

APPENDIX 6

LONDON BOROUGH OF TOWER HAMLETS **ENFORCEMENT POLICY**

1) Background

This policy is designed to provide a suitable framework to ensure a fair and consistent approach is applied for cases under consideration.

2) Legislative framework

The Council currently has the power to prosecute offences under legislation including the Fraud Act 2006 and Prevention of Social Housing Fraud Act 2013.

3) Suitability for Prosecution and Sanction Action

Cases are scrutinised by the Corporate Anti-Fraud Manager for the suitability for prosecution or sanction action taking into account a number of factors.

Primarily evidence and the public interest test are applied before further additional details of the case are taken into account. Details of the considered criteria are given below:

A) *Sufficiency of evidence*

- Is there enough evidence to provide a realistic prospect of conviction?
- Has the evidence been collected in an appropriate manner?
- Can the evidence be used in court?
- Is the evidence reliable?

B) **Public interest test**

Generally it must be seen to be in the public interest to prosecute. Poor publicity surrounding an attempted prosecution can lead to criticism of the Authority. To consider whether it is in the public interest to prosecute then seven (7) questions need to be considered:

- (a) How serious is the offence committed? The more serious the offence, the more likely it is that a prosecution is required. When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect's culpability and the harm to the victim by asking themselves the questions at b) and c).
- (b) What is the level of culpability of the suspect? The greater the suspect's level of culpability, the more likely it is that a prosecution is required. Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect's age or maturity (see paragraph d) below for suspects under 18).

Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

- (c) What are the circumstances of and the harm caused to the victim? The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim. A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of

those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim's health it may make a prosecution less likely, taking into account the victim's views. However, we do not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

- (d) Was the suspect under the age of 18 at the time of the offence? The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

As a starting point, the younger the suspect, the less likely it is that a prosecution is required. However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

- (e) What is the impact on the community? The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.
- (f) Is prosecution a proportionate response? Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration.

- The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.12 a) to g), but cost is a relevant factor when making an overall assessment of the public interest.)
 - Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.
- (g) Do sources of information require protecting? In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

C) *Additional factors of the case*

A key consideration in the decision whether to prosecute is the level of *dishonesty* involved in the fraud. An investigated case may result in a relatively large amount of value t, but another with a lower amount of abuse may present as more serious because of the level of knowledge and deception involved.

Other factors taken into consideration are:

- Where the offender was in a position of trust (e.g. employee or Councillor).
- Where there is evidence of collusion (e.g. with a contractor Landlord or employee)
- Where Authorised Officer powers have been obstructed.

- Where there are errors or flaws in the system of control applied by the Council

The facts of the case are provided by the investigating officer in summary form at the end of the investigation following a taped Interview under Caution and calculation of any resulting losses.

The Principal Investigation Officer handling the case will evaluate the case and pass her/ his recommendations on to the appropriate Team Leader.

The Team Manager will consider all the available evidence and determine whether any further action will be appropriate on the case in terms of criminal prosecution action, Civil action, Disciplinary action or all three. The above mentioned points are taken into consideration as are any serious social or personal factors that may have come to light during the investigation. Materiality of the loss will also be considered in ensuring cases are pursued making the best use of resources.

The Authority aims to facilitate prosecution action on all cases where there is suitable evidence and supporting criteria. The team has an officer dedicated to preparing the paperwork required and liaising with the Legal department to ensure optimum results are achieved when the case goes to court.

All sums at risk will be pursued and recovery made either by Proceeds of Crime remedy or alternative method including asset recovery.

All cases where there is a successful outcome will be publicised as far as possible to both give confidence to the public that the Council will not tolerate abuse and to act as deterrence to others.