

APPENDIX 2

Leicestershire County Council – Loss Recovery Strategy

Fraud covers a wide range of criminal activity which, so far as the Council is concerned, can broadly be characterised as the dishonest appropriation of the Council's resources (whether financial or otherwise).

Because the Council's resources are finite (*whilst its functions, statutory and otherwise, are significant, diverse and complex*) and because the Council has a responsibility to safeguard public monies, fraudulent activities should be regarded with the utmost seriousness.

For the purposes of this Loss Recovery Strategy, there are two overarching considerations which inform the Council's approach to tackling any detected fraud:-

- The first consideration is the need to preserve public funds which, in appropriate circumstances, may involve the Council taking active steps to recover any misappropriated assets or obtain equivalent compensation; and
- The second is the need to ensure due process of law which, in appropriate circumstances, may require the Council to co-operate with law enforcement authorities which may investigate any alleged offences and, if appropriate, prosecute the alleged perpetrator(s).

Although the Council recognises the importance both of preserving public funds and of ensuring due process of law, these considerations may lead the Council to respond to fraud in different ways.

For example, the prioritisation of the preservation of public assets in response to fraud may prompt the Council to exhaust any civil remedies available to it. On the other hand, the prioritisation of the need to ensure due process of law may prompt the Council to report all fraudulent activities to law enforcement agencies.

For the purposes of this policy, it is recognised that although it is desirable that fraudulent activity be prosecuted, that course of action may leave the Council worse off financially than if the Council had pursued its own civil remedies.

Financial Considerations in relation to reporting fraud to law enforcement authorities

The County Solicitor reports that legal advice received by the Council suggests that criminal prosecutions do not tend to result in high levels of recovery of assets for the Council. This can be attributed to a number of factors:-

- (1) The focus of criminal proceedings is not exclusively upon compensating the victim (*the purpose of sentencing as outlined by statute¹ includes a range of considerations including the need to punish offenders, protect the public, rehabilitation etc.*).

¹ Section 142 of the Criminal Justice Act 2003

- (2) In proceedings brought by the Crown Prosecution Service, the Council has limited control over the question of whether the Court makes any compensation orders²
- (3) There are statutory limits³ to the amount of compensation that the Magistrates Courts can order.
- (4) Those convicted of criminal offences may lose their liberty and or their livelihood and are frequently unable to compensate the Council.
- (5) Unlike Civil Courts the Criminal Courts must take account of a defendant's ability to pay before imposing financial penalties.
- (6) Proceeds of Crime Act 2002 proceedings are complex and are restricted to matters dealt with in the Crown Court.

Civil proceedings may, in appropriate circumstances, offer an increased prospect of achieving a financial recovery but this is highly dependent upon a number of factors including the availability of evidence proving the fraud as well as the ability of the Defendant to meet any judgment.

It is important to treat the civil and criminal avenues as being distinct. It should be borne in mind that law enforcement agencies, such as the Police and/or Action Fraud, are unlikely to wish to pursue a criminal case if the matter has already been pursued in the civil courts. Police may also be less inclined to take action where alleged perpetrators have had an opportunity to conceal evidence or make restitution for their alleged wrongdoing.

Strategy Adopted.

- 1.1 In the event that a fraud or financial irregularity is suspected, the Council will determine on a case by case basis, after seeking the advice of the County Solicitor, or a solicitor in legal services with delegated authority, what further action (if any) will be taken to recover its losses from individual(s) or organisations responsible.
- 1.2 At the earliest available opportunity the Council will consider whether it is appropriate to pursue civil remedies or refer the matter to law enforcement agencies for investigation and/or prosecution.
- 1.3 Before reaching any decision on how to proceed, the Council will seek to avoid any activities which may unnecessarily alert the perpetrator, encourage them to dispose of evidence or otherwise hamper a criminal investigation. This may on occasions not be practicable, for example when an internal disciplinary investigation has been held beforehand. In any event, it is standard operational practice to secure potential evidence at the outset.
- 1.4 In making its decision on whether to pursue civil remedies or report fraudulent activity to law enforcement agencies, the Council will consider the circumstances of the case as well as relevant public interest factors which, without limitation, may include the following:-

² Sections 130 - 133 Powers of Criminal Courts (Sentencing) Act 2000

³ Section 40 (1) Magistrates' Courts Act 1980

Factors which tend to favour a criminal prosecution	Factors which tend to favour Civil Recovery
There is believed to be little prospect of recovery through civil means.	The defendant is known to have assets available for execution or the defendant is working and it is considered that there is a good prospect of recovery.
There is a high level of culpability or wrongdoing.	There is lower level of culpability or dishonesty.
Evidence gathered points to there having been a high level of planning of the fraudulent / criminal activity.	The fraud was opportunistic.
It has come to light during the investigation that the defendant is known to have previous convictions for this kind of activity.	The incident is believed to be a one off.
The defendant denies any responsibility and is unwilling to co-operate with the Council.	The defendant has acknowledged their wrongdoing and is prepared to co-operate with the Council.
It is likely that the police and CPS are likely to be willing to investigate / prosecute.	Whether it is believed that the Police / CPS are unlikely to investigate.

It should be borne in mind that the above factors are only *potential* indicators and any decision whether to instigate criminal or civil proceedings can never be an exact science but will be taken in conjunction with legal advice and after careful consideration of the facts.

- 2 When the Council can demonstrate that it has suffered financial loss and, where it is practical, priority should be given to civil recovery. If however it is believed that civil proceedings will not achieve a significant or any recovery then the Council should give consideration reporting the allegations to relevant law enforcement agencies.
- 3 Whilst primarily consideration will be given to pursuing criminal action or civil remedy, there are alternative avenues of loss recovery open to the Council including:
 - o Pension Forfeiture - where an employee is a member of the Leicestershire County Council Pension Scheme and is convicted of fraud, the Council may be able to recover the loss from the capital value of the individual's accrued benefits in the Scheme;
 - o Bankruptcy, e.g. if it is believed an individual has a poor history of paying;

- If an individual remains an employee of the Council consideration whether any assessed losses may be recovered from future salary payments;
 - Recovery of losses through the Council's fidelity guarantee insurance cover.
- 4 Whilst the Corporate Resources Insurance Section will give advice where it is believed an insurance claim can be made under the Council's fidelity guarantee insurance, the Council's preferred approach, however, is to seek recovery of losses from the perpetrator and fidelity guarantee insurance will generally be a method of last resort.
- 5 In more serious cases, the Crown Court has powers of asset recovery under the Proceeds of Crime Act 2002. The Crown Court must consider making a confiscation order against a defendant under POCA if:
- a) the defendant is convicted of an offence or offences in the Crown Court, or has been committed to the Crown Court for sentence or to be considered for a confiscation order; and
 - b) the prosecutor requests that the court consider making a confiscation order, or the court believes that it is appropriate to consider making a confiscation order.

The Crown Court, when it considers making a confiscation order against a defendant, must determine whether the defendant has a 'criminal lifestyle'. If so, the court must determine whether the defendant benefited from his 'general criminal conduct'.