



Suffolk Coastal District Council  
**Fraud and Corruption Response and Investigation Management Plan**

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## **Foreword**

### **Not a victimless crime**

The Council's primary goal is to ensure that Suffolk Coastal is a place where the community continues to enjoy the highest Quality of Life and receives high quality services from the Council. To provide a wide range of services and at a level of quality demanded, we must ensure that we manage our resources effectively; this includes preventing the loss of financial resources and assets from fraud, theft and corrupt practices.

Fraud and corruption are not victimless crimes; there is constant pressure upon our resources and the services we provide to the tax and council taxpayer. Losses resulting from fraud and corruption only add pressure upon these resources and a pound stolen by fraud or corruption is a pound less that could have been spent on a public service. Given that it is often the poorest and most vulnerable in our society who are most reliant upon the services the Council and other public bodies provide, fraud and corruption has a disproportionate impact on these groups; proof if any were needed that fraud and corruption are far from being victimless crimes.

### **The Council's attitude**

We believe that in whatever form or guise, fraud and corruption are wrong, that we must maintain a zero tolerance approach, take measures to prevent and deter such dishonesty from occurring, and to actively investigate and prosecute / apply sanctions where they do occur. We will ensure that our investigations are thorough, professional and draw upon the expertise of a wide range of practitioners, from investigators and auditors to IT specialists.

### **This document**

This document sets out how we will respond to instances of fraud and corruption and undertake investigations. It is not intended as constituting an exhaustive and all encompassing investigations manual, rather it is a statement of the standards and general actions we will adhere to when, as an organisation, we deal with allegations of fraud, corruption and similar wrongdoing.

**Stephen Baker**

**Chief Executive**

May 2009

## **1. Introduction**

### **Introduction to fraud and corruption**

- 1.1 Fraud, “concealed stealing” and corruption, abusing a position for personal gain, both poses a direct threat to the Council’s reputation as an efficient and well managed organisation, but more importantly they directly threaten the Council’s resources and thus the quality of services we provide to the citizens of the Suffolk Coastal district.
- 1.2 Losses resulting from fraud and corruption present local and national problems, nationally, Housing and Council Tax Benefit fraud losses are estimated as being £600 million, whilst each “National Fraud Initiative” data-matching exercise undertaken by all Councils in England and Wales finds year-on-year increases in the levels of fraud losses. Fraud and corruption are very real threats.
- 1.3 Historically, aside from benefit fraud the Council has sustained few losses arising from fraud and corruption but the Council is not complacent concerning the risks and is committed to maintaining a robust, effective and integrated anti-fraud and corruption system to protect its assets and reputation.

### **Introduction to the corporate response**

- 1.4 Suffolk Coastal has a zero-tolerance policy towards fraud and corruption and is committed to combating it at every level and to seek appropriate sanctions and redress in every proven case.
- 1.5 The Council employs highly trained specialist investigators to detect and investigate fraud, not only where there is an existing suspicion of fraud but also in the area of proactively detecting and rooting out the perpetrators of fraud and corruption. Where a multi-skilled approach is required to a particular investigation, the Council’s specialist counter-fraud investigators will work with internal auditors, computer specialists and officers from external agencies such as the police to ensure a thorough and professional investigation.
- 1.6 Where instances of fraud or corruption are found, the Council will not hesitate to take action, including the application of sanctions, prosecution and / or dismissal as appropriate.

- 1.7 As part of its response to the threat of fraud and corruption, the Council will seek to maintain a heightened awareness of the risks posed to the organisation by educating all members of staff in their duty and responsibility to assist in the fight against fraudulent and corrupt activities.

**Introduction to investigation**

- 1.8 Investigating suspicions of wrongdoing can be a difficult and demanding task, one requiring objectivity, determination and attention to detail. The Council expects that all investigations will be undertaken by suitably trained and qualified investigators who conduct their enquiries:

- openly;
- honestly;
- to high professional standards; and
- using ethical and lawful investigation practices.

- 1.9 The investigator's primary role is to establish the facts, and in doing so investigators may use certain legal powers or undertake actions that have the potential to invade the rights of individuals; this is an inevitable consequence of the investigation process. Whilst investigations can be intrusive, the Council's investigators will endeavour to limit the extent of the intrusion provided that such limitation does not hamper the investigation.

- 1.10 In pursuing investigations, investigators will adhere to all applicable legislation, regulations, codes of practice and best stated practice.

- 1.11 The Council has three investigative routes available to it and will pursue the route it considers most appropriate given the known facts of the case:

- *The civil or disciplinary route*, where the investigation will adhere to employment and relevant civil law and, where applicable, to the Council's disciplinary code with a view to concluding the case (where necessary) at a hearing or tribunal;

- *The criminal route*, where the investigation will adhere to legislation governing criminal investigations such as the Police and Criminal Evidence Act and the Criminal Procedures and Investigations Act, with a view to concluding the case (where necessary) with a sanction or within the Criminal Courts;
- *The hybrid route*, where the investigation initially adheres to the criminal route but is done so with an option of later downgrading to the civil or disciplinary route (dependent upon the circumstances and facts of the case).

1.12 The route taken by the Council will usually be decided by the Corporate Counter Fraud Manager, however, for more serious cases involving suspected internal fraud or corruption, the decision will be taken in conjunction with the Assistant Audit Partnership Manager and Audit Partnership Manager.

1.13 Once an investigation is referred to, or instigated by, officers from the Corporate Counter Fraud Team / Internal Audit Section, the Audit Partnership Manager shall have 'ownership' of the investigation. This action is taken to:

- Ensure objectivity by having an allegation investigated by officers with no perceived vested interests;
- Provide transparency to the investigation process, thus building confidence in the Council's counter-fraud and corruption work; and  
/ or
- Ensure that investigators and auditors are free to conduct their investigation work free from pressure, whether witting or not, to limit or direct their investigation or reach certain conclusions.

#### **Introduction to the corporate counter fraud team**

1.14 The majority of investigations will be undertaken by the Council's Corporate Counter Fraud Team, often with the assistance of specialists in the audit / accountancy and IT fields where there is a requirement for their particular skills.

All investigators within the Corporate Counter Fraud Team are counter-fraud and corruption specialists and are required to hold counter-fraud specialist status as conferred by the University of Portsmouth as a minimum professional qualification.

1.15 The role of the Corporate Counter Fraud Team is to:

- Work with Senior Management, Elected Members and employees, to put in place, review and maintain all required elements of an effective counter-fraud and corruption culture;
- Work in conjunction with the Council's communications team, to deter fraud and corruption;
- To work with Internal Auditors and Managers to ensure there are effective counter-fraud and corruption controls and detection mechanisms in all key systems, and that these controls are routinely reviewed and developed in line with emerging fraud trends and methodology;
- To investigate suspicions of fraudulent and corrupt practice in a professional, fair and objective manner;
- To act as professional witnesses at Court, Tribunal or Disciplinary hearings;

#### **Powers and authority of investigators**

1.14 The Council's investigators are granted powers to investigate under a number of specific Acts, e.g. for benefit fraud investigations powers are conferred under Social Security legislation. The power to investigate internal acts of fraud and corruption arises from the requirement for the Council to administer its financial affairs properly under the Local Government Finance Act 1988.

- 1.15 The Council's investigators have the right to expect cooperation from all Members and staff in the exercising of their official duties. This means providing any information and / or documentation requested in a timely manner, making statements where required and granting access to such systems and information repositories as required and when deemed necessary by the investigating officer.
- 1.16 The Council's investigators are authorised by the Audit Partnership Manager to remove any and such material as considered necessary, including files and in extreme case, the contents of desks and / or computers. Hindrance to this process will be seen as a serious disciplinary matter.
- 1.17 Due to the nature of any possible investigation, the investigator is not required to explain his actions or reasons for the requests to the person from whom the information is requested or required. Any requests should be directed at the Audit Partnership Manager for consideration; reasons will not be given if they are likely to harm the conduction or outcome of an investigation, however, the information requested must be provided.
- 1.18 The Council's investigators will carry identification with them at all times.

**Introduction to the Legal Services Section of the Council**

- 1.19 The Council's Legal services Section will, by agreement, prosecute any case that meets set criteria (and where a right of audience exists) on behalf of the Council. Where necessary the Legal Services Section will appoint appropriate Legal Counsel.
- 1.20 In cases concerning benefit fraud, an appropriately qualified Solicitor from the Legal Services Section shall make all Public Interest and Evidential decisions concerning how cases should be disposed of, i.e. no further action, sanction or prosecution.
- 1.21 Unless in extraordinary circumstances, i.e. immediate action is required, the Audit Partnership Manager will seek the advice of the Legal Services Section prior to referring a case of internal fraud or corruption to the Police or Crown Prosecution Service (CPS).

**Role of the police and CPS**

- 1.22 Where cases are deemed suitable, or where resources are required that go beyond the power or remit of the Council's investigators, or for any other reason deemed necessary, the Council may refer cases to the Police or CPS.
- 1.23 Whilst the Assistant Audit Partnership Manager authorises referring a case of suspected internal fraud or corruption to the Police, under usual circumstances this course of action will only be taken after prior consultation with the Legal Section and the Chief Executive or Strategic Director.
- 1.25 For matters concerning benefit fraud, Police assistance can be requested only after authorisation of the Corporate Counter Fraud Manager. The Corporate Counter Fraud Manager can authorise the Police / CPS to prosecute a case of suspected benefit fraud but only once a Solicitor from the Council's Legal Services Section has applied the Public Interest and Evidential tests.

**Measuring fraud and Identifying areas at risk**

- 1.26 Central measures in responding to threats of fraud and corruption are measuring the 'fraud and corruption stock' (recording all known and suspected instances of such actions), which in turn helps the Council identify risk areas.
- 1.27 All suspected instances of non-benefit fraud and all forms of suspected corruption must be reported to the Audit Partnership Manager, who will maintain a record of:
- all reports received;
  - details of the report (threat type, modus operandi, system attacked, level of loss or potential loss, method of detection, offender details and profile if known);
  - what actions have been taken by the Council in response; and
  - the outcome of this response.
- 1.28 The Audit Partnership Manager will inform the Assistant Audit Partnership Manager and Corporate Counter Fraud Manager as appropriate to ensure that the Council is taking all necessary measures to respond to these threats, i.e. internal auditors reviewing key controls in specific areas deemed to be at risk.

## 2. Managing Cases

### Referral Process

2.1 The Council acknowledges that reporting suspicions of fraud, corruption and / or similar wrongdoing can be daunting, regardless as to one is a member of the public, an officer or an elected member. However, for the Council to protect its assets and provide the public services relied upon by so many it is necessary for individuals to come forward and report their concerns and this can be done in a number of ways:

- Report your suspicions direct to the Corporate Counter Fraud Unit;
  - Fraud hotline 01394 444444, general office: 01394 444456 / 01394 383789 Ext. 2456;
  - On-line fraud report form (via the Council's website: <https://apps1.suffolkcoastal.gov.uk/AF3/an/default.aspx/RenderForm/?F.Name=S8rd1jcV5cU>);
  - E-mail: [fraud.investigation@suffolkcoastal.gov.uk](mailto:fraud.investigation@suffolkcoastal.gov.uk);
  - In person (9am-5pm Monday–Thursday and 9am-4.30pm on Friday at the Council's Melton Hill offices).
- Make a disclosure under the Public Interest Disclosure Act (PIDA) 1998 by;
  - Disclosing your concerns to your manager, head of service, Human Resources Section, Audit Partnership Manager or Assistant Audit Partnership Manager; or
  - Calling the Council's Whistleblowing Hotline 01394 444222.

PIDA provides protection from victimisation in respect of all individuals who make a disclosure in good faith. The Council's Whistleblowing Policy is available via its website: <http://www.suffolkcoastal.gov.uk/NR/rdonlyres/E6FABD46-F6A8-4D72-92C6-E81FD4D402AA/0/WhistleblowingPolicyFeb2007.pdf>

- Report your suspicions to your line manager or head of service.

- 2.2 Referrals may come from a variety of sources, but essentially fall into the following categories:
- from members of the public;
  - from members of staff;
  - from partner and other external organisations;
  - from data-matching exercises;
  - from proactive exercises.
- 2.3 All referrals will be centrally recorded and assessed against the Corporate Counter Fraud Unit's standard assessment matrix within 2 working days of receipt, doing so ensures efficiency and consistency in the decision making process, which serves to prevent any bias and negate allegations of the same. All assessments, regardless of the decision reached, will be reviewed by the Corporate Counter Fraud Manager.
- 2.4 The identity of individuals making referrals will be kept private and treated as confidential, although employees making disclosures under the Council's Whistleblowing Policy should understand that there may be occasions where their identity is disclosed, usually if they are needed to testify at Court, at a Tribunal hearing or a disciplinary hearing.
- 2.5 Where the identity of the individual / organisation making the referral is known, an acknowledgement will be made by whatever method is most appropriate.
- 2.6 Due to concerns regarding data protection, personal and business confidentiality, in most cases it will not be possible to advise the person making the referral of investigation progress or indeed of any outcome.
- 2.7 Where a disclosure is made under the Council's Whistleblowing Policy, it may be possible to provide the person making a disclosure with some limited information to protect them from potential harassment or victimisation.

### **Investigation Planning and Assignment**

- 2.8 Accepted cases will be assigned to an investigator by the Counter Fraud Manager within an average of 10 working days (2 working days for cases of internal fraud).
- 2.9 Prior to the investigation being commenced, an outline plan of the investigation will be agreed between the Corporate Counter Fraud Manager and the investigator assigned, to detail:
- Provide direction for the investigation;
  - Detail health and safety risks;
  - Where necessary, detail timescales for particular investigation actions and activities; and
  - Identify resources and costs likely to be required / encountered during the course of the investigation;
- 2.10 All non-internal fraud investigations will be reviewed on a monthly cycle, internal fraud investigations will be reviewed on a two-weekly cycle.
- 2.11 All cases of suspected benefit fraud will be logged on the Corporate Counter Fraud Unit's fraud management information system, cases of benefit fraud will also be recorded on the Academy system's 'Fraud Module'.
- 2.12 Due to the sensitive nature of the information contained, access to these records will be restricted to Corporate Counter Fraud Team staff and auditors.

### **Criminal and disciplinary cases**

- 2.13 Certain cases may involve proceedings that are both necessary and appropriate under criminal legislation and disciplinary regulations. In such cases the criminal investigation will be undertaken by the Corporate Counter Fraud Team whilst disciplinary matters will be the responsibility of management / Human Resources.
- 2.14 Where necessary investigators from the Corporate Counter Fraud Team will offer guidance and advice to managers and Human Resources officers, and will provide evidence to disciplinary hearings when required.

- 2.15 Legally there is nothing to prevent Corporate Counter Fraud investigators from investigating matters under the disciplinary code whilst also conducting a criminal investigation. However, there is a fundamental conflict between criminal legislation and employment regulations regarding a person's right to silence under criminal law and the right of an employer to demand a person accounts for their actions. Therefore the Corporate Counter Fraud Team will not usually conduct disciplinary investigations in cases where they are also undertaking a criminal investigation.
- 2.16 Where a case is likely to result in a criminal prosecution, disciplinary action will not be delayed (given the length of time a criminal investigation and resulting prosecution can take).
- 2.17 In cases where there is a conflict between progressing a criminal investigation and resolving a disciplinary matter quickly, it may be that the disciplinary process will need to be suspended until an appropriate point is reached in the criminal investigation where the progression of the disciplinary case will not impact on the gathering of evidence for criminal proceedings.

**Investigation Files: Quality Control and Access**

- 2.18 Investigation case files will be maintained to the highest standards of control and will be subject to regular inspection and review by the Corporate Counter Fraud Manager to ensure the required standards of quality and probity are being maintained.
- 2.19 Investigation case files will be treated as sensitive documents and access to them outside the Corporate Counter Fraud Team will only be granted to authorised officers or regulatory / inspection / audit bodies. In ongoing 'live' cases, access to evidence obtained during the course of that investigation will be restricted to within the Corporate Counter Fraud Team, with the following exceptions:

- Access to the evidence will be granted where the Senior Solicitor and Corporate Counter Fraud Manager are satisfied that access is lawful, is for a legitimate purpose or aim and will not compromise the investigation, evidential soundness or quality of the evidence concerned;
- Where necessary evidence will be removed from the case file prior to inspection if it is deemed that the proposed access could contaminate its value;
- Where necessary access to ongoing case files will be supervised by the Corporate Counter Fraud Manager or an officer from the Corporate Counter Fraud Team;
- All access of ongoing cases by non-Legal Section / Corporate Counter Fraud Team members will be recorded, with the record detailing the time, date, place and duration of access, details of the officer(s) accessing, purpose of the access.

2.20 Unauthorised access to an investigation file, particularly a live investigation, could constitute a disciplinary offence.

2.21 All requests for access to files made under the Freedom of Information and Data Protection will be given serious consideration, but under usual circumstances access will not be granted or will be restricted where the disclosed information:

- Has been provided by identifiable individuals (identifiable either by being named within the file or the information they provided is likely to identify them), and that information was given on the basis of strict confidence; or
- Concerns investigative methodology or techniques or anti-fraud and corruption practices procedures, the disclosure of which could undermine a particular case, the Authority's broader anti-fraud and corruption efforts or otherwise prejudice law enforcement measures; or

- Could result in the endangerment of the health and / or safety of any individual.

Typically where a named individual has provided information, however, there will be occasions where the very nature of the information passed to the Council would identify the individual, regardless as to whether they gave their name or any other identifiable details concerning themselves.

### **Notebooks**

2.22 Notebooks are an important tool for the investigator, and each counter-fraud investigator will maintain an authorised official notebook, and use it observing the ELBOWS mnemonic:

- E** Erasures – do not rub anything out;
- L** Leaves torn out – do not rip pages out;
- B** Between lines– do not write between lines on the page;
- O** Overwriting – do not write over any other writing;
- W** Writing in pencil – always write in ink;
- S** Spaces – do not leave spaces for additions at a later stage.

2.23 The notebook is an evidential record and one subject to production and scrutiny in Court and Tribunal hearings, as such investigators must ensure they make detailed entries as appropriate, whilst ensuring the safety and control of the notebook at all times and only use the notebook for their official duties.

2.24 The Corporate Counter Fraud Manager will periodically inspect notebooks to ensure an appropriate standard is being maintained.

2.25 Where a notebook is required for inspection / examination by an officer external to the Corporate Counter Fraud Unit, the Corporate Counter Fraud Manager should be consulted beforehand and his authorisation obtained in order to ensure that evidential standards are maintained.

2.26 In the event of a notebook being lost or destroyed, the Corporate Counter Fraud Manager and the officer issuing the notebook must be informed in writing.

2.27 When using the notebook, investigation officers will:

- Make all entries in black or blue ink;
- Record all relevant events, particularly interviews undertaken, details of surveillance and off-site visits;
- Sign, date and time all entries;
- Clearly record the time and date of any event detailed within the notebook;
- If there is a long time between the event and the record of it being made, explain the reason;
- Pages missed erroneously should be crossed through by a single line;

2.28 If using the notebook to record details of observations, investigators should adhere to the ADVOKATE principle determined by R v Turnbull:

- A** Amount of time (how long in view)
- D** Distance
- V** Visibility
- O** Obstructions or impairments to view
- K** Known to the witness
- A** Any other reason for remembering
- T** Time lapses
- E** Errors in descriptions

### **Caseload control**

2.29 The Corporate Counter Fraud Manager controls investigators workflow and caseloads, ensuring that investigators are not given excessive workloads and that case turnaround times are thus that each case is actively and effectively investigated without undue delay.

2.30 Each investigation case will be examined and discussed with the investigating officer once a month in order to ensure adequate progress is being made and that potential problems are identified and dealt with at the earliest opportunity. A written record of this examination will be made within the case control spreadsheet.

- 2.31 Individual investigators are under a duty to ensure they maintain professional standards of case control, ensuring that cases are being constantly progressed and that all reasonable lines of enquiry are being pursued.
- 2.32 Where an investigation uncovers little evidence and little likelihood of a successful outcome the investigation will be concluded as soon as possible. Investigators are expected to liaise with the Corporate Counter Fraud Manager concerning cases where they believe continuing the investigation would be unproductive or uneconomical to continue rather than waiting for the monthly case review.

### **Case reports**

- 2.33 All investigation cases will conclude with a case report, the length and detail of which will be dependent upon a number of factors including, the nature of the offence(s), the seriousness of the offences and the extent to which the report will be disseminated.
- 2.34 Typically, housing benefit reports will provide sufficient detail to enable a Benefits Decision Maker to reach a determination as to whether an individual is entitled to receive benefit payments, and if so at what level of entitlement.
- 2.35 Non-Housing Benefit fraud reports will provide sufficient detail to enable the reader to comprehend the following points:
- The nature of the allegation;
  - In general terms, how the investigation was undertaken;
  - The findings;
  - Conclusions, and where appropriate Recommendations.

All findings, conclusions and recommendations must be substantiated by the evidence and facts obtained arising from the investigation. Such evidence must be secured within the investigation file, which itself must be securely retained by the investigating officer.

### 3. Legislation

3.1 An investigator's duties, responsibilities and actions are regulated by a wide range of legislation, of all which investigators are expected to be familiar with. The legislation used, and powers derived from it, will vary according to the nature of the case under investigation.

3.2 Whilst investigators are provided with a number of powers, they should only be used when it is necessary to do, proportionate to the offences / actions concerned, and apply those powers in a fair and reasonable manner.

#### **Criminal Procedures and Investigations Act 1996**

3.3 Investigators must be familiar with the Criminal Procedures and Investigations Act 1996, which relates to any criminal investigation commenced on or after 1<sup>st</sup> April 2007, and details the responsibilities and duties of investigators. A code of practice has been drafted to assist investigators.

3.4 The code relates to police officers and persons other than police officers who are charged with the duty of conducting investigations, as defined by the Act. Investigators are to have regard to the provisions of the code and should take these into account when applying their own procedures. Relevant sections are printed below for reference.

#### 3.5 **Definitions of roles under CPIA 1996 S.23(1)**

Criminal investigation is defined under the code as:

(s)2.1 an investigation conducted by investigation officers with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it. This will include:

- investigations into offences that have been committed;
- Investigations whose purpose is to ascertain whether an offence has been committed, with a view to the possible institution of criminal proceedings;

- investigations which begin in the belief that an offence may be committed;
- charging a person with an offence includes prosecution by way of summons

3.6 The Code defines the roles of the following individuals in relation to their conduct under the Act and on the treatment of material collected as a result of conducting a criminal investigation as defined by the Act:

*The investigation Officer* is defined within (s)1.1 as any officer who is involved in the conduct of a criminal investigation. All investigators have a responsibility for carrying out the duties imposed on them under the act. This includes:

- recording information;
- retaining information;
- disclosing information;

In conducting the investigation the investigator should pursue all reasonable lines of enquiry, whether these point towards or away from the accused. What is reasonable in each case will depend on the circumstances and the council's policies in use at the time.

*The Officer in Charge of the investigation* is the person responsible for directing a criminal investigation. He or she is responsible for ensuring that the proper procedures are in place for recording information, and retaining records of information and other material.

*The Disclosure Officer* is the person responsible for examining material retained by the Investigation Officer during the investigation; revealing information to the prosecutor during the investigation and certifying that he or she has done this; disclosing the material to the accused at the request of the prosecutor.

*The Prosecutor* Is the authority responsible for the conduct of criminal proceedings on behalf of the Council or any agent employed by the Council for that purpose.

- 3.7 Guidance on the use retention and storage of records and other *material* can be found in the codes of guidance (s)23(1):

*Material* Is material of any kind including information or objects which is obtained during the course of the investigation and which may be relevant to the investigation. Material may be relevant if it appears to the Investigation officer, or to the officer in charge, or to the disclosure officer, that it has some bearing on any offence under investigation and on the surrounding circumstances of the case, unless it is incapable of having any impact on the case.

*Sensitive Material* is material which the disclosure officer believes, after consulting with the officer in charge of the investigation, it is not in the public interest to disclose.

*Recording Information.* Where the investigation has led to the beginning of criminal proceedings the Investigation Officer should create a list of sensitive and non-sensitive schedules covering all the documents that will be used in the proceedings, and those records which will not be used and have been collated into either sensitive or non sensitive.

- 3.8 Where enquiries continue and further information is obtained which will require disclosure, the Investigation Officer must discuss this with the following individuals:

- The Officer in Charge of the Investigation where one has been nominated;
- The Disclosure Officer where one has been nominated.

The Prosecutor, where the information is converted into evidence that will form a part of the prosecution case.

**Functions and general responsibilities**

- 3.9 (s)3.1 of the code states that each of the prescribed functions concerning the Investigation Officer, Officer in Charge and the Disclosure Officer are separate, however in some circumstances the officer conducting the Investigation can assume all three roles.
- 3.10 Failure of the Council to have separate delegated designated officers under the Act, does not exempt the investigations officer from carrying out the duties imposed by the Act.
- 3.11 Section 34(4) of The Criminal Justice and Public Order Act 1994 makes the Police and Criminal Evidence Act 1984 apply to investigators employed by government or local authority agencies.
- 3.12 Much of PACE relates specifically to police officers and the powers bestowed on them, however investigators should be mindful of the provisions contained in the PACE Code of Practice, particularly Codes C and E relating to questioning and tape recording of interviews.
- 3.13 Code C, s.67(9) provides:
- "Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of such a code."
- 3.14 The PACE Code of Conduct is a lengthy document in it's own right and investigators should ensure they either have ready access to a copy for reference. It is a requirement of conducting interviews under caution that a copy be available for consultation by a suspect or witness.

**Criminal Justice Act 1998**

- 3.15 The CJA 1988 contains a great deal of legislation that is pertinent to investigating officers, but sections of Chapter 33 Part II 25, 26 and 27 have particular relevance as they relate to the content of witness statements and their admissibility in court.

**Criminal Justice & Public Order Act 1994**

3.16 An investigating officer must be aware that witnesses may be subject to intimidation where the accused or their agents attempt to prevent the person assisting with the investigation at any stage. (s)51 of the Criminal Justice & Public Order Act 1994 makes it an offence in the following terms:

(1) A person who does to another person—

(a) an act which intimidates, and is intended to intimidate, that other person;

(b) knowing or believing that the other person is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and

(c) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with, commits an offence.

(2) A person who does or threatens to do to another person—

(a) an act which harms or would harm, and is intended to harm, that other person;

(b) knowing or believing that the other person, or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence; and

(c) does or threatens to do the act because of what (within paragraph

[b]) he knows or believes,

commits an offence.

(3) A person does an act “to” another person with the intention of intimidating, or (as the case may be) harming, that other person not only where the act is done in the presence of that other and directed at him directly but also where the act is done to a third person and is intended, in the circumstances, to intimidate or (as the case may be) harm the person at whom the act is directed.

(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person’s property) and similarly as respects an intimidatory act which consists of threats.

(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) above need not be the only or the predominating intention or motive with which the act is done or, in the case of subsection (2), threatened.

(6) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

### **Use of the witness intimidation legislation**

- 3.17 Investigators can consider this action at any time during an investigation where this has occurred and do not have to wait until legal proceedings have started. In these circumstances, advice from the police and the Council's legal department should be sought.

### **Surveillance and the Regulation of Investigatory Powers Act 2000 (RIPA)**

- 3.18 Under the terms of the Human Rights Act 1998 (HRA) the Council is a public authority and as such may only conduct covert surveillance activity under the auspices of the Regulation of Investigatory Powers Act 2000 (RIPA).

- 3.19 The Council's investigators (or any officer from the Council or a third party working on behalf of the Council) may only lawfully undertake covert activities where:

- It is for the purpose of the prevention of disorder or crime; and
- It has been authorised in accordance with RIPA legislation (which does allow for unauthorised legislation in certain circumstances with the proviso that written authorisation is later obtained) and the Council's RIPA procedure.

- 3.20 Covert surveillance may only be used when there is no other practical non-intrusive or less intrusive method way of obtaining the evidence to prove or disprove the conduct alleged against the individual to have occurred.

3.21 RIPA specifies that there are types of surveillance 'Directed Surveillance' and 'Covert Surveillance'; by law, Local Authorities are only allowed to carry out Directed Surveillance which is defined under (s)26(2) of the Act as:

*surveillance which is covert but not intrusive, and which is undertaken*

- for the purposes of a specific investigation or operation;
- in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation);
- otherwise than by way of immediate response to events or circumstances (the nature of which is such that it would not be reasonably practicable for an authorisation under this part to be sought for the carrying out of surveillance)

3.22 Surveillance involves the observation of person or persons with the intention of gathering private information to produce a detailed picture of a person's life, activities and associations. Directed surveillance does not include any type of covert surveillance in residential premises or in private vehicles.

3.23 Officers must complete the appropriate request and authorisation form prior to undertaking surveillance, paying particular attention to the following sections:

- why the directed surveillance is necessary;
- what it seeks to achieve;
- why the surveillance is proportional (why it is not excessive);
- an explanation what information is sought to be obtained as a result of the surveillance
- any potential collateral intrusion (this refers to any other individuals who may be observed or affected as a direct result of the use of surveillance); and
- how the methods used to gather the information limit intrusion into the lives of third parties

- 3.24 Requests must be authorised by an appropriate Authorising Officer prior to commencement of surveillance. Details of Authorising Officers are stipulated in the Council's Code of Practice on Surveillance.
- 3.25 Copies of the appropriate forms can be found within the Counter Fraud Unit area of the Dora (intranet) site along with a copy of the Home Office Code of Practice on Surveillance.
- 3.26 Authorisations last for up to three months at which point the surveillance authorisation should be renewed or cancelled. Where the surveillance has been completed prior to the three month limit it must be cancelled at the first moment that it is no longer needed. A cancellation form must be completed as soon as possible to ensure that this has been done.
- 3.27 Covert surveillance without authorisation could constitute a breach of the Human Rights Act 1998.
- 3.28 Copies of all authorisations, cancellations, reviews and renewals must be lodged with the Council's Audit Partnership Manager.
- 3.29 Surveillance must only be carried out by officers trained for the purpose, and prior to the surveillance taking place a briefing between the officers and line management should be convened to cover the following details:

- I Intelligence
- I Intention
- M Method
- A Administration
- R Risk
- C Communications

**Covert Human Intelligence Sources**

- 3.30 The use of Covert Human Intelligence Sources is covered in RIPA, and concerns the use of cultivated informants for the purposes of obtaining information. Use of CHIS also calls for the use of specially trained "source handlers".

- 3.31 The Council currently does not use Covert Human Intelligence Sources, but there is nothing to prevent this position from changing, and doing so without further notice.
- 3.32 If the Council were to use Covert Human Intelligence Sources, the Chief Executive Officer must first authorise their use.

**Communications Data and Single Point of Contact (SPoC)**

- 3.33 As a result of amendments to RIPA Ch.23, it is now possible for Local Authorities to obtain certain types of communications data from Communications Service Providers (CSPs).
- 3.34 The type of data available relates to traffic and subscriber details, not communications content.
- 3.35 Only trained officers (known as a SPoC – Single Point of Contact) who are Home Office accredited can apply for information on behalf of the Council. The Corporate Counter Fraud Manager and the Assistant Audit Partnership Manager are the Council's accredited officers.

**Use of Covert Equipment**

- 3.36 At times the conduct of surveillance may involve the use of covert equipment, which may take the form of cameras, video recorders, and covert radios. The use of such equipment should only be undertaken by officers trained and adept in their use.
- 3.37 Where covert recording equipment is used, logs should be kept of recordings, detailing the time, date and place of the recording, what the recording is of, the type of equipment used to make the recording, which officers operated the device and whether those officers were present with the device at the time of recording.
- 3.38 All tapes and other media used must be securely retained and accounted for (and documented) at all times.

3.39 Tapes / media used to make covert recordings are evidential documents and may only be viewed by authorised officers. In any event, a record of any viewing of the tape must be made each time it is viewed, detailing:

- Who viewed the tape;
- Where, when and for how long;
- The purpose of the viewing.

#### **Accessing internal electronic communications**

3.40 The Council maintains a number of electronic communications systems including a telephone system, email and internet systems in order for its officers and Members to conduct the Council's business. All users of these systems should be aware that the Council's investigators maintain the right to monitor the use of these systems without notice and may periodically conduct checks to ascertain ensure that these systems are not being abused, again without notice.

3.41 Specifically, under RIPA and / or the Telecommunications (Lawful Business Practice) Interception of Communications) Regulations 2000, the Council's investigators and auditors have lawful authority to access the following as part of an authorised investigation:

- Any e-mail communications sent to or from the Council's computers / servers;
- Records of internet use made by any individual using one of the Council's computers / servers; and to
- Intercept telephone communications and examine communication data with regard to the Council's own telephony system (in part or whole).

Access will only be made in order to establish the existence of facts for the purpose of preventing or detecting crime or for the purpose of investigating or detecting the unauthorised use of that or any other telecommunication system.

3.42 All requests for access to this data will be made in writing to the Audit Partnership Manager and will detail:

- What information is sought and from which communication device;
- The name(s) of the individual(s) subject to investigation;
- Why the information is necessary and proportionate.

### **Human Rights**

3.43 The provisions of RIPA came about because of the introduction and adoption of the HRA, which among other things provides for the individual's right to respect for private and family life, home and correspondence. Investigators should note that under s.6 of the HRA it is unlawful for the public body to act in any way incompatible with a convention right.

3.44 Article 8 of the Human Rights Act 1998 states that it is the right of every citizen to have a private life. This right, while being qualified, can only be breached for prescribed reasons, and the only reason investigators can breach Article 8 is where they are acting for the prevention of disorder or crime.

3.45 As established by European Jurisprudence, the right to respect for privacy extends even to the workplace. Suffolk Coastal respects its employee's right to privacy, however, as part of an authorised investigation the Council's investigators and auditors have the right to search all property belonging to, leased or hired by, or otherwise in the lawful possession of the Council. This right does not extend to personal possessions, but employees should be aware that the desk drawers, filing and other storage facilities they use are the property of the Council and may be searched as part of an authorised investigation.

3.46 Article 6 of the Human Rights Act states that every citizen has the right to a fair trial and access to the information which he or she is being accused of being made available in reasonable time before any legal proceedings. Consequently investigators and auditors should ensure that they comply with domestic criminal investigation legislation such as the Police and Criminal Evidence Act 1984 and the Criminal Procedures and Investigation Act 1996.

3.47 Challenges under s.6 and s.8 of the Act are frequently brought to proceedings in court under the provisions of the Human Rights Act and investigators should familiarise themselves with the Act ([http://www.opsi.gov.uk/ACTS/acts1998/ukpga\\_19980042\\_en\\_1](http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_1)) in the event that they find their procedures criticised and, more importantly, called to defend their actions.

#### **Data Protection and Freedom of Information**

3.48 The Data Protection Acts 1998 seeks to protect personal data that is held by organisations. The Data Protection Act 1998 and customer confidentiality apply to the information held by the Council and its investigators.

3.49 Information should not be disclosed to anyone unless supporting documentation is in place for the disclosure and the person requesting information is either included for the purposes of disclosure on the authority's registration, or is registered themselves for the purpose of the detection and prevention of crime or the prosecution of offenders.

3.50 The Information Commissioner is keen to assist policing organisations in having a sensible approach to collecting, keeping and exchanging data. The Act itself does not seek to prevent investigations of crimes and holds several exemptions in order to assist in these areas. The main section is Section 29, which allows the one-off transfer of information between organisations that have not registered each other for sources and disclosures under the Act.

3.51 The Freedom of Information Act 2000 grants the individual access to data held by anyone on the individual. From 1<sup>st</sup> January 2005 any person who makes a request for information to a public authority has two distinct rights (subject to certain exemptions):

- A right to be informed whether the public authority holds that information; and
- where the authority holds that information, a right to be provided with it

- 3.52 Responsibility for enforcement of the Act rests with the Information Commissioner (who also enforces and oversees the Data Protection Act 1998). There is a right of appeal against decisions of the Commissioner to the Information Tribunal. Breaches of decisions of the Commissioner will be treated as if they were contempt of court, which could result in a large fine or imprisonment.
- 3.53 Employees should also be aware that it is an offence to alter, deface, block, erase, destroy or conceal information with the intention of preventing its disclosure if it has been requested.
- 3.54 The Act grants a right of access to a “person” making a request. The term “Person” is widely defined and covers ordinary members of the public and any entity with a legal personality such as companies, incorporated public bodies and members of the media. The motive of the person making the request is irrelevant.
- 3.55 “Information” means information recorded in any form and therefore covers written information (in paper or electronic form, including emails), drawings, photographs, film and sound recordings. Information does not mean the specific document on which the information is recorded and applicants do not therefore have to identify any documents, only the information they are seeking.
- 3.56 The request does not have to state it is a request under the Act. Officers must therefore be alert to the possibility that a request may not be obvious and treat all requests as FOI requests until told otherwise. The Act requires that the request be complied with promptly and in any event not later than 20 working days following the receipt of the request.
- 3.57 The Council can only refuse a request for information if:
- One of the exemptions under the Act applies;
  - The applicant has failed to supply further information reasonably requested;
  - The request is vexatious;

- It is identical or substantial similar to a previous request from the same applicant which has been complied with and a reasonable time has not elapsed since compliance;
- The Council estimates that the cost of compliance will exceed the amount set by the Secretary of State

3.58 Certain types of information are exemption from the duty to confirm or deny and the duty to disclose. Exemptions are either “absolute” or “qualified”. Where an exemption is qualified it only applies if the public interest in maintaining the exemption outweighs the public benefit of disclosing it or confirming or denying its existence as the case may be.

3.59 The Act contains 8 absolute exemptions and 14 qualified exemptions. The following are of relevance to local government fraud investigation:

Absolute Exemptions:

*Information provided in confidence*

Information is exempt where its disclosure would constitute an actionable breach of confidence at the time the request is made by a third party. Disclosure must actually constitute a breach of confidence. The exemption will not apply simply because a document is marked “confidential”. In order to be an actionable breach of confidence the following three elements must be present:

- it must be treated by the provider as confidential and not be in the public domain;
- the circumstances must create an obligation of confidence e.g. an agreement;
- there must be an unauthorised use of that information to the detriment of the person who communicated it.

*Personal Information*

Where the information is “personal data” under the Data Protection Act which relates to the person applying for it, this is exempt and their request should be treated as a subject access request under the Council’s Data Protection Policy. Where the request relates to personal data in relation to a third party disclosure may well breach the DPA and will probably come within one of the other absolute or qualified exemptions.

Qualified Exemptions

*Investigations and proceedings*

This applies to information held at any time for the purposes of criminal investigations and proceedings (including civil proceedings).

*Legal Professional Privilege*

This applies to certain communications between lawyers and their clients.

*Law Enforcement, National Security and Defence.* This applies to a range of information held for these purposes.

- 3.60 The implications for fraud investigation work are that disclosure under FOI for ongoing investigations is likely to be exempt. However, for closed cases, particularly those that have been kept beyond the agreed date of destruction specified in the Corporate Counter Fraud Unit’s Retention/Destruction of Records policy / procedure, the case may be different. It is therefore important to ensure that agreed timescales for destruction of records are maintained.
- 3.61 All requests made / received under FOI should be discussed in the first instance with the Assistant Audit Partnership Manager, who is the Council’s FOI Officer.

**Other legislation**

3.62 Other legislation pertinent to investigators will relate specifically to the commission of offences. Depending on the nature of the offence, consideration should be given to proceedings under:

- *Criminal Attempts Act 1981*  
An act that is more than merely proprietary to commission of an offence.
- *Criminal Justice Act 1987*  
Conspiracy to defraud.
- *Criminal Law Act 1977*  
Conspiracy.
- *Forgery and Counterfeiting Act 1981*  
Making/intending to use false instrument; copying false instrument; use of false instrument; use of copy of false instrument.
- *Housing Act 1996*  
Knowingly or recklessly making false statement or withholding information; Fraudulent homelessness applications.
- *Social Security Administration and Fraud Act(s) (as amended)*  
Making false representation; Failure to notify change of circumstances; Causing or allowing another to fail to notify a change.
- *Theft Act 1968*  
(s)1 A person is guilty of theft if they *dishonestly appropriate property belonging to another with the intent of permanently depriving the other of it.*

**The elements to be proven**

3.63 Criminal offences usually require two main elements to be present:

- a particular set of circumstances and consequences (this will vary from offence to offence and will be detailed in each statute) – this is called the *actus reus* of the offence; and
- that the possible offender did it with a 'guilty mind' (i.e. he/she did it dishonestly, intentionally, etc. or whatever the specific statute states) – this is called the *mens rea* of the offence.

3.64 It is often necessary to prove an element of “dishonesty”, and the offender acts dishonestly if:

- Their conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people; and
- They realise their conduct is so regarded.

It is of no regard if the offender does not think their conduct is dishonest (R v Ghosh 1982).

## 4. Evidence

- 4.1 The gathering of evidence is a continuous process that occurs throughout the life of an investigation. Securing and protecting this evidence is essential. How the evidence is handled and presented will affect the outcome of any potential prosecution case against the individual being investigated.
- 4.2 Information or evidence obtained for the purpose of investigating criminal offences can be used in civil matters of recovery of losses.

### **Evidential requirements**

- 4.3 The standard of evidence required in criminal cases is “beyond all reasonable doubt”. It is for the prosecutor to prove that the accused committed the alleged acts and that there are no defences in law that could be given so as to find the accused not guilty.
- 4.4 The standard of evidence required in civil cases is “on the balance of probabilities”. This means that on balance, the evidence (which can include some forms of hearsay evidence and opinion) leans in favour of the plaintiff (the person or organisation bringing the action) or against the defendant. Civil cases require that the evidence be collected before the hearing with the same *prima facie* (“on the face of it” or “at first sight”) considerations as for a criminal case.
- 4.5 Consequently, this means that even in simple cases a great deal of effort and investigation are required to ensure that only appropriate cases, which stand a likely outcome of being proved, should be taken before the courts.
- 4.6 Investigators should be aware that in most circumstances physical evidence (such as application forms; review forms; copies of proofs for income and capital; copies of bank or building society statements; etc) will be required.
- 4.7 Statements made under section 9 of the Criminal Justice Act 1968 and Statements of Fact signed by the maker can be produced in criminal trials, as can:
- taped or video taped statements made under caution;
  - notes made by investigating officers

- statements and proof of contact (such as counter sheets or telephone contact forms);
- computer records;
- DIP images;
- Audit reports;
- confirmation of facts from employers
- confirmation of facts from other agencies

#### **The use of statements**

- 4.8 It is important to remember that statements for criminal cases can be used in civil cases as well but must conform to the protocols of the of the Civil Procedures Act 1998. Where civil statements are being considered for conversion for criminal cases care must be taken to remove all hearsay and opinion unless it is expert opinion evidence being provided. If officers are unsure they should seek advice from the Legal Section.

#### **Handling evidence**

- 4.9 In fraud cases, evidence will mostly consist of paper documents. It is therefore important that documents are correctly treated from the start of an investigation. Evidence, in any form, will need to be:

- Secured;
- Retained in a suitable receptacle and clearly and appropriately labelled;
- divided into primary and secondary evidence;
- correctly disclosed

#### **Securing evidence**

- 4.10 The security of documents and other evidence is paramount once an investigation case is commenced. The integrity of any documents that are provided to prove key areas of evidence is important. If the defence can show that documents have not been kept secure and could have been altered or tampered with, then the case could collapse.

- 4.11 During an investigation, it is good practice for all original documents to be kept in a secure cupboard or filing cabinet and any documents attached to an investigation that are of a sensitive nature should be locked away when not being worked upon. Documents should not be left unattended on desks.
- 4.12 The security of evidence applies equally to electronic information. Any annotation notes electronically attached to an electronically scanned document are part of the evidence and must be included under disclosure.  
Any comments made in these e-notes should not be edited out or changed. Any logs or audit trails that show access and action on electronic documents must be retained.
- 4.13 ACPO Guidelines on preserving computer evidence are available from <http://www.dataclinic.co.uk/ACPO%20Guide%20v3.0.pdf>.

#### **Searches of the Council's property**

- 4.14 The Council provides a wide range of equipment, from official cars to desks, filing cabinets and other storage / business devices and equipment, for employees to use. The Council provides this equipment solely for the purposes of conducting the Council's official business, and whilst employees may occasionally place or store personal items in equipment provided by the Council:
- The Council accepts no responsibility for any damage to or loss of personal items stored or held within its property; and
  - The Council has the right to search its property and to do so without notice; and
  - Searching includes recording data input into computers and undertaking forensic analysis of networks and individual computers and data storage devices owned by the Council.

As detailed within paragraph 3.45, the Council's investigators may conduct searches of the Council's property as part of an authorised investigation.

Searches will only be conducted once authorisation has been obtained from the Audit Manager or the Chief Executive or a Strategic Director, and a full record will be made of:

- Specifically what was searched;
- When and where;
- Who was present
- By whom;
- Why;
- What was found.

To aid this process, searches will usually be conducted by a 'searching' officer who will physically conduct the search, an 'evidence' officer who will record what was found and when, and a 'supervising' officer who will monitor the search.

- 4.15 Neither individuals nor their personal possessions will be searched by officers from the Council, however, the Council does have the right to contact the police where circumstances require.

#### **Exhibit labels**

- 4.16 A label should be attached to each item of evidence. Every tag should have an identification number that relates to statements about the case. Either of the following numbering procedures may be used:

- the provision of evidence numbering at the stage of preparing a prosecution file; or
- the provision of a numbering sequence at the beginning of the investigation that follows the case through to prosecution.

Both practices are acceptable. The first ensures that evidence is placed in an order useful to the prosecution; the second ensures that evidence is not forgotten or missed out of the collating process.

### **Interviewing Under Caution**

- 4.17 Code C.11.1A of the Police and Criminal Evidence Act 1984 defines an interview as *“the questioning of a person regarding his or her involvement in a criminal offence or offences which, by virtue of code 10.1, is required to be carried out under caution”*.
- 4.18 Usually interviews under caution will be conducted at the Council's Melton Hills offices, however for sensitive cases such as internal fraud or corruption investigations, interviews may be conducted off-site at suitable locations.
- 4.19 Interviews under caution will be conducted by suitably trained and accredited investigators or auditors and will be recorded on PACE appropriate magnetic tape recording equipment.
- 4.20 Where a decision has been made to involve the Police in the investigation and the suspected person has been arrested, the suspect must not be interviewed about the relevant offence except at a police station or other authorised place of detention.
- 4.21 All records of interviews under caution must include the following:
- the place where the interview takes place;
  - the time it begins and ends and the time that the record is made;
  - any breaks in the interview and the names of all those present;

This record should be made on forms provided for the purpose or in the investigators notebook or in accordance with the codes of practice for the tape recording of interviews with suspects.

### **The PACE Caution**

- 4.22 The investigating officers will need to decide when a caution is necessary. The rule for investigators to follow is that a person must be cautioned if there is any suspicion that he/she is involved in a criminal offence. Without a caution any interview may be excluded as evidence.

4.23 If a suspect has previously been cautioned, they must be reminded that they are still under that caution in any subsequent interview.

4.24 The caution shall be given in the following terms;

*“ You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.”*

Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved.

4.25 An accused person must be told that they are not under arrest (Council investigators do not have the power to arrest suspects), that the accused is free to go whenever they want during any interview under caution conducted by a Council investigator (unless an arrest has been made by the police and the interview is being conducted at a police station).

4.26 If there is a break in the questioning under caution then the interviewer must ensure that the person interviewed is aware that he/she remains under caution. If there is any doubt, the caution shall be given again in full when the interview resumes.

4.27 Investigators must make a separate record of an interview under caution. Depending on the procedures in use by the Council this may be on the case file, on the computer system notebook or in the officer's own notebook. The reason for this is that should a trial be held the investigator is personally responsible for making and explaining the reasons for making the records and holding the interview.

4.28 Specific rules apply to vulnerable persons and those whose first language is not English. These can be found in Code C Police and Criminal Evidence Act 1984 on the treatment of individuals who have language difficulties.

- 4.29 Where possible, it is always advisable to invite the individual to the office for the interview. This provides the officers with control over the process, allows taping and formalises the interviewing process.

**The Right to remain silent**

- 4.30 The right to remain silent is an important aspect of the civil liberties of English Law. Under PACE, the accused has the right to remain silent on their own right and that of their spouse. However, if they use something in their defence that they should have revealed at the time of the interview they might find that their argument value is reduced.

- 4.31 It should be remembered that, although the accused has the right to remain silent during a cautioned interview, the court may make an inference from that silence. Investigators should ensure that they provide advance disclosure to the suspect's solicitor before the interview, this will help the solicitor provide legal advice to their client.

- 4.32 Where an interview is conducted by the police, the police can give a warning concerning the inference that can be drawn from remaining silent. Section 34 of the Criminal Justice and Public Order Act 1994 governs the right of inference.

**The PEACE Model**

- 4.33 Interviews should only be conducted by officers trained in investigative interview techniques.
- 4.34 The prescribed format for conducting interviews is know as the PEACE model.

**P** Preparation and planning – prior to interview commencing

**E** Engage and explain – at the commencement of the interview

**A** Account – let the suspect give their version of the facts

**C** Challenge – confront the suspect with the known facts where they differ

**E** Evaluate – the information obtained during the interview afterwards

### **Witness Statements**

- 4.35 The standard document for taking witness statements is known as a Section 9 (Criminal Justice Act) statement and follows a prescribed format. Section 9 statement forms are used for taking statements from victims, witnesses and, in certain circumstances, suspects during an interview.
- 4.36 An alternate form of witness statement is known as a Statement of Fact, which is used to confirm information that has already been provided to the Council.
- 4.37 Where the witness is prepared to provide information, they can either be invited to write their own statement or the officer can write the statement which the witness can then sign. Where the witness does not wish to make a statement, the investigating officer should make his or her own statement recording what was said and the details of the date, time and circumstances for file purposes.
- 4.38 For handwritten statements:
- the witness should sign every page;
  - the witness should sign after the last word written on the statement;
  - the witness should initial any alteration;
  - the witness should complete the statement appendix form, detailing their contact details;
  - their understanding that the statement may be used in court and that they may be called as a witness; their dates of non-availability for court; and their permission to use the statement in civil proceedings for recovery of losses

## **5. Prosecution and Sanctions**

- 5.1 The Council's policy on Benefit Fraud prosecutions and sanctions can be found both within its internet and intranet sites.
- 5.2 The Council prosecutes offences in its own right, but will also use the Department for Work and Pensions Legal Branch and the Crown Prosecution Service as deemed appropriate.

Prior to any case being prosecuted (regardless as to who prosecutes it), all cases must be referred to the Legal Section where the two key tests are applied:

- *The Evidential Test*, which ascertains whether there is sufficient evidence to secure a successful prosecution at Court; and
- *The Public Interest Test*, which ascertains whether it is in the public interest to prosecute in the first instance or whether offering a sanction as an alternative to prosecution would be more appropriate.

In accordance with the Council's prosecutions and sanctions policy, these tests may only be applied by a suitably qualified solicitor.

- 5.3 Where the Council believes that there is sufficient evidence to warrant a prosecution, and on the balance of probabilities the Council is more likely than not to secure a successful prosecution **and** it believes it is in the public interest to do so, the Council will prosecute within the criminal courts. However, where the Council believes that it is not in the public interest to prosecute **as a first option**, it can offer a sanction as an alternative.
- 5.4 Where the individual concerned has admitted the offence at the interview under caution and there is sufficient evidence to prosecute, the Council can offer a formal caution; an official warning and one that is recorded by the Department for Work and Pensions for 5 years and can be disclosed to the Court for sentencing purposes for any further offences committed. If the offer of a formal caution is declined, the Council retains the right to prosecute.
- 5.5 Where the individual has not admitted the offence at interview, or refused to be interviewed, and there is sufficient evidence to prosecute, the Council can offer an Administrative Penalty. The Administrative Penalty is essentially a civil fine, fixed at 30% of the amount of overpaid benefit and cannot be disclosed to the Court for sentencing purposes for any further offences committed. As with the formal caution, if the offer of an Administrative Penalty is declined, the Council retains the right to prosecute.

5.6 For case of internal fraud and corruption, it is standard procedure to refer the matter to the Police or Crown Prosecution Service, prior to doing so it is usual practice for the Audit Partnership Manager to discuss the case with one of the Council's Senior Solicitor and the Chief Executive or Strategic Director.

5.7 In the most serious cases the Audit Partnership Manager may refer the matter directly to the Police / Crown Prosecution Service.

### **Legal Services Section**

5.8 As stated previously, the Legal Services Section act on behalf of the Corporate Counter Fraud Team / Internal Audit Section concerning all benefit fraud matters where the Council is deciding to prosecute or offer a sanction.

5.9 The service provided by Legal Services is as follows:

- to initiate criminal proceedings on behalf of the Council;
- to conduct prosecutions in the Magistrates Court;
- to conduct prosecutions in the Crown Court;
- to obtain summonses of the offences alleged on the accused;
- to ensure that the correct offences for the correct person are placed before the court;
- to ensure that the primary and secondary evidence in criminal proceedings are sent to the accused;
- to appoint Legal Counsel in the Crown Court (if necessary) and Appeal Courts;
- to provide advice on cases being considered for prosecution on the quality of the evidence based on the "public interest" test.

### **In Court**

5.10 If a case goes to trial at either the Magistrates or Crown Court, the involvement of the Council will vary depending on the circumstances of the case. For example, the accused may plead guilty, in which case the Council may only be involved when mitigation is examined. Where the accused pleads not guilty, Council officers are almost certain to be called to give evidence.

- 5.11 The main investigative officer is likely to be called upon to give evidence, particularly if the officer undertook investigation interviews. The likelihood of having to give direct evidence is greater if the Council is prosecuting the case and the police were not involved at the outset of the investigation.
- 5.12 It is important that the investigation officer re-read and be thoroughly familiar with the case notes prior to attending court. There may be a substantial delay between completing an investigation and being called to give evidence in court. In particular, any witnesses (including the investigating officer) should review all documentary evidence and physical evidence to which they will be referring. This includes where records have been retained by the witness and controls must be in place to ensure that they are brought to the trial.
- 5.13 The court procedure in England and Wales is “adversarial” and it is the responsibility of opposing Counsel to discredit the prosecution evidence.
- 5.14 Officers must conduct themselves with the highest integrity and present the facts of the case as they are understood to be. In the event that an officer forgets a fact or does not know the answer to a question the correct thing to do is to admit that.
- 5.15 Evidence should be given clearly and loudly enough for the court to hear. The officer should direct responses to questions from either Counsel to the magistrates, judge or jury, and not to Counsel asking the question.
- 5.16 Investigations officers of the Council must dress smartly for appearances in Court as they are representing the authority.

Where the use of a jury is involved in a trial, the individuals who make up the jury are ordinary people who may not accept testimony from someone who alleges to be but does have the appearance of a professional. In addition, judges and magistrates expect a reasonable standard of attire as a mark of respect to the Court.

### **The trial**

- 5.17 The role of prosecuting Counsel is to prove the case against the accused. The accused does not have to prove his innocence. Prosecuting lawyers need to ensure that the performance of the witnesses is reliable. They will expect witnesses to know their evidence and answer accurately.
- 5.18 The role of defence Counsel is to discredit the prosecution's evidence. A common practice is to attempt to make a witness more nervous so that they do not respond clearly. To achieve this end defence Counsel have been known to use techniques such as yawning through the prosecution examination or by unnecessarily sharp or argumentative questions. They may also try to get a witness to state a contrary opinion or force the witness into giving a "yes" or "no" answer that does not give the whole answer.
- 5.19 The most important rule when being cross-examined is not to take personally the comments of the defence Counsel, remain calm, state what is known to be true and avoid expressing opinions, and to direct answers at the judge or magistrate.
- 5.20 Courts will normally allow officers to refer to their pocketbook while giving evidence. Sometimes opposing Counsel will challenge the witnesses' memory and the magistrate or judge may therefore ask for evidence from memory. If the Council's witness does not want to use their pocketbook then the prosecution Counsel should be notified of their request before the trial. Prior to referring to the notebook, permission should be sought from the judge or magistrate.

### **Witnesses**

- 5.21 At Court, prior to the trial commencing, the investigating officer should not meet with prosecution witnesses unless the Council's solicitor is present. To do so invites challenge by the Court regarding witness interference.
- 5.22 Witnesses should be contacted a week before the trial and reminded to refresh their memories on the evidence that they are to give to the Court. Witnesses will need to be well prepared before going into Court. It is better for the prosecution if witnesses can be persuaded to volunteer to appear, rather than be summoned. If a witness is summoned they are unlikely to co-operate with the prosecution.

- 5.23 Expert witnesses give evidence on either the validity or the scientific nature of the evidence. Normally they will require a fee to attend court. Note that a judge does not have the power to call witnesses – only the prosecution or defence Counsel may do that.
- 5.24 A report from an expert witness can be submitted to the Court and the trial judge can say if the report is admissible as evidence, leaving it to the jury to decide how much they accept as being correct.
- 5.25 Possible expert witness for a fraud case would be:
- a representative from the Government Forensic Science Service;
  - a forensic accountant or auditor;
  - an academic;
  - a psychologist;
  - a sociologist;
  - a qualified medical practitioner

Local police and the CPS will have a list of local expert witnesses and their field of expertise.

### **The verdict**

- 7.26 Once prosecution and the defence Counsel have put their arguments, a decision on the case will be reached. The magistrates or jury will make a decision based on the case put before them in the Court. If the accused is found guilty, defence Counsel will make a case for mitigation (a plea to reduce the seriousness of the offence) and the prosecution will inform the Court of any previous offences.
- 7.27 The magistrates or judge will then sentence the accused. If the accused has pleaded guilty and shown some remorse, the judge or magistrates will take this into account.
- 7.28 If the accused either pleads guilty or is found guilty, the judge or the magistrate will consider an appropriate sentence. The sentence will depend on the type and number of charges or summonses.

If the person is acquitted (found not guilty), then the results should be recorded on the investigation file and any other records connected to the investigation

- 7.29 Judges and magistrates are unlikely to sentence a person convicted of fraud to a custodial sentence. In many cases a probation or community service order will be given. It should be remembered that whatever sentence is passed the guilty person will have a criminal conviction and a criminal record.

### **Redress**

- 7.29 In addition to the sentence, the prosecution will ask the Court to consider other action that may be appropriate, such as a forfeiture order, compensation orders, confiscation, payment of costs of the trial and recovery of monies lost.

- 7.30 A forfeiture order is an order that transfers title from the defendant to the crown. The Criminal Court Act 1973 (s)43 states that if it can be demonstrated that either:

- property (in the widest sense of the word – see 8.42) which has been seized or was in the possession of the accused at the time of arrest was used in perpetrating the crime; or
- if unlawful possession of the property at the time of arrest can be proved then the Court can make an order to deprive the offender of the property. The Court takes into consideration the financial effect on the offender prior to ordering forfeiture.

- 7.31 If the Council seeks to recover sums from the offender then a compensation order should be sought if the offender has other means of paying the sum specified, rather than an order for forfeiture of property.

- 7.32 A confiscation order is an order to pay a sum of money to the Crown. Unlike a forfeiture order it does not have to specify how the offender has to raise the money in order to comply with the order. As with a forfeiture order only the prosecuting body can request a confiscation order.

- 7.33 The request for a confiscation order is made in a Prosecutor's Statement at the start of the trial. The Prosecutor cannot request a confiscation order after the trial has begun unless new relevant evidence becomes known during the trial.
- 7.34 The Prosecutors Statement has to specify details of the way the offender benefited from their criminal activity (including any gifts). The benefit to the offender has to be proven. The proof required is that of civil proof (i.e. on the balance of probabilities).
- 7.35 The definition of property is given in section 4 of The Theft Act 1968 as: "*money and all other property, real or personal, including all things in action and other intangible property*"
- 7.36 In order to work out the value of property, the court will hold a hearing. This hearing is held after conviction.
- 7.37 The Court can order, by means of a compensation order, that compensation be paid for the full or partial amount (at the courts discretion). This is enforced by the court if the fine is unpaid.

#### **After The Trial**

- 7.38 The Council may request at Court that anyone found guilty (or who pleads guilty) should attend a police station to be photographed, fingerprinted and have a DNA sample taken.
- 7.39 All original documents should be returned to where the records were originally obtained. Copies should be placed on the prosecution file and the file held by the respective Anti Fraud Unit for later inspection by internal or external auditors. Files must be held for a minimum of six years or until after completion of the sentence by the accused, whichever is later, to comply with any potential appeal requests that might be made by the defendant.
- 7.40 Publicity regarding successful prosecution is nearly always useful to the Council. It communicates to the public that the Council takes fraud seriously.

Following a successful prosecution that the Council wishes to publicise, it should issue a press release that includes a statement that the Council will not tolerate fraud (but will do all it can to ensure that to those who are entitled assistance will be provided). It should be noted that there are rules governing what can be said in the press regarding a trial and the Communications Section of the Council is responsible for all press releases.

## **8. Fraud Liaison, Joint Working and External Resources**

### **Working with other agencies and jurisdictional considerations**

- 8.1 Some evidence is likely to be obtained from organisations outside the local authority. If evidence has been supplied from an external source, then a statement will be required confirming that the evidence has come from that organisation and it is accurate.
- 8.2 Building working relationships with appropriate outside agencies allows for the transfer of skills and good practice, joint partnerships in the form of joint working, and joint investigations. Liaison also provides a forum for information exchange. It must be noted that arrangements for data exchange under the Data Protection Act 1998 must be in place first before any joint projects are undertaken.

### **External resources**

- 8.3 Where necessary investigators will use data from Companies House Direct, Land Registry Direct and credit checking / reference agencies.
- 8.4 Access to these services may be sought via the Counter Fraud Unit, there is a nominal charge for these services (by the organisations providing them). Given the nature of their work and that such searches leave identifiable footprints, the Counter Fraud Unit will not undertake credit checks on behalf of any other non-investigations based Sections within the Council.

### **Open research on the internet**

- 8.5 Investigators should be mindful that much information and intelligence (and to a degree, evidence) can be obtained by conducting open research on the internet. Much of this information is in the public domain, but care should be exercised and the admissibility of any evidence obtained should be given consideration to.

- 8.6 Access to the internet is granted by the Council and is subject to policy and procedure governing its use.

**Proactive counter-fraud initiatives**

- 8.7 The Council is legally required under s.6 of the Audit Commission Act 1998 to provide relevant data and to participate in NFI .
- 8.8 The Council provides information obtained from its databases (such as Payroll, Pensioners, Housing Benefit, etc.) which is matched with that of other authorities and agencies, to identify possible fraud.
- 8.9 Details of matches are returned to the Internal Audit Section where further internal investigations and audits will be undertaken by auditors and investigators.
- 8.10 In addition to NFI the Council's Corporate Counter-Fraud Unit seeks to identify and target fraud by undertaking proactive drives and data-matching exercises. These exercises are similar in methodology to that used by the NFI, but are run more frequently (NFI is a bi-annual exercise) in order to deter fraud and identify offenders and control weaknesses more effectively than relying on NFI by itself.