistleblowing report and any information gathered during an investigation should be kept confidentially. Information should be shared on a strictly need to know basis.
 - 4.5 A record of this meeting should be written either contemporaneously or shortly following the meeting. These notes must be kept securely.
 - 4.6 No commitments should be made about the process or outcome of the whistleblowing report, however the whistleblower should be reassured that their concerns will be taken seriously.
 - 4.7 Following the meeting further details should be provided to the Assistant Director (or more senior manager) in charge of the area and Veritau. The relevant Assistant Director (or more senior manager), with advice from Veritau, will assign the investigation to a suitable person. This may be the manager who initially took the whistleblowing report or a member of staff from another area. In cases of potential criminality or health and safety then Veritau and the Health and Safety Team respectively will normally take the responsibility for investigating the concern.
- 5.0 Conducting an investigation**
- 5.1 At the outset of an investigation the person responsible for looking into the concern should inform the whistleblower that they are taking the matter forward.
 - 5.2 Updates during the course of the investigation should be provided to the whistleblower but only if it is appropriate (e.g. is data protection observed) and does not prejudice the investigation. If this is the case then it may be appropriate to only update the whistleblower once the investigation has concluded.
 - 5.3 It is advisable that notes are taken throughout the investigative process in terms of actions taken and conclusions reached.
 - 5.4 The anonymity of the whistleblower should be considered before any and all actions are taken in connection with the investigation. If a situation arises

where it is not possible to resolve the whistleblowing report without the identity of the whistleblower becoming known, then this should be reported to and discussed with that person before the action is taken. The person's name should only be made known to other employees on a need to know basis. Equally if the whistleblowing report is about a specific person then that person's identity should also be protected.

- 5.5 Investigations instigated following a whistleblowing report should be dealt with as quickly as possible. Appropriate levels of resource should be made available to deal with the matter expeditiously. Where a whistleblowing investigation leads to other council processes being required (e.g. a disciplinary investigation) then relevant officers should be made aware at an early stage.
- 5.6 At the conclusion of an investigation a report should be drafted outlining any supporting or non-supporting evidence, conclusions reached, and recommendations. This report should be sent to the senior responsible manager (i.e. Assistant Director), Veritau, and if relevant the HR advisor assigned to the case.

6.0 **Special Circumstances**

Safeguarding Concerns

- 6.1 If a concern includes issues relating to safeguarding, the relevant assistant director, director, or Veritau should ensure that the matter is raised immediately through normal council safeguarding arrangements.

Anonymous Concerns

- 6.2 If a concern has been made anonymously then it must still be treated as credible and dealt with through the procedure detailed in this guidance.

Victimisation

- 6.3 If the whistleblower reports that their identity has become known and they are being victimised then this should be reported to the relevant HR advisor as soon as possible. The Council may be in contravention of whistleblowing legislation if action is not taken to address this.

Vexatious / Malicious reports

- 6.4 If a whistleblower acts in bad faith or raises malicious, vexatious, or knowingly untrue concerns in order to harm colleagues, their department or the Council then they may face disciplinary action. If you suspect this is the

case then this should be reported to the relevant HR advisor as soon as possible.

External Disclosures

- 6.5 It is important to be supportive and encouraging to those raising a concern. However, if an employee indicates that they are considering taking their concerns outside of the Council, for example to the media or social networking sites, you should advise them that:
- you will not be able to support them if they do so;
 - external disclosures to outside bodies may not be covered by the whistleblowing policy and relevant legislation;
 - their actions may represent an unauthorised disclosure;
 - they could jeopardise any legal protection they may have; and
 - they could face disciplinary action themselves.
- 6.6 If a whistleblower does make an external disclosure then this should be reported to the relevant HR advisor and Veritau as soon as possible. Some types of disclosure are covered by national legislation but a consideration of whether an appropriate action has taken place or not should be considered on a case by case basis.

Support

- 6.7 If you have any queries or issues concerning whistleblowing then seek advice from your manager, Human Resources or Veritau.