

## **Proceedings against Councillor Wilson – response to questions raised from Councillor Pugsley**

**Responsible officer:** Kevin Finan, Chief Executive

**Reason for Report:** The report was requested by the Scrutiny Committee meeting on 19 January 2015 to answer a series of questions raised by Members on the successful prosecution of Councillor Wilson in February 2014.

### **RECOMMENDATION: That the Scrutiny Committee:**

- 1. Note the answers to their questions raised at the earlier meeting**
- 2. Note and endorse the current Anti-Fraud and Corruption Policy; Housing and Council Tax Benefit Fraud Policy; and Fraud Policy & Procedure Manual (attached)**
- 3. Support the promotion of propriety in public office**

**Relationship to Corporate Plan:** Delivery of the Corporate Plan requires the Council maintaining public confidence and support. When exercising a community leadership role it is vital that the holders of public office act in a way that promotes propriety in their corporate culture.

**Financial Implications:** None arising directly from this report. The £3,800 benefit fraudulently claimed is being repaid by instalment. The costs of prosecution are explained within the report.

**Legal Implications:** None arising directly from this report. The Council's powers and duties are covered in the appendices to the report.

**Risk Assessment:** The prevention and detection of fraud and corruption are managed through the maintenance of the Anti-Fraud and Corruption Policy and the Housing and Council Tax Benefit Fraud Policy. Failure to have and maintain such policies would leave the Council more vulnerable to fraudulent and corrupt activity.

### **1.0 Introduction**

- 1.1 At the last meeting of this Committee, Councillor Pugsley raised a number of questions which the Chief Executive undertook to answer by way of a report to the next Committee meeting.
- 1.2 Reference was made to a more recent prosecution case in the Exeter Magistrates Court costing £13k. This prosecution was brought by the Department for Work and Pensions and, as such, is not dealt with in this report.
- 1.3 The Council maintains a number of policies and procedural processes to guide prosecution decisions when dealing with fraud and corruption. These are attached.

- Anti-Fraud and Corruption Policy – Appendix 1
- Housing and Council Tax Benefit Fraud Policy – Appendix 2
- Fraud Policy and Procedures Manual – Appendix 3

## **2.0 Questions asked by Cllr Pugsley and Scrutiny Committee members**

2.1 A transcript of the last meeting giving details of the questions raised is attached at Appendix 4.

## **2.2 Costs of the prosecution of Councillor Wilson for dishonesty.**

2.2.1 The estimated costs of the prosecution have been put at £13,000. This covers the Council's staff time in addition to the £10,000 cost of a barrister to represent the Council in the Crown Court.

2.2.2 Of the £3,000 estimated that the Council incurred, less than £1,000 was incurred in bringing the matter to the Exeter Magistrates Court.

2.2.3 The Council's Solicitor for the case recorded 62.2 hours in total on the case, at a salary cost of £23 per hour, equalling £1,430. If we were charging out his time, it would be at a rate of £125 per hour.

2.2.4 The matter was taken to the Crown Court because Councillor Wilson pleaded not guilty at the Magistrates Court and elected to be tried at the Crown Court. As the Council employs only solicitors and not barristers, then our staff have no right of audience in the Crown Court. The necessity of employing a barrister to represent the Council was therefore entirely a consequence of Councillor Wilson's refusal to plead guilty at an early stage in the proceedings.

## **2.3 The employment of an expensive barrister.**

2.3.1 The choice of which barrister to employ was made by the Chief Executive in consultation with the Council's Solicitor, Monitoring Officer and Head of Finance. Given a choice of local barristers it was decided to appoint the most experienced local counsel due to the difficulties anticipated in bringing a case for dishonesty. Councillor Wilson maintained throughout, until he changed his plea during the trial, that he did not act dishonestly, an essential element of the fraud offences he was charged with. With a prosecution for a fraud (offence) it is necessary to prove not only the act, but also dishonesty. Although Councillor Wilson did not admit the dishonesty, his account of what happened was implausible and it was felt a senior barrister would be able to show the dishonesty through effective cross-examination. The barrister appointed also had previous experience in prosecutions of this nature.

2.3.2 At an early stage of the proceedings Councillor Wilson raised that he would also pursue a defence that the prosecution was an abuse of process, in effect that the prosecution was politically/personally motivated. This increased the already sensitive nature of the prosecution.

2.3.3 The fee negotiated at the outset with the barrister's clerk was £10,000. This included representation at the three-day trial and advice leading up to the trial. It should be borne in mind that the Council's solicitors are not criminal solicitors who are used to being in the criminal courts day-in and day-out and had not previously been involved with a benefits prosecution. Several conferences were needed with the barrister leading up to the trial. It should also be borne in mind that if the prosecution had been put out to outside solicitors, the cost would have increased considerably.

2.3.4 During the investigation of the benefit fraud, Councillor Wilson had shown a propensity to deceive and mislead on a number of occasions. These included:

- Stating an annual pension received was actually the proceeds from the sale of a car
- Opening a new and undeclared bank account to receive undeclared income
- Failure to declare income from work undertaken for the Liberal Democrat Party. Councillor Wilson lied repeatedly and said the income was merely reimbursement of expenses incurred by him
- Failure to declare a pension income
- Claiming to have been made redundant rather than having been sacked for gross misconduct.
- Claiming to have lost the cheque he received from the sale of the car.
- Maintaining, in relation to income he should have disclosed in his benefit claim forms, that he thought he did not have disclose it because it was used towards his daughter's school fees.

2.3.6 In the light of the range and number of dishonest representations received from Councillor Wilson, the refusal to plead guilty and the onus of proof required from the Council, it was seen as important that an experienced barrister be used to address the brazen denials we faced and ensure a successful prosecution. A senior barrister was also needed because of the sensitive nature of the prosecution heightened by the allegation from Councillor Wilson that the prosecution was an abuse of process.

## **2.4 Collection of evidence prior to prosecution.**

2.4.1 The Council's Housing Benefit Fraud team and Legal Services collected a range of evidence prior to prosecution. This included past benefit claim forms where income was not declared, bank statements from accounts not previously declared, annual pension payments and other income sources not previously declared, together with the results of interviews carried out under caution. This evidence was considered sufficient for the Magistrates Court hearing and when Councillor Wilson insisted on a Crown Court hearing, the evidence was passed to the Council's appointed barrister who advised that the evidence obtained by the Council was sufficient for the prosecution.

2.4.2 It is important to note the relevance of the Mercedes car in relation to the prosecution. On 19 March 2012, Councillor Wilson handed in a benefit claim form, together with 5 nationwide accounts in his sole or in joint names with his former wife. On one statement of account the Housing Benefit Manager noted that Councillor Wilson had received £1,943.48. This sum was

income and should have been disclosed in the benefit claim form. Councillor Wilson said, when challenged about the sum of £1,943.48 coming into his bank account, that it represented the sale proceeds of his car.

2.4.3 When subsequently interviewed under caution it was pointed out to Councillor Wilson that checks had established the £1,943.48 was income and should have been disclosed. Councillor Wilson maintained he had made an honest mistake and thought when he spoke to the Housing Benefit Manager that the sum was the sale proceeds of the car. Officers checked this and in a further interview under caution it was pointed out to Councillor Wilson that no cheque for any similar sum, being the proceeds of the sale of a car, was paid into any of Councillor Wilson's accounts. Councillor Wilson then claimed he lost the cheque. Councillor Wilson's account of why he told the Housing Benefit Manager that the amount of £1943.48 was sale proceeds of the car seemed implausible and pointed again towards Councillor Wilson's dishonesty. The issue of whether Councillor Wilson had in fact sold the car was not considered at that time by the investigators.

2.4.4 It was only much later nearing the trial date that the barrister had a hunch about the Mercedes car. Given Councillor Wilson's propensity to lie, the barrister considered he might not have sold the car at all. The barrister mentioned that he had Mercedes E-class and they were exceptionally well made and Councillor Wilson may have been loathed to part with it.

2.4.5 It was during the course of the three-day trial that the Council's barrister made enquiries that revealed the car had not been sold. This completely undermined the testimony being given by Councillor Wilson. This evidence was passed to the barrister representing Councillor Wilson as the evidence showed that Councillor Wilson was actually perjuring himself in the testimony he was making. After an hour adjournment, Councillor Wilson was persuaded to stop his testimony and change his plea to guilty rather than have evidence presented to show his perjury.

2.4.6 The evidence collected during the course of the trial was not believed relevant prior to the trial but became of relevance as a consequence of Councillor Wilson's evidence under oath.

## **2.5 Waste of money in employing an experienced barrister and not receiving anything useful.**

2.5.1 While it is true that the Council's barrister did not get to cross-examine Councillor Wilson, he had set out the Council's case, identified the further deceitful evidence being provided by Councillor Wilson and requested the conclusive proof necessary to prove that the evidence being given actually amounted to perjury.

2.5.2 The evidence of numerous previous dishonest representations from Councillor Wilson suggests that had the evidence gathered during the trial been collected and presented prior to the trial, then a different deceitful testimony would have been made. The fact that our experienced barrister was able to discern the deceit and the evidence necessary to prove it clearly

demonstrates that the appointment was both necessary and represented value for money.

## **2.6 Use of the Police and others to investigate and bring a prosecution.**

2.6.1 The Council regularly works with the Department for Work and Pensions (DWP) to bring a prosecution. This is most appropriate where the fraud results in an overpayment of housing or council tax benefit, as well as a state benefit administered by the DWP. This was not an appropriate approach in the case of Councillor Wilson as he received no other state benefit. His status as a councillor, together with receipt of an allowance, is taken as evidence of being unavailable for work. In these circumstances, only housing benefit and council tax relief were being fraudulently claimed, leaving the Council to deal with the prosecution without the usual support from DWP investigators and legal team.

2.6.1 Housing and council tax benefits are Social Security benefits which the Council administers on behalf of the DWP. The powers that we use to investigate are governed by the Social Security Administration Act 1992 and the Social Security Fraud Act 2001. These powers are often more powerful than those given to the police.

2.6.2 The same sanctions that can be imposed are also stipulated in the above Acts. We can administer a formal caution (not the same as a police caution), administration penalties (fines) and prosecutions. The police have never been used to investigate and/or prosecute benefit fraud because it is a specialised investigation and is regulated by specific legislation.

2.6.3 The police would only be interested in the case if there were other forms of fraud also involved, ie systematic organised fraud, drugs, money laundering, etc. They would otherwise push it back to the Council because we are a prosecuting authority.

## **2.7 The threshold for bringing prosecutions currently in use.**

2.7.1 The Fraud Policy and Procedures Manual (at Appendix 3), shows that the current threshold guide is set at £2,000 for consideration of a prosecution. In the case of Councillor Wilson, the fraud resulted in benefit of £3,800 being paid, to which he was not entitled. Clearly this is above the threshold value and meets the criteria in Appendix 5 of the Fraud Policy and Procedures Manual; "Members are involved in the commission of the offence then the Authority would consider prosecuting the offender".

2.7.2 It is important also to see the Fraud Policy and Procedure Manual in the context of the version of the Council's Anti-Fraud and Corruption Policy (at appendix 1) which was in place at the time of this prosecution and which sets out the overriding context for the handling of corrupt or fraudulent activity. Specifically, regard should be had to:

*1.1.4 However, this policy is designed to promote propriety in public office and so the following, more general definition of fraud is also appropriate: 'deliberate deception, trickery or cheating with the intention to gain an advantage'.*

- 2.1 *The Council's Anti-Fraud and Corruption Policy demonstrates a firm, clear and unambiguous commitment to preventing fraud and corruption. This policy, along with others such as the Code of Conduct for both Officers and Members, is designed to prevent fraud and corruption. However, if fraud or corruption is discovered, the Council will deal swiftly with the perpetrators in accordance with this policy.*
- 3.1 *The Council must maintain a culture which does not tolerate fraud and corruption, and which is based on openness, fairness, trust and value.*
- 3.3 *The Council will deal firmly with those who seek to defraud the authority, or who are found to be corrupt, in accordance with this policy (and operates a zero tolerance approach).*
- 3.4.2 *Honesty and Integrity – Holders of public office should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.*
- 3.4.10 *Leadership – Holders of the public office should promote and support these principles by leadership, and by example, and should act in a way that preserves public confidence.*
- 3.5 *We expect all our officers and Members to follow these principles and all legal rules, procedures and practices, and to protect our legitimate interests at all times. Any Member or officer, and any person or organisation who falls short of these standards can be sure that we will take all necessary action to deal with the matter.*
- 6.8 *In the case of benefit fraud, the Council has a dedicated unit established to investigate potential irregularities. Working practices in this regard are set out in the Housing Benefit/Council Tax Benefit Fraud Procedures Manual. These policies will be followed in the case of suspected benefit fraud.*
- 2.7.3 Having regard to the financial threshold and the cultural context of the Council's approach to fraud and corruption, it will be seen as entirely appropriate for officers to bring a prosecution against Councillor Wilson in the circumstances.

## **2.8 Police action and the use of a police caution as a way forward.**

- 2.8.1 While it may be the case that referral to the Police and the use of a police caution may be a cheaper option for the Council, this may be seen as a 'soft' option and undermine the strong anti-fraud and corruption culture the Council seeks to establish.
- 2.8.2 It is clear from the Anti-Fraud and Corruption Policy that any staff found to be fraudulent or corrupt will be dealt with through both the disciplinary process, as well as a likely prosecution. If the public found the Council maintaining the member of staff in employment and allowing a caution to cover the matter, our

integrity in other matters would be open to question and severely diminished. The same must be true for Members found to be dishonest and hence the firm stance taken in paragraph 3.5 of the Anti-Fraud and Corruption Policy, as stated above.

### **3.0 Conclusion**

- 3.1 The contents of this report seek to address the questions raised by Councillor Pugsley and the Scrutiny Committee in order to allow the 'post mortem' that was requested.
- 3.2 Councillor Pugsley preceded his questions and request for a post mortem with reference to "the very unpleasant atmosphere in the Council after the Court decision in February".
- 3.3 Much of the frustration and anger expressed at that Council meeting results from; a) the inability of the Council to take meaningful direct action against a fellow Councillor since the abolition of the former standards regime; and b) the limitations imposed on judges when sentencing in cases such as this being limited to the financial loss with little regard to the dishonesty and abuse of public office.
- 3.4 It is important for the Council's future integrity, however, not to merely brush aside the reaction, anger and questions of the public in relation to this prosecution as simply a 'very unpleasant atmosphere'. The policies referred to in this report rightly recognise the high expectations of the public when it comes to the behaviour of those in public office.
- 3.5 Having regard to the policy framework within which officers are required to operate, the actions taken with regard to Councillor Wilson's dishonesty were both appropriate and proportionate.

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**Circulation of the Report:** Management Team, Legal Services, Housing Benefit Services

**List of Background Papers:** none

# Anti-Fraud & Corruption Policy



## 1.0 WHAT IS FRAUD AND CORRUPTION?

### 1.1 What is Fraud?

#### 1.1.1 The Audit Commission Fraud Manual defines **Fraud** as:

*'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'*

#### 1.1.2 Most actual and attempted fraud against local authorities is committed by people who do not work for the authority, usually by claiming grants and benefits to which they are not entitled.

#### 1.1.3 For their purposes fraud does not include petty theft or misappropriation without the distortion of financial statements or other records.

#### 1.1.4 However, this policy is designed to promote propriety in public office and so the following, more general, definition of fraud is also appropriate: *'deliberate deception, trickery or cheating with the intention to gain an advantage'*.

### 1.2 What is Corruption?

#### 1.2.1 The Audit Commission Fraud Manual defines **Corruption** as:

*'the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person'*

#### 1.2.2 Unlike fraud, corruption usually needs a council employee or Councillor to take part.

#### 1.2.3 In addition, the legislation relating to corrupt practices in public bodies also describes forbearing to do anything for reward as corrupt.

## 2.0 MID DEVON DISTRICT COUNCIL'S APPROACH TO COMBAT FRAUD AND CORRUPTION

### 2.1 The Council's Anti-Fraud and Corruption Policy demonstrates a firm, clear and unambiguous commitment to preventing fraud and corruption. This policy, along with others such as the Code of Conduct for both Officers and Members, is designed to prevent fraud and corruption. However, if fraud or corruption is discovered, the Council will deal swiftly with the perpetrators in accordance with this policy.



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- 2.2 This Policy document embodies a series of measures designed to frustrate any attempted fraudulent or corrupt act, and the steps to be taken if such an act occurs.

## 3.0 CULTURE

- 3.1 The Council must maintain a culture which does not tolerate fraud and corruption, and which is based on openness, fairness, trust and value.
- 3.2 Managing the risk of fraud and corruption is the responsibility of management. However, each member and officer of the Council must be aware of the risk of fraud, and has a duty to report any reasonable suspicions. All members and officers are encouraged to raise concerns about fraud and corruption, immaterial of rank, seniority or status, in the knowledge that such concerns will be properly investigated. The Council has a Whistle-blowing Policy to give confidence to anyone who wishes to raise concerns about behaviour and practice.
- 3.3 The Council will deal firmly with those who seek to defraud the authority, or who are found to be corrupt, in accordance with this policy (and operates a zero tolerance approach).
- 3.4 We believe the best defence against fraud and corruption is to create a strong anti-fraud culture within the organisation. We promote the ten general principles governing conduct, which are:

### 1. Selflessness

Holders of public office should serve the public interest and should never improperly confer an advantage or disadvantage on any person.

### 2. Honesty and Integrity

Holders of public office should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

### 3. Objectivity

Decisions should be made on merit, including when making appointments, awarding contracts, or recommending individuals for rewards and benefits.

### 4. Accountability

Holders of public office should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully with any scrutiny to their particular office.

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## 5. Openness

Holders of public office should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for their actions.

## 6. Personal Judgement

Holders of public office may take account of the views of others, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

## 7. Respect for Others

Holders of public office should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of officers and members of the Council.

## 8. Duty to uphold the Law

Holders of the public office should uphold the law and, on all occasions, act in accordance with the trust placed in them.

## 9. Stewardship

Holders of the public office should ensure that resources are used in a prudent manner and in accordance with the law.

## 10. Leadership

Holders of the public office should promote and support these principles by leadership, and by example, and should act in a way that preserves public confidence.

3.5 We expect all our officers and members to follow these principles and all legal rules, procedures and practices, and to protect our legitimate interests at all times. Any member or officer, and any person or organisation who falls short of these standards can be sure that we will take all necessary action to deal with the matter.

3.6 We also expect that people and organisations we deal with will act with honesty towards us.

## **4.0 PREVENTION**

4.1 The Council's Chief Officers – Chief Executive, Heads of Service and Service Managers – are responsible for establishing sound systems of internal control

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in all of their service's operations. 'Internal control' means the systems of control devised by management to ensure the Council's objectives are achieved in a manner that promotes economic, efficient and effective use of resources. Such systems must safeguard the authority's assets and interests from fraud.

- 4.2 Internal Audit independently monitors the existence, appropriateness and effectiveness of internal controls, as a service to management.
- 4.3 Where fraud or corruption has occurred because of a breakdown in the authority's systems or procedures, management will ensure that appropriate improvements in systems of control are implemented to prevent a reoccurrence.
- 4.4 The Council's Chief Officers are responsible for ensuring that all staff are aware of the existence and content of the Financial and Contract Procedure Rules and other regulatory documents.
- 4.5 Chief Officers must ensure that staff are properly trained to discharge the responsibilities allocated. Once training has been provided, performance must be managed and use of proper practices enforced.
- 4.6 The Council recognises that a key preventative measure in dealing with fraud and corruption is for managers to take effective steps during the recruitment process to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts. The Council's recruitment policy should be adhered to during this process, and adequate employment references/employment checks performed.
- 4.7 When a new member of staff commences employment with the Council they will receive an Induction session, which will include a presentation from the Audit Team Leader on the Anti-Fraud & Corruption and Whistle-blowing Policies and be made aware that the Policies are available on the Internal Audit pages of the Council's Intranet site (Sharepoint).
- 4.8 All staff must comply with the Officers Code of Conduct. Members must comply with the Member's Code of Conduct. These policies state how the Council expects all officers and members to conduct themselves, and specifically requires offers of gifts, hospitality and potential conflicts of interest to be declared. The Head of Communities & Governance (in her role as Monitoring Officer) maintains these registers and they are subject to independent review by Internal Audit on an annual basis.

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- 4.9 Employees are required to report to their line manager, supervisor or other responsible senior officer any illegality, impropriety, breach of procedure or serious deficiency. The Council has a Whistle-blowing Policy to give confidence to anyone who wishes to raise concerns about behaviour and practice.
- 4.10 Arrangements are in place, and will continue to be developed, which encourage the secure exchange of information/data between the Council and other Government agencies on national and local fraud and corruption activity. All such arrangements will adhere to Data Protection legislation.

## 5.0 DETERRENCE

- 5.1 Where fraud or financial irregularity is confirmed, the Audit Team Leader and/or the Head of Communities & Governance will refer this to the police for investigation and, where appropriate, prosecution.
- 5.2 Fraud and Corruption are serious offences against the Council. The Council's disciplinary process will be invoked in respect of any employee who is found to have acted fraudulently or corruptly. Disciplinary action may also be taken in addition to, or instead of, criminal proceedings, subject to the advice of the Human Resources Section.
- 5.3 The Council's Communications Team will liaise with the press to publicise any anti-fraud and corruption initiatives undertaken by the Council.

## 6.0 DETECTION AND INVESTIGATION

- 6.1 Employees are required to report to their Head of Service or Service Manager any concerns about illegality, financial impropriety, or breach of procedure. The Council's Whistle-blowing Policy provides a framework for reporting, investigating and following up such concerns.
- 6.2 Where it appears that a potential fraud or financial impropriety has occurred this must be reported to the Audit Team Leader. An audit investigation will then commence.
- 6.3 Internal Audit will ensure that potential fraud or irregularity is responded to promptly and discreetly;
- All evidence is recorded;
  - Evidence is sound and adequately reported;
  - All evidence is held securely;
  - The Council's insurance section is notified where appropriate;

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- Findings are reported promptly to management; and
  - Further action is taken, where appropriate
  
- 6.4 In the case of fraud or financial irregularity, where sufficient evidence exists to suggest that a criminal offence may have been committed, the Audit Team Leader and/or the Head of Communities & Governance will refer this to the police. The police, in consultation with the Crown Prosecution Service, will determine whether any prosecution will take place.
  
- 6.5 The Audit Team Leader will ensure that fraud or financial irregularity necessitating police involvement is reported to the Chief Executive, the Council's Monitoring Officer, the Section 151 Officer, and where this is employee related, the Head of Human Resources and Development.
  
- 6.6 If during the course of any investigation, it transpires that any corrupt action has occurred, the Audit Team Leader will notify the Council's Monitoring Officer.
  
- 6.7 Where the outcome of an Internal Audit investigation indicates improper behaviour by an employee, chief officers must instigate the authority's disciplinary procedure. Disciplinary action may be taken in addition to, or instead of, criminal proceedings, subject to the advice of the Human Resources Section.
  
- 6.8 In the case of benefit fraud, the Council has a dedicated unit established to investigate potential irregularities. Working practices in this regard are set out in the Housing Benefit/Council Tax Benefit Fraud Procedures Manual. These policies will be followed in the case of suspected benefit fraud.
  
- 6.9 The procedures outlined above for the detection and investigation of fraud, corruption and financial irregularity are illustrated by means of a flowchart are Annex 1.
  
- 7.0 RESPONSIBILITY FOR THIS STRATEGY**
  
- 7.1 The Audit Team Leader has overall responsibility for the maintenance and operation of this Policy. The Policy will be reviewed and updated on a three yearly basis to ensure that it is both up to date and working as intended.
  
- 7.2 A confidential record of disclosure and its outcomes will be kept for a period of 5 years from the date all action was concluded on the matter. Reports will be made to the Audit Committee on a half yearly basis to inform them of the number, and type of, instances of fraud and corruption. However, no

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personal details will be listed to ensure that confidentiality will not be jeopardised.

## HOUSING AND COUNCIL TAX BENEFIT FRAUD POLICY

### 1 INTRODUCTION

- 1.1 Mid Devon District Council has a duty to administer a housing benefit service on behalf of the Department for Works and Pensions (DWP). This includes the provision on an active fraud investigation team to ensure that benefits are paid correctly and to those entitled to them.
- 1.2 Countering fraud is the responsibility of everyone working in or having management responsibility for housing benefit administration. It is essential that everyone is aware of the risk of fraud and what to do if fraud is suspected.
- 1.3 Good practice in benefit administration procedures will help to prevent fraud entering the system, however there is always a risk of fraud and we must ensure that measures are in place to detect, investigate and take action against fraud.

### 2 PURPOSE

- 2.1 The work of the fraud team is as much a part of benefits work as the assessment of claims. To this end both areas of benefit administration must work together to achieve the overall vision and objectives for the service. The purpose of this document is to ensure that fraud prevention is made an integral part of housing benefit administration.

### 3 SCOPE

- 3.1 It is essential that there is close liaison between the assessment and fraud team, coupled with agreed procedures to aid the successful prevention and detection of fraud in benefit administration.
- 3.2 This can be achieved by:
  - The prevention of fraud occurring at the outset of the claim by the identification and remedy of weaknesses in systems, continual review of systems and training of staff to establish a fraud aware benefits team.
  - Detection and investigation of fraud in claims that are already in payment.
  - Amending or canceling claims where fraud or error are identified.
  - Calculating overpayments of benefit and assisting with recovery and/or prosecution
  - Maximising subsidy by investigating fraudulent claims and deciding on appropriate action to take, such as prosecution, sanction or penalty.

## **4 FRAUD PREVENTION**

- 4.1 The government has introduced a range of measures designed to identify and reduce benefit fraud. Mid Devon District Council has a designated team within the housing benefit division whose primary function is the detection and investigation of fraud or error.
- 4.2 To assist with this Mid Devon District Council has adopted and undertakes the following activities;
- The verification framework (fully compliant since 1999)
  - The National Fraud Initiative (annually working with District Audit)
  - Housing Benefit Data Matching schemes (quarterly working with the DWP).
  - Royal mail service to return re-directed mail.
  - A fraud service level agreement with the Benefits Agency
  - A policy for prosecution and sanctions
  - Has a dedicated 24hour a day fraud hotline for reporting fraud
  - Fraud awareness training
  - Joint fraud initiatives with the Benefits Agency
  - Regular use of the Benefits Agency Remote Access Terminal (RAT)
  - Agreed local standard to visit all new claims within 7 working days.

## **5 STAFF TRAINING AND FRAUD AWARENESS**

- 5.1 The effectiveness of an anti-fraud policy for benefits will depend on the training and feedback given to all benefits staff. Fraud awareness training must be included in each member of staff's individual training and development plan.
- 5.2 Staff need to be aware of the potential for fraud within the benefit system. Fraud awareness training is an integral part of the induction of any new staff.
- 5.3 Departmental policies within the benefit section encourage the referral to fraud any claims where a fraud or irregularity is suspected.
- 5.4 The senior fraud investigation officer must receive PINS training from the Benefits Agency.

## **6 PROSECUTION**

- 6.1 An essential element of any fraud activity is to take action to recover the debt raised and consider prosecution of the perpetrator of the fraud. When deciding what sanction to apply, consideration must be given to the relevant legislation, such as the Theft Act 1968, the Social Security Act 1992 or the Human rights Act 1998.
- 6.2 For a case to be considered for prosecution there must be sufficient evidence that the claimant or any other person has acted fraudulently. In all cases a senior officer will make the decision on action to be taken in relation to the fraud investigation.
- 6.3 The local authority has a choice in the action to take once fraud has been identified.
- Administrative Penalty, a fine of 30% of the recoverable overpayment,



- Formal Caution
  - Summons and prosecution.
- 6.4 Agreement has been made with the Benefits Agency that all cases where fraud has been established and an overpayment accrued in excess of £1,500 will be considered for prosecution. The Benefits Agency Solicitors will take cases to court on behalf of the local authority if appropriate.
- 6.5 An Administrative Penalty or a Formal Caution may be considered as an alternative to criminal proceedings.
- 6.6 In all cases even where prosecution or other sanction is not considered appropriate action will be taken to recover any overpayment raised.

## **7 DETERRENT**

- 7.1 High priority must be given to stopping fraud from entering the benefit system, the continued compliance with the Verification Framework and partnership working with others such as the Benefits Agency, Inland Revenue and local police will ensure that good practice is continued.
- 7.2 Publicity relating to the anti-fraud activities of the council both internally and externally will positively promote the successes of the team, and our commitment to protecting the public purse.
- 7.3 Adoption of a prosecution policy for housing benefits will ensure that investigations are progressed to prosecution or penalty.

## **8 ASSOCIATED DOCUMENTS**

- 8.1 MDDC RIPA POLICY Any investigation work needing surveillance will be carried out in line with RIPA, and according to corporate procedures.
- 8.2 MDDC Corporate Anti-Fraud and Corruption Strategy.
- 8.3 Housing Benefit Prosecution Policy (March 04).

**FRAUD POLICY & PROCEDURES MANUAL****1. Introduction**

The aims and objectives of the Fraud Investigations Department is

*"To investigate fraud and abuse of external claims made against the authority from members of the public or their agents".*

The main area of work relates to fraud surrounding claims to Housing Benefit and other Social Security benefit. This code of conduct is intended to be a guide to the investigator when conducting these investigations.

**2. Background**

There are numerous types of fraud and irregularities, which are investigated by the department. Staff should be familiar with the legislation surrounding the payment of Housing Benefit, such as the Housing Benefit (General) Regulations 1987, and the Social Security Act 1992 etc.

Details of changes and amendments are circulated by the DWP in the form of HB/CTB circulars. These are available for reference via E-mail and hard copy.

**3. Objectives of Investigations**

The investigations into suspected fraud will endeavor to:

- *Target resources primarily at areas of perceived high risk (such as Housing Benefit)*
- *Take the lead role in undertaking any Data Matching exercises including the Audit Commission National Fraud Initiative*
- *Instigate the prosecution (or the imposition of other sanctions where appropriate) of offenders having full regard to the Council's prosecution policy*
- *Publicise and manage a phone service for members of the public to report fraud - Fraud Hotline*
- *Undertake joint exercises with other departments and enforcement agencies*
- *Seek to continuously improve standards, and incorporate established good practice into working practices*

**FRAUD POLICY & PROCEDURES MANUAL**

- *Equip staff to perform the duties of the group effectively by means of a program of continual appraisal, training and development.*
- *Provide advice and guidance pro-actively and as requested.*

**4. Conduct of Investigations and Investigators**

The investigation should be conducted in a professional manner adopting recognised procedures. These procedures are in place to ensure the safety and integrity of officers and should be adhered to at all times. Copies of these procedures are issued to all officers. These guidance notes cover the following areas:

- Files, documents and working papers
- Conducting interviews
- Safe systems of work
- Reactive work
- Proactive work
- Prosecutions
- Liaison arrangements

Compliance with Housing Benefit, Council Tax Benefit and related regulations in particular, along with a requirement to work within the law in general, are pre-requisite conditions of professional investigation officers in the employment of the Council. It is also a basic requirement that staff should take the utmost care in undertaking such a sensitive role. The conduct of investigators will always be open to close scrutiny. Officers should ensure that they do not fail to maintain the high standards of honesty and integrity expected of them.

All investigations should be conducted and all evidence gathered, collated and recorded in accordance with CPIA 1996, PACE 1984, Data Protection Act 1984 et seq, HRA 1998, RIPA 2000, and all other standards of good practice. Investigators will be fully qualified Counter Fraud Specialists and must ensure that they remain up to date and conversant with the legislation governing the conduct of investigations.

**5. Files, Documents and Working Papers**

Each file has a unique reference number and will be scored on the investigation matrix. When a referral is input general details will be included i.e. the source of the referral and type of allegation.

**FRAUD POLICY & PROCEDURES MANUAL**

All documents relating to the investigation should be kept in the file and all actions and events should be noted on the investigation matrix, action taken whilst out of the office should also be recorded in the QB50 notebook (further guidance on completion of QB50 in guidance note attached at Appendix).

The details of the weekly rent and/or CTB should be noted at the start of the investigation and held on file. The file record should be maintained in such a way as to reflect the current status of an investigation and detail all events/action taken supplemented by the working file).

Once the file has been completed and an overpayment recorded the file must be closed on all the relevant systems and all relevant papers stored on the file (see Closure Policy Appendix 3).

Invitations to interview letters are in a standard format and issued with the leaflet 'Taper Interview under Caution'. The investigator can send these without being checked by the Fraud Manager. Special one off letters however should be scrutinised by the Fraud Manger before sending out.

When an investigation is complete a report will be sent to the relevant department (for benefit cases this will be the Benefits Section) outlining the findings and making recommendations. Copies of documents supporting the findings and copies of statements or records of interviews conducted should accompany the report. When reporting findings, officers should relate information gathered and succinctly put conclusions drawn from the investigation, these should be based on the evidence gathered not the officer's opinion. Finally the recommended action should be given at the end of the report. It is important to remember that action is only recommended and that decisions on claims are made by the Benefits Section or the appropriate department. Officers therefore should always ensure that evidence is factual and is reported in a clear and concise manner to assist the relevant person in making their decision in accordance with your recommendation.

In all cases referred by an employee of Mid Devon District Council whether Benefits Section, Housing or wherever, the "outcome" will be forwarded to them, thanking them for the referral and letting them know the outcome (i.e. fraud proven, claimant to be prosecuted, sanction etc).

When conducting proactive work information will be provided by the Fraud Manager with instructions/procedures as to the methods to be adopted when carrying out the exercise. Instructions for conducting the periodical exercises are issued to investigators. Working papers and documents for each claim should be kept on file. Each case resulting in an adjustment in benefit should be recorded on the SX3 system.

**FRAUD POLICY & PROCEDURES MANUAL****6. Surveillance**

Surveillance will only be undertaken having taken into account the guidance contained in the Regulation of Investigatory Powers Act 2000, and in compliance with the authorities Code of Practice for Surveillance (copies available in section and with Legal Section or from the Intranet).

**7. Interviews**

Interviews are an essential part of any investigation and should be conducted in a professional manner, and where appropriate under caution (see below). Whenever practicable interviews should be conducted in the Interview rooms provided. This approach is not only conducive to staff safety but should ensure that investigations are undertaken in the most cost effective manner. Interviews should not be conducted when the mental and physical condition of the interviewee is such that they are unaware of what they are being asked. Discretion should be exercised where it is apparent that the interviewee may be under the influence of drugs and/or alcohol.

The translation service can provide interpreters where an interviewee cannot speak English. Investigators should establish prior to interview. Where it is apparent that the person's first language is not English, the investigator should try to establish what their first language is, and make appropriate arrangements with the Translation Service.

Recording the interview contemporaneously is important, and staff should insist the interviewee read the record of the interview (or where appropriate have it read to them) prior to it being signed. This minimises any confusion later. If the interview is recorded on a "statement of witness" form the interviewee should be made aware of the pre-printed declaration before the interview commences.

If during the course of an interview an officer has reasonable grounds to suspect that an offence has been committed, the officer must stop the interview and caution the interviewee, recording the caution in their QB50 notebook. If possible the customer should sign the QB50 acknowledging that the caution has been issued.

**8. Interviews under Caution**

IUC interview letters are held in the shared fraud folder for inviting customers to attend. These letters should be used without amendment and issued with a copy of the leaflet 'Taped Interview under Caution'. There are also follow up letters if no response is received by the customer. If after the final invitation letter we have had no response from the customer, consideration should be given to passing the case for prosecution.

**FRAUD POLICY & PROCEDURES MANUAL**

The interviews are held in Interview rooms provided. Before conducting the interview the investigating officer should prepare a detailed interview plan which should include details of the offence(s), possible defenses, mitigation and points to prove.

Officers should be aware that the code of practice for conducting these types of interviews should be available at all times for reference. All the necessary documentation has been prepared and an aide memoir for the investigator is available to ensure the procedures are strictly adhered to.

At the end of the interview the master and copy tapes should be signed in by the Fraud Manager and stored in a secure cabinet. All movements of the working tape are recorded on a file also held in a secure cabinet. These should be completed whenever the working copy is removed. The interviewee will be given a copy of the leaflet 'After an Interview under Caution'.

**9. Safe Systems of Work**

Investigators should always remember that their safety is of paramount importance, particularly when conducting visits outside the office. It is the responsibility of each officer to adopt the safe system of work that is detailed in the investigators guide. (See Safety of Staff, Appendix 4).

**10. Reactive Work**

Cases are referred for investigation from various sources including Benefit Section, Housing, anonymously from members of the public as well as from various other sources such as the Housing Benefit Matching Service (referrals are issued on a quarterly basis) and National Fraud Initiative (conducted bi-annually). To enable analysis of these referrals it is important that care is taken to ensure that the source is correctly noted on Intelligence report.

**11. Proactive Work**

Proactive work focuses on various types of initiatives such as residency, landlord exercises etc.

**12. Prosecutions**

In all cases where fraud is proven consideration should be given by the investigator as to whether prosecution or other penalty is appropriate (See prosecution policy and guidance on the suitability of offenders Appendix 5). Where prosecution is recommended the case should be referred to the Benefits Manager with a case summary outlining the reasons the investigator has come to this decision. The Benefits Manager will review the case and

**FRAUD POLICY & PROCEDURES MANUAL**

decide whether it is suitable for proceedings. All other cases that have been interviewed under caution should be referred to the Fraud Manager outlining what action is proposed (i.e. sanction or closure) for authorisation. All of this action should be recorded on Matrix Notes.

**13. Cases involving Staff or Members**

Any case where an investigator suspects that a Council employee or Councilor may be involved should be brought to the attention of line management immediately. It is Council policy to pursue prosecutions in cases involving employees and/or members particularly where their position gives them knowledge of the benefit or local taxation system.

Where departmental personnel are involved either because they have made the referral or where they are considering disciplinary action updates should be sent (the content having been agreed with your team leader) at least every 28 days.

**14. FIS Liaison Arrangements**

Liaison arrangements are in place to facilitate the exchange of information between ourselves and various other agencies. Formal liaison exists between the Fraud Investigation Service (FIS).

In all investigations where another Social Security benefit is in payment along with HB/CTB the investigator must issue an FPA1 when the file has been raised.

If for whatever reason a case cannot be investigated and the alleged fraud would affect entitlement to another Social Security benefit in addition to HB/CTB it should be referred to FIS using form FPA2 immediately.

At the conclusion of the investigation or when sufficient evidence has been collated for a decision regarding entitlement an FPA4 should be sent to Jobcentre plus to obtain an adjudication decision. If no response is received within 28 days follow up action should be taken, if no reply is then received within a further 14 days the case should be referred to your line manager.

**15. Liaison Arrangement Other LA's**

The authority is affiliated to LAIOG (Local Authorities Investigating Officers Group) and WBIG (Wales Benefit Investigation Group). Copies of the directories are held on the LAIOG website with details of investigators in other authorities, which is a useful reference source when dealing with enquiries from other LA's.

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It is important that investigators should always bear in mind the requirements of the Data Protection Act when dealing with requests for and making requests for information, and that checking that someone is listed in a directory does not ensure that they are the person on the other end of the phone.

**16. Fraud Awareness**

As fraud investigators, you will likely be the most aware of potential areas of abuse, if you become aware of weakness in, or breakdown of, procedures that may make fraud more likely. Investigators should inform their line managers so that steps can be taken to rectify the situation and promote good fraud prevention.

**17. Standards of Behavior - General Principles**

Officers should be aware that the Council expects staff to carry out their duties with the highest standards of honesty and integrity.

The Council demands a very high standard of conduct when dealing with the public. Members of the public have a right to expect courtesy and co-operation at all times.



## FRAUD POLICY &amp; PROCEDURES MANUAL

## Appendix 1

**Referral Matrix****Benefit Section Referrals**

All referrals from the Benefits Unit are to be looked at unless the following applies: -

**The referral is a request for us to obtain or verify information that the Benefit Section can request themselves.**

Mid Devon District Council Referral Matrix criteria will ensure that all referrals from the benefits section are acknowledged and a record is issued as to who the case has been allocated to or why the case has been rejected.

The Matrix includes a scoring system, ensuring all quality referrals are investigated. The investigating team reserves the right to “manually” override any score – based on local knowledge.

**The score guide is as follows: -**

40 Minimum Score. The scoring system incorporates sections, which require further scoring. This will add weight to the decision to investigate but will not necessarily override any decision made by the Investigator not to proceed based on previous knowledge or low Matrix scoring.

**OPTIONS**

Accept Referral

Treat as Priority

Reject Referral

Options:

Pass back to processors for consideration

Pass to FIS for consideration

– No Action

Marginal –

Refer details to Investigation Officer to decide if score should be amended. (Take into consideration: suitability for observations, local knowledge etc).

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**Override** The Investigation team, reserve the right to “manually” override any score

**All other Referrals**

A referral is vetted within 5 working days of receipt and work will commence within 14 working days of receipt of referral. Referrals are allocated to Investigators based on work load.

## FRAUD POLICY &amp; PROCEDURES MANUAL

## Appendix 2

## QB50 Procedural Notes

- 1) The notebook should contain sequentially numbered pages.
- 2) Pages must not be removed or left blank. Deletions should be made with a single line, which the officer must initial and date. **Under no circumstances should you use liquid or any other types of erasing material, rub out mistakes with an eraser, or scrub through any deletion.**
- 3) The margin on the left hand side of each page should be used to enter the time that particular events take place, e.g. the time observations on a subject started and ended.
- 4) Each day should be clearly recorded, showing the date, day and month. Any unused space on a line should be lined through and initialed. At the end of the day the notes should have a line drawn across the page.
- 5) The official notebook must be used whilst conducting any business outside the office, each time an entry is completed it should be timed and dated. **All officers must have their notebooks with them when conducting interviews.** When an individual has been cautioned notes must be made contemporaneously and the customers' signature should be obtained or the reason why the customers has not signed the notebook.
- 6) Wherever practicable note should be taken contemporaneously otherwise the reason for the delay should be noted.
- 7) The notebooks are items of controlled stationery and contain highly confidential information and should be treated as security items Maxine Tucker is the current stockholder for QB50's and will issue new notebooks and store-completed notebooks.
- 8) Notebook will be subject to monthly checks and the manager will initial and date the notebook after inspection.

## FRAUD POLICY &amp; PROCEDURES MANUAL

## Appendix 3

**Conduct and Closure of Investigations**

Investigations should be conducted in a professional manner adopting recognised procedures and in full compliance with all relevant legislation (CPIA 1996, PACE1984 and RIPA2002). Additionally all other appropriate regulations (Housing Benefit, Council Tax Benefit for benefit fraud cases) must be adhered to. The requirements to work within the law in general and apply appropriate associated regulations are pre-requisite conditions of professional investigation officers in the employment of the Council. It is also a basic requirement that staff should take the utmost care in undertaking such a sensitive role. The conduct of investigators will always be high profile and open to close scrutiny. Officers should ensure that they do not fail to maintain the high standards of honesty and integrity expected of them.

**Review of open cases**

Officer should as a matter of course review each case to see whether evidence is available or obtainable if the investigation is likely to be successful. Consideration should be given to the method / resources required to ensure the necessary information is proportionate and whether delay or age of information are likely to have a detrimental impact on the outcome. Such factors need to be balanced against the seriousness of the offence and its prevalence.

**Closure of Investigation**

On completion of each investigation a report will be sent to the relevant department outlining the findings and making recommendations. Copies of all relevant documents should accompany the report but full regard must be given to any Data Protection implications when providing documentation. Documents obtained from third parties or those that could be regarded as sensitive should only be referred with the Fraud Managers agreement.

Reports must be factual and relate to the information / evidence gathered and not the opinion of the investigator. Any recommendations should be made at the end of the report, and it is important to remember that action is only recommended and that the appropriate department makes decisions on claims. Officers therefore should always ensure that reports are written in a clear and concise manner to assist each department in making their decision in accordance with your recommendation.

At the conclusion of the investigation feedback should be provided on all internal referrals to the originator. The details given will of necessity have to be brief and not breach Data Protection or issues of claimant confidentiality.

**FRAUD POLICY & PROCEDURES MANUAL**

Investigators will ensure all relevant documents are secure in the file in date order, the most recent being at the top. The investigator will record on the Referral Matrix system all relevant events for each case thus providing a complete record of events for the life of the file. All relevant fields on Referral Matrix must be completed by the investigator e.g. closure category, overpayment, final report etc. prior to filing. All files going dormant will be passed to the Fraud Manager for a final check before being filed away.

**Case Monitoring**

Cases will be monitored monthly, a sample of open and closed will be selected which, each investigator will provide to the Fraud Manager the selected files within 3 days. The files will be checked to ensure that they have been actioned in accordance with the relevant guidance and comply with appropriate legislation. Files that have been open for over three months will also be reviewed to ensure that an extension has been agreed, the case warrants further investigation and that they are being progressed. Files worked by the Fraud Manager, along with a sample of the Investigation files, will be checked by the Benefits Manager following the same procedure.

The line manager will provide feedback and instruction to the investigator on files where appropriate and discuss the findings at performance appraisals.

## FRAUD POLICY &amp; PROCEDURES MANUAL

## Appendix 4

**Safety of Staff: Visiting the Public**

The safety of staff is of paramount importance, and whilst one cannot eradicate all the dangers associated with visiting the public it is hoped that by adhering to the following procedures they can be minimised.

- Whenever practicable interviews should be conducted at purpose built secure locations, such as the Phoenix House or district local offices.
- All officers engaged in duties that may necessitate visiting members of the public will receive training on identifying and dealing with potentially aggressive situations.
- Visits are normally made unaccompanied, however if it is felt that it would be unwise to visit a particular address or person alone then the Fraud Manager should be informed and where appropriate an accompanied visit arranged.
- Mobile phones have been provided so that contact can be maintained with staff whilst they are out visiting, and staff are aware that they should not undertake a tour of visits without one.
- The Revenues Manager will hold details on all visiting officers giving their home telephone number, a description of the officer, photograph, any alternative contact point (such as spouse or close relative), together with details of their motor vehicle. These details would assist management and/or the Police should it become necessary to instigate a search.
- Each officer will hold the home telephone numbers of the Fraud Manager and Benefits Manager to enable contact to be made if a tour of visits is scheduled to finish outside normal office hours. Senior staff will leave their phones on continually to enable emergency contact.

**Visits from the Office**

- Before leaving the office the officer must complete the Schedule of Visits detailing all addresses to be visited, the intended sequence of visits, which mobile phone they are on and the expected time of return. They must also business out on the Wintime system. Alternatively where an officer does not intend returning to the office the time noted will be the time by which they will contact the office to advise that they have completed their tour of visits safely. Whilst out on a tour of visits contact should be made with the office every two hours, therefore the first contact time on the visit sheet should be no longer than two hours after the tour of visits commenced. When they contact the office the officer receiving the call must note the

**FRAUD POLICY & PROCEDURES MANUAL**

new time on the visit sheet and annotate the schedule of visits to show the time of contact and which visits have been completed.

- If it becomes necessary to change the sequence, location or number of visits the office should be contacted and the schedule of visits amended. Likewise if it becomes apparent that the tour of visits will take longer than the time estimated the office should be contacted, a new estimated time given and the schedule amended.
- If the estimated time of return/contact is significantly exceeded (over 30 minutes) a senior member of staff should be notified immediately and efforts made to contact the visiting officer either on the mobile phone and/or (where officers had not intended returning to the office) through their home contact point. If we have still been unable to make contact a Senior Manager should consider contacting the Police.

**Early Visits before arriving at the Office**

- When an officer intends making visits before arriving at the office they should complete the schedule of visits (including the estimated time of return) the day before, and ensure that the Fraud Manager is informed of what they intend to do. They must contact the office when they start their tour and confirm the next contact time. The officer receiving the call should note the schedule of visits sheets accordingly. Where a tour of visits is due to start before normal office hours, arrangements regarding contact must be agreed with a senior officer within the group on the day prior to the tour of visits.
- If it becomes necessary to change the sequence, location or number of visits the office should be contacted and the schedule of visits amended. Likewise if it becomes apparent that the tour of visits will take longer than estimated the office should be contacted and the schedule amended. Whilst out on a tour of visits contact should be made with the office every two hours, therefore the first contact time on the visit sheet should be no longer than two hours after the tour of visits commenced. When contact is made with the office the officer receiving the call must note the new time on the visit sheet and annotate the schedule of visits to show the time of contact and which visits have been completed.
- If the estimated time of return/contact is significantly exceeded (over 30 minutes) a senior member of staff should be notified immediately and efforts made to contact the visiting officer either on the mobile phone and/or (where officers had not intended returning to the office) through their home contact point. If we have still been unable to make contact a Senior Manager should consider contacting the Police.

FRAUD POLICY & PROCEDURES MANUAL

**Monitoring and Review**

All members of the group are responsible for ensuring that the procedures are adhered to and that prompt action is taken when staff do not make contact by a specified time. Team leaders will be responsible for ensuring staff comply with the procedures and for monitoring the completion of the schedule of visits.

The procedure will be subject to an annual review, with staff being encouraged to participate. Any amendments will be discussed at group meetings.



## FRAUD POLICY &amp; PROCEDURES MANUAL

## Appendix 5

**Prosecution Policy**

As outlined in the Mid Devon's Antifraud Policy Statement the Council is committed to protecting the public funds it administers through its actions in respect of the investigation of suspected fraudulent claims for Housing Benefits and/or Council Tax Benefits.

This policy statement is intended to provide the agreed framework for Council officers involved in the detection, investigation and prosecution of Housing Benefit and Council Tax fraud.

All investigations identified as suspected fraudulent claims for benefit, will be investigated to prosecution standard. Each individual case will incorporate investigation techniques necessary, proportionate and legal, relevant to the circumstances of the allegation.

At the conclusion of all investigations by members of the Council's Fraud Investigation Section, where it is considered that appropriate evidence exists to sustain a prosecution the Authority will consider which of the following actions are appropriate:

**Local Authority Caution**

Where the overpayment is under £2000, and

- The claimant has never previously committed offences of fraud, theft or benefit related offences or offences against the Local Authority or DWP
- The offence(s) were not planned or systematic, and
- There was no other person involved in the fraud, and
- The offender has admitted the offence in full,

are grounds for considering the use of a Local Authority Caution as the relevant penalty.

A caution is offered as an alternative to prosecution. Mid Devon District Council retains the right to pursue a prosecution should a caution not be accepted.

**Administrative Penalty**

Where the overpayment is under £2000, and

- It was a first offence, and
- The offence(s) were not planned or systematic, and
- There was no other person involved in the fraud, and

**FRAUD POLICY & PROCEDURES MANUAL**

An Administrative Penalty is offered as an alternative to prosecution. Mid Devon District Council retains the right to pursue a prosecution should the offer of a penalty not be accepted.

An officer of Mid Devon District Council of Grade 7 or above will be responsible for the administration of Cautions and Administrative Penalties.

**Criminal Prosecution**

For all other cases where the overpayment is £2000 or over, or

- It was not a first offence, or
- The offence(s) were planned or systematic, or
- There were other persons involved in the fraud, or
- Employees or Members are involved in the commission of the offence(s)

then the Authority would consider prosecuting the offender and other persons directly involved in the offence.

However, every case will be considered on its own merits and action will be considered as appropriate. It is noted that some cases will not fall into any category.

A prosecution under taken by Mid Devon District Council will be in line with the relevant legislation as detailed below. However should an offence under any other legislation be identified Mid Devon District Council retain the right to consider it's suitability.

- Social Security Administration Act 1992 Sections 112, 111 including amendments to the act.
- Theft Act 1968 section 15, 15a, 17 & 24a
- Conspiracy (common law)
- Accessory & Aiding and Abetting Act 1867

Mid Devon District Council work jointly with the Department for Work and Pensions. Any identified offence likely to effect either agency will be reported to the other.

Both will consider each case for joint investigation and based upon evidence of identified offences consider joint action in the previously mentioned manner (Caution, Administrative Penalty or Prosecution).

## FRAUD POLICY &amp; PROCEDURES MANUAL

**Suitability of Offenders for Prosecution**

When considering whether it is appropriate to instigate proceedings, the Fraud Manager must first consider:

- a) Is there sufficient admissible evidence to justify bringing a prosecution?

And

- b) Is the prosecution in the public interest?
- a) In considering whether the evidential test has been met the Fraud Manager must decide:

- (1) Whether there is clear evidence of an offence
- (2) Whether it is likely evidence will be excluded by the court, given the rules of evidence and the Codes of Conduct issued pursuant to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996 and any other relevant legislation;
- (3) Whether there has been any remiss administration or fault on the part of the Council or the DWP (formerly the DSS) that has contributed to the processing of the fraudulent claim or subsequent benefit
- (4) Whether there is evidence that might support or detract from the reliability of a confession?
- (5) Whether a court is likely to find the explanation given by the defendant is credible in the light of all the evidence and whether the evidence supports an innocent explanation.
- (6) Whether a witness' background may weaken the prosecution case. For example if a witness has a motive which may affect their attitude to the case.
- (7) Whether there are concerns over the accuracy or credibility of a witness and is there further evidence which the investigator should seek which may support or detract from the account of the witness

## FRAUD POLICY &amp; PROCEDURES MANUAL

- (8) Whether all reasonable lines of enquiry have been pursued
- (9) Whether there has been a delay a court is likely to find unacceptable
- (10) Whether there are any other relevant considerations from the Code for Crown Prosecutors or relevant circumstance of the particular case.

ii. In deciding whether 'public interest' is best served by prosecuting an offender the following factors should be considered:

- (1) Obtained significant fraudulent payments, or for a prolonged period
- (2) The fraud was planned or systematic,
- (3) Evidence that they had previously claimed Benefits fraudulently
- (4) No personal circumstances likely to be offered in mitigation
- (5) Abused their position of trust within the Authority

The following paragraphs go into greater detail regarding the factors, which must be considered, to ensure consistent and equitable treatment of those accused of fraud.

### 1) Financial Limits

Careful consideration would have to be given to commencing a prosecution where the amount of the fraudulent activity has not resulted in 'significant financial gain' to the claimant, i.e. the amount of the fraudulent overpayment is less than the cost of proceedings.

Where there is no significant financial gain a prosecution could still be considered if it is felt that the fraud was a deliberate attempt to gain money by deception (if, for example, the fraud has been discovered after a relatively short space of time and a significant financial gain has not yet occurred), or in the case of a persistent offender or any other case where prosecution would be warranted.

An initial financial guideline figure of £2000 has been established as the minimum amount at which the Authority would refer a case for prosecution, unless there were aggravating factors such as previous history of fraud or where it the offences were planned.

**FRAUD POLICY & PROCEDURES MANUAL****2) Physical / Mental Factors**

Consideration must be given to the mental and physical condition (including age) when deciding whether to prosecute. The officer should consider whether there are significant personal or mental problems that may have contributed to the reasons for committing the offence. In addition, due consideration should be given where there is any evidence to suggest that the claimant or partner or a third party (e.g. a child) would be severely affected by our action. .

It is essential when considering the above issues that an appropriate impartial opinion as to the claimant's physical and/or mental condition is obtained.

**3) Voluntary Disclosure**

It may not be appropriate to prosecute those, whose disclosure of their own free will, has led to the identification of a fraud of which the Authority was unaware. Admissions made after enquiries had commenced do not constitute voluntary disclosure.

**4) Previous Incidence of Fraud**

Any evidence of previous benefits-related fraudulent activity should form part of the overall "prosecution assessment", regardless of whether any previous offences resulted in prosecution.

**5) Social Factors**

If it is considered that the claimant's failure to declare the correct circumstances has been caused by significant extenuating social or financial factors these should be fully evaluated. The fact that an individual was in debt or has limited assets would not in it self meet this requirement.

**6) Adequacy of Evidence**

Substantive evidence is essential to secure any conviction. Proceedings should not be sought if there is any doubt that the required evidence is not available. It must be clear that the fraudulent act was actually committed, that it was committed in the full knowledge of benefit regulations and that it was committed with the clear and deliberate intention to obtain property by deception. Satisfying the requirements of the Code for Crown Prosecutors Evidential Test will ensure that evidence is of the standard required by the courts.

**FRAUD POLICY & PROCEDURES MANUAL****7) Failure in Investigation**

It should be evident on the case file that all appropriate procedures have been adhered to with regard to satisfying the requirements of the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigations Act 1996 and other relevant legislation. Particular consideration should also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.

**8) Failure in Benefit Administration**

Full account must be taken of remiss administration or fault on the part of the Authority or the DWP (formerly the DSS) that has contributed to the processing of the fraudulent claim and subsequent award of benefit.

**Post-investigation Considerations**

Once the Investigating Officer has completed the investigation, the Fraud Manager will consider each case on its merits applying the criteria in this policy and in the Code for Crown Prosecutors and any other circumstances relevant to the case.

The Fraud Manager will decide whether there is enough evidence to provide a realistic prospect of securing a conviction and if so, whether it is in the public interest to offer a caution, offer an administrative penalty or recommend prosecution.

**Authorisation of Sanction or Prosecution**

Decision to offer Caution or Administrative Penalty will be made by the Fraud Manager, having full regard to the Council policy. Cases being referred for prosecution will be authorised by the Benefits Manager, in consultation with the designated Legal Advisor.

The Benefits Manager may also refer cases to the Police where it is considered that the nature of the offence or the procurement of evidence requires them to undertake the investigation.

The Benefits Manager may instruct the manager of the Fraud Investigations Section to act on his/her behalf in this regard.

As recognised by the Benefit Fraud Inspectorate it may be necessary on occasion to vary the level at which sanctions or prosecutions are applied in the light of particular circumstances or for operational reasons.

**Publicity**

**FRAUD POLICY & PROCEDURES MANUAL**

Press releases will be issued in suitable cases to seek to maximise the deterrent effect and raise the level of public fraud awareness. Consideration will be given to the amounts involved, nature of the offence, public interest and deterrent value of publicising a particular case. For example if the court imposes an unusually lenient sentence it may not be in the public interest to publicise the case as it sends out the wrong message.

**Review of Policy**

The policy will be reviewed in the light of any legislative changes, trends or other factors that impact on the effectiveness of the policy.

**Reviewed 3<sup>rd</sup> June 2008**  
**M.Tucker**

## Appendix 4

Cllr Pugsley's wording to Scrutiny:

Proceedings against Councillor Wilson. (We can all remember the very unpleasant atmosphere in the Council after the Court decision in February.) It is time now to have a calm post mortem to see what lessons can be learnt for the future.

Transcript of the recording of the meeting held on Monday 19<sup>th</sup> January 2015.

Cllr Pugsley - You may remember that we didn't cover ourselves in glory last February and the atmosphere was most unpleasant and I said then that we need a post-mortem when people had calmed down but we are a bit late. Last month we brought a prosecution for benefit fraud which cost us £13K and all that it got was a suspended prison sentence. Now, the practical effect of a suspended sentence is for the judge to say 'go away and don't do it again for 2 years' and one does wonder if that is the best way of spending £13K, particularly in our present financial circumstances. But it raises an immediate detailed point – that was at the Exeter Magistrates Court and it cost us £13K. We were told that the prosecution in the Crown Court, which went on for 3 days, with an expensive barrister, also cost us £13K. So this raises questions – it must have cost more to go to Crown Court than it did in the magistrate's court and more general issues on our prosecutions. Arising out of the case last February first of all before we prosecuted we hadn't collected all the evidence, evidence was collected on the 3<sup>rd</sup> day of the trial and the trial thereon collapsed. We should have collected the evidence in advance. We had a very experienced barrister but because the case collapsed we weren't actually paying for anything useful, and the legal profession will tell you that was an awful waste of money. Last February we spent £13K, if that is the right figure, and we recovered in costs £240 which is 2% of our outlay and again that ought to be making us think – is this best way to do things. You will know that the RSPCA had the same on a larger scale when they spend £327K to prosecute David Cameron's hunt, they recovered £20k which is 6% of costs. The judge said to them in the trial 'isn't there a better way of using your money?' The RSPCA then had a full post-mortem at the end of which it was suggested that they should think, for controversial cases, to use the police and the crown prosecution service. That is my suggestion in these cases. The Police are there to investigate cases and collect evidence, it's what they do, they are doing it all the time. The CPS are dealing with that all the time and they have an idea of the sentence that will be passed and the staff needed to do the job, and indeed there are some very good Crown Prosecutors who could quite possibly have done it themselves. If we say there is an offence and we hand it over to the police to investigate and prosecute, if they think it's appropriate. That's what they are specialist at, let them get on and do it, I think it will cost less to the public purse but in any case it would cost a great deal less to us and I suggest that we go down that line. With one final point the police when they look at these cases with the CPS do think, is that worth a prosecution to achieve a conditional discharge or suspended sentence and what the police then do is to issue a police caution – that saves going to court,



has the same effect as a suspended sentence and it is on the record so that if they do it again it comes up. As we don't do a lot of prosecuting under difficult circumstances I suggest that we let the Police get on with it because they are specialist and it's cheaper to us and the caution is a way forward.

Kevin Finan - If you want to carry out a post-mortem then you need to have the information before you. I can't tell you off hand what our prosecution policy is, we do have thresholds and if you want to carry out a post-mortem and consider making recommendations about how we prosecute then I suggest this is something for the next agenda and we'll bring a report forward"

Discussion took place.

Cllr Pugsley asked that his original question not get lost – 'If Magistrates court cost £13K how much more did a three day Crown Court case cost?'

Kevin Finan 'We will analyse the cost between the magistrate's court and the crown court' - If the Chairman is happy with that we will prepare a report that will answer Councillor Pugsley's questions.

Paul Williams also asked that we find out what the Police can and can't prosecute.

Jenny Roach asked for clarification of the 'threshold'.