

## ANTI-FRAUD POLICIES

### 1. INTRODUCTION

- 1.1 Following the report of the Monitoring Officer and Section 151 Officer on Corporate Governance to the Standards Committee 29<sup>th</sup> July 2005, a number of anti-fraud related policies have been reviewed and updated in accordance with the agreed action plan under the Code of Practice for Corporate Governance for 2004/05. These are:
- ❑ Anti-Fraud & Corruption Policy.
  - ❑ Whistle Blowing at Work Policy
  - ❑ Prosecution Policy - Council Tax & Housing Benefit Fraud.
- 1.2 These policies contain links to other approved protocols and policies that did not require updating as part of the aforementioned Corporate Governance review. Where practicable appropriate electronic (Intranet) links will be established.
- 1.3 Cabinet is requested to approve the appended policies.
- 1.4 Standards Committee will be informed of the outcome of this report as part of the Corporate Governance review process during the summer of 2006.
- 1.5 In accordance with stated good practice on corporate governance all employees, and where appropriate Members, will be circulated with these policy statements once approved by Cabinet. Awareness training will be offered to relevant employees.

### 2. ANTI-FRAUD AND CORRUPTION POLICY (Appendix A)

- 2.1 This is the overarching anti fraud policy document and prescribes the Council's commitment to deal with fraud and corruption in accordance with the standards prescribed by good corporate governance.
- 2.2 This policy replaces the Fraud Investigation & Benefit Fraud Council Policy – December 2000.

### 3. WHISTLE BLOWING AT WORK POLICY (Appendix B)

- 3.1 This policy provides the basis for employees to report in confidence on matters of fraud, corruption, malpractice, unethical conduct or any other matter that may be damaging to the individual or effect the reputation of the Council.
- 3.2 The Public Interest Disclosure Act 1988 protects those that expose such serious wrongdoings from recrimination by the employer provided that such claims are not vexatious.

- 3.3 This policy replaces the “Fraud, Corruption and Probity” policy to managers and employees as revised in May 2000.

**4. PROSECUTION POLICY – COUNCIL TAX AND HOUSING BENEFIT FRAUD (Appendix C)**

- 4.1 This policy seeks to define consistent and uniform approach to the application of sanctions, including prosecution, against those that defraud the Council in respect of Housing Benefit and Council Tax claims. In addition to being an identifiable requirement under the last Corporate Governance review such a policy meets the standards expected by the Housing Benefit Inspectorate and the Department of Works and Pensions.
- 4.2 With exceptions of specific sanctions for benefit fraud e.g. Formal Cautions and Administrative Penalties, the principles of the policy can be embraced by all departments of the Council responsible for taking criminal action against perpetrators. However, the need for an umbrella policy covering all aspects of criminal actions taken by the Council will be kept under review.
- 4.3 This policy replaces the Council Tax and Housing Benefit Administration – Benefit Fraud Prosecution Policy reported to Central Services Committee on 1<sup>st</sup> December 1998.

**5. FINANCIAL CONSIDERATIONS:**

- 5.1 There are no financial considerations.

**6. ENVIRONMENTAL CONSIDERATIONS:**

- 6.1 There are no environmental considerations associated with this report.

**7. CRIME & DISORDER IMPLICATIONS:**

- 7.1 These policies support the Council’s stand against crime and disorder.

**8. CONCLUSIONS:**

- 8.1 The endorsement and approval of the appended policies meet not only the requirement of the last Corporate Governance Review but meet with codes of good practice and standards set by a number of Government bodies.
- 8.2 Adoption of the policies will further assist in meeting the requirements of the Council’s continued performance assessment (CPA).

**9. RECOMMENDATIONS:**

Cabinet *is recommended* to:

- 9.1 Approve the Anti-Fraud and Corruption Policy as shown in Appendix A
- 9.2 Approve the Whistle Blowing at Work Policy as shown in Appendix B
- 9.3 Approve the Prosecution Policy - Council Tax and Housing Benefit Fraud as shown in Appendix C

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**Background Information:**

Corporate Governance – Annual Report to Standards Committee 29<sup>th</sup> July 2005

Fraud, Corruption & Probity leaflets as revised May 2000

Fraud Investigation & Benefit Fraud – Council Policy – December 2000

Council Tax & Housing Benefit Administration – Benefit Fraud Prosecution Policy – Central Services Committee 1<sup>st</sup> December 1998

## ANTI-FRAUD AND CORRUPTION POLICY STATEMENT

APRIL 2006

Anti-Fraud and Corruption Policy

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**1 INTRODUCTION**

1.1 Good Corporate Governance requires that the authority demonstrates clearly that it is firmly committed to dealing with fraud and corruption and will deal equally with perpetrators from inside (members and employees) and outside the Council. In addition, there will be no distinction made in investigation and action between cases that generate financial benefits and those that do not. This policy statement, however, will not compromise the Council's commitment to Equal Opportunities or the requirements of the Human Rights Act 1998 and other relevant statutory provision.

1.2 This policy statement embodies a series of measures designed to frustrate any attempted fraudulent or corrupt act and the steps to be taken if such action occurs. For ease of understanding it is separated into five areas as below:-

Culture	Section 2
Prevention	Section 3
Deterrence	Section 4
Detection and Investigation	Section 5
Training	Section 6

1.3 The Council is also aware of the high degree of external scrutiny of its affairs by a variety of bodies such as the Audit Commission (including External Audit and Inspection), other Government Inspection bodies, the Local Government Ombudsman, the National Standards Board, HM Customs & Excise and the Inland Revenue. These bodies are important in highlighting any areas where improvements can be made.

1.4 Fraud and corruption are defined by the Audit Commission as:-

**Fraud** – *“the intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to conceal the misappropriation of assets or otherwise for gain”.*

In addition, fraud can also be defined as *“the intentional distortion of financial statements or other records by persons internal or external to the authority, which is carried out to mislead or misrepresent”.*

**Corruption** – *“the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person”.*

1.5 In addition, this policy statement also covers “*the failure to disclose an interest in order to gain financial or other pecuniary benefit.*”

## **2 CULTURE**

- 2.1 The culture of the Council has always been one of openness and the core principles of Value, Fairness and Trust support this. The culture therefore supports the opposition to fraud and corruption.
- 2.2 The prevention/detection of fraud/corruption and the protection of the public purse are responsibilities of everyone, both internal and external to the organisation.
- 2.3 The Council’s elected members and employees play an important role in creating and maintaining this culture. They are positively encouraged to raise concerns regarding fraud and corruption, immaterial of seniority, rank or status, in the knowledge that such concerns will wherever possible be treated in confidence. The public also has a role to play in this process and should inform the Council if they feel that fraud/corruption may have occurred.
- 2.4 Concerns must be raised when members, employees or the public reasonably believe that one or more of the following has occurred is in the process of occurring or is likely to occur:
- A criminal offence
  - A failure to comply with a statutory or legal obligation
  - Improper or unauthorised use of public or other official funds
  - A miscarriage of justice
  - Maladministration, misconduct or malpractice
  - Endangering an individual’s health and/or safety
  - Damage to the environment
  - Deliberate concealment of any of the above
- 2.5 The Council will ensure that any allegations received in any way, including by anonymous letters or telephone calls, will be taken seriously and investigated in an appropriate manner.
- 2.6 The Council will deal firmly with those who defraud the Council or who are corrupt, or where there has been financial malpractice. There is, of course, a need to ensure that any investigation process is not misused and, therefore, any abuse (such as employees/members raising malicious

allegations) may be dealt with as a disciplinary matter (employees) or through the Council's adopted procedures for complaints against Members.

- 2.7 When fraud and corruption has occurred due to a breakdown in the Council's systems or procedures, Directors will ensure that appropriate improvements in systems of control are implemented in order to prevent a re-occurrence.

### **3 PREVENTION**

#### **EMPLOYEES AND ELECTED MEMBERS**

##### **3.1 Responsibilities of Elected Members**

- 3.1.1 As elected representatives, all members of the Council have a duty to the Citizens of the District to protect the Council and public money from any acts of fraud and corruption.
- 3.1.2 This is done through existing practice, compliance with the National Code of Conduct for Members, the Council's Constitution, including Financial Regulations and Standing Orders and relevant legislation.
- 3.1.3 Elected Members sign to the effect that they have read and understood the Code of Conduct for Members when they take office. Conduct and ethical matters are specifically brought to the attention of members during induction and include the declaration and registration of interests. Officers advise members of new legislative or procedural requirements.

##### **3.2 Responsibilities of Employees**

- 3.2.1 Each employee is governed in their work by the Council's Standing Orders and Financial Regulations, and other policies on conduct and on IT usage. Included in the Council policies are guidelines on Gifts and Hospitality, and codes of conduct associated with professional and personal conduct and conflict of interest. These are issued to all employees when they join the Council from Personnel services.
- 3.2.2 In addition to paragraph 3.4.1 above, employees are responsible for ensuring that they follow the instructions given to them by management, particularly in relation to the safekeeping of the assets of the Authority.
- 3.2.3 Employees are expected always to be aware of the possibility that fraud, corruption and theft may exist in the workplace and be able to share their concerns with management.

##### **3.3 Conflicts of Interest**

- 3.3.1 Both elected members and employees must ensure that they avoid situations where there is a potential for a conflict of interest. Such situations can arise with externalisation of services, internal tendering, planning and land issues etc. Effective role separation will ensure decisions made are seen to be based upon

impartial advice and avoid questions about improper disclosure of confidential information.

## **OTHER ROLES AND RESPONSIBILITIES**

### **3.4 The Role of the Section 151 Officer**

3.4.1 The Section 151 Officer has been designated with the statutory responsibilities as defined by s151 of the Local Government Act 1972. These responsibilities outline that every local authority in England & Wales should:

*“make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has the responsibility or the administration of those affairs”.*

3.4.2 Under the Sec 151’s Officers responsibilities, proper administration encompasses all aspects of local authority financial management including:

- Compliance with the statutory requirements for accounting and internal audit and ensuring the Authority’s responsibility for ensuring proper administration of it’s financial affairs;
- The proper exercise of a wide range of delegated powers both formal and informal;
- The responsibility for managing the financial affairs of the local authority in all it’s dealings; and
- The recognition of the fiduciary responsibility owed to local taxpayers.

3.4.3 Under these statutory responsibilities the Sec 151 Officer contributes to the anti-fraud and corruption framework of the Council.

### **3.5 The Role of the Council’s Monitoring Officer:**

3.5.1 The Council’s Monitoring Officer is a statutorily appointed officer who has duties under the probity and ethical framework concerning Elected Members.

3.5.2 If a Member is suspected of committing fraud this should be immediately brought to the attention of the Monitoring Officer and Chief Executive who will consider whether the Member should be referred to the Standards Board for England. Any subsequent investigation should there be one will either be carried out by the Standards Board or the Monitoring Officer as prescribed by law or in accordance with the Council’s complaints procedures in respect of Members.

### **3.6 Role of Internal Audit**

3.6.1 Internal Audit, a statutory function within the Resources Directorate, plays a vital preventative role in trying to ensure that systems and procedures are in place to prevent and deter fraud and corruption. Internal Audit investigates all employee

cases of suspected financial irregularity, fraud or corruption, including Benefit fraud investigations (see below), in accordance with agreed procedures.

3.6.2 Under the Council's Financial Regulations, representatives of Internal Audit are empowered to:

- enter at all reasonable times any Council premises or land;
- have access to all records, documentation and correspondence relating to any financial and other transactions as considered necessary;
- have access to records belonging to third parties such as contractors when required;
- seek such explanations as are regarded necessary concerning any matter under examination;
- require any employee of the Council to account for cash, stores or any other Council property under his/her control or possession.

*# Intranet Link to the Council's Financial Regulations (as amended 2006).*

3.6.3 Internal Audit will liaise with management to recommend changes in procedures to reduce risks and prevent losses to the Authority.

### **3.7 The Role of Directors and Service Managers**

3.7.1 Managers at all levels are responsible for the communication and implementation of this strategy in their work area. They are also responsible for ensuring that their employees are aware of the Council's personnel policies and procedures, the Council's Financial Regulations and Standing Orders and that the requirements of each are being met in their everyday business activities.

3.7.2 Managers are expected to create an environment in which their staff feel able to approach them with any concerns they may have about suspected irregularities.

3.7.3 Special arrangements may be applied from time to time for example where employees are responsible for cash handling or are in charge of financial systems and systems that generate payments, for example payroll or the Revenues & Benefits computer system. Relevant training will support these procedures.

3.7.4 The Council recognises that a key preventative measure in dealing with fraud and corruption is for managers to take effective steps at the recruitment stage to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts and agency staff. The Council's formal recruitment procedure contains appropriate safeguards in the form of written references, the verification of qualifications held and employment history. As in other public bodies Criminal Records Bureau (CRB) checks are



undertaken for employees working with or who may have contact with children or vulnerable adults.

### **3.8 The Role of the Benefits Investigation Team**

3.8.1 The Council has a Benefits Investigation Team based within Internal Audit who undertake investigations into allegations of benefit fraud and are responsible for all of the benefit fraud investigations, in accordance with legislation and agreed codes of conduct. In all cases they will work with Internal Audit, Personnel and senior management to ensure that correct procedures are followed and that this policy is adhered to.

*# [Intranet Link to Prosecution Policy - Council Tax & Housing Benefit Fraud \(April 2006\)](#)*

### **3.9 The Role of the Audit Commission**

3.9.1 Independent external audit is an essential safeguard of the stewardship of public money. This is currently carried out by the Audit Commission through specific reviews that are designed to test (amongst other things) the adequacy of the Council's financial systems and arrangements for preventing and detecting fraud and corruption. It is not the external auditors' function to prevent fraud and irregularities, but the integrity of public funds is at all times a matter of general concern. External auditors are always alert to the possibility of fraud and irregularity, and will act without undue delay if grounds for suspicion come to their notice. The external auditor has a responsibility to review the Council's arrangements for preventing and detecting fraud and irregularities, and arrangements designed to limit the opportunity for corrupt practices.

3.9.2 Where External Audit is required to undertake an investigation they will operate within legislation and their codes of conduct.

### **3.10 The Role of the Public**

3.10.1 This policy, although primarily aimed at those within or associated with the Council, enables concerns raised by the public to be investigated, as appropriate, by the relevant person in a proper manner.

### **3.11 Co-operation with Others**

3.11.1 Internal Audit has arranged, and in compliance with the Data Protection Act, to develop and encourage the exchange of information on national and local fraud and corruption activity in relation to Local Authorities, with external agencies such as:

- Police
- County, and District Groups
- Audit Commission
- Department for Work & Pensions
- Government Departments

- National Anti-Fraud Network

### **3.12 Official Guidance**

- 3.12.1 In addition to Financial Regulations and Standing Orders, due regard will be had to external and inspectorate recommendations.

## **4 DETERRENCE**

### **4.1 Housing and Council Tax Benefit Administration & Fraud Investigation**

- 4.1.1 Benefits administration is recognised nationally as being complex and difficult to administer. This results in the scheme being prone to error and abuse. The Authority is committed to tackling poverty but it must also ensure that the administration of housing and council tax benefit is secure, fair and provides prompt help to those who need it. Equally, it must also be vigilant in tackling fraud and error to ensure value for taxpayers' money.
- 4.1.2 The Revenues & Benefits Service operates within the Government's policies and guidelines and the National Performance Standards Framework, which aims to improve the quality and accuracy of benefit determinations and both prevent and reduce the incidence of fraud.
- 4.1.3 The Council has a Benefit Investigation Team who is responsible for all benefit fraud investigations, in accordance with legislation and agreed codes of conduct. In cases where employees are involved they will work with Internal Audit, Personnel and appropriate senior management to ensure that correct procedures are followed and that this policy is adhered to.

### **4.2 Prosecution**

- 4.2.1 In terms of prosecutions the Council will ensure consistency in the Council's action and seek to deter others from committing offences against the Authority.

### **4.3 Disciplinary Action**

- 4.3.1 Theft, fraud and corruption are serious offences which may constitute gross misconduct against the Authority and employees will face disciplinary action if there is evidence that they have been involved in these activities, including Benefit fraud. Disciplinary action will be taken in addition to, or instead of, criminal proceedings depending on the circumstances of each individual case but in a consistent manner.
- 4.3.2 Members will face appropriate action under this policy if they are found to have been involved in theft, fraud and corruption against the Authority. Action will be

taken in addition to, or instead of criminal proceedings, depending on the circumstances of each individual case but in a consistent manner.

#### **4.4 Publicity**

- 4.4.1 The Council will optimise the publicity opportunities associated with anti-fraud and corruption activity within the Council.
- 4.4.2 In all cases (both Member and Officer) where the Council has suffered a financial loss then the Council will consider the recovery of the loss.
- 4.4.3 All anti-fraud and corruption activities, including the update of this policy, will be publicised.

### **5 DETECTION AND INVESTIGATION**

- 5.1 Internal Audit plays an important role in the detection of fraud and corruption. Included in their five-year plan are reviews of system controls including financial controls and specific fraud and corruption tests, spot checks and unannounced visits.
- 5.2 In addition to Internal Audit, there are numerous systems and management controls in place to deter fraud and corruption but it is often the vigilance of employees and members of the public that aids detection.
- 5.3 Where frauds are reported by employees the Council will ensure that such information is properly dealt with within its whistle blowing policies.

*# [Intranet Link to Whistle Blowing at Work policy \(April 2006\)](#)*

### **6 AWARENESS AND TRAINING**

- 6.1 The Council recognises that the continuing success of this strategy and its general credibility will depend in part on the effectiveness of training and awareness for members and employees and accordingly will take appropriate action.

### **7 CONCLUSION**

- 7.1 The Council has always prided itself on setting and maintaining high standards and a culture of openness, with core principles of Value, Fairness and Trust. This strategy fully supports the Council's desire to maintain an honest authority, free from fraud and corruption.
- 7.2 The Council has in place a network of systems and procedures to assist it in dealing with fraud and corruption when it occurs. It is determined that these arrangements will keep pace with any future developments in both preventative and detection techniques regarding fraudulent or corrupt activity that may affect its operation.

- 7.3 The Council will maintain a continuous review of all these systems and procedures through Internal Audit, within Resources.
- 7.4 This policy statement will be reviewed on a regular basis.

**WHISTLE BLOWING AT WORK POLICY**

**APRIL 2006**

Whistle Blowing at Work Policy

**1. POLICY**

1.1 New Forest District Council is committed to the highest standards of corporate governance and to full accountability for all of its services. It is also committed to the prevention, deterrence, detection and investigation of all forms of fraud, corruption, malpractice and unethical conduct.

1.2 The Whistle Blowing policy is specifically intended to ensure that any employee who raises an issue or concern regarding suspected malpractice or serious wrongdoing in the workplace, will not be subject to any detriment, e.g. dismissed, denied promotion, ostracised or transferred to another department. The aim is to encourage employees to raise concerns about malpractice in the workplace, promoting honesty and openness.

1.3 The policy is intended to supplement, rather than replace, the existing complaints procedures whereby Council employees, Members and members of the public may already raise complaints or matters of genuine concern with the Council. Members of the public will always be referred in the first instance to the Council's Corporate Complaints Procedures.

*# Intranet Link to the Corporate Complaints Procedures*

1.4 The policy gives clear guidance to employees for bringing attention to any wrongdoing, which they feel is harmful to individuals or could affect the reputation of the Council.

1.5 If a Member is concerned about any aspect of an employee's conduct (including conduct which would be covered by this policy), they should follow the procedure set out in the Local Code for Member/Officer Relations i.e. the matter should be reported to the relevant Director.

1.6 Alternatively, if an employee is concerned about the conduct of any Member, their Line Manager, their Director, the Chief Executive or the Monitoring Officer should be informed. The matter will be taken seriously. Members are under an obligation to comply with a statutory Code of Conduct as well as the Council's own local codes.

*# Intranet Link to the Local Code for Member/Officer Relations*

*# Intranet Link to the Code of Conduct for Members*

**2. INDIVIDUALS AFFECTED**

2.1 All employees of New Forest District Council.

### **3 DEFINITION**

- 3.1 The term 'Whistle Blowing' is used to define the disclosure, by an employee, of information that relates to suspected malpractice, corruption, fraud and illegal or unethical conduct by employees and/or agents of the Council.
- 3.2 The following list is not exhaustive but gives examples of malpractice, unethical conduct or potential malpractice:
- Danger to the health and safety of any individuals
  - Damage to the environment
  - Unauthorised use of public funds
  - Misappropriation of public funds
  - Breach of regulatory, administrative or common law
  - Abuse of those living within our sheltered housing schemes or other Council controlled premises.
  - Fraud and Corruption or any criminal offence that has or is likely to take place.
  - Breach of contract
  - Negligence
  - Attempting to conceal any of the above, including omission to document any issues of concern or preventing persons from reporting such concerns.

### **4. AIMS AND SCOPE OF THE POLICY**

- 4.1 The Council's employees are an important element in its stance against fraud, corruption or any form of malpractice and are positively encouraged to raise any concerns that they may have on these issues where they are associated with the Council's activity. They can do this in the knowledge that such concerns will be treated in confidence, properly investigated and dealt with fairly.
- 4.2 The policy is aimed at encouraging employees to feel confident in raising serious concerns, on an anonymous basis if necessary, and to have confidence that those concerns will be dealt with appropriately. It will also reassure them that they will be protected from possible reprisals or victimisation if they have reasonable belief that they have made the disclosure in good faith.

### **5. EMPLOYEE RESPONSIBILITIES**

- 5.1 Employees are expected to maintain the highest levels of honesty and integrity as defined by the Council's Employee Code of Conduct as well as any code of conduct related to, or required by, their professional institute or association.

*[# Intranet Link to Employees Code of Conduct](#)*

## 6. HOW TO RAISE A CONCERN

6.1 Employees are urged to raise concerns, often before problems have a chance of becoming serious, with their line manager or Head of Service. Employees have the right to engage the services of their Trade Union if they so wish. They may in any circumstance raise it directly with any of the following officers:

- Chief Executive
- Directors
- Head of Human Resources
- Head of Internal Audit
- The Council's Monitoring Officer
- The Council's S151 Officer

**NOTE:** It is a specific requirement of the Council's Financial Regulations that all matters of fraud, misappropriation or other financial irregularity are referred immediately, by the employee raising a concern or the officer to whom they have initially reported, to the Council's Section 151 Officer (currently the Director of Resources) and/or the Head of Internal Audit.

*# Intranet link to Financial Regulations*

6.2 Concerns can be raised verbally or in writing. If written, the concern should be addressed to one of the officers set out in paragraph 6.1 and sent in an envelope marked '*Personal, Private and Confidential*'. If the concern is of an extremely serious nature, the envelope should be hand delivered to the person to whom the matter is being reported. Concerns expressed anonymously are much less powerful and employees are encouraged to put their names to allegations. However, in order to ensure that maximum facilities are available to employees they are free to report anonymously on any areas of concern. Such anonymous allegations will be fully investigated.

**NOTE:** If anonymity is preferred, complainants may use the Council's secure (and untraceable) 24 hour Fraud Hotline managed by Internal Audit. The number is 0800 085 1637. Concerns (of any nature) may be e-mailed using [fraud@nfdc.gov.uk](mailto:fraud@nfdc.gov.uk) in total confidence

6.3 New Forest District Council is proud of its reputation as a Council with the highest standards of probity and will ensure that any complaints received are properly investigated. However any false or malicious allegations that are received will be viewed very seriously and the making of such allegations by an employee of the Council will be regarded as a disciplinary issue (refer to the Council's Disciplinary Procedures). False or malicious allegations by a Councillor will be dealt with as a potential breach of the Code of Conduct for Members.

6.4 If employees still have reason to feel unable to report their concern as outlined above, they may report their concern to a prescribed organisation such as: -

- Public Concern at Work: Tel: 020 7404 6609 [www.pcaw.co.uk](http://www.pcaw.co.uk)
- Hampshire Police: Tel: 0845 045 4545
- Audit Commission: Tel: 020 7828 1212
- Health & Safety Executive Tel: 0845 345 0055

## 7. INVESTIGATING A CONCERN

- 7.1 For all matters concerning allegations of fraud, corruption and financial malpractice on the part of an employee, the Council's Internal Audit services will conduct the investigation or refer the matter to the Police as appropriate. It is critical that complainants and/or line managers do not instigate their own investigation in these circumstances as this may frustrate the ability to proceed with criminal action.
- 7.2 In all other cases where there is prima facie no breach of regulation or legislation and/or abuse of persons which could give cause for legal action the line manager will fully investigate the matter, in consultation with appropriate service professionals. Although employees will be-informed of progress, in some cases detailed feedback will not be possible. However the employee will receive information that will demonstrate that the Council has investigated the matter thoroughly, including any changes in working practices.
- 7.3 If the employee feels that the investigation has failed to resolve the matter, they should ask for a confidential meeting with their Director or Head of Service-
- 7.4 Complaints against Members will be conducted in accordance with the procedures adopted by the Council or as determined by the Standards Board for England as appropriate.

## 8. LEGISLATION

- 8.1 Public Interest Disclosure Act 1988: The Act protects employees who expose serious wrongdoing in the workplace and prohibits any recrimination by employers or individuals against employees who raise concerns of malpractice, unethical conduct or serious wrongdoing.
- 8.2 Employment Rights Act 1996: This brings together many of the individual employment rights found amongst a number of different statutes. It repeals in their entirety the Employment Protection (Consolidation) Act 1978 and the Wages Act 1986. It requires employers to provide employees with information about their rights and entitlements and to treat them fairly.
- 8.3 Health and Safety at Work Etc. Act 1974: responsibilities of the employer to establish and maintain a safe and healthy workplace
- 8.4 Sex Discrimination (Gender Reassignment) Regulations 1999: Prohibits direct discrimination against employees on the grounds of gender reassignment.
- 8.5 Protection from Harassment Act 1997: Contains provisions designed specifically to deal with 'stalkers'.
- 8.6 The Employment Equality (Religion or Belief) Regulations 2003: Extends discrimination rights to cover belief systems.



**9. OTHER SOURCES OF INFORMATION**

See Intranet Links referred to in this report, and additionally:

Anti-Fraud & Corruption Policy	(see Audit Services/Intranet)
Grievance & Disciplinary procedure	(see Employee Handbook/Intranet)

**PROSECUTION POLICY – COUNCIL TAX & HOUSING BENEFIT FRAUD**

APRIL 2006

Prosecution Policy**1. INTRODUCTION**

- 1.1 The council has great scope for exercising discretion at various stages in the resolution of offences. It is important that officers of the council exercise discretion in a uniform manner in order to achieve a consistent application, which will serve the interests of justice, the council, and the offender.
- 1.2 It is the Council's policy that all enforcement decisions are always consistent, balanced and fair and relate to the degree and nature of the offence. The Council will decide, based on the Code for Crown Prosecutors, Home Office guidelines the degree or type of sanction to be used in each individual case. In coming to any decision many factors will be taken into account including the seriousness of the offence, the value of the overpayment, the length of the fraud, the vulnerability of the claimant, and the health and age of the claimant.
- 1.3 The commission of an offence will not automatically attract a prosecution. There are positive advantages for the council, society and also for the individual concerned, in using prosecution as a last resort. Alternatives to prosecution have long been established, particularly in the case of special categories of offenders such as the elderly and the mentally and physically handicapped. A similar recognition of the benefits of alternatives to prosecution in appropriate cases must be made for all offenders regardless of age, gender or ethnic origin.

**2. RESOLUTION OF OFFENCES**

- 2.1 Fraudulent cases involving the council may be resolved by the following sanctions:
- 2.2 **Formal Caution**

For cases generally not exceeding a fraudulent over payment of £2000 and where no previous findings of guilt are known, the council have the authority under the Social Security Administration (Fraud) Act 1997 to offer a Formal Caution to a claimant. The claimant has to admit that they have committed an offence for a Formal Caution to be considered a suitable sanction. This course of action should not be embarked upon unless evidence to the criminal standard has been obtained. Should the claimant refuse, the council will be required to prosecute the claimant under the appropriate legislation. The £2000 ceiling is to be used as a guideline only as there will be occasions when cases outside this criteria may be considered suitable for a Formal Caution to be administered. Before any decision is made the council will make checks with the Professional Standards Unit (PSU) of the Department of Work and Pensions (DWP) and with the Crime Intelligence Management Unit (CIMU) of the Hampshire Constabulary in respect of previous findings of a formal caution or previous convictions. Formal Cautions will be administered to claimants by either The Assistant Director of Resources or The Audit Manager. The Senior Investigations Officer may also on occasions perform this task providing he/she has had no direct involvement in the Investigation.

### 2.3 Administrative Penalty under the Social Security Administration (Fraud) Act 1997

This Act offers an alternative to prosecution in the form of a 30% penalty on the value of the detected fraud. The figure of not more than a £2000 fraudulent over payment will generally be the ceiling figure. However, this figure is not sacrosanct and each case will be considered on its merits. The claimant is not required to admit any offence for a penalty to be administered. To administer such a penalty the claimant must accept the conditions of this penalty by signing a written agreement. The agreement may be withdrawn (at the risk of being prosecuted) within 28 days of being served. This form of sanction will be considered where prosecution would not be in the Council's interest (see prosecutions below) but sufficient funds may be available to ensure recovery of monies. As with Formal Cautions, checks will be made with the PSU at the DWP and the Police re previous findings of guilt before a decision is made.

### 2.4 Police Caution

This sanction would be applied in cases where there is an admission of guilt but prosecution is not felt appropriate. Under a Service Level Agreement, such cautions are administered by the Police themselves and require a full prosecution file to be compiled by the Council's investigators. This form of caution carries a higher penalty for the claimant in that such a sanction will be recorded on the Police National Computer and is disclosable for any future Court appearance. This form of caution will normally be considered for cases, which would normally result in a court appearance, but for mitigating factors such as previous good character and the age and health of the claimant.

### 2.5 Prosecutions

Prosecution is the ultimate sanction available to the Council and will normally be considered for all frauds in excess of £2000. However this figure could be less if there has been a previous history of fraud or other specific factors need to be considered. Before reaching this decision the Audit Manager will have regard to the Attorney General's Guidelines as to whether prosecution is in the public interest, whether the claimant is fit to be prosecuted and whether the evidence has passed the evidential sufficiency test i.e. the Council must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against every defendant on every charge and has been obtained in an appropriate manner. This will be substantiated by the Council's Solicitor and agreement reached on the wording of any Summonses.

2.6 In respect of all the sanctions available to the Council, an important aim must be to ensure that justice "**has been seen to be done**" and in this respect, the Council seeks to ensure that adequate publicity accrues to promote the deterrence of benefit fraud throughout the community.

### 3. EXPLANATIONS AND CRITERIA FOR DECISIONS: FORMAL CAUTION

- 3.1 A formal caution unlike a formal Police Caution may not be cited in legal proceedings. However it may be taken into consideration when deciding on any future proceedings being considered by the Council.

It is an appropriate means of resolving a case when:

- (a) an offence has been admitted by the offender, but having regard to the circumstances of the offence and amount of over payment, Court proceedings are not desirable.
- (b) It will prevent the entry of an offender into the criminal justice system.

- 3.2 The criteria for a Formal Caution must include :

**Sufficiency of evidence** - A formal caution is only appropriate if the strength of evidence is such that a prosecution would otherwise succeed. Cautioning should never be used as a substitute for a weak case.

**Admission of Guilt** - Guilt must be admitted. It may not be sufficient that the facts or circumstances of an offence are admitted. If an essential element of the offence includes intent, then that intent must also be admitted.

**Consent** - The offender must consent to receiving a caution, but not before a decision has been taken that a caution would be appropriate.

### 4. EXPLANATIONS AND CRITERIA FOR DECISIONS: ADMINISTRATIVE PENALTY UNDER THE SOCIAL SECURITY ADMINISTRATION (FRAUD) ACT 1997

- 4.1 An administrative penalty may not be cited in legal proceedings. However, it may be taken into consideration when deciding on any future proceedings being considered by the Council.

It is an appropriate means of resolving a case when:

- The offender has not admitted an offence, but having regard to the circumstances of the offence and amount of over payment, Court proceedings are not desirable.
- It will prevent the entry of an offender into the criminal justice system.

- 4.2 The criteria for an Administrative Penalty must include:

**Sufficiency of evidence** - A Penalty is only appropriate if the strength of evidence is such that a prosecution would otherwise succeed. Offering a penalty should never be used as a substitute for a weak case.

**Consent** - The offender must consent to receiving a penalty, but not before a decision has been taken that a caution would be appropriate. If the offender refuses the penalty then the case must proceed to prosecution.

## 5. EXPLANATIONS AND CRITERIA FOR DECISIONS: POLICE CAUTION

5.1 A caution must not be considered unless the circumstances of the offence justify it.

5.2 Properly used, cautioning is an effective form of dealing with offenders, and one which may, in appropriate circumstances, be used for offenders of any age. Proper use of discretion is a matter of common sense: the questions to be asked in each case are: -

- Whether the circumstances are such that a caution is likely to be effective.
- Whether the caution is appropriate to the offence.

5.3 The criteria for a formal Police Caution must include:

**Sufficiency of evidence** - A formal Police caution is only appropriate if the strength of evidence is such that a prosecution would otherwise succeed. Cautioning should never be used as a substitute for a weak case.

**Admission of Guilt** - Guilt must be admitted. It may not be sufficient that the facts or circumstances of an offence are admitted. If an essential element of the offence includes intent, then that intent must also be admitted.

**Consent** - The offender must consent to receiving a caution, but not before a decision has been taken that a caution would be appropriate. It is also important that the offender is given an explanation of the significance of a formal Police caution.

5.4 The objective of a Police caution is to impress upon the offender the seriousness of the misconduct and the possible consequences of re-offending.

5.5 Citation at Court - Cautions must be brought to the attention of the Courts. However cautions and previous convictions should be notified to the court on separate sheets of paper.

## 6. EXPLANATIONS AND CRITERIA FOR DECISIONS: PROSECUTION

6.1 No decision to take formal proceedings should be taken unless **ALL** the following conditions are fully met :

- The available evidence must comply with the Code for Crown Prosecutors criteria for prosecution, i.e. there must be a realistic prospect of conviction.
- Alternative methods of disposal such as Formal and Police cautions and Administrative Penalties have been considered and discounted.

- A prosecution will serve the public interest. Factors which have some bearing on public interest include the nature and seriousness of the offence and the value of property involved e.g. Housing Benefit overpayment.

Where these criteria are met, then prosecution may be appropriate.

## **7. FRAUD AWARENESS.**

- 7.1 All new members of the Benefit Section will be given a talk and a Fraud Awareness Induction Handbook by the Senior Investigations Officer and his/her team. In addition, monthly fraud liaison meetings will be held with representatives from the Benefits section and all agenda item requests and minutes of the meetings will be circulated to all staff within Tax & Benefits.
- 7.2 Fraud Awareness Sessions will be conducted on an annual basis to all staff employed in benefit administration.
- 7.3 A dedicated site on the NFDC Intranet to be maintained highlighting how claimants on Benefit who commit Fraud may unwittingly bring themselves to the attention of other council employees.
- 7.4 Publicity in the form of highlighting successful convictions in local newspapers and other relevant media outlets, as well as advertising the Fraud Hotline **0800 085 1637** initiative to the public.