

**SOUTH YORKSHIRE FIRE & RESCUE AUTHORITY**  
**PROSECUTION POLICY**

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Owner:	Director of Finance and Procurement

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## **1 POLICY STATEMENT**

- 1.1 The Prosecution Policy forms part of the Authority's overall counter-fraud framework. The policy covers all acts, and/or attempted acts, of fraud or corruption committed by officers or Members of the Authority, or committed by members of the public, or other organisations or their employees, against the Authority.
- 1.2 The policy sets out the circumstances in which the Authority will take legal action against the perpetrators of fraud or corruption. The policy does not cover internal disciplinary procedures which are the subject of the Authority's separate disciplinary policy and procedures.
- 1.3 This policy should be read in conjunction with the Authority's Anti-Fraud and Corruption Policy, Anti-Fraud and Corruption Strategy, Anti-Bribery Policy, Confidential Reporting (Whistleblowing) Policy, Financial Regulations, Contract Standing Orders, and Disciplinary Policy and Procedures.
- 1.4 This policy does not cover consideration of prosecutions for fire safety, explosives, health and safety or petroleum matters which would be termed 'regulatory' prosecutions.

## **2 PURPOSE OF THE POLICY**

- 2.1 The Authority is committed to an effective anti-fraud and corruption strategy. The strategy is designed to encourage the prevention and detection of fraud and corruption. As part of the strategy the Authority is also committed to taking appropriate action against anyone believed to have attempted and/or committed a fraudulent or corrupt act against it.
- 2.2 The policy is designed to ensure that the Authority acts fairly and consistently when determining what action to take against the perpetrators of fraud or corruption.
- 2.3 Employees, Elected Members or Co-opted Independent Members who are found to have committed fraud or corruption will be subject to disciplinary proceedings and will be reported to the police where a crime is suspected. The Authority will also take all steps available (and economic to pursue) to recover any losses incurred, including taking action in the civil courts.

## **3 PROSECUTION**

- 3.1 All matters identified which could indicate illegal acts will be investigated. Where there is evidence of illegal acts a report will be made to the Police and evidence will be shared with them to inform the Police and Crown Prosecution Service's decision as to whether to prosecute. The Authority will assist any ensuing Police investigation and prosecution process.

## **4 MEMBERS AND EMPLOYEES**

- 4.1 The Authority will invoke disciplinary action in all cases of fraud, theft, financial misconduct, serious and intentional breach of financial regulations and corruption committed by employees of the Authority or volunteers or agents. The normal recommendation for employees would be gross misconduct. This will include cases of fraud against the Authority, other Authorities, other public sector bodies and partners.

- 4.2 Where a financial loss has been identified the Authority will always seek to recover this loss either through the civil or criminal process. In addition, where employees are members of professional bodies, we will refer cases to the relevant professional body.
- 4.3 The Authority will always refer cases to the relevant prosecuting authority for criminal prosecution, where management consider a prosecution to be appropriate, in matters relating to elected Members and employees.

## **5 OTHER FRAUD**

- 5.1 Other types of fraud against the Authority may include, but are not limited to: Ex Gratia Payments, Injury Awards, Compensatory Awards, Grants, Reliefs or other applications for financial assistance.
- 5.2 In cases where the Authority suffers a financial loss, we will always seek recovery. Where an organisation is involved in the fraud, the Authority will also make referrals to the relevant governing body e.g. Charities Commission.
- 5.3 The Authority will also consider criminal prosecution. The factors that will affect our decision to prosecute will be based on the evidential and the public interest test as referred to at 3.2 above.

## **6 MITIGATING FACTORS**

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

### Voluntary Disclosure

A voluntary disclosure occurs when an offender voluntarily reveals a fraud about which the Authority 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 Authority 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;

### Social Factors

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

In certain exceptional circumstances the Authority may decide not to prosecute an offender. For example, a lack of sufficient resources to complete the investigation within

## **7 PROCEEDS OF CRIME ACT 2002 (POCA)**

7.1 In addition to the actions set out in this policy, the Authority 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 Authority to recover its losses from assets which are found to be the proceeds of crime.

7.2 The Authority will use the Proceeds of Crime Act 2002 and Criminal Justice Act 1988 to obtain Confiscation Orders as well as recovery of the full criminal benefit figure where possible. The Authority may use Accredited Financial Investigators attached to other law enforcement agencies in order to conduct an investigation, obtain orders and present evidence.

## **8 PUBLICITY**

8.1 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 Authority recognises the deterrent value of good publicity and therefore information regarding successful prosecutions and sanctions will be made public.

## **9 REPORTING AND REVIEW**

9.1 Details of all cases where prosecutions have resulted from investigations conducted by Authority Officers will be included in any anti-fraud report provided to the Authority's Audit and Governance Committee.

9.2 This policy will be reviewed as part of the Constitution as required, or when changes in legislation require it, by the Monitoring Officer. Any minor or consequential changes will be made with the agreement of the Authority's Monitoring Officer.