

SOUTH HAMS DISTRICT COUNCIL

NAME OF COMMITTEE	Audit Committee
DATE	13 September 2011
REPORT TITLE	Anti Fraud, Corruption and Bribery Policy and Strategy; and Benefit Fraud Prosecution And Sanction Policy
Report of	S.151 Officer Monitoring Officer Internal Audit Manager
WARDS AFFECTED	All/Corporate

Summary of report:

The purpose of the report is to seek Members' approval for a revised Anti Fraud, Corruption and Benefit Policy and Strategy. Although the previous version of the document was fit for purpose, the introduction of the Bribery Act 2010 from 1st July 2011, internal management changes and the shared service agenda has meant an update is necessary.

The pressure on Local Authorities to be vigorous in their approach when any fraudulent activity is discovered is undiminished, whether that be internal fraud, corruption or bribery or fraudulent benefit claims, perpetrators should be prosecuted whenever it is in the public interest to do so.

The adoption of this updated Anti Fraud, Corruption and Policy and Strategy, and Benefit Fraud Prosecution and Sanction Policy, which includes a prosecution policy, will ensure a consistent approach is applied and that the Council operates to 'best practice' standards.

Financial implications:

None, within existing budgets.

RECOMMENDATIONS:

That the Audit Committee RECOMMENDS to the Council that the Anti Fraud, Corruption and Bribery Policy and Strategy and Benefit Fraud Prosecution and Sanction Policy 2011 be adopted.

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1. BACKGROUND

1.1 The Council has a responsibility to take the risk of fraud, corruption or bribery seriously and for many years has operated within an Anti Fraud and Corruption Strategy which set out our approach zero tolerance of fraud and corruption.

1.2 The objectives of the Strategy were to:

- Provide a clear statement of the Council's position on fraud and corruption;
- Minimise the risk to the Council's good name and loss of its assets;
- Promote a culture of integrity and accountability, two of the fundamental principles of good governance, in members, staff and all those the Council does business with;
- Enhance existing procedures aimed at preventing, discouraging and detecting fraud and corruption; and
- Raise awareness of the risk of fraud and corruption being perpetrated against the Council.

1.3 The external auditors and CIPFA have been actively promoting good governance and particularly the arrangements for prevention and detection of fraud through the following:

- Audit Commission Documents – Protecting the Public Purse checklist to those charged with governance outlining the Councils arrangements for countering fraud and corruption
- CIPFA Better Governance Forum document: 'Managing the Risk of Fraud – Actions to Counter Fraud and Corruption';
- The Benefits Fraud Inspectorate - concerned with the administration of Housing and Council Tax Benefits and provides guidance and recommendations on best practice to ensure that risks of Fraud are identified and dealt with.

2. ISSUES FOR CONSIDERATION

Changes from the Previous Version of the Document

2.1 Although the previous version of the document was fit for purpose and the objectives remain, the introduction of the Bribery Act 2010 from 1st July 2011, internal management changes and the shared service agenda has meant an update is necessary.

2.2 The previous version of the Strategy was reviewed and compared with:

- West Devon's existing Strategy;
- CIPFA (Technical Information Service) guidance of April 2011 – Adopting the Right Strategy
- CIPFA Better Governance Forum document: 'Managing the Risk of Fraud – Actions to Counter Fraud and Corruption';
- Bribery Act 2010: guidance issued by the Ministry of Justice; and
- The 2011 Strategy of several other Councils (to whom we extend our gratitude).

2.3 The main changes to the previous version of the document are:

- Alignment of the Policy and Strategy and its presentation with West Devon BC as part of the shared service agenda, the best of both used to create a new document (Appendix A);
- Updating the Policy and Strategy to reflect the recent management changes
- Reflecting the requirements of the Bribery Act 2010 that came into force on 1st July 2011;
- Separating the detailed Fraud, Corruption and Bribery Response Plan. This is effectively a procedure document, which will be updated and made available on the Council's Intranet.

2.4 The Benefit Fraud Prosecution and Sanction Policy (Appendix B) remains unchanged.

3. LEGAL IMPLICATIONS

3.1 To ensure that the Council complies with the Fraud Act 2006 and the Bribery Act 2010.

4. FINANCIAL IMPLICATIONS

4.1 None, within existing budgets.

5. RISK MANAGEMENT

5.1 The risk management implications are:

Opportunities	Benefits
Communicating the Anti Fraud stance to members, officers and the public may deter those that consider that an attempted fraud is work risking.	The Council demonstrates its commitment to an Anti Fraud culture, by the regular review, updating and approval of an Anti Fraud Strategy.

Issues/Obstacles/Threats	Control measures/mitigation
Investigations are commenced promptly after suspicions are aroused.	The approach to investigating suspected fraud is clearly laid out in the Council's Fraud, Corruption and Bribery Response Plan.

Issues/Obstacles/Threats	Control measures/mitigation
Preventative measures are in place, including a system of internal controls which are regularly reviewed.	Controls are regularly reviewed by managers and Internal Audit on a risk basis, with vulnerability to fraud being a key part of the audit risk assessment.
Risk of fraud or corruption being perpetrated on the Council.	Preventative measures are in place, including a system of internal controls which are regularly reviewed.
Fraud or corruption is not identified at an early stage.	The Council's Confidential Reporting Policy (whistle blowing) encourages members, officers and the public to report suspected fraud without fear of reprisals. Internal control measures are in place.
Suspected fraud or corruption is not investigated in a sound professional way.	Only appropriately trained officers are appointed to investigate suspected fraud.

Corporate priorities engaged:	All/Corporate
Statutory powers:	Fraud Act 2006 Bribery Act 2010
Considerations of equality and human rights:	No specific equality and human rights issues arising from this report.
Biodiversity considerations:	No specific biodiversity issues arising from this report.
Sustainability considerations:	No specific sustainability issues arising from this report.
Crime and disorder implications:	No specific crime and disorder issues arising from this report.
Background papers:	Protecting the Public Purse – Local Government Fighting Fraud' (Audit Commission September 2009); Protecting the Public Purse – Fighting Fraud against Local Government and local Taxpayers (Audit Commission October 2010). Disciplinary Procedures; CIPFA Better Governance Forum: Managing the Risk of Fraud.
Appendices attached:	Appendix A: Anti Fraud, Corruption and Bribery Policy and Strategy 2011. Appendix B: Benefit Fraud Prosecution and Sanction Policy



**ANTI FRAUD, CORRUPTION and BRIBERY
POLICY and STRATEGY**

ANTI FRAUD, CORRUPTION and BRIBERY POLICY and STRATEGY**1.0 INTRODUCTION**

- 1.1 This document sets out the non-tolerance position held by South Hams District Council on fraud, corruption and bribery.
- 1.2 The objectives of an Anti Fraud, Corruption and Bribery Policy and Strategy are to:
- ◆ Provide a clear statement of the Council's position on fraud, corruption and bribery;
 - ◆ Minimise the risk to the Council's good name and loss of its assets;
 - ◆ Promote a culture of integrity and accountability, two of the fundamental principles of good governance, in members, staff and all those the Council does business with;
 - ◆ Enhance existing procedures aimed at preventing, discouraging and detecting fraud, corruption and bribery; and
 - ◆ Raise awareness of the risk of fraud, corruption and bribery being perpetrated against the Council.
- 1.3 In managing its responsibilities the Council is determined to protect itself against fraud and corruption both from within the authority and from outside. The Council is committed to an effective Policy and Strategy which is designed to:
- ◆ Encourage prevention;
 - ◆ promote detection; and
 - ◆ Identify a clear pathway for investigation.
- 1.4 To combat fraud, corruption and bribery the Council's Policy and Strategy is based on a series of comprehensive procedures. These cover:
- ◆ Risk Management (paragraph 3);
 - ◆ Policy Statements (paragraph 5);
 - ◆ Deterrence and Prevention (paragraph 6);
 - ◆ Detection, Investigation, Sanctions and Redress (paragraph 7); and
 - ◆ Publicity and Training (paragraph 8)
- 1.5 There is an inter-relationship between the Strategy and other existing Council policy documents. These include Financial Regulations **(Financial and Contract Procedure Rules)**, dealing with action to be taken when irregularities or suspected irregularities arise, the **Confidential Reporting (Whistle Blowing) Policy, Gift and Hospitality Registers for Members and Officers, Codes of Conduct for Members and Staff** and the **Disciplinary Procedures**.
- 1.6 There is a separate Anti Money Laundering Policy and related guidance and procedures.

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- 1.7 All references to 'Members' within this document refer to both elected members and co-opted members who sit on the Standards Committee, and any other co-optees from time to time appointed (for example, on to Scrutiny Panels). Likewise references to 'staff' should be taken to include full and part-time staff and permanent, temporary and agency staff.

Benefits Fraud

- 1.8 Whilst the general principles outlined in this Strategy apply to all areas of the Council's operations, it should be noted that a specific policy document is in place in respect of the prevention and detection of benefit fraud.
- 1.9 This deals with the requirements of the Council's Benefits service and dedicated Fraud Team, and that of the equivalent in the Department of Work and Pensions, attached in the Council's **Benefit Fraud Prosecution and Sanction Policy** (Appendix B).

2.0 DEFINITION OF FRAUD, CORRUPTION AND BRIBERY**Fraud**

- 2.1 Fraud has been defined as: *the intentional and dishonest distortion of financial statements and other records by persons internal or external to the Council which is carried out to conceal the misappropriation of assets or otherwise for gain.* (Source: CIPFA)
- 2.2 The Fraud Act 2006 came into effect on 15 January 2007. The Act created a new general offence of fraud with three ways of committing it:
- ◆ Fraud by false representation (dishonest representation) to gain or cause loss or risk of loss;
 - ◆ Fraud by failing to disclose information (where there is a legal duty, e.g. under written or oral contracts);
 - ◆ Fraud by abuse of position.

It also created new offences:

- ◆ Obtaining services dishonestly
- ◆ Possessing, making and supplying articles for use in frauds
- ◆ Fraudulent trading applicable to non-corporate traders. (extends Companies Acts to sole traders etc)

ANTI FRAUD, CORRUPTION and BRIBERY POLICY and STRATEGY**Corruption**

- 2.3 Corruption has been defined as: *the offering, giving, soliciting or acceptance of an inducement or reward, which may influence a person to act against the interests of the organisation.* (Source: Audit Commission)

Bribery

- 2.4 Bribery is defined as: *The offering, giving or soliciting of an inducement or reward which may influence a person to perform a function or activity improperly.*

- 2.5 The 2010 Bribery Act says that a person is guilty of an offence if either of the following cases applies:

Person A **offers, promises or gives** a financial or other advantage to another person, and

- ♦ Intends the advantage to induce Person B to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity, or knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity

Person B is guilty of an offence if any of the following cases applies.

- ♦ Where Person B **requests, agrees to receive or accepts** a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by Person B or another person); or where the request, agreement or acceptance itself constitutes the improper performance by Person B of a relevant function or activity under the Bribery Act and organisation can be prosecuted if it has failed to prevent bribery.

- 2.6 Public sector organisations are explicitly covered by the offences in sections 1, 2 and 6 of the Act.

- 2.7 Members and staff must note that this Policy and Strategy reflects the Council's zero tolerance of both the offering and receipt of bribes.

3.0 RISK MANAGEMENT

- 3.1 Areas most commonly at risk from fraud are both internal and external and include those involving the handling of any asset of an attractive and portable nature. Among typical high risk areas are cash, cheques,

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credit cards, contracts, income, payments, expense claims, housing benefits, loans, investments, payroll, grants and stores etc.

- 3.2 Areas where corrupt practices or bribery may be found may include, but are not limited to the award of permissions, planning consents and licences, canvassing for appointments, hospitality, interests of members and officers, secondary employment of staff which may influence their work for an authority, pressure selling, tendering and award of contracts, settlement of contractors' final accounts and claims and the disposal of assets.
- 3.3 The risk of fraud, corruption and bribery is reflected in the Council's Risk Register. The risk registers link to the Council's objectives and priorities, and the System of Internal Control.
- 3.4 These processes require managers to identify the key risks to achieving their service objectives and the controls to mitigate these risks, which may include fraud or corruption. Assurance that the controls to mitigate the risks are in place and operating satisfactorily is required, also annually, and give consideration to 3.1 and 3.2 above.

4.0 EXTERNAL SCRUTINY

- 4.1 The Council is aware of the high level of external scrutiny of its affairs by a variety of bodies and individuals including:
- Local tax payers and community groups
 - Pressure groups
 - Service users
 - Local press
 - The Council's external auditors
 - Government Departments and Agencies
 - HM Revenue and Customs
- 4.2 The adoption of a formal anti fraud, corruption and bribery strategy will provide a degree of assurance to those external bodies and individuals interested in the Council's activities.

5.0 POLICY STATEMENTS**Culture**

- 5.1 The Council is determined that the culture and tone of the organisation will be, and is seen to be, one of openness, honesty and opposition to fraud, corruption or bribery.

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- 5.2 The Council is committed to discouraging, preventing and detecting fraud, corruption and bribery where attempted on, or from within, the Council's organisation.
- 5.3 The Council expects members and staff at all levels to be aware of the standards of conduct expected of them and the procedures designed to reduce the risk of fraud, corruption and bribery occurring.
- 5.4 Members and staff are responsible for their own conduct and compliance with this strategy and are required to comply with their respective codes of conduct.
- 5.5 There is an expectation and requirement that individuals, suppliers and organisations associated in whatever way with the Council will act with integrity, and that members and Council staff will lead by example in these matters.

Members and Staff

- 5.6 Members and staff are positively encouraged to raise any concerns on fraud, corruption and bribery matters normally, but not exclusively, through a Head of Service or other line manager. This they can do in the knowledge that such concerns will be treated in confidence and properly investigated. If necessary a route other than through a line manager may be used to raise such concerns, e.g. Internal Audit, Chief Executive, S.151 Officer, Director, or Monitoring Officer.
- 5.7 The Council has drawn up a separate policy and procedure to deal with any area of concern that an employee may wish to bring to the attention of the management, the '**Confidential Reporting (Whistle Blowing) Policy**'.
- 5.8 The Council's Monitoring Officer needs to be informed of any actual or suspected breaches of the law or codes of practice. Regular formal meetings between the S.151 Officer, Monitoring Officer and Internal Auditor, an officer group known as the Probity Group, discuss potential issues and the Group holds urgent meetings when suspected breaches of the law or codes of practice are identified. (See section 7 of this document relating to investigation). .
- 5.9 The primary responsibility for maintaining sound arrangements to prevent and detect fraud, corruption and bribery rests with management. Any manager made aware of suspected fraud, corruption and bribery will adopt defined procedures by:
- ♦ Dealing promptly with the matter;

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- ◆ Recording all evidence received;
- ◆ Ensuring that evidence is sound and adequately supported;
- ◆ Ensuring security of evidence collected;
- ◆ Notifying the s.151 Officer, and the Council's Monitoring Officer; &
- ◆ Implementing Council disciplinary procedures were appropriate.

5.10 Any abuse of this process by knowingly raising unfounded and/or malicious allegations may be dealt with as a disciplinary matter.

5.11 The Council can be expected to deal swiftly and thoroughly with any member or member of staff who defrauds or attempts to defraud the Council or who is corrupt. The Council will be robust in dealing with financial malpractice.

Partner Organisations and Members of the Public

5.12 In addition, partner organisations or members of the public are also encouraged to report concerns through any of the above avenues. The principles and processes described in this Strategy and its Appendices, and the Council's **Confidential Reporting (Whistle Blowing) Policy**, will be applied to any concerns formally reported by partner organisations or members of the public.

Monitoring

5.13 The S.151 Officer will monitor the effectiveness of all aspects of the arrangements for the anti fraud, corruption and bribery culture including the approach to investigations, success of sanctions and processes for recovering loss. On a risk basis, the S.151 Officer will make informed judgements about the levels of budgetary investment in work to counter fraud, corruption and bribery.

5.14 The Audit Committee's terms of reference require them to monitor Council policies on **confidential reporting, anti fraud, anti corruption and anti bribery**.

5.15 A regular report to the Committee by the Internal Auditor will inform Members of any suspected or proven fraud, corruption or bribery identified and the system changes required to ensure that the circumstances are not repeated.

6.0 DETERRENCE AND PREVENTION

6.1 The effectiveness of the Council's financial arrangements will have a major bearing on its ability to minimise fraud, corruption and bribery. To

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actively prevent fraud the Council must identify and remove the opportunity to commit crime from new policies and systems and to revise existing ones to remove apparent weaknesses.

- 6.2 The Council will endeavour to act robustly and decisively when fraud, bribery or corruption is suspected and proven. This will be demonstrated through disciplinary action or prosecution. The Council will take action to help ensure the maximum recoveries for the Council.

Prevention – Internal Controls

- 6.3 As the appointed officer under 'Section 151' of the Local Government Act, 1972 and the Accounts and Audit Regulations (various years) responsible for making arrangements for the proper administration of the Council's financial affairs, the Head of Finance and Audit is required to:

- ◆ Maintain an effective accounting system;
- ◆ Comply with statutory financial reporting deadlines; and
- ◆ Maintain an adequate and effective internal audit.

The Regulations required that a Deputy s.151 Officer be formally nominated and this is currently the Chief Accountant.

The 2003, 2006 and 2011 Accounts and Audit Regulations require the Council to ensure that it has adequate and effective financial management and a sound **System of Internal Control (SIC)**. It must review the system annually and publish a statement with the accounts (the Annual Governance Statement).

- 6.4 The Council's Financial Procedure Rules (part of the Constitution) also require the S.151 Officer to maintain a planned continuous **internal audit** to form part of the system of internal control, assist in the protection of the Council's assets and the detection and prevention of fraud and error. In consultation with the internal and external audit managers, special attention within audit plans is paid to those activities particularly exposed to the risk of fraud, corruption and bribery (paragraph 3.0).
- 6.5 The adequacy and appropriateness of the Council's financial systems is independently reviewed by both internal and external audit. Senior management are required to be responsive to audit recommendations, and any issues.
- 6.6 The Council's arrangements for preventing fraud will be considered by the Audit Committee on a regular basis. The arrangements will include Internal Audit and the Benefits Fraud Team carrying out pro-active and reactive work.

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- 6.7 The Internal Auditor will take the appropriate steps to communicate to the appropriate managers, on a timely basis, the details of any fraud bulletins (warnings) received from the external auditor and any other source to ensure safeguards are in place.
- 6.8 The Council will liaise and co-operate with other interested agencies and authorities, including the Audit Commission, Department for Work and Pensions, the Police, professional bodies, and other local authority networks, by, for example, exchanging information on current trends and remedies and membership of the National Anti Fraud Network (NAFN).

Prevention – Staff

- 6.9 The Council recognises that a key preventative measure in the fight against fraud, corruption and bribery is to take effective steps at the recruitment stage to establish, as far as possible, the previous record of potential staff in terms of their propriety and integrity. Staff recruitment is therefore required to be in accordance with procedures laid down by the Head of Corporate Services, and, to obtain a written reference regarding known honesty and integrity of potential staff before employment offers are made.
- 6.10 In the case of agency staff, references will have been taken by the agency to establish the honesty and integrity of the employee.
- 6.11 Council staff are expected to follow any **Code of Conduct** related to their employment or to their professional bodies or qualifications. This will be emphasised in staff induction procedures.
- 6.12 Employees who hold professional, trade or other appropriate qualifications are expected to comply with codes of conduct issued by the organisations of which they are members.
- 6.13 Council staff are required to notify the Council's Monitoring Officer of offers of gifts or hospitality in any way related to their employment.
- 6.14 Any relevant pecuniary interests which, if publicly known, could be perceived as being likely to interfere with their independent judgement, must also be notified to, and recorded by, the Monitoring Officer.

Prevention – Members

- 6.15 The Council's constitution contains a statement of the roles, functions, rights and duties of Members of the Council of Councillors. All members are required to comply with the Constitution which includes a Code of Conduct.

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- 6.16 All members of the Council are required under the Council's **Code of Conduct** to notify the Council's Monitoring Officer of:
- ♦ Any areas of conflict between their Council duties and other areas of their personal or professional lives
 - ♦ Any offers of gifts or hospitality as specified in the code (to a value exceeding £25), which are in any way related to the performance of their duties to the Council.
- 6.17 The Authority has in place a Standards Committee that promotes and maintains high standards of member conduct and assists members to observe the code of conduct.

7.0 DETECTION, INVESTIGATION, SANCTIONS AND REDRESS

- 7.1 Prevention systems, particularly internal control systems, within the Council have been designed to provide indicators of any fraudulent activity.
- 7.2 It is often the alertness of staff and the public to such indicators that enables detection to occur and the appropriate action to take place when there is evidence that fraud or corruption may be in progress.
- 7.3 Despite the best efforts of financial managers and auditors, many frauds are discovered by chance or 'tip off', and the Council has in place arrangements to enable such information to be properly dealt with - the **Confidential Reporting (Whistle Blowing) Policy and the Fraud, Corruption and Bribery Response Plan** both of which are available on the Council's Intranet.
- 7.4 Other methods of detection will be employed, on a risk basis, by those officers of the Council charged to do so e.g. Internal Audit, Benefit Fraud Team.
- 7.5 These will include analytical intelligence techniques and the sharing of information, within the data protection rules, with other agencies both locally and nationally. Examples of bodies involved in sharing such intelligence and data are the Audit Commission, National Fraud Initiative (NFI), and Benefit Agency (HBMS).

Investigation

- 7.6 An Investigating Officer will be appointed by the Chief Executive and/or S.151 Officer, following liaison with the Monitoring Officer for fraud, corruption or bribery investigations (normally the Internal Auditor).

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- 7.7 A detailed **Fraud, Corruption and Bribery Response Plan** has been written which contains Flow Diagrams showing the Reporting, Investigation and Action stages under the following headings:
- ◆ Notifying Suspected Fraud
 - ◆ Line Management;
 - ◆ Confidential Reporting - S.151 Officer, Director, Monitoring Officer, Chief Executive, Internal Audit;
 - ◆ Investigating Suspected Fraud
 - ◆ Steps to be taken;
 - ◆ Responsibilities of the Investigating Officer
 - ◆ Liaison with External Audit and the Police
 - ◆ Interim Report/Final Report
 - ◆ Outcomes
 - ◆ Disciplinary;
 - ◆ Prosecution;
 - ◆ Exoneration
 - ◆ Confidentiality
 - ◆ Postscript – Defamation
- 7.8 The Response Plan is available to all staff on the Council's Intranet.
- 7.9 Depending on the nature and anticipated extent of the allegations, Internal Audit will normally work closely with management and other agencies such as the Police to ensure that all allegations and evidence are properly investigated and reported upon.
- 7.10 Any control weaknesses identified by an investigation must be reported to the relevant manager to allow improvements to be made that will ensure that there is no opportunity for further fraud or corruption.

Sanctions and Redress

- 7.11 The Council's **Disciplinary Procedures** will be used where the outcome of the Investigation indicates improper behaviour of staff.
- 7.12 Sanctions by Standards Committee for members would follow a finding of the breach of the Members Code of Conduct.
- 7.13 For both staff and Members In cases where financial impropriety is discovered, the Council will normally wish the Police and Crown Prosecution Service to assess evidence and make the decision to prosecute or not.
- 7.14 The Council will always seek to recover any losses incurred as a result of fraud, corruption or bribery, wherever this is practical, including the use of the civil law if appropriate. Losses will be calculated using a

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professional statistical methodology for making accurate estimates, building in a proper level of independent valuation as required.

Investigations Not Involving Fraud or Corruption

- 7.15 The investigation process related to the Council's **Disciplinary Procedures** will only be used to for those enquiries where no fraud, corruption or bribery is suspected.
- 7.16 The manager responsible for human resources will outline any investigations undertaken under the Disciplinary Procedures to the S.151 Officer, Monitoring Officer and Chief Internal Auditor, who meet as an officer group known as the Probity Group, on a regular basis

8.0 TRAINING AND PUBLICITY

- 8.1 The Council recognises that the continuing success of its Anti Fraud, Corruption and Bribery Policy and Strategy and its general credibility will depend largely on the effectiveness of programmed training and responsiveness of staff throughout the organisation through publication.

Training

- 8.2 It is, therefore, apparent that all staff involved in fraud work should be properly and regularly trained in all aspects of it. The training plans of all relevant staff, produced annually as part of the Council's appraisal system, will reflect this requirement and include both internal and externally training provision. Such training will be tailored to the needs of the individual staff member concerned, and is therefore dependent upon knowledge and experience.
- 8.3 The Council supports the concept of induction and subsequent training for all staff in this area, but particularly for staff involved in internal control systems to ensure that their responsibilities and duties are regularly highlighted and reinforced. This can be linked with training and awareness of other key documents such as the Confidential Reporting Policy and Anti-Money Laundering Procedures.
- 8.4 The possibility of disciplinary action against staff that ignore such training and guidance is clear.

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Publicity

8.5 Methods of publication of the Strategy and Response Plan will be sought, with the clear goal of ensuring that all staff are aware of the zero tolerance culture and targeting those officers in areas of high risk of fraud loss.

- ◆ The Council's Website;
- ◆ Externally through the Council's community publications;
- ◆ The Council's Intranet;
- ◆ Member's Bulletin or equivalent;
- ◆ Promotional sessions at section team meetings;
- ◆ Flyer on Notice Boards or accompanying payslips; and
- ◆ Occasional reminder e-mails to all staff and members.

9.0 POLICY REVIEW

9.1 The Council has in place a clear network of systems and procedures to assist in the fight against fraud, corruption and bribery. It is determined that these arrangements will keep pace with any future developments in both preventative and detection techniques regarding fraudulent or corrupt activity that may affect its operation.

9.2 To this end, the Council maintains a continuous overview of such arrangements through, in particular, its S.151 Officer and its Internal and External Auditors and through the probity role of the Monitoring Officer and the Probity Group.

9.3 This policy will be reviewed annually by the S.151 Officer or at the specific request of the Council's Monitoring Officer, and formally updated at least every 3 years.



**BENEFIT FRAUD
PROSECUTION and SANCTION POLICY**

BENEFIT FRAUD PROSECUTION AND SANCTION POLICY

This Policy relates specifically to benefit fraud but links to the principles set out in the **Council's Anti Fraud, Corruption and Bribery Policy and Strategy**.

Statement of Intent

South Hams District Council Revenue and Benefits Section is committed to protecting the public purse. Local Authorities have been vigorously encouraged by District Audit and the Benefit Fraud Inspectorate to develop prosecution and sanction policies to deal with those who commit fraud against their Housing Benefit and Council Tax Benefit administration. This policy allows the Revenue and Benefits Service to ensure, an equitable and consistent approach to the prosecution and sanction of offenders and that when Fraud is identified it is dealt with effectively and in the public's best interest.

Where sufficient evidence has been gathered to show that a fraud has been committed, then a sanction or prosecution should be the normal outcome.

However, there are instances, where prosecution is not the correct option and the policy must identify those offences which should be cautioned or sanctioned. Conversely, it should also set out those types of cases where these remedies are not applicable. Prosecution and Sanction principles have been drawn up to enable consistent decisions to be made on each case that falls to be considered so that it can be shown that each instance has been treated fairly and reasonably. However comprehensive the policy might appear, it still will not cover every circumstance or series of events and should be regarded as providing the general principles and guidance to make a consistent and fair decision

Where it is decided that the case does not fall within the Council's criteria to prosecute or sanction, the Council is still committed to recovering all overpaid benefit.

When proceedings are considered, there are four basic standards to be borne in mind by the Council.

- Is there sufficient evidence to justify the laying of information before the magistrate?
- Is a prosecution in the public interest?
- Does the prosecution meet the criteria laid down in South Hams District Council's policy (equivalent to that in the Code for Crown Prosecutors)?
- Should an administrative penalty or formal caution be issued as an alternative?

Prosecutions

If any of the factors below are present in a case and the quality of the evidence is such that a successful prosecution could be brought, then prosecution should be seriously considered:

- The amount of money obtained is substantial and in excess of £2,000

BENEFIT FRAUD PROSECUTION AND SANCTION POLICY

- Whether there is evidence of the offence being pre-meditated.
- The fraud has continued over a long period
- Any previous incidence of fraud
- Whether multiple claims are involved
- Whether the alleged offender is in a position of trust
- Whether there is Landlord/tenant or employer/employee collusion
- Whether the offence, although not serious itself, is widespread in the area it was committed
- Whether there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct
- Whether there would be positive publicity which would act as a deterrent to others
- An involvement by the perpetrator in other fraudulent benefit or allowance claims.
- A refusal of the perpetrator to accept a caution or an administration penalty when offered

Factors present in a case which might argue against prosecution:

- The alleged offender's physical and mental condition
- Voluntary disclosure and full co-operation with the investigation by the alleged offender
- Mitigating social/domestic factors e.g. if the perpetrator is elderly or infirm
- First offence
- Where a more fitting sanction would be an administration penalty or Local Authority caution
- Offer of restitution [either in full or by instalments]
- Adverse publicity
- Failure in benefits administration, including delay
- Most crucially concerns or doubts about the quality of the evidence obtained.

Whereas the factors laid out above are general guiding principles, each case still needs to be treated on its own merits and a decision then reached as to whether a prosecution would be both in the Council's and the general public interest.

As an alternative to prosecution it may be appropriate to offer either an administrative penalty or a caution

Administrative Penalties

An administrative penalty is a financial penalty amounting to 30% of the gross adjudicated overpayment. It can be offered in any of the following cases:

- Where there is enough evidence to prosecute
- The amount involved is more than £750 and less than £2000, and not so serious as to warrant prosecution at the outset.
- A first time offence where it is considered that the imposition of the financial penalty is sufficient punishment in itself

BENEFIT FRAUD PROSECUTION AND SANCTION POLICY

- The fraud has not continued over a considerable period [should be less than 6 months]
- The fraud was not planned or premeditated
- There has been no previous agreement by the perpetrator to pay an administration penalty
- There has been no collusion, or
- The person has not been in a position of trust as an officer or member

The administration penalty will be recovered over and above the fraudulent overpayment. Where the administrative penalty is refused by the perpetrator, or where it is not in the public interest to offer such a penalty, the Council will prosecute, unless there are very exceptional circumstances not to do so.

Cautions

There are cases where it may be appropriate to issue a formal Local Authority caution. This is a written warning issued by the Local Authority for a benefit offence and is intended to act as a deterrent or warning against future conduct. The written warning is to be signed by the perpetrator clearly stating that the offence is admitted and the caution accepted. A copy of the caution will be given to the person receiving it and will state that should that person be reported for another offence then the original caution may be taken into consideration. In adopting this procedure we are following the Department of Work and Pensions, who regularly invoke a similar procedure.

A caution is an alternative to prosecution and can only be considered in cases where enough evidence exists to prosecute. Refusal to accept a caution should generally result in a prosecution being instituted.

Cautions may be appropriate in the following instances:

- The fraud is a first time offence
- The amount involved is more than £750 but less than £2,000
- The perpetrator voluntarily disclosed the fraud or admits it
- There are mitigating social or domestic or personal factors
- An offer of restitution has been made

The formal Local Authority caution will be issued by the Investigations Manager and should be recorded in a register. These cautions will also be recorded by the CFIS team at Plymouth Department of Work and Pensions who record sanctions which have been imposed as a result of Department of Work and Pensions and Local Authority investigations.

It may not be appropriate to consider a caution where the perpetrator has already been involved in other offences involving Housing/Council Tax Benefit or has been previously cautioned or convicted of benefit fraud.

BENEFIT FRAUD PROSECUTION AND SANCTION POLICY**General Policy**

- The general policy is that prosecution is not likely to be considered in those cases where the fraud overpayment is less than £750.
- An administrative penalty or caution will not normally be offered if the fraud overpayment is less than £750 or more than £2,000.
- Prosecution will be strongly considered for all cases where the fraud overpayment is greater than £2,000 or where the suspect has a history of fraudulently claiming benefit.
- The decision as to whether to prosecute, issue a caution or offer an administrative penalty will be made by the Investigations Manager after consideration of all relevant details and the prosecution criteria detailed above.
- Legal Services will undertake a scrutiny role of a percentage of those cases processed for administration penalties and cautions to ensure that the correct standards are being applied.

Implementing and Using This Policy

To implement an active sanctions policy as envisaged by the Benefit Fraud Inspectorate and the External Auditor requires an investment of time and manpower.

There will be regular consultations between the Investigation staff and the Council's Solicitor concerning prosecution cases in order to ensure that:

- Evidence is gathered in the appropriate manner and that the evidence will be of the quality necessary to secure judgement in favour of South Hams District Council.
- Interviews are conducted in accordance with approved practices
- There is agreement over the final course of action in respect of the file.

Investigations and prosecutions will be carried out in accordance with the recommendations laid down in the Attorney General's guidelines on criteria for prosecution, the Code for Crown Prosecutors, the Criminal Procedures and Investigation Act, Police and Criminal Evidence Act, the Regulation of Investigatory Powers Act, and the Social Security Fraud Act and any other relevant legislation.

In the event of the decision being made to prosecute a case, in the vast majority of cases the prosecution will be conducted through the Council's Solicitor, though in certain circumstances it may be more appropriate to prosecute through the Police or the Department of Work and Pensions, especially in the light of the closer working arrangements with the Department of Work and Pensions.

Fraudsters involved in Housing Benefit and or Council Tax Benefit Fraud are likely at the same time to be perpetrating other benefit or allowance fraud. So it will be imperative to liaise with Department of Work and Pensions and other agencies regarding these policy proposals and to be receptive to valid concerns and requests in order to incorporate them into this policy.

BENEFIT FRAUD PROSECUTION AND SANCTION POLICY

There is a warning on the Council application forms that in the event of customer giving incorrect information on the form they may be prosecuted. This statement will always be a separate paragraph within the declaration, to emphasise that the Council has a strong commitment to deter fraud and to prosecute those who ignore the warning.

The Council will attempt to seek appropriate publicity whenever it is believed that the outcome of the prosecution sends a strong message of deterrence to fraudsters.