

Report of	Meeting	Date
Assistant Chief Executive (Business Transformation)	Audit Committee	17/01/08

ANTI-FRAUD & CORRUPTION STRATEGY

PURPOSE OF THE REPORT

- 1 To seek the Audit Committee's approval of the revised Anti-Fraud & Corruption Strategy (AFCS).

RECOMMENDATIONS

- 2 That the new AFCS is approved

EXECUTIVE SUMMARY OF REPORT

- 3 The AFCS has been updated to address recommendations made by the Audit Commission in the Use of Resources assessment and other developments. This report explains the changes that have been made to the AFCS and the reason for them.

CORPORATE PRIORITIES

- 4 This report relates to the following strategic objectives:

Put Chorley at the heart of regional economic development in the central Lancashire sub region		Develop local solutions to climate change	
Improving equality of opportunity and life chance		Develop the character and feel of Chorley as a good place to live	
Involving People in their Communities		Ensure Chorley is a performing Organisation	✓

BACKGROUND

- 5 The AFCS is not a new document but has been developed and amended over many years in response to new regulations, organisational changes or improvements in accepted best practice.
- 6 It is now timely to "refresh" the AFCS to accommodate a number of developments.

PURPOSE OF THE ANTI-FRAUD & CORRUPTION STRATEGY

- 7 The Strategy establishes the Council's determination to ensure that serious concerns are properly raised and addressed. It sets out the Council's specific policies towards the prevention, detection, notification and investigation of fraud and corruption and summarises the responsibilities of members, managers and officers in this respect.
- 8 The Strategy covers all allegations of fraud or corruption committed against the Council whether they are perpetrated by members, officers or the general public; for example benefit fraud.
- 9 It gives specific advice and guidance to officers of the Council who undertake or have an interest in investigations. It aims to clarify the roles and responsibilities of all interested parties, including the Chief Executive, Monitoring Officer, Section 151 Officer, Corporate Director Of Human Resources, other Directors and external agencies including the Police.
- 10 This "refresh" the AFCS accommodates a number of developments, each of which are explained below.

FRAUD RISK MANAGEMENT

- 11 In their Use of Resources report the Audit Commission requested the Council to "Further develop proactive counter fraud and corruption work, determined by a formal risk assessment". In response to this a Fraud & Corruption Risk Register has now been compiled which identifies specific fraud risks in individual Directorates. We are now working with Directors to put mitigation strategies in place to minimise the threat of fraud in their service areas.
- 12 We are also aiming to publish regular fraud bulletins on the Intranet to bring any current fraud issues or scams to the attention of staff and provide advice and guidance to raise the overall awareness of fraud generally.

"WHISTLE-BLOWING"

- 13 The Council recently launched a Whistle Blowing Policy (WBP), which encourages staff and stakeholders to raise any matter of concern and explains who should be informed in particular circumstances. The WBP gives clear instructions regarding how to report suspected fraud or corruption and as such now forms an important part of the Council's AFCS.

OTHER ISSUES

- 14 The AFCS has also been updated to reflect the new corporate organisational structure and changes in responsibility.

IMPLICATIONS OF REPORT

- 15 This report has no implications for specific Directorates. The matters raised in the report are cross cutting and impact upon the authority as a whole.

GARY HALL
ASSISTANT CHIEF EXECUTIVE
BUSINESS TRANSFORMATION

Background Papers			
Document	Date	File	Place of Inspection
Whistle Blowing Policy	2006	FINANCE	UNION ST OFFICES

Report Author	Ext	Date	Doc ID
Garry Barclay	5468	02/01/08	AF&CS.doc

Chorley Council

Anti-Fraud & Corruption Strategy

**AUDIT & RISK SERVICE
FINANCE
JANUARY 2008**



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A. GENERAL PROVISIONS

1. CORPORATE GOVERNANCE

1.1 The Council has, and is continuing to develop a corporate governance framework that seeks to manage risk in order to minimise the incidence of fraud, corruption, and other adverse events within the Authority. Much of the corporate governance framework is actually incorporated within the Constitution of the Council and includes all the following elements:

- Standards Committee
- Overview & Scrutiny Committees
- Regulatory Committees
- Standing Orders
- Financial & Contracts Procedure Rules
- Access to Information Procedure Rules
- Budget & Policy Framework Procedure Rules
- Executive Procedure Rules
- Members & Officers Codes of Conduct
- Protocol on Member / Officer Relations
- Members Allowances Scheme

1.2 In addition to the above constitutional provisions, the Council has in place the following policies and procedures:

- Risk Management Framework
- Disciplinary Procedure
- Monitoring Officer Arrangements
- Registers of Interests
- Registers of Hospitality, Gifts & Entertainment
- IT Security Policy
- Business Improvement Planning Procedures
- Managing Safely Methods
- Local Code of Conduct in Planning Matters
- Housing Benefit and Council Tax Benefit Sanction & Prosecution Policy
- Anti Money Laundering Arrangements
- Data Protection & Freedom of Information Policies and Procedures

2. CONTENTS OF THE STRATEGY

2.1 Inevitably however, breaches of the law, policy or formal procedure do occur. This Strategy has therefore been produced to establish the Council's determination to ensure that serious concerns are properly raised and addressed in full compliance with the Public Interest Disclosure Act 1998.

2.2 The Strategy establishes the Council's specific policies towards the prevention, detection, notification and investigation of fraud and corruption and summarises the responsibilities of members, managers and officers in this respect.

- 2.3 The Strategy covers all allegations of fraud or corruption committed against the Council whether they are perpetrated by members, officers, agency staff, partners, contractors or the general public (benefit fraud).
- 2.4 The Strategy gives specific advice and guidance to officers of the Council who undertake or have an interest in investigations. It aims to clarify the roles and responsibilities of all interested parties, including the Chief Executive, Monitoring Officer, Section 151 Officer, Corporate Director Of Human Resources, Directors and external agencies including the Police. In particular, the Strategy seeks to direct and co-ordinate investigations under the direction of:
- Assistant Chief Executive (Business Improvement) (in accordance with Financial Procedure Rules)
 - Corporate Director Of Human Resources (under the Council's Disciplinary Procedure)
 - Corporate Director of Governance / Monitoring Officer (in accordance with the Local Government Act 2000).

3. OTHER CORPORATE PROCEDURES

- 3.1 This Strategy supplements the Council's **Whistle Blowing Policy**, which encourages officers to disclose any matter which gives them cause for concern and provides guidance on how such matters should be reported. The Strategy is also intended to supplement the Council's **Financial Procedure Rules** and **Disciplinary Procedure**, each of which already provide a degree of advice on the conduct of investigations

- 3.2 **Financial Procedure Rules** state that (Chief Officers) shall "notify the Assistant Chief Executive (Business Improvement) immediately of any suspected fraud, theft, improper use or misappropriation of the authority's property or resources. Pending investigation and reporting the Chief Officer should take all necessary steps to prevent further loss and to secure records and documentation against removal or alteration.

In practice, for the purpose of Financial Procedure Rules the Internal Audit Section is usually informed of potential irregularities as the delegated representatives of the Assistant Chief Executive (Business Improvement).

- 3.3 **Disciplinary Procedure.** Whenever an alleged irregularity occurs, this Strategy should always be read in conjunction with the Council's Disciplinary Procedure.

In general, irregularities that do not involve fraud, a breach of Financial Procedure Rules or do not have a direct financial basis will not normally be investigated by the Internal Audit Section (for example breaches of the Council's policies on leave and sickness absence). These will normally be pursued directly by the respective Director under the Disciplinary Procedure.

Where an irregularity does involve fraud or has a financial basis an Internal Audit investigation will normally be undertaken. The Internal Audit investigation and report is used as the basis of (or in support of) the management / disciplinary case, which remains the responsibility of the Director under the arrangements laid down in the Disciplinary Procedure.

In some cases the Assistant Chief Executive (Business Improvement) and Corporate Director Of Human Resources may confer as to how the investigation should proceed.

4. LEGAL COMPLIANCE

- 4.1 The drafting of this Strategy also reflects the need to ensure conformity with the following legal developments:
- 4.2 **Regulation of Investigatory Powers Act (RIPA) 2000.** Any investigations that involve directed surveillance or the use of covert intelligence sources must be undertaken in accordance with RIPA. RIPA was introduced in parallel with the Human Rights Act, which (inter alia) sought to ensure rights to privacy and a fair trial. RIPA makes lawful certain actions by public authorities (Schedule 1) provided that they are properly authorised. In particular, RIPA requires that in each case authority must be given by prescribed persons using designated forms. The use of directed surveillance and covert intelligence sources is not restricted to Internal Audit investigations but extends to benefit fraud investigations, noise nuisance, planning, anti social behaviour and other areas.
- 4.3 **Local Government Act 2000 (Part III).** Under this Act, any allegation made against members of the Council should be referred to the Monitoring Officer for investigation and referral to the Standards Committee and Standards Board for England. This in turn may lead to investigation by an external Ethical Standards Officer. Any such allegations that are brought to the attention of the Assistant Chief Executive (Business Improvement) or Corporate Director Of Human Resources should be referred directly to the Monitoring Officer.

B. FRAUD PREVENTION & DETECTION STRATEGY

1. THE ROLE OF MEMBERS

- 1.1 As elected representatives, all Members of the Council have a duty to the citizens of Chorley to protect the assets of the Council from all forms of abuse. This is done through the formal adoption of the Anti-Fraud & Corruption Strategy and by compliance with the national Code of Conduct for Members.
- 1.2 In addition the Accounts and Audit Regulations 2003 require every local authority to "maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control in accordance with proper internal audit practices". Members have a duty to provide sufficient resources to ensure that the system of internal audit is "adequate" and "effective".

2. THE ROLE OF MANAGEMENT

- 2.1 Management at all levels are responsible for ensuring that their staff are aware of the authority's Financial Procedure Rules and Standing Orders and that the requirements of each are being met. They are also responsible for ensuring that appropriate procedures are in place to safeguard the resources for which they are responsible.
- 2.2 It is vital that managers are alert to potential problems in their work areas and that adequate and effective safeguards are in place to prevent financial irregularities. However, Directors and their managers should also satisfy themselves that checks are in place at the appropriate levels, so that in the event of a breach any irregularity would be picked up promptly, so minimising any loss to the authority. Internal Audit can provide advice and assistance in this area.
- 2.3 Special arrangements may apply where employees are responsible for cash handling or are in charge of systems that generate payments (for example payroll or the housing benefit computer system). Directors and their managers should ensure that adequate and appropriate training is provided for staff and that checks are carried out from time to time to ensure that proper procedures are being followed. Directors and their managers may also wish to consider whether pre-employment checks should be undertaken for some posts.
- 2.4 The references and qualifications of all proposed new employees should be thoroughly checked prior to a position being offered.

3. THE ROLE OF EMPLOYEES

- 3.1 Employees are responsible for ensuring that they follow the instructions given to them by management particularly in relation to the safekeeping of the assets of the authority. They may be required to disclose information about their personal circumstances in accordance with the authority's Financial Procedure Rules and Standing Orders.

4. INTERNAL AUDIT & RISK MANAGEMENT

- 4.1 The Internal Audit Section plays a preventative role in trying to ensure that systems and procedures are in place to prevent and deter fraud. The Section investigates cases of suspected financial irregularity and carries out fraud searching exercises to establish whether irregularities have occurred and to recommend changes in procedures to prevent further losses to the authority. The Internal Audit Section provides advice and assistance to all Directors.
- 4.2 The responsibility for the detection of financial irregularities rests with management. Internal Audit will advise and assist management in fulfilling their responsibility for preventing irregularities and will investigate cases where irregularities are thought to have taken place. There may be circumstances of course, where auditors detect fraud as a result of the work that they are undertaking or as a result of specific fraud searching exercises.
- 4.3 As a new initiative in 2007, in response to advice from the Audit Commission to become more proactive in minimizing the risk of fraud, we have worked with Directors to establish a Corporate Anti-Fraud & Corruption Risk Register. This establishes any significant fraud risks within individual directorates, the mitigation currently in place to offset such risks plus any further action that Directors need to take to manage the risks down to an acceptable level.

5. BENEFIT ENQUIRY TEAM

- 5.1 The Benefit Enquiry Team play a major role in the deterrence of benefit fraud, for example through the application of the Council's Sanction & Prosecution Policy (Appendix 1).
- 5.2 A further objective is the detection of fraud, by investigating allegations of Housing Benefit and Council Tax Benefit fraud. Both pro-active (specific fraud searching exercises) and reactive investigations (upon receipt of a referral) are carried out.

6. EXTERNAL AUDIT

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

7. DETERRENCE

- 7.1 Fraud and corruption are serious offences against the authority and employees may face disciplinary action and/or prosecution, benefit claimants may be subject to a sanction or prosecution, if there is sufficient evidence that they have been involved in these activities. This is designed to deter others from committing offences against the authority. Where a case is referred to the Police for criminal proceedings and is subsequently brought to court, any resultant publicity will also act as a deterrent to potential fraudsters.

8. NATIONAL FRAUD INITIATIVE (NFI)

8.1 The National Fraud Initiative (NFI) exercise is organised by the Audit Commission and is usually carried out every 2 years. The Council actively takes part in the initiative as it forms part of a continuous attempt to identify fraud, particularly fraudulent benefit claims. NFI is about matching information contained within the Council's computer systems against information contained within other organisations' systems, for example, payroll, student awards and pensions, the main aims being to identify fraudulent benefit claims, and to detect cases of sub-letting or dual tenancies (council house tenants).

8.2 At Chorley, NFI is co-ordinated by the Internal Audit Section, whose key tasks are:

- ensuring that data is submitted to the Audit Commission on time in the required format;
- performing an initial review of the results;
- liaising with other participating organisations;
- passing any suspected fraudulent cases to the appropriate officers for investigation.

9. HOUSING BENEFIT MATCHING SERVICE (HBMS)

9.1 This data matching exercise is organised by DWP and is carried out monthly. The Council actively takes part in the initiative as it forms part of a continuous attempt to identify benefit fraud. HBMS involves matching information contained within the Council's Academy Benefits system against data of other benefits.

10. NATIONAL ANTI-FRAUD NETWORK (NAFN)

10.1 Membership of the National Anti-Fraud Network (NAFN) is available to all local authorities in England & Wales and exists to provide individual councils with a variety of fraud intelligence and information sharing services. NAFN also has links with a variety of external agencies that supply information in order to prevent and detect fraud. These include the Credit Industry Fraud Avoidance System (CIFAS), the Police, Immigration Service, Contributions Agency, the University & Colleges Admissions Service (UCAS) and some utility companies.

10.2 NAFN is organised into 5 regional areas, Chorley belonging to the Northern Region. The Council's key contacts for the NAFN are the Benefits Enquiry Unit, due the nature of the investigations they undertake.

11. NATIONAL BENEFIT FRAUD HOTLINE

11.1 The National Benefit Fraud Hotline 0800 328 6340 is publicised extensively, including through the Council web site to encourage members of the public to report potential fraudsters, anonymously or otherwise.

C. REPORTING ALLEGATIONS / WHISTLE-BLOWING

1. NORMAL REPORTING LINES

- 1.1 Irregularities regarding the general public, officers, or members may come to light in a variety of circumstances. These include:
- Data-matching (National Fraud Initiative)
 - The results of routine Internal Audit work;
 - Complaints by members of the public or other third parties (e.g. DWP);
 - Whistle-blowing by members of staff;
 - Normal benefit assessment process;
 - Specific fraud searching exercises by both the Internal Audit Section and Benefit Enquiry Unit;
 - Benefit fraud hotline.
- 1.2 Any member of staff who discovers circumstances that may involve an irregularity should normally report the matter to their line manager. Thereafter, line managers should immediately inform their Director.
- 1.3 If the suspected irregularity is in respect of financial transactions or in any matter affecting property, cash, stores, remuneration or allowances, Directors should report the matter to the Assistant Chief Executive (Business Improvement) (in accordance with the Council's Financial Procedure Rules). The Assistant Chief Executive (Business Improvement) will in turn inform the Chief Executive.
- 1.4 If the suspected irregularity is in respect of benefit fraud by a member of the public the matter should be reported to the Benefits Enquiry Unit. If it relates to an Officer it should be reported to the Assistant Chief Executive (Business Improvement), but if it involves a Member the matter should be passed to the Corporate Director of Governance.
- 1.5 In other instances Directors should consult the Corporate Director Of Human Resources as to whether the Disciplinary Procedure should be invoked.
- 1.6 Directors are responsible for managing the discipline of employees in their respective directorates and in most circumstances they will act as "Disciplinary Officer" for the purposes of the Disciplinary Procedure (although this may be delegated to other senior officers). In cases where serious breaches of conduct are suspected the Disciplinary Officer should nominate another officer to carry out an investigation – the "Investigating Officer". In order to ensure independence in this process it may be necessary (for example in smaller service units) for the Director to act as Investigating Officer and another Director to act as Disciplinary Officer. The Council will arrange training for all those who may be required to perform either of these roles.
- 1.7 In cases of alleged financial irregularities, the Investigating Officer will be advised by the Internal Audit Section. This may involve Internal Audit undertaking much of the investigation work and providing the Investigating Officer with a formal report.

ALLEGATIONS AGAINST SENIOR OFFICERS & MEMBERS

2.1 It may become necessary to investigate allegations made against senior officers or members. In these cases, if the alleged irregularity involves:

(a) A line manager, the Director should be notified directly.

(b) A Director, the Chief Executive should be notified directly.

(c) The Chief Executive, the incident should be reported in the first instance to the Assistant Chief Executive (Business Improvement), who should inform the Leader of the Council.

(d) An elected member, the incident should be reported to the Monitoring Officer who should in turn inform the Chief Executive and Leader of the Council. The Monitoring Officer should then inform the Chair of the Standards Committee and the Standards Board for England, if the allegation is made in writing.

(e) The Leader of the Council, the Monitoring Officer should inform the Chair of the Standards Committee directly.

2.2 The officers designated below shall perform the functions of Disciplinary Officer and Investigating Officer in the cases of alleged irregularities involving line managers or Directors.

Officer	Disciplinary Officer	Investigating Officer
Line Manager	Director of the service concerned	Director responsible for another service
Director (other than the Corporate Director of Governance)	Chief Executive	Director responsible for another service

2.3 In respect of alleged irregularities involving the Chief Executive or the Corporate Director of Governance or the Assistant Chief Executive (Business Improvement), the allegation shall be considered by an independent person and then by a panel of Members in accordance with their terms and conditions of employment.

2.4 In respect of alleged irregularities involving an elected member, including the Leader of the Council, the matter shall be dealt with in accordance with the procedures for the time being specified by the Standards Board for England and in any regulations made under the Local Government Act 2000.

3. EXTERNAL REPORTING

- 3.1 If employees do not have the confidence to raise matters internally, they may choose to contact the Council's External Auditors or the Police. Their respective addresses and telephone numbers are:

External Audit:

**Mike Thomas
Audit Commission
Aspinall Close
Middlebrook
Horwich
Bolton
BL6 6QQ
m-thomas@audit-commission.gov.uk
(01204) 877300**

The Police:

**Chief Inspector Andy Murphy
Leyland Police Station
Lancastergate
Leyland
(01772) 415974
andrew.murphy@lancashire.pnn.police.uk**

D. INTERNAL INVESTIGATIONS PROCEDURE

1. THE PROCEDURE IN OUTLINE

- 1.1 To assist those who become involved in investigations, the Council's Internal Investigations Procedure is simplified in the flowchart at Appendix 2 to this Strategy document.
- 1.2 This procedure largely covers investigations into officers and members of the authority. It is however acknowledged that various forms of investigation are undertaken in other areas of Council business, for example housing and council tax benefits, health & safety, planning, environmental services, housing, car parking and corporate complaints. The procedure is designed to support and supplement the separate arrangements that already exist in these areas.

2. INVESTIGATION - OFFICERS

- 2.1 Investigations are necessary in order to:

- Find out the facts before taking any form of action;
- Apply appropriate sanctions;
- Eliminate innocent people from unjustified suspicion;
- Improve systems, procedures and controls;
- Recover losses;
- Prevent and deter.

- 2.2 The first stage of any potential investigation is to establish whether the matter under consideration actually constitutes an irregularity (and if so who should investigate). Any irregularity which involves the use of deception to obtain an unjust or illegal financial advantage may be classed as a fraud.

- 2.3 Irregularities fall within the following broad categories, the first three of which are criminal offences: -

- **Theft** – the dishonest taking of property belonging to another, with the intention of permanently depriving the owner of its possession. This may also involve the use of deception.
- **Fraud** – the Fraud Act 2006 introduced a general offence of “fraud” which may be committed in three ways: by making a false representation, by failing to disclose information or by an abuse of position. In each case it is not necessary to prove that an individual has actually gained from their action simply that there was an intention to gain from their behaviour, cause loss or expose the Council to the risk of loss.
- **Bribery and corruption** – involves the offering and acceptance of a reward, for performing an act, or for failing to perform an act, which leads to gain for the person offering the inducement. This could occur in connection with contracts, consultancy engagements, purchasing and appointment of staff.

- **False accounting** – falsification, fraudulent amendment or destruction of documents in order to distort the true nature of a transaction.
- Failure to observe, or breaches of **external regulations** (for example Health and Safety Regulations).
- Failure to observe, or breaches of the **Constitution of the Council** including Standing Orders and Financial Procedure Rules.
- Failure to observe, or breaches of **Council policies and procedures** (especially personnel policies and procedures relating to recruitment & selection, annual leave and sickness absence).
- Failure to observe, or breaches of **departmental procedures**.
- Failure to follow legitimate **management instructions**.

2.4 Whilst the potential for irregularity is present across the full spectrum of activity in any local authority, certain areas are, by their very nature accepted as being of higher risk than others. These areas include:

- Tendering & Award of Contracts;
- Appointing External Consultants;
- Appointing Staff;
- The External, Pecuniary Interests of Members / Officers;
- Hospitality;
- Awarding Licences / Planning Consent / Land Valuations, etc;
- Purchasing.

2.5 Section C of this Strategy document contains guidance as to who should normally undertake investigations in each of the above circumstances. The following paragraphs explain the procedures to be followed in Internal Audit investigations, however the principles apply equally to other investigations, including those under the direction of the Corporate Director Of Human Resources / Disciplinary Procedure.

2.6 Where allegations are reported to the Assistant Chief Executive (Business Improvement), he / she will (in conjunction with the Internal Audit Section) undertake an initial assessment of the circumstances and will recommend whether to:

- (a) Take no further action;
- (b) Refer the matter to the Director;
- (c) Consult with the Corporate Director Of Human Resources;
- (d) Consult with the Police immediately;
- (e) Initiate a preliminary Internal Audit investigation;
- (f) Other (e.g. some combination of the above).

2.7 A designated pro-forma is completed to record the above and passed to the Chief Executive for approval prior to being returned “private & confidential” to the Internal Audit Section.

- 2.8 Where the Assistant Chief Executive (Business Improvement) (in consultation with the Chief Executive) deems that an Internal Audit investigation is necessary, a preliminary investigation should initially be conducted. The appropriate Director would be informed.
- 2.9 The preliminary investigation must be carried out with the utmost confidentiality and as much relevant information as possible should be gathered before alerting or approaching suspected parties.
- 2.10 If the preliminary investigation highlights matters of a minor nature, Directors may be asked to investigate them with ongoing advice and assistance from Internal Audit as necessary. In these instances, Internal Audit should be kept advised as to progress.
- 2.11 If the preliminary investigation highlights matters that Internal Audit consider should not be dealt with by the Director, Internal Audit will carry out the full investigation with management support as necessary. The Corporate Director Of Human Resources would normally be consulted regarding potential disciplinary proceedings.
- 2.12 If the preliminary investigation results in a reasonable suspicion that a criminal offence has taken place, the Police should normally be informed. Whether the Police are contacted at the point it is believed that a criminal offence may have taken place or when the internal investigations are concluded first is a matter for the Assistant Chief Executive (Business Improvement), in consultation with the Chief Executive to decide.
- 2.13 Where an irregularity is reported to the Police at this point and the suspected perpetrator(s) are known, he/she/they should normally be suspended from duty in order to facilitate the forthcoming investigation. It will be for the Assistant Chief Executive (Business Improvement) and Chief Executive to decide (in conjunction with the Corporate Director Of Human Resources) whether to:
- Also invoke the Disciplinary Procedure at this stage, including a separate internal investigation, or;
 - Postpone the start of the Disciplinary Procedure pending the outcome of the Police investigation.
- 2.14 The key issue is to determine whether the finalisation of the Police investigation is essential to progress being made with an internal disciplinary or whether the initial evidence is such that there are firm grounds for invoking the Disciplinary Procedure and Police investigation simultaneously. It should be recognised that the standard of evidence required for a disciplinary offence is on the “balance of probabilities” and is less than that required for a criminal offence which has to be proven “beyond reasonable doubt”.
- 2.15 If it decided to invoke the Disciplinary Procedure and initiate an internal investigation, the Investigation Officer should not necessarily restrict their enquiries solely to the specific allegation(s) made. The premise to be followed is that if a person is alleged to have committed an offence in one sphere of their activities, they may well have committed offences in any other area of their responsibilities where the opportunity arose. Therefore the full extent of possible irregularity should be determined.

2.16 With regard to alleged financial irregularities, investigated by Internal Audit, additional information would normally be extracted from the following systems / records:

(a) Personnel/Payroll - Name, Address, Date Commenced Employment, Current Post, Previous Post, Previous Employers, Annual Leave, Rota/Shift Details, Vehicle, Bank Details, Car Mileage Claims, Additional Allowances, Qualifications, Courses Attended, Sickness Absence Summary, Marital Status, Emergency Contacts.

(b) Council Tax - List of Occupants, Forwarding Address, Statement of Account.

(c) Register of Electors - List of Occupants.

(d) Car Mileage Claim records - If the employee submits car claims, these are obtained from the E-claims system and checked to ensure they are correctly completed.

(e) Flexitime records - These would be obtained from the Wintime system and jointly reviewed with managers in order to identify inconsistencies.

(f) Telephone Calls - This could be used to establish whether an employee was in contact with an individual/organisation and therefore corroborate or disprove statements made by the employee.

(g) Any computerised records where the data protection rules permit the use of the personal data for the prevention and detection of fraud.

3. INVESTIGATION – MEMBERS

3.1 The procedure shall be that specified for the time being by the Standards Board for England and in any regulations made under the Local Government Act 2000.

4. RECORD KEEPING / EVIDENCE / CONFIDENTIALITY

4.1 When any investigation work is performed a file should be opened and updated on an ongoing basis as the matter is progressed, incorporating the details / results of the enquiries carried out, including all meetings, interviews and telephone discussions. The file should also contain any records, papers, workings or other forms of documentary evidence which may later form the basis of any report that is deemed necessary.

4.2 All files or other evidence relating to the investigation should be removed to a secure place and in such a way as to ensure confidentiality. On occasions, it may be appropriate to remove documents, etc. in a way that does not raise the suspicions of the person under investigation if the alleged perpetrator is to be allowed to continue working. In any event, documentary evidence should be collected as soon as possible, since the onset of an investigation may result in its destruction.

4.3 Great care must be taken to record detailed, complete and accurate information of the matters reported and results of the investigation. Wherever possible, the original (or prime) documents should be obtained as evidence in preference to copies.

4.4 Information held on a computer system may be used as evidence in any subsequent disciplinary or criminal proceedings and should be extracted in printout form, including as part of the printed data, the date and time of its production. In order to comply with Section 69 of the Police & Criminal Evidence Act 1984 a computer printout should be endorsed by a person who was, at the time of its production, responsible for the operation of the computer installation from which it was generated. Such persons should sign and date the following statement:

“I certify that, in respect of this document (Ref No), there are no reasonable grounds for believing that the information is inaccurate because of improper use of the computer by which it was generated, and, that at all material times the computer was operating properly, or if not, that any respect in which it was out of operation was not such as to affect the production of the document or the accuracy of its contents”

Extreme caution must be taken where it is necessary to obtain evidence stored on a PC. No attempt should be made to turn the PC on as this will automatically overwrite chronological and other data files that may be vital in proving the case. Advice must be sought from Internal Audit or ICT staff.

4.5 Full security of irregularity records (both manual and computerised) must be maintained at all times.

4.6 In general terms, all those engaged in investigation work should maintain secrecy and confidentiality throughout. This is because:

- Allegations / suspicions of fraud may turn out to be unfounded and if secrecy and confidentiality have been maintained this will prevent considerable embarrassment to both the accused officer and the authority.
- Investigations are of immediate interest to employees, members of the public and the media. Careless talk can generate rumours which quickly obtain wide circulation
- Where fraud had occurred, breaches of confidentiality could alert the suspect and result in them having an opportunity to cover their tracks or destroy material evidence or otherwise frustrate the investigative process.

5. SURVEILLANCE

5.1 Any investigations that involve directed surveillance or the use of covert intelligence sources must be undertaken in accordance with the Regulation of Investigatory Powers Act 2000 and Council procedures. The use of directed surveillance and covert intelligence sources is not restricted to Internal Audit investigations but extends to benefit fraud, noise nuisance, planning, anti social behavior and other areas. The key provisions of RIPA are:

- Surveillance must be appropriate for the advancement of the investigation.
- An application for authorisation for directed surveillance must be made in writing.
- Authorisation must be given in advance by prescribed persons, formally nominated by the authority for this purpose.
- Authorisations must be given in writing using designated forms and can only be given on one of the grounds specified in the Act as “for the purposes of preventing or detecting crime or of preventing disorder”.

- Where urgent authorisation is requested, it may be given orally by the authorised officer. A written record of the urgent authorisation must be made.
- Authorised officers have overall responsibility for the management of the investigation and are personally liable for the authorisations that they give.
- Applications should contain sufficient detail to enable the authorised officer(s) to make an objective assessment. The reasons for granting / not granting authorisation should be noted on the application.
- The authorised activity must be reasonable, proportionate and necessary.
- A central record must be maintained of ongoing and completed surveillance operations.
- Authorisations are valid for a period of 3 months only. Designated renewal forms must be completed / authorised if the surveillance is to continue. The authorising officer must question the validity of any surveillance lasting more than 3 months.
- Once surveillance ceases to be necessary, designated cancellation forms should be completed / authorised.

5.2 The Authority's formally agreed list of prescribed persons is as follows:

- Chief Executive
- Corporate Director of Governance
- Assistant Chief Executive (Business Improvement)
- Corporate Director (Neighbourhoods)

5.3 The Corporate Director of Governance (Monitoring Officer) has an overall responsibility to oversee the operation of the system of giving authorisations. The Monitoring officer should also be consulted for advice whenever it is unclear whether RIPA applies to a given situation.

5.4 Copies of the forms issued by the above prescribed persons must be passed to the Monitoring Officer to be retained in a central control register as they may be required as evidence at some future date.

5.5 The following standard forms are in use within the authority:

- RIP1 – Application For Directed Surveillance
- RIP2 – Renewal Form
- RIP3 – Review Form
- RIP4 – Cancellation Form
- Corresponding forms are available for the use of a Covert Human Intelligence Source (CHIS) and are numbered RIP5/6/7/8
- An additional form ACD1 is available for use where it may be necessary to obtain "Communications Data" such as telephone records as part of an investigation.

5.6 Comprehensive information regarding the use of RIPA forms is contained in the Procedural Guidance Notes for staff available on the Loop.

6. INVESTIGATORY INTERVIEWS – OFFICERS

- 6.1 During the course of an investigation it is often necessary to question the employee under suspicion in order to establish facts. Under the Council's Disciplinary Procedure, such investigatory interviews are normally conducted by the directorate's nominated "Investigating Officer", but he / she may be assisted by a member of the Internal Audit Section if Internal Audit are involved in the investigation.
- 6.2 Wherever possible, these are arranged with prior notice unless it is felt this could result in the destruction or distortion of evidence. However Internal Audit reserves the right to carry out interviews without notice during the course of an investigation. This is outside the terms of the Disciplinary Procedure.
- 6.3 The employee may also be accompanied at the investigatory interview but where the interview is urgent and of necessity at short notice a lack of accompaniment does not provide sufficient reason for the interviewee not providing the necessary explanations.
- 6.4 Questions should normally be written down in advance or a checklist of the required information prepared.
- 6.5 The time and place of interview should be carefully considered to avoid interruptions and the chance for the interviewee to "invent" his explanation during a break.
- 6.6 The people present should be as few as possible. Under normal circumstances this would be:
- The interviewee
 - His / her representative
 - Investigating Officer
 - Human Resources representative
 - Internal Audit representative (where appropriate)
- 6.7 It should be made clear at the outset what the purpose of the investigatory interview is and that the interviewee's representative may not answer questions on his / her behalf.
- 6.8 A record of the questions asked and detailed notes of the responses received must be made. Recording equipment may also be used. Care should be taken in framing the questions and no action that could be construed as duress by the interviewee must take place.
- 6.9 If the alleged irregularity is of a criminal nature and there is the possibility of criminal charges being laid against an individual, in order for evidence to be admissible in court interviews must be conducted and statements taken in accordance with the procedures laid down in the Police and Criminal Evidence Act (PACE). Whilst investigatory interviews are conducted in a formal manner, they are not intended to satisfy PACE requirements. Therefore should the decision be made to refer the matter to the Police (either before or after the commencement of the internal investigation) the employee under suspicion would be re-interviewed under caution and formal statements taken by them. Formal statements would also be taken from other relevant witnesses, including the Investigation Officer and Internal Audit.
- 6.10 Interviewees should be provided with two copies of the interview transcript, which they should be asked to sign and date (including any suggested amendments) and return one copy to Human Resources.

7. INVESTIGATORY INTERVIEWS – MEMBERS

- 7.1 These will be carried out in accordance with regulations (if any) made under Section 66 of the Local Government Act 2000. If no such regulations are in force, the matter will be dealt with in accordance with any provisions specified by the Standards Board for England.

8. INVESTIGATORY INTERVIEWS – BENEFIT CLAIMANTS

- 8.1 If a fraud allegation is substantiated and is potentially a prosecution case the interviews will be carried out formally under caution in accordance with PACE.
- 8.2 If a claimant is also in receipt of other benefits the DWP's Benefit Fraud Investigation Service will be contacted to invite them to be involved in the investigatory interview.

9. SUSPENSION

- 9.1 At the outset or during the course of an investigation it may become necessary to consider suspending the alleged perpetrator(s) from carrying out their normal duties. Under the Council's Disciplinary Procedure, depending on the circumstances of the case the employee may be:
- Required to remain in their own post on restricted duties.
 - Required to work in any other position within the Council.
 - Suspended from all duties and required to remain away from work.
- 9.2 The Disciplinary Procedure contains guidance on the circumstances under which suspension is appropriate and the process that must be followed.
- 9.3 A key concern for the Investigating Officer is to protect the integrity of any unsecured evidence and to prevent any influence the suspect(s) might bring to bear on associates. If this is considered to be a material threat, the Investigating Officer should recommend suspension to the Chief Officer / Senior Officer concerned (in consultation with the Corporate Director Of Human Resources).
- 9.4 Where the suspension requires an employee to remain away from work, the Investigating Officer should (with possible assistance from Internal Audit or Human Resources officers):
- Escort the employee to his / her workstation.
 - Allow the employee to remove any personal possessions.
 - Ensure that nothing material to the investigation is removed (e.g. diaries).
 - Require the employee to hand over any keys, identity cards or passes.
 - Escort the employee from the premises.

10. INVESTIGATION REPORTING - OFFICERS

- 10.1 At the end of the investigation, the Investigating Officer must decide whether there is a case to be answered and therefore if it should proceed to a disciplinary hearing. If it is to proceed, they will produce a written Management Statement of Case in conjunction with Human Resources.
- 10.2 If any or all of the investigation is undertaken by the Internal Audit Section, an interim Internal Audit Report will be produced. This will assist with (but does not constitute) the Management Statement of Case.
- 10.3 The interim Internal Audit Report should contain:
- (a) Full details of the investigation process followed;
 - (b) A summary of the evidence obtained;
 - (c) The potential nature of the offences (if any) committed;
 - (d) Recommendations as to Police referral, invoking the Disciplinary Procedure, or both.
- 10.4 All reports should be factual, impartial and, unless absolutely necessary contain no opinion.
- 10.5 With regard to whistle blowing considerations under the Public Interest Disclosure Act, in certain circumstances the names of witnesses may be deleted in a report and provided in a separate covering sheet. However although protection is guaranteed to witnesses, they cannot (other than in exceptional circumstances) be guaranteed anonymity as they may be required to give oral evidence at a future hearing, appeal, tribunal or in court.
- 10.6 The investigation may also reveal weaknesses in systems, procedures or internal control which need to be rectified for the future. At an appropriate stage, a final Internal Audit Report will be issued to the relevant Director detailing such weaknesses together with corresponding recommendations for corrective action.

11. INVESTIGATION REPORTING - MEMBERS

- 11.1 These will be carried out in accordance with regulations (if any) made under Section 66 of the Local Government Act 2000. If no such regulations are in force, the matter will be dealt with in accordance with any provisions specified by the Standards Board for England.

12. INVESTIGATION REPORTING – BENEFIT CLAIMANTS

- 12.1 At the conclusion of the investigation a report will be produced, this will be passed to the Benefits Team Leader for the calculation of the overpayment and claim of subsidy, and to the Assistant Benefits Manager to review the case.

13. HEARINGS & APPEALS – OFFICERS

- 13.1 The Council's detailed rules on disciplinary hearings and appeals are contained in the Disciplinary Procedure. Where an investigation has been undertaken (partially or wholly) by the Internal Audit Section, Internal Audit may provide the following services:
- (a) Advising management on how they might approach a disciplinary case that is based on the results of an Audit or joint Audit / management investigation.
 - (b) Advising management on how to formulate disciplinary / criminal charges.
 - (c) Advising management on how to put together a disciplinary package of evidence.
 - (d) Attending the disciplinary interview (and possible appeals) as a witness.
- 13.2 Internal Audit only provides evidence to a disciplinary hearing and has no other influence on the Disciplinary Officer's decision.
- 13.3 Where the investigation is into matters of a potentially criminal nature, the Police would normally have been informed at an earlier stage. However, in certain circumstances it may have been decided to proceed with the internal investigation before contacting the Police. Under these circumstances the Investigatory Officer should inform the Assistant Chief Executive (Business Improvement) / Corporate Director Of Human Resources once it becomes clear that a criminal offence has been committed. They would in turn review the issue of Police referral.
- 13.4 In any event, after the internal investigation is completed and if the matter proceeds to a Disciplinary hearing, the Disciplinary Officer should ensure that the Assistant Chief Executive (Business Improvement) / Corporate Director Of Human Resources are informed of any potentially criminal offence. The issue of Police referral is a matter for the Assistant Chief Executive (Business Improvement) and/or Corporate Director Of Human Resources to decide (in conjunction with the Chief Executive).
- 13.5 It should also be borne in mind that where actual losses have occurred, if an insurance claim is to be pursued the matter must first be reported to the Police and a crime number obtained. This number needs to be inserted on actual claim form.

14. HEARINGS & APPEALS – MEMBERS

- 14.1 These will be carried out in accordance with regulations (if any) made under Section 66 of the Local Government Act 2000. If no such regulations are in force, the matter will be dealt with in accordance with any provisions specified by the Standards Board for England.

15. HEARINGS & APPEALS – BENEFIT CLAIMANTS

- 15.1 These will be undertaken in accordance with the Housing / Council Tax Benefit Sanction & Prosecution Policy (Appendix 1).

16. LOSS RECOVERY

- 16.1 Where actual losses have occurred it may be possible to recover them (wholly or in part) via an insurance claim, in which case the Police must first be contacted for a crime number for insertion on the actual claim form.
- 16.2 The Council's policy for recovering uninsured losses from the perpetrators of fraud is to do so in all cases where, having considered all the available evidence the Corporate Director of Governance takes the view that recovery action through the Courts is likely to succeed and also where the Chief Executive considers that such recovery action should be taken.
- 16.3 Appendix 1 contains directions in respect of the recovery of overpaid benefits.

SANCTION AND PROSECUTION POLICY
HOUSING BENEFIT & COUNCIL TAX BENEFIT

In line with the Council's Anti-Fraud Strategy, Chorley Council is committed to fighting fraud.

In considering prosecution or other sanction under this policy, the Council will take into account all relevant legislation including the Human Rights Act 1998.

General

The Council appreciates that each case is unique and must be considered on its own merits. However the general principles set out below will be applied in all appropriate cases. In reaching a decision as to whether a case is appropriate for prosecution, two important criteria should be borne in mind.

1. That there is sufficient admissible evidence to justify prosecution
2. That the prosecution of that case would be in the public interest.

Every case where the evidence is such that it may be prosecuted must still be tested to see whether it is in the public interest to do so.

The Council will use various means to conduct the prosecution in appropriate cases.

These will include: -

- a) The Council's own Legal Department
- b) Lancashire Police
- c) DWP Solicitors Branch in joint LA/BA cases.
- d) Agency Solicitors

(All the above bodies will make reference to "The Code for Crown Prosecutors" produced by the Crown Prosecution Service)

In line with the policy adopted by the Department for Work and Pensions and to ensure consistency in the prosecution process, the following guidelines will apply.

Local Authority Caution

Providing an offence has been committed, there is no lower overpayment limit for prosecution purposes in caution cases. This means that a caution can be considered where the offence has been an attempted fraud.

In cases where the overpayment is less than £2,000 (including other benefits if the case is a joint LA/DWP case) and where evidence indicates

- The person has not offended before, or
- The person has previously committed benefit fraud, but the offence was minor and not subject to a caution or prosecution and the current offence is minor; or
- The person has previously been cautioned within the last 5 years for a similar offence but the offence was minor and the current offence is minor; and
- There was planning involved in the process, or
- There were other persons involved in the fraud, and
- The person's circumstances and demeanour towards the offence indicates that a caution would be the appropriate action.

Then the Council will, in most circumstances issue an official Local Authority Caution (see Appendix 1 for conditions applicable to Local Authority Cautions) in addition to requiring full repayment of the overpayment.

Administrative Penalties

If the total overpayment (including other benefits if the case is a joint LA/BA case) is more than £50 and less than £2000.00 and where the evidence indicates

- It was a first offence
- There was no planning involved, and
- There was no other person involved, and
- The person's circumstances and demeanour towards the offence indicates that an administrative penalty would be the most appropriate action.

Then the Council will, in most circumstances, make an offer of a 30% Administrative Penalty in addition to requiring full repayment of the overpayment. (See Appendix 2 for conditions applicable to Administrative Penalties.)

Prosecutions

If the total overpayment (including other benefits if the case is a joint LA.BA case) is below £2,000.00 and where the evidence indicates

- It was not a first offence, or
- The fraud had been deliberate and calculated, or
- The fraud had continued over a long period; or
- The person has failed to attend an interview under caution; or
- There were other persons involved in the fraud, or
- The person has declined the offer of an Administrative Penalty or withdrawn agreement to pay and Administrative Penalty; or
- The person has declined the offer of an official caution

Then the Council will, in most circumstances, prosecute.

If the total overpayment (including other benefits if the case is a joint LA/BA case) is over £2,000 prosecution will be considered at the outset.

Other Factors

Other factors will be taken into consideration before *prosecution* is recommended.

1. Duration of the Offence

An offence committed over a long period of time should be a factor towards prosecution. The claimant may have had opportunity to declare the correct information when the claim was renewed.

2. Previous Offences

The Council must make enquiries about any previous offences of a similar nature, committed by the offender. If the offender has already been cautioned for deception, a second caution issued by the Council may not be appropriate.

3. Trust

Was the offender in a position of trust? E.g. a member of staff or a Councillor?

4. Collusion

Has the case arisen through collusion e.g. with landlords, managing agents or employers etc? This type of case is considered to amount to serious fraud and should be recommended for prosecution where possible irrespective of the amount of overpayment involved.

5. Offenders Physical and Mental Condition

It would be *inadvisable* to prosecute in the following cases: -

- a) Where the offender is seriously ill
- b) Where the offender is mentally ill
- c) Where the offender is a heavily pregnant (within 3 months of confinement)
- d) Where the offender is over 75 years of age or bedridden
- e) Where the offender is deaf or visually impaired
- f) Where the health of the offender's partner may suffer. This will only apply where the partner suffers from a condition that would be made worse if proceedings were taken.

6. Social Factors

Consideration must be given to social factors when deciding whether or not to recommend prosecution. Instances in which prosecution may be considered inappropriate include cases where:

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- a) The Court would set against the offence such personal or mitigating factors that would make prosecution inappropriate e.g. the person was driven to the offence by a tragedy or domestic situation such as bereavement or sickness.
- b) The offender has already served a prison sentence for benefit fraud and an earlier offence has subsequently been discovered (it is the Court's view that people come out of prison with a 'clean sheet')
- c) The claimant is young (under 21), immature and would appear to the Court as someone who could have been dealt with effectively without proceeding. Youth does not automatically exclude the possibility of prosecution. Prosecution may be desirable where the offender already has a criminal record.
- d) It is known that a prosecution would have a damaging effect upon the defendant's career or employment i.e. the offender would not only lose their job but would not be able to get similar employment if prosecuted successfully by the Local Authority.

7. Voluntary Disclosure

Voluntary disclosure is where a claimant of his or her own free will reveals a fraud. In this case prosecution would not be appropriate. However, a disclosure is not voluntary if: -

- a) the admission is not a complete disclosure of the fraud
- b) It was apparently prompted by the expectation that the fraud would be discovered e.g. they knew the Council was making enquiries of their employer etc
- c) The claimant admits all the facts as soon as they are challenged
- d) The claimant discloses the fraud as a result of being required to complete a review form.

In all the above cases prosecution should be considered in the normal way.

8. Procedural Difficulties/Delays/Failures in the Investigation/Administrative Process

Closure of the case, without prosecution will be the only course of action where: -

- a) The investigation has been deficient and has failed to obtain all the evidence available
- b) Internal checks which should have revealed the offence did not do so e.g. benefit paid on incomplete or inadequate information, failure to observe flaws in a statement or document.

Decision-Making Process Under This Policy

Where Chorley Council are the 'lead' in the investigation

The recommendation to apply any sanction, including prosecution will be made, in the first instance, by the Compliance Manager, or in his/her absence the Investigator after consultation with the Revenues and Benefits Manager.

Where the case involves offences concerning benefits other than Housing and Council Tax Benefits, agreement will be sought from the DWP Sector Fraud Manager to the proposed action before submitting the recommendation.

All recommendations will be in the form of a written report and will include the following:

- Amount overpaid
- Period of overpayment
- Summary of the investigation and its findings
- Details of previous convictions, penalties or cautions
- Reasons for recommendation
- Recommended action

Any report will be accompanied by sufficient evidence and information obtained during the investigation including the investigator's report and either a transcript of the interview under caution or contemporaneous notes taken during the interview under caution.

Where the recommendation is that a Local Authority Caution or Administrative Penalty be offered, authorisation will be sought and given by the Revenues and Benefits Manager.

Where the recommendation is that criminal proceedings should be commenced, authorisation will be sought and given by the Assistant Chief Executive (Business Improvement).

Where Department for Work and Pensions is the 'lead' in the investigation

On receipt of the DWP Sector Fraud Manager's recommendation (FPA5) the Compliance Manager shall decide to whether the Council should participate in the action proposed.

All cases

Legal advice or opinion must be obtained where there is any doubt or uncertainty of a course of action to be taken under this policy.

Conclusion

It is essential that each case is treated on its own merit and any decision taken under this policy is fair and consistent.

The decision to prosecute an individual is a serious step. Fair and effective use of the sanction and prosecution policy is essential to the maintenance of law and order and in the deterrence of benefit fraud. However even in a minor case, a prosecution have serious implications for all involved.

In exceptional circumstances, an alternative to prosecution (caution or administrative penalty) may be considered without regard to the amount of the overpayment. The reasons for the recommendation to deviate from the policy must be explained in full to the Director of Finance.

All sanctions and prosecutions will be subject to a monitoring process.

LOCAL AUTHORITY FORMAL CAUTIONS

A formal caution is an oral warning given in certain circumstances (as described in the Sanction and Prosecution Policy) to a person who has committed an offence.

In any case selected for the issue of a caution, there must be evidence to prove the offence, an admission at an Interview Under Caution and the person being cautioned must give his/her informed consent for the procedure.

Where a person declines a caution, the case should then be recommended for prosecution in the normal way. It is expected that most people who are offered a caution will accept it in preference to being prosecuted.

A formal Caution is a deterrent and does not affect the recipient, unless by re-offending, he/she is prosecuted for a subsequent offence.

It is important to ensure that Cautions are administered and seen to be administered by Senior Officers to prevent their use being devalued in the eyes of the public when compared with Cautions issued by other prosecuting authorities, including the Police.

A Certificate of Caution must be completed detailing the offences committed and the following points made clear to the person at the outset:-

- a) The significance of the Caution itself
- b) That a record will be kept of the Caution for 5 years
- c) That the existence of a previous Caution may influence the decision whether or not to prosecute if the person should offend again
- d) That the Caution may be cited if the person should subsequently be found guilty of a different offence by a Court
- e) That the Caution is being issued instead of their case being passed to the prosecution authorities to consider instituting criminal proceedings
- f) That the Caution is not a criminal conviction

The person agreeing to this course of action must sign a Certificate of Caution. The Cautioning Officer will endorse the certificate and issue a copy. A further copy will be issued to the Professional Standards Unit of DWP. The certificate will contain a reminder that the fact that they have been Cautioned will count against them and the Caution may be cited if they are convicted by a court in future for a different offence.

ADMINISTRATIVE PENALTIES

An administrative penalty is a financial penalty which can be offered to a person who, the Authority believes, has caused benefit to be overpaid to them by a deliberate act or omission on their part and there are grounds for instituting proceedings against them for a criminal offence relating to the overpayment.

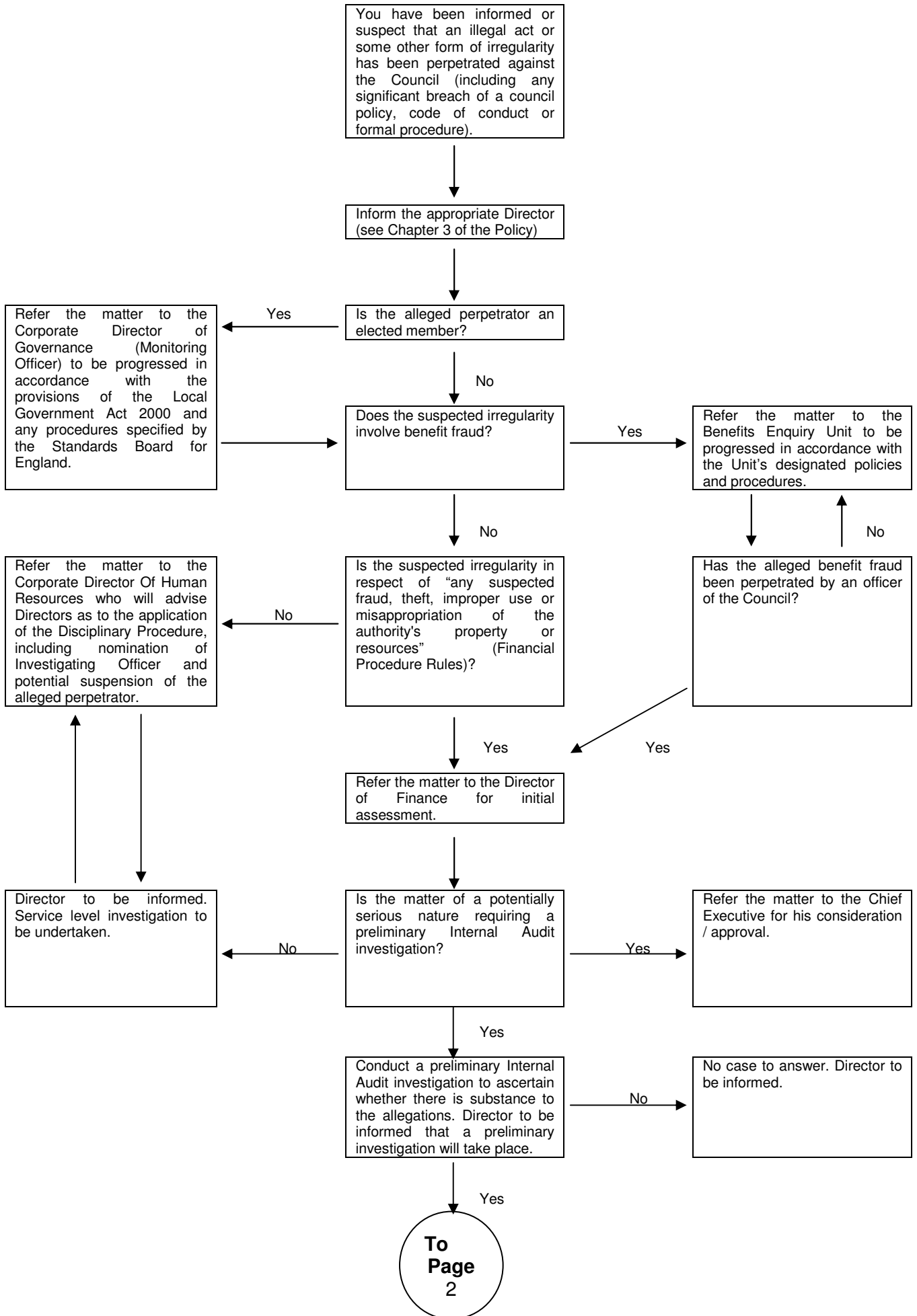
Legislation lays down the circumstances in which a penalty can be offered and how the penalty is calculated. The legislation:-

1. Is contained in Section 115A of the Social Security Administration Act 1992
2. Was introduced under the Social Security Administration (Fraud) Act 1997; and
3. Came into force on the 18th December 1997.

The following requirements are mandatory :-

- Offer of a penalty can only be made where the overpayment is recoverable from a person under, or by virtue of Section 75 or 76 of the Social Security Administration Act 1992, and the making of the overpayment was attributable to an act or omission on the part of the person; there must be grounds for instituting criminal proceedings against the person for an offence relating to the overpayment upon which the penalty is based.
- A penalty can only be offered to a person in respect of an overpayment or any part of thereof that has accrued after the commencement date of 18th December 1997.
- If a person agrees to pay a penalty, criminal proceedings cannot be instituted against them in respect of the overpayment on which the penalty is based.
- The amount of the penalty must be calculated at 30% of the amount of the recoverable overpayment (rounded down to the whole penny)
- Once a penalty offer has been accepted, the person may withdraw from the agreement at any time during the period of 28 calendar days beginning with the day on which the agreement was reached
- Where a person agrees to pay a penalty, and the overpayment on which the penalty is based is subsequently revised, then the agreement to pay a penalty no longer applies. Any penalty that has already been recovered must be repaid. However, if a new agreement is made based on the revised overpayment, the amount already recovered by way of a penalty may be treated as recovered under the terms of the new agreement instead of being repaid.
- Where a person declines a penalty, the case should then be recommended for prosecution in the normal way.

APPENDIX 2 - CHORLEY BC INTERNAL INVESTIGATIONS PROCEDURE



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