



Notice of meeting of

Decision Session - Executive Member for Corporate Services

To: Councillor Moore (Executive Member)

Date: Tuesday, 9 March 2010

Time: 4.15 pm

Venue: The Guildhall, York

AGENDA

Notice to Members – Calling In

Members are reminded that, should they wish to call in any item on this agenda, notice must be given to Democracy Support Group by:

10.00 am on Monday 8 March 2010 if an item is called in before a decision is taken, or

4.00pm on Thursday 11 March 2010 if an item is called in after a decision has been taken.

Items called in will be considered by the Scrutiny Management Committee.

Any written representations in respect of the items on the agenda should be submitted to Democratic Services by **5.00 pm on Friday 5 March 2010**.

1. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on the agenda.

- 2. Minutes** (Pages 3 - 4)
To approve and sign the minutes of the Decision Session of the Executive Member for Corporate Services held on 16 February 2010.
- 3. Public Participation**
At this point in the meeting, members of the public who have registered their wish to speak at the meeting can do so. The deadline for registering is **5.00 pm on Monday 8 March 2010**.
- 4. Counter Fraud and Corruption Policies** (Pages 5 - 26)
This report seeks approval for the adoption of revised counter fraud and corruption, and counter fraud and corruption prosecution policies for the council.
- 5. Urgent Business**
Any other business which the Chair considers urgent under the Local Government Act 1972.

Information Log

No items have been published on the Information Log since the last decision session.

Democracy Officer:
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For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above.

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Would you like to speak at this meeting?

If you would, you will need to:

- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than 5.00 pm** on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

A leaflet on public participation is available on the Council's website or from Democratic Services by telephoning York (01904) 551088

Further information about what's being discussed at this meeting

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

Access Arrangements

We will make every effort to make the meeting accessible to you. The meeting will usually be held in a wheelchair accessible venue with an induction hearing loop. We can provide the agenda or reports in large print, electronically (computer disk or by email), in Braille or on audio tape. Some formats will take longer than others so please give as much notice as possible (at least 48 hours for Braille or audio tape).

If you have any further access requirements such as parking close-by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

Every effort will also be made to make information available in another language, either by providing translated information or an interpreter providing sufficient advance notice is given. Telephone York (01904) 551550 for this service.

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Holding the Executive to Account

The majority of councillors are not appointed to the Executive (40 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Decision Session) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

Who Gets Agenda and Reports for our Meetings?

- Councillors get copies of all agenda and reports for the committees to which they are appointed by the Council;
- Relevant Council Officers get copies of relevant agenda and reports for the committees which they report to;
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City of York Council

Committee Minutes

MEETING	DECISION SESSION - EXECUTIVE MEMBER FOR CORPORATE SERVICES
DATE	16 FEBRUARY 2010
PRESENT	COUNCILLOR MOORE (EXECUTIVE MEMBER)

20. DECLARATIONS OF INTEREST

The Executive Member was invited to declare at this point in the meeting any personal or prejudicial interests he might have in the business on the agenda. None were declared.

21. MINUTES

RESOLVED: That the minutes of the meeting held on 29 January 2010 be approved and signed by the Executive Member as a correct record.

22. EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That the press and public be excluded from the meeting during consideration of Annex B of agenda item 5 ("Bad Debt Write-Off Report - Period mid November 2009 to January 2010") on the grounds that it contains information which is likely to reveal the identity of an individual and relating to the financial or business affairs of any particular person. This information is classed as exempt under Paragraphs 2 and 3 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

23. PUBLIC PARTICIPATION

It was reported that there had been no registrations to speak under the council's Public Participation Scheme.

24. BAD DEBT WRITE OFF REPORT - PERIOD MID NOVEMBER 2009 TO JANUARY 2010

The Executive Member received a report that presented the irrecoverable accounts in respect of Council Tax (CT), National Non-Domestic Rates (NNDR), Sundry Debtors and Housing Benefit overpayment for write-off covering the period 21 November 2009 to 22 January 2010.

The Executive Member was asked to write-off the over £5k accounts (totalling £46,736) in line with the council's Financial Regulations, or to leave the accounts on the council's accounts.

RESOLVED: That the write-off of bad debt, as set out in Table 1 of the report and in the confidential Annex B of the report be approved.

REASON: To remove irrecoverable bad debt from the council's accounts in accordance with accountancy best practice.

Councillor R Moore, Chair

[The meeting started at 4.15 pm and finished at 4.17 pm].



Decision Session – Executive Member for Corporate Services 9 March 2010

Report of the Assistant Director of Resources (Customer Service and Governance)

Counter Fraud and Corruption Policies

Summary

- 1 The purpose of the report is to seek approval for the adoption of revised counter fraud and corruption and counter fraud and corruption prosecution policies for the council.

Background

- 2 In accordance with best practice, the council maintains policies on countering fraud and corruption and prosecuting in cases where fraud is proven. Approval of these policies is the responsibility of the Executive Member for Corporate Services.
- 3 The policies were last updated in April 2008. Minor changes are now required to update them, and to take into account changes to service arrangements for example the transfer of counter fraud services to Veritau Ltd.

Counter Fraud Policies

- 4 The counter fraud and corruption policy and fraud and corruption prosecution policy are included at Annex 1 and 2. Proposed changes to the policies are shown in the annexes. The changes are minor, and reflect changes to service arrangements, job titles and updates to other information and policies.

Consultation

- 5 The revised policies were presented to the Audit and Governance Committee (who are responsible for overseeing counter fraud work and monitoring these policies) for comment on 15 February 2010.

Options

- 6 Not relevant for the purpose of the report.

Analysis

- 7 Not relevant for the purpose of the report.

Corporate Priorities

- 8 This report contributes to the council's overall aims and priorities by helping to ensure probity, integrity and honesty in everything we do. In doing so it contributes to the corporate objective of making the council an effective organisation.

Implications

- 9 There are no implications to this report in relation to:

- **Finance**
- **Human Resources (HR)**
- **Equalities**
- **Legal**
- **Crime and Disorder**
- **Information Technology (IT)**
- **Property**

Risk Management Assessment

- 10 The council will fail to comply with proper practice if it fails to maintain up to date counter fraud and corruption policies and procedures.

Recommendations

- 11 The Executive Member for Corporate Services is asked to:
- approve the proposed changes to the council's counter fraud and corruption policy and fraud and corruption prosecution policy.

Reason

To ensure that up to date counter fraud procedures and policies are maintained.

Contact Details

Author:

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Audit and Fraud Manager
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Chief Officer Responsible for the report:

Pauline Stuchfield
Assistant Director (Customer Service and Governance)
Telephone: 01904 551706

Report Approved

Date 22/2/10

Specialist Implications Officers

Not applicable

Wards Affected: Not applicable

All

For further information please contact the author of the report

Background Papers

None

Annexes

Annex 1 – Counter Fraud and Corruption Policy
Annex 2 – Fraud and Corruption Prosecution Policy

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CITY OF YORK COUNCIL
COUNTER FRAUD AND CORRUPTION POLICY

1 Introduction

- 1.1 All organisations are at increasing risk of fraud and corruption. It is estimated that total fraud in the UK amounts to approximately £30.5 billion per annum, of which £17.6 billion relates to the public sector. It is therefore a risk that the council cannot and should not ignore.
- 1.2 Any fraud committed against the council effectively constitutes a theft of taxpayers money. It is unlawful and deprives the council of resources which should be available to provide services to the public. By putting in place effective measures to counter the risk of fraud and corruption the council can reduce losses which impact on service delivery as a contribution to the achievement of overall council priorities.
- 1.3 This document sets out the council's policy in relation to fraud and corruption perpetrated against it, and its overall arrangements for preventing and detecting fraud. It forms part of the council's overall policy framework for combating fraud and corruption and should be read in conjunction with the constitution, the financial regulations, contract procedure rules, the fraud and corruption prosecution policy, the whistleblowing policy, disciplinary procedures, and the anti-money laundering guidance.

2 Definitions and Scope

- 2.1 For the purpose of this policy, the term fraud is used broadly to encompass:
- acts which would fall under the definition in the Fraud Act 2006
 - anything which may be deemed fraudulent in accordance with the generally held view of fraud as causing loss or making a gain at the expense of someone by deception and dishonest means
 - any act of corruption (ie the giving or receipt of gifts with a view to the giver receiving a more favourable treatment than they would otherwise be entitled to)
 - acts of theft
 - any other irregularity which is to the detriment of the council whether financially or otherwise, or by which someone gains benefit they are not entitled to.
- 2.2 This policy does not cover fraud or corruption against third parties, even where the council takes part in its investigation or prosecution. In addition, it does not cover other acts – for example offences involving violence -

which may affect the council, and which should be to be reported directly to the police.

3 Principles

- 3.1 The council will not tolerate fraud or corruption in the administration of its responsibilities, whether perpetrated by members, officers, customers of its services, third party organisations contracting with it to provide goods and/or services, or other agencies with which it has any business dealings. There is a basic expectation that members and all staff will act with integrity and with due regard to matters of probity and propriety, the requirement to act lawfully and comply with all rules, procedures and practices set out in legislation, the constitution, the council's policy framework, and all relevant professional and other codes of practice.
- 3.2 The council will seek to assess its exposure to risks of fraud and corruption. It will prioritise resources available to prevent and deter fraud in order to minimise this risk.
- 3.3 The council will consider any allegation or suspicion of fraud seriously, from whatever source, and if appropriate will undertake an investigation to confirm whether fraud has occurred and determine the appropriate outcome. Any investigation will be proportionate. Due to its nature, the investigation of housing and council tax benefit fraud will be subject to prioritisation using formal risk assessment criteria. The council may refer any incident of suspected fraud to the police or other agency for investigation, if appropriate.
- 3.4 To act as a deterrent, the council will take action in all cases where fraud (or an attempt to commit fraud) is proved, in proportion to the act committed. This may include prosecution, application of internal disciplinary procedures, or any other action deemed appropriate to the offence (for example referral to a professional body). Prosecution decisions will be made in accordance with the fraud and corruption prosecution policy.
- 3.5 As a further deterrent, and to minimise losses, the council will attempt to recover any losses incurred through civil or legal action. In addition, the council will seek to apply any appropriate fines or penalties, and recover any costs incurred in investigating and prosecuting cases.

4 Responsibilities

- 4.1 Overall responsibility for the approval of this policy rests with the Executive Member for Corporate Services on behalf of the council in accordance with the council's constitution.

- 4.2 The Audit and Governance Committee has a responsibility to provide advice to the council on issues arising out of fraud investigations and to report any remedial or preventative action that has or which ought to be taken by the council in relation to such matters. It also monitors council policies on whistle-blowing and counter fraud & corruption and can consider any matter referred to it in accordance with the council's whistle-blowing policy and procedures.
- 4.3 The officer governance group has a responsibility for ensuring that the council has effective fraud and corruption procedures embedded across the organisation that comply with best practice and good governance standards and requirements.
- 4.4 Veritau (who provide internal audit, counter fraud and information governance services to the council) is responsible for reviewing the council's counter fraud and corruption policies on a regular basis and for recommending any required changes to those policies. In addition, Veritau leads on fraud prevention and detection issues for the council and is responsible for investigating any suspected cases of fraud or corruption. The internal audit team carries out audit work to ensure that systems of control are operating effectively, which contributes to the reduction in opportunities for committing fraud. The Head of Internal Audit is required to report his/her professional opinion on the council's control environment to members of the Audit & Governance Committee on an annual basis in accordance with proper practice.
- 4.5 The Director of Resources as chief financial officer is required to ensure the council has appropriate systems of control in place to prevent and detect fraud. All directors have a responsibility for preventing and detecting fraud within their service areas. This includes maintenance of effective systems of internal control and ensuring that any weaknesses identified through the work of internal audit or by other means are addressed promptly.
- 4.6 The Head of Civic, Democratic and Legal Services is the council's nominated officer for the purposes of the Money Laundering Regulations (2007), and has a statutory responsibility for reporting any issues referred in this capacity.
- 4.7 All staff have a general responsibility to be aware of the possibility of fraud and corruption, and to report any suspicions that they may have to Veritau. Where appropriate, staff may use the whistleblowing policy to raise concerns anonymously.

- 4.8 Officers within human resources have a responsibility to support service departments in undertaking any necessary disciplinary process after consultation and initial investigation, where appropriate, by Veritau.

5 Overall Counter Fraud Arrangements

Introduction

- 5.1 The purpose of this section is to set out the council's overall framework for countering the risk of fraud and corruption. While the council aims to follow best practice in relation to counter fraud activity¹, it recognises that there are areas for further development. This section therefore also sets out those areas of practice it wishes to develop further.

Measurement

- 5.2 The council will further develop systems for assessing the potential risks and losses due to fraud and corruption (for example through its risk management arrangements), and will use these to prioritise counter fraud activity, and review the resources available to counter those risks. The review will include an assessment of actual levels of fraud² and the effectiveness of counter fraud activity in reducing losses. The outcome of this review will be reported to the Audit and Governance Committee on an annual basis as part of the audit and fraud planning cycle.

Culture

- 5.3 The council will promote a culture whereby all staff, members, service users, and contractors are aware that fraud or corruption in any form is unacceptable. To do this, it will:
- ensure that there are clear arrangements in place for reporting suspicions about potential fraud or corruption, whether that be by staff, council members, partners, stakeholders, contractors or members of the public;
 - investigate reported suspicions and where evidence of fraud or corruption is found will prosecute where appropriate and take any other action necessary in accordance with the financial regulations, contract procedure rules, fraud and corruption prosecution policy,

¹ For example the CIPFA Better Governance Forum publication "*Managing the Risk of Fraud – Actions to Counter Fraud and Corruption (the Red Book 2)*"

² All suspected fraud should be reported to Veritau. A record of all such information will be maintained on a confidential basis.

disciplinary procedures, members code of conduct, or any relevant legislation or guidance;

- ensure that the consequences of committing fraud and/or partaking in corrupt practices are widely publicised.

Prevention and Detection

Controls

- 5.4 As part of its ongoing operating procedures, the council seeks to ensure that proper systems of internal control are in place. This includes controls to directly prevent and detect fraud, such as separation of duties and management review, along with other procedures such as vetting as part of recruitment processes and systems for declaration of interests and gifts and hospitality. The effectiveness of systems of control are monitored by directorates, and a formal report is made as part of the process for preparing the annual governance statement. The council maintains a system of internal audit to provide independent review of control systems on an ongoing basis, in accordance with a risk assessment.
- 5.5 Services will be encouraged to consider the risk of fraud as part of the council's risk management process. Any information on risks identified will be used to inform the annual review of counter fraud activity.

Proactive Work

- 5.6 The council will carry out targeted project work (for example data matching exercises) to identify fraud and corruption in known high risk areas. This work will be carried out by Veritau as part of its annual workplan. Work will be prioritised based on a risk assessment as part of the annual review of counter fraud activity. Work may include joint exercises with other agencies, including other local councils.
- 5.7 The council will take part in projects led by other agencies such as the DWP and Audit Commission to identify potential fraud. For example the National Fraud Initiative and HBMS Data Matching Service. Resources will be allocated to follow up all data matches as part of audit and fraud workplans. Veritau will work with service departments to ensure that they are aware of the need to include notices to service users stating that any data held may be subject to use for data matching purposes.

Relationships

- 5.8 The council has established relationships with a number of other agencies. It will continue to develop these relationships and develop new

ones to further the prevention and detection of fraud. Organisations which the council will work with include:

- the police
- the Audit Commission
- the courts
- the Department for Works and Pensions
- other councils
- the Office of Fair Trading
- community groups

- 5.9 Veritau will work with council departments to ensure that systems for reporting and investigating suspected fraud and corruption are robust. Where appropriate, formal protocols will be developed setting out departments responsibilities (for example between Veritau and human resources).

Fraud Awareness Training

- 5.10 As part of its annual workplan, Veritau will provide targeted fraud awareness training to specific groups of staff, based on its annual risk assessment.

Investigation

- 5.11 All suspected cases of fraud, corruption, theft or other irregularity will be investigated. The nature of each investigation will depend on the circumstances of each case. Veritau will act as a first port of call for any suspected fraud and will provide advice on whether other agencies should be notified (eg the police). Veritau will determine the extent of the investigation to be carried out in consultation with service departments and human resources³. Where necessary, Veritau may refer cases directly to other agencies without consultation (for example the police or the Audit Commission) at the discretion of the Head of Internal Audit.
- 5.12 All staff involved in the investigation of fraud will be appropriately trained. They will be required to comply with any relevant legislation and codes of practice. For example the Police and Criminal Evidence Act (PACE), Regulation of Investigatory Powers Act (RIPA), the Data Protection Act, and the Criminal Procedures Investigations Act. Investigators will take into account the individual circumstances of anyone involved in an investigation and adjustments to procedure will be made where necessary

³ For suspected housing benefit or council tax benefit fraud Veritau will determine the extent of investigation required based on a risk scoring system.

to ensure that all parties are treated equitably (where it is appropriate and reasonable to do so).

- 5.13 As part of the outcome of every investigation, a review of any weaknesses in control will be made and if necessary recommendations will be made to address any issues identified. These will be set out in a formal report to the managers of the service concerned, and will be followed up to ensure the issues are addressed.
- 5.14 The Head of Internal Audit will ensure that systems for investigating fraud are reviewed on an ongoing basis, to ensure that they remain up to date and comply with good practice.

Publicity

- 5.15 The council will publicise all successful prosecutions undertaken either by itself or by partner organisations, to act as a deterrent against future fraud.
- 5.16 In addition, a targeted campaign of publicity will be undertaken each year to raise the awareness of fraud to staff, members, the public, and other agencies. This will consist of both internal and external publicity and will aim to:
- raise awareness about potential fraud and ensure all stakeholders are alert to the possibilities of fraud
 - inform all stakeholders of the procedures to be followed if they have suspicions of fraud
 - ensure that all stakeholders are aware that the council will not tolerate fraud and the consequences of committing fraud against it.

Recovery of Monies

- 5.17 Where any loss has been incurred by the council or additional costs have been incurred as a result of fraud or corruption, the council will seek to recover these from the individual or organisation concerned. This will help to ensure that the financial impact of fraud on the council is minimised and act as a deterrent. As a further deterrent, the council will seek to levy any appropriate fines or penalties where it is possible and desirable to do so.
- 5.18 Methods of recovery may include:
- recovery from assets held by the organisation or individual (using the Proceeds of Crime Act or any other relevant legislation)
 - bankruptcy where appropriate
 - recovery from future salary payments if an individual remains an employee of the council

- recovery of pension contributions from employees or members who are members of the North Yorkshire Pension Fund.

6 Monitoring & Review Arrangements

- 6.1 The arrangements set out in this policy document will be reviewed on an annual basis as part of the audit and fraud planning cycle and will include the fraud and corruption prosecution policy, and other related guidance. Veritau will work with other departments to ensure that other related guidance and policy (such as the whistleblowing policy) are reviewed on a regular basis and any amendments or necessary changes are reported to members for approval.

LAST UPDATED: 9 March 2010

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CITY OF YORK COUNCIL
FRAUD AND CORRUPTION PROSECUTION POLICY

1 Scope and Purpose

- 1.1 The fraud and corruption prosecution policy forms part of the council's overall counter-fraud and corruption strategy. The policy covers all acts, and/or attempted acts, of fraud or corruption committed by officers or members of the council, or committed by members of the public, or other organisations or their employees, against the council.
- 1.2 The policy sets out the circumstances in which the council will take legal action against the perpetrators of fraud or corruption. It also sets out the circumstances when it is appropriate to consider alternative courses of action such as offering a caution. The policy does not cover internal disciplinary procedures which are the subject of the council's separate disciplinary policy and procedures.
- 1.3 This policy should be read in conjunction with the council's constitution, financial regulations, contract procedure rules, the counter fraud and corruption policy, the whistleblowing policy and the council's disciplinary policy and procedures.
- 1.4 Housing and council tax benefit fraud is the most common type of fraudulent act committed against the council. The policy contains specific guidelines for determining the most appropriate course of action when fraud of this kind has been identified. Offences other than fraud and corruption (for example those relevant to the enforcement of regulations and/or the collection of taxes) are dealt with by the appropriate service departments under other policies and relying on specific legal powers.
- 1.5 Where fraud or corruption is proven, decisions about whether to prosecute will be made in accordance with this policy by officers or agents of the council as set out below.

Housing and Council Tax Benefit Cases:

- a) **Routine Cases:** Decisions about prosecution will be made by appropriate staff within Veritau, in consultation with the council's legal services department (who are responsible for undertaking prosecutions). Decisions about alternative sanctions (see below) will be made by Veritau.
- b) **Other Cases**¹: Decisions about prosecution will be made by the Assistant Director (Customer Services and Governance) or the Director of Resources following a recommendation by Veritau.

Non Benefit Cases:

A recommendation about prosecution, or other action that may be appropriate will be made by Veritau. Decisions will be made by the

¹ For example where a case is complex, where the costs of prosecution could be significant, or where there are other risks associated with a case.

Assistant Director (Customer Service and Governance) or the Director of Resources in consultation with legal services, and the relevant service director(s).

2 Principles

- 2.1 The council is committed to an effective anti-fraud and corruption strategy. The strategy is designed to encourage the prevention and detection of fraud and corruption. As part of the strategy the council is also committed to taking appropriate action against anyone believed to have attempted and/or committed a fraudulent or corrupt act against it. The council considers that those guilty of fraud or corruption must take responsibility for their actions before the courts.
- 2.2 The policy is designed to ensure that the council acts fairly and consistently when determining what action to take against the perpetrators of fraud or corruption.
- 2.3 Staff and members who are found to have committed fraud or corruption may be prosecuted in addition to such other action(s) that the council may decide to take, including disciplinary proceedings in the case of staff and referral to the council's Standards Committee and/or the Standards Board for England in the case of Members. Any decision not to prosecute a member of staff for fraud and corruption does not preclude remedial action being taken by the relevant director(s) in accordance with the council's disciplinary procedures or other policies.
- 2.4 This Policy is also designed to be consistent with council policies on equalities. The council will be sensitive to the circumstances of each case and the nature of the crime when considering whether to prosecute or not.
- 2.5 The consistent application of the policy will provide a means for ensuring that those who have perpetrated fraud and corruption are appropriately penalised. It will also act as a meaningful deterrent to those who are contemplating committing fraud or corruption. The council recognises the deterrent value of good publicity and therefore information regarding successful prosecutions and sanctions will be made public.
- 2.6 Any decision taken by an authorised officer to prosecute an individual or to offer a formal sanction (HB/CTB cases only) will be recorded in writing. The reason for the decision being taken will also be recorded.
- 2.7 Irrespective of the action taken to prosecute the perpetrators of fraud and corruption, the council will take whatever steps necessary to recover any losses incurred, including taking action in the civil courts.

3 Prosecution

- 3.1 The policy is intended to ensure the successful prosecution of offenders

in court. However, not every contravention of the law should be considered for prosecution. The council will weigh the seriousness of the offence (taking into account the harm done or the potential for harm arising from the offence) with other relevant factors, including the financial circumstances of the defendant, mitigating circumstances and other public interest criteria. All cases will be looked at individually and be considered on their own merit.

- 3.2 To consider a case for prosecution the council must be satisfied that two tests have been passed. Firstly, there must be sufficient evidence of guilt to ensure conviction. This is called the **evidential test**. Secondly, it must be in the public interest to proceed – the **public interest test**.
- 3.3 To pass the evidential test, the authorised officer must be satisfied that there is a realistic prospect of conviction based on the available evidence (that is, there must be sufficient admissible, substantial and reliable evidence to secure a conviction).
- 3.4 To pass the public interest test, the authorised officer will balance, carefully and fairly, the public interest criteria against the seriousness of the offence. The public interest criteria include;
 - the likely sentence (if convicted);
 - any previous convictions and the conduct of the defendant;
 - whether there are grounds for believing the offence is likely to be repeated;
 - the prevalence of the offence in the area;
 - whether the offence was committed as a result of a genuine mistake or misunderstanding;
 - any undue delay between the offence taking place and/or being detected and the date of the trial;
 - the likely effect that a prosecution will have on the defendant;
 - whether the defendant has put right the loss or harm caused.
- 3.5 It will generally be in the public interest to prosecute if one or more of the following factors applies, subject to any mitigating circumstances;
 - the actual or potential loss to the council was substantial (and for benefit related fraud exceeds the thresholds set out in the financial guidelines which form part of this policy);
 - the fraud has continued over a long period of time;
 - the fraud was calculated and deliberate;
 - the person has previously committed fraud against the council (even if prosecution did not result) and/or there has been a history of fraudulent activity;

- the person was in a position of trust (for example, a member of staff);
- there has been an abuse of position or privilege;
- the person has declined the offer of a caution or administrative penalty, or has withdrawn the offer to pay an administrative penalty (HB/CTB cases only);
- the case has arisen from a collusive employer or landlord investigation (HB/CTB cases only);
- the case has involved the use of false identities and/or false or forged documents (HB/CTB cases only);

4 Mitigating Factors

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

Voluntary Disclosure

- 4.2 A voluntary disclosure occurs when an offender voluntarily reveals fraud about which the council is otherwise unaware. If this happens, then the fraud will be investigated but the offender will not be prosecuted unless in exceptional circumstances. However, any person colluding in the crime will still be prosecuted. A disclosure is not voluntary if the:-

- admission is not a complete disclosure of the fraud;
- admission of the fraud is made only because discovery of the fraud is likely, (for example, the offender knows the council is already undertaking an investigation in this area and/or other counter fraud activity);
- offender only admits the facts when challenged or questioned;
- offender supplies the correct facts when making a claim to Legal Aid;
- disclosure comes to light in some other way, for example, by the issue of a Housing Benefits review form (HB/CTB cases only).

Ill Health or Disability

- 4.3 Where the perpetrator (and/or their partner in HB/CTB cases) is suffering from prolonged ill health or has a serious disability or other incapacity then the offender will not be prosecuted unless in exceptional circumstances. Evidence from a GP or other doctor will be requested if the condition is claimed to exist, unless it is obvious to the investigator.

For HB/CTB cases it is also necessary to prove that the person understood the rules governing receipt of benefit and was aware that their action is wrong. This may not be possible where, for instance, the offender has serious learning difficulties. However, simple ignorance of the law will not prevent prosecution.

Social Factors

- 4.4 A wide range of social factors may make a prosecution undesirable. The test is whether the court will consider the prosecution undesirable, and go on to reflect that in the sentence.

Exceptional Circumstances

- 4.5 In certain exceptional circumstances the council may decide not to prosecute an offender. Such circumstances include;
- the lack of sufficient resources to complete the investigation within a reasonable period of time (even after requesting assistance from the police and the DWP);
 - the prosecution would not be in the interests of the council.

5 Alternatives to Prosecution (HB/CTB cases only)

- 5.1 If a housing or council tax benefits case is considered strong enough for prosecution but there are mitigating circumstances which cast a doubt as to whether a prosecution is appropriate then the council may consider the offer of a sanction instead. The two sanctions available are;
- formal cautions, or;
 - administrative penalties.

Formal Cautions

- 5.2 A formal caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. A formal caution is a serious matter and all cautions are recorded by the DWP. Where a person offends again in the future then any previous cautions will influence the decision on whether to prosecute or not.
- 5.3 Subject to the thresholds set out in the financial guidelines below, a formal caution will normally be offered where all of the following apply;
- there is sufficient evidence to justify instituting criminal proceedings;
 - the person has admitted the offence;
 - it was a first offence, and;

- an administrative penalty is not considered to be appropriate.

Only in very exceptional circumstances will a further caution be offered for a second or subsequent offence of the same nature.

- 5.4 Cautions will be administered by the Head of Internal Audit, Audit and Fraud Manager, Fraud Team Leader, or a senior fraud investigator. If a caution is offered but not accepted then the council will usually consider the case for prosecution. In such cases the court will be informed that the defendant was offered a penalty but declined to accept it.

Administrative Penalties

- 5.5 Section 115A of the Social Security Administration Act 1992 as amended by Section 15 of the Social Security Administration (Fraud) Act 1997, permits an administrative penalty to be offered to claimants as an alternative to prosecution. The penalty is set at a rate of 30% of the total benefit overpayment. Once an administrative penalty is accepted, the claimant has 28 days to change their mind.

- 5.6 Subject to the thresholds set out in the financial guidelines below, an administrative penalty will normally be offered by the council in the following circumstances;

- the council believes that there is sufficient evidence to prosecute;
- it was a first offence or a previous offence was dealt with by way of a caution, and;
- in the opinion of the council, the circumstances of the case mean it is not overwhelmingly suitable for prosecution, and;
- the claimant has the means to repay both the overpayment and the penalty, and;
- there is a strong likelihood that both the overpayment and the penalty will be repaid.

- 5.7 It is important to note that the claimant does not need to have admitted the offence for an administrative penalty to be offered. Administrative penalties will be administered by the Head of Internal Audit, Audit and Fraud Manager, Fraud Team Leader, or a senior investigator. If an administrative penalty is not accepted or is withdrawn then the council will usually consider the case for prosecution. In such cases the court will be informed that the defendant was offered a penalty but declined to accept it.

6 Financial Guidelines (HB/CTB cases only)

- 6.1 Where the authorised officer considers that justice can be best served with a caution or administrative penalty where the overpayment is higher

than the figures shown below then discretion may be applied. Equally, discretion may be applied where it is considered reasonable to prosecute but the overpayment is lower than the limit prescribed.

6.2 The following guidelines apply in helping to determine the appropriate action to take;

- A formal caution or an Administrative Penalty may be offered where the overpayment is under £2,000. The decision on which to offer will depend on the circumstances of the case and whether the offence has been admitted or not by the accused.
- If the overpayment is over £2,000 and it is considered to be in the public interest then prosecution proceedings will generally be instigated.
- The council will not normally consider prosecution or a formal sanction in cases where the total overpayment is less than £100 (unless there are particular circumstances which make this desirable) although the overpayment will still be recovered from the claimant.

6.3 Where the size of the overpayment is such that the council would normally prosecute but there are mitigating factors which make such a prosecution undesirable then a formal sanction may be offered instead.

6.4 Serious attempted fraud which is discovered before benefits have been put into payment (and where there is no overpayment of benefit as a result) will also be considered for prosecution or sanction. The criteria for determining whether a prosecution is appropriate will be the potential seriousness of the fraud as opposed to the value of the overpayment. Each case will be considered on its own merits and action will be taken as appropriate.

7 Proceeds of Crime Act 2002 (POCA)

7.1 In addition to the actions set out in this policy, the council reserves the right to refer all suitable cases for financial investigation with a view to applying to the courts for restraint and/or confiscation of identified assets. A restraint order will prevent a person from dealing with specific assets. A confiscation order enables the council to recover its losses from assets which are found to be the proceeds of crime.

8 Implementation Date

8.1 This revised policy is effective from 9 March 2010 and covers all decisions relating to prosecutions and sanctions after this date.