

DEVON COUNTY COUNCIL AUDIT COMMITTEE

Anti-Fraud, Bribery and Corruption Policy and detailed Strategy & Response Plan

Report of the County Treasurer

Please note that the following recommendations are subject to confirmation by the Committee before taking effect.

Recommendation: that the Committee **approves** the updated Anti-Fraud, Bribery and Corruption Policy (Appendix 1) and detailed Strategy and Response Plan attached (See Appendix 2).

1 Introduction

- 1.1 Senior Management of the Council recognises the benefit from, and need for, improved accountability and resilience in the face of the increasing risk of fraud. The update of the Anti-Fraud, Bribery and Corruption Policy (Appendix 1) and detailed Strategy and Response Plan attached (See Appendix 2) will assist the Council in preventing, detecting and investigating fraud and corruption.
- 1.2 Assessing the risk of fraud happening is an important step in 'Acknowledging' that fraud is a threat, this aligns with the CIPFA Fighting Fraud and Corruption Locally strategy for the 2020's, leading on to the prevention and detection of fraud.
- 1.3 Strong Governance is a cornerstone of managing fraud; having robust arrangements and executive support to ensure anti-fraud, bribery and corruption measures are embedded throughout the organisation is vital. Further, a holistic approach to tackling fraud is part of good governance.

2 Other Updates

- 2.1 Council officers from Counter Fraud, Risk Management, Internal Audit and service areas are working to further develop a robust fraud risk analysis and response for DCC taking into account the following areas of risk intrinsic to fraudulent activity.
 - Financial risk – What is the amount in £'s that could be being lost through Fraud. DCC will have to determine what is an acceptable risk for them? A 'zero tolerance' approach is adopted as fraudulent activity is constantly changing and low value frauds tend to have a high frequency, whereas high value frauds tend to have a lower frequency of occurrence, both types of frauds will however effectively prove have a high financial cost to the Council.
 - Reputational risk – What is the potential for damage to the organisation and its officers? Media coverage on any high profile fraud or lack of perceived control on low level fraud can be damaging leading to low staff morale, a lack of public trust in the organisation and further scrutiny by the public and or Governmental or Regulatory bodies. This in turn can lead to further reputational damage.

- The risk / threat to life of serious injury – Some types of fraud can ultimately lead to the loss of life and or serious injury. The use of substandard products or labour, the lack of the correct certification and or documentation may lead to an organisation being held at least partly responsible if they cannot show that the correct checks and balances are in place. Availability of suitably trained staff may result in catastrophic failure of safety mechanisms in place to protect the public.
- Criminal and or civil liability – Where a loss is incurred due to fraudulent activity it may affect those we serve as an organisation, it may affect our partners and those further down the chain. It is important to be able to defend the organisation and its stance in respect of fraud in order to show that where possible the risk has been minimised. As in 3.6 the organisation could fail to ensure there are adequate staff or resources (due to available finances) to make sure that all relevant checks are and have been undertaken in line with our organisational responsibilities.
- Ongoing service availability - Where funding and reputational risks occur, then future funding and service availability can also be affected. If a scheme is seen to be 'not working' or not cost effective then resources may be diverted elsewhere. Where funding is lost through fraudulent activity this of course has a direct effect on the availability of funding and resources to provide an effective ongoing service anyway.
- Impact on victims – It is important to understand what the 'risk' is to the victims of fraud. Whilst the Local Authority may consider itself the victim of any fraud we must remember that we only act as service providers and procurers for local people and have a 'fiduciary responsibility' to adequately protect the public purse. Any loss through fraud can have multiple victims, especially at a time when public finances are so tight. A loss of revenue or other essential funding effects all of the above scenarios and can ultimately lead to services being withdrawn and staffing reductions. Therefore it is clear that fraud losses affect us all and must be minimised.

3 Focused reviews and ongoing work

- 3.1 **Procurement.** Officers are developing a proactive data analysis approach to counter fraud using PowerBI, officers are coding software which allows for a higher detailed analysis than would normally be available. Access to direct and real time data can mean that concerns raised in partner organisations can be reviewed and prevent risks from occurring.
- 3.2 **Pensions.** as above, a data analysis approach is being considered to protect and guard against similar offences and offending patterns.
- 3.3 **Integration with Audit Plan Work** - Reducing fraud risk in systems is a key preventative measure. Sharing known previous examples of fraud in the respective areas of business, as well as 'red flag' issues, can assist in improving controls and may point towards potential fraudulent activity.
- 3.4 **National Fraud Initiative** – The bi-annual NFI data has been successfully supplied to Cabinet Office, and 'matched' results are available. Work has started on investigating these matches.
- 3.5 **Investigation of potentially fraudulent activity** – investigation of 'live' cases continues.

3.6 **Training and awareness** – The Counter Fraud Manager and team facilitate general fraud awareness training, and are also aiming to provide more detailed training, awareness, advice and support on several specific areas of LA business. The new Anti-Fraud, Bribery and Corruption eLearning course is available to all staff and will be a useful tool in raising awareness and protection from fraud.

Mary Davis

Electoral Divisions: All
Local Government Act 1972

List of Background Papers

Contact for Enquiries: Robert Hutchins
Tel No: (01392) 382437 Larkbeare House

<u>Background Paper</u>	<u>Date</u>	<u>File Ref</u>
-------------------------	-------------	-----------------

Nil

There are no equality issues associated with this report

Devon County Council

Anti-Fraud, Bribery and Corruption Policy

Date – June 2021

CONTENTS

1.	Anti – Fraud, Bribery and Corruption statement	3
2.	Introduction	3
3.	What is Fraud?	4
4.	What is Bribery?	4
5.	What is Corruption?	4
6.	Avenues for reporting fraud, bribery and corruption	5
7.	Responsibilities	5

Devon County Council

Anti-Fraud, Bribery and Corruption Policy

1. Anti-fraud, bribery and corruption statement.

- 1.1. Fraud in all its forms is now the most common criminal offence in the UK costing the economy £193 Billion a year. This equates to £3,000 per head of population in the UK (or £7,000 per household). It is estimated to cost Local Authorities anywhere between £2.2 and £7.4 Billion annually, losses that council front line services can ill afford and which can contribute to council tax increases year on year. The cost of fraudulent activity impacts most markedly on those requiring the most help in our society, it is therefore imperative that we combat this criminal activity appropriately and effectively.
- 1.2. Fraud, bribery and corruption are by definition crimes and should not be tolerated. Any fraud against Devon County Council is a fraud against the public purse and therefore we will build processes and policies that will prevent and detect fraud and pursue those who would commit fraud; maximising our resources and ensuring that the public retain confidence in Devon County Council.
- 1.3. The public are entitled to expect the local authority to conduct its affairs with honesty and openness and to demand the highest levels of integrity and conduct from its staff, Members and partners. The policy is part of an interconnected approach by Devon County Council, which is committed to making sure that the opportunity for fraud, bribery and corruption is reduced to the lowest possible level. The Council will pursue and endeavour to bring to justice those who commit fraud, and its related offences.

2. Introduction

- 2.1. The Council's elected members and employees play an important role in creating and maintaining a culture which requires everyone to act honestly and with integrity at all times and to safeguard the resources for which they are responsible. Devon County Council's policy is that:
 - any level of fraud, corruption or bribery in or against the Council will not be tolerated.
 - every attempt will be made to deter and prevent fraud.
 - opportunities for fraud and corruption will be reduced to the lowest possible level.
 - elected members and employees will be made aware of their obligation to report suspicions of fraud.
 - mechanisms will be in place for elected members and employees to report fraud.
 - any suspicion of fraud will be thoroughly investigated and dealt with appropriately.

- any evidence of criminal activity will be reported to the Devon Audit Partnership Counter Fraud Team; and
- mechanisms will be in place for seeking redress in respect of money defrauded.

2.2. Devon County Council also expects that individuals and organisations (e.g. suppliers, contractors and service providers) that it interacts with will act towards Devon County Council with integrity and without thought or actions involving fraud. Where relevant, Devon County Council will include appropriate clauses in its contracts about the consequences of fraud, bribery and corruption; evidence of such acts is likely to lead to a termination of the particular contract and may lead to prosecution or other sanction.

3. What is Fraud?

3.1. There are a number of criminal offences that relate to what might commonly be termed as 'fraud' that are covered by the [Theft Act 1968](#) and the [Theft Act 1978](#). However the [Fraud Act 2006](#) created a new general offence of fraud with three definitions:-

- Fraud by false representation, i.e. if an individual dishonestly makes a false representation and intends by making the representation to make gain for himself or another, or to cause loss to another or expose another to risk of loss.
- Fraud by failing to disclose information, i.e. if an individual dishonestly fails to disclose to another person information which he is under a legal duty to disclose and intends, by means of abuse of that position, to make a gain for himself or another, or to cause loss to another or expose another to risk of loss; and
- Fraud by abuse of position, i.e. if an individual occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, and he dishonestly abuses that position, and intends, by means of the abuse of that position, to make a gain for himself or another, or to cause loss to another or expose another to a risk of loss.

4. What is Bribery?

4.1. Broadly, the [Bribery Act 2010](#) defines bribery as giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith.

4.2. Bribery does not have to involve cash or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event.

4.3. Some simple examples are:

- Bribery in order to secure or keep a contract.
- Bribery to secure an order.
- Bribery to gain any advantage over a competitor.
- Bribery of a local, national, or foreign official to secure a contract.

- Bribery to turn a blind eye to a health safety issue or poor performance or substitution of materials or false labour charges.
- Bribery to falsify an inspection report or obtain a certificate.

4.4. Section 2 of the Bribery Act 2010 makes it an offence to accept a bribe.

5. What is Corruption?

- 5.1. Corruption is the abuse of entrusted power for private gain. It can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.
- 5.2. 'Misconduct in a public office' is a common law offence and is committed when the holder of a public office acts, or omits to act, in a way contrary to his duty.

6. Avenues for Reporting Fraud, Bribery and Corruption

- 6.1. Devon County Council has in place avenues for reporting suspicions of fraud, bribery and corruption. Employees, elected members, members of the public, contractors and partners should report any concerns or suspicions to:

Counter Fraud Team Manager at Devon Audit Partnership

By telephone – 01752 304450 or 01752 306710

By email counter.fraud@devon.gov.uk

In writing – Counter Fraud Services Manager, Devon Audit Partnership, Floor 4 Midland House, Nottle Street, Plymouth PL1 2EJ

- 6.2. Employees can also report their concerns to their line manager (for school employee's head teacher, Chair of Governors), trade union representative or the Head of Legal Services. '[Protect](#)', an independent charity provides free, confidential and practical advice if someone is unsure of how to raise a concern. They operate a Whistleblowing Advice Line - Tel: 020 3117 2520
- 6.3. All matters will be treated seriously and dealt with in a professional manner. If you ask us to treat the matter in confidence, we will do our utmost to respect your request but it is not possible to guarantee confidentiality. Vigorous and prompt investigations will be carried out into all cases of actual or suspected fraud discovered or reported.

7. Responsibilities

- 7.1. The Chief Finance Officer as "Section 151 Officer" has a statutory responsibility under Section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Council's financial affairs and, together with the Chief Executive and members of the Corporate Management Team, has overall responsibility for Devon County Councils counter-fraud policy and procedures, and for establishing and maintaining a sound system of internal control that supports the achievement of the Councils policies, aims and objectives.
- 7.2. The system of internal control is based on an ongoing process designed to identify the principal risks, to evaluate the nature and extent of those risks and to manage them effectively. Managing fraud risk will be seen in the context of the management of this wider range of risks.
- 7.3. Responsibilities include:

- Developing a fraud risk profile and undertaking a regular review of the fraud risks associated with each of the key organisational objectives in order to keep the profile current.
- Establishing an effective anti-fraud policy and fraud response plan, commensurate to the level of fraud risk identified in the fraud risk profile.
- Designing an effective control environment to prevent fraud commensurate with the fraud risk profile;
 - Establishing appropriate mechanisms for:
 - reporting fraud risk issues.
 - reporting to the Audit and Governance Committee
- Liaising with Risk Management and the Audit and Governance Committee.
- Ensuring that Devon County Councils recruitment policy is adhered to and that effective steps are taken at recruitment to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts.
- Making sure that all staff are aware of the Organisation's anti-fraud policy and know what their responsibilities are in relation to combating fraud.
- Ensuring that appropriate counter-fraud training is available and provided to staff.
- Ensuring that vigorous and prompt investigations are carried out if fraud occurs or is suspected.
- Ensuring that appropriate legal and / or disciplinary action is taken against perpetrators of fraud.
- Taking appropriate disciplinary action against supervisors/managers where supervisory/managerial failures have contributed to the commission of fraud.
- Taking appropriate disciplinary action against staff who intentionally fail to report fraud.
- Taking appropriate action to recover assets.
- Ensuring that appropriate action is taken to minimise the risk of similar frauds occurring in future.

7.4. Operational managers / supervisors are responsible for:

- Ensuring that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively.
- Preventing and detecting fraud.
- Assessing the types of risk involved in the operations for which they are responsible.
- Reviewing and testing the control systems for which they are responsible regularly.

- Ensuring that controls are being complied with and their systems continue to operate effectively.
- Implementing new controls to reduce the risk of similar fraud occurring where frauds have taken place.

7.5. Every member of staff and elected member of the council is responsible for:

- Acting with propriety in the use of Devon County Councils resources and the handling and use of funds whether they are involved with cash or payments systems, receipts or dealing with suppliers and or customers.
- Being alert to the possibility that unusual events or transactions could be indicators of fraud.
- Reporting details immediately through the appropriate channel if they suspect that a fraud has been committed or see any suspicious acts or events.
- Complying with the Devon County Council Employee Handbook and the Devon County Council's Code of Conduct specifically in respect of the declaration of 'Gifts and Hospitality' and potential conflicts of interest.
- Cooperating fully with those conducting internal checks, reviews, or fraud investigations.

Devon County Council

Anti-Fraud, Bribery and Corruption Strategy / Response Plan

Date – June 2021

CONTENTS

1. Strategy / Response Plan	3
2. Govern	4
3. Acknowledge	4
4. Prevent	5
5. Pursue	6
6. Protect	6
7. Information Technology and Data Matching	6
8. Sanctions Guidelines	7
9. Legislative Framework	7
10. Sanctions Available to the Local Authority	8
11. Standards of Evidence	8
12. Formal Cautions	8
13. Administering a Fixed or Civil Penalty	9
14. Prosecutions	9
15. Factors for Consideration	9
16. Public Interest	10
17. Summary	10

1. Strategy/Response Plan

- 1.1 Fraud is a major drain on the Public Purse it is therefore imperative that all Public Sector Staff prevent fraudulent activity and understand the threats and risks involved to the country's economy and specifically the local economy. This Strategy will assist Devon County Council in becoming more resilient to current threats and those identified in the future. The aim is to minimise fraudulent activity with a zero tolerance approach to those who commit criminal acts of fraud against Devon County Council whether the threat is from outside or internally within the Council.
- 1.2 Tackling fraud is an integral part of putting finances on a stable footing and ensuring that taxpayers' hard-earned money is used to protect resources for frontline services. Fraud has a serious effect on all parts of the economy and costs the UK in the region of £193 billion per year. The cost of fraud to local government is estimated at £2.2 - £7.4 billion a year. (The Annual Fraud Indicator 2017)
- 1.3 This Strategy aligns with the Core Values of Equality, Trust, retaining the confidence of the people of Devon and should be read in conjunction with the Anti-Fraud, Bribery and Corruption Policy 2021. (To be linked when authorised)
- 1.4 Through its arrangements with Devon Audit Partnership, the Council has a dedicated Counter Fraud Team which delivers professional counter fraud advice, guidance and investigatory work. The team will endeavour to exceed the expectations of the local population in combating fraud; this in turn will allow the Council to use its resources on frontline services for those who legitimately need them as well as promoting re-investment in Devon, to make it a place where people want to live, learn, work and visit.
- 1.5 Devon County Council will Govern, Acknowledge, Prevent, Pursue and Protect in respect of any threats posed by fraudulent activity whether by individuals or organisations with a view to making the most of its finances and promoting fairness and opportunity within the County.
- 1.6 The Strategy's key objectives are to:
- Assess and understand the fraud risks faced by Devon County Council.
 - Commit the correct support and resource to tackle fraud risk areas identified.
 - Maintain a consistent and robust anti-fraud response.
 - Make better use of information and technology to counter threats of fraud.
 - Ensure all fraud controls and processes are effective and continue to enhance these.
 - Further develop an effective anti-fraud culture.
 - Pursue fraud debt recovery and the use of Civil Sanctions when appropriate.
 - Further develop capability and capacity to address and deter fraudsters.
 - Embrace/encourage collaboration across all Local Authorities and Law Enforcement Agencies in the fight against fraudulent activity.
 - Promote a zero-tolerance approach to fraud.

2. Govern

2.1 Devon County Council will ensure that it has robust arrangements and executive support to ensure anti-fraud, bribery and corruption measures are embedded throughout the organisation. Having an overall holistic approach to tackling fraud is part of good governance.

2.2 It understands that the tone is set from the top of any organisation and should be included in local counter fraud strategies and response plans.

2.3 Local authorities can ensure that their counter fraud response is comprehensive and effective by considering their performance against each of the six themes – **the six Cs** – that emerged from 2016 research:

- Culture – The tone is set from the top.
- Capability – Increase fraud awareness across the organisation by giving individuals the ability to recognise and know where to report fraud when they suspect it.
- Competence – Access to Accredited Counter Fraud Specialists.
- Capacity – Ensuring sufficient resource is available to counter fraud.
- Communication – Ensure that all Members, staff and contractors are aware of their obligations.
- Collaboration – Utilise and assist other counter fraud agencies to ensure maximum effectiveness.

3. Acknowledge

3.1 Devon County Council acknowledges that it is not immune to fraud and that it has a duty to implement measures to protect the public purse in all areas of its business. Fraud is a hidden crime and the Council should not enable fraudulent or corrupt activity to remain hidden.

3.2 The Council commits to:

- Involving the Chief Executive in championing the fight against fraud and corruption;
- Engaging with the Audit Committee, seeking their endorsement for counter fraud and corruption work in the Council;
- Committing appropriate resources to identify, assess, detect and prevent fraud and corruption throughout all areas of business within the Council;
- Assessing and trying to understand the fraud, bribery and corruption risks facing the Council now and in the future;
- Maintaining a robust counter fraud and corruption response;
- Keeping records of all suspected and confirmed cases of fraud and corruption;
- Working with all available internal and external partners and law enforcement agencies with a view to reducing the risk of fraud across all areas of the Council's business;

- Using appropriate data matching tools available to deter and detect fraudulent/corrupt activity;
- Supporting and passing on best practice to other Authorities in respect of counter fraud and corruption work;
- Adopting best practice and learning from other Authorities in respect of counter fraud and corruption work;
- Ensuring that all staff understand how, where and when to report suspicions of fraudulent activity.

3.3 Only through its acknowledgment that it faces the continuing threat of fraud and corruption can the Council effectively counter the threat. The Council has, through its arrangements with Devon Audit Partnership, committed to retaining the expertise of a qualified counter fraud investigative capability; acknowledging the potentially wider risks from corporate fraud and corruption and its obligation to investigate all types of fraud.

4. Prevent

4.1 The best way to fight fraud is to prevent it from happening in the first place. Prevention extends beyond making sure that there are appropriate systems and process controls in place. It also depends upon the development of an effective anti-fraud and corruption culture that reinforces a zero tolerance and deters criminals from committing fraud in the first place.

4.2 The Council commits to:

- Make better use of information and technology in the analysis and prediction of fraudulent or corrupt activity in all areas of the Council's business;
- Use all internally available data to maximise detection of fraud and corruption;
- Encourage other Local Authorities and stakeholders to share their data in order to maximise the detection of fraud and corruption;
- Share intelligence with other Authorities and relevant Law Enforcement Agencies in order to combat fraud and corruption;
- Use all areas of the [National Fraud data matching Initiative](#) to best effect;
- Support local and national initiatives to support the fight against fraud and corruption;
- Use the [National Anti-Fraud Network \(NAFN\)](#) to maximise information gathering in order to combat fraud and corruption;
- Implement the local government counter fraud and corruption strategy '[Fighting Fraud and Corruption Locally](#)', to improve the Council's resilience to fraud and corruption;
- Arrange Fraud Awareness training to be offered out to all internal staff and Members as well as, where appropriate, 3rd parties linked to the Council's business;
- Maximise publicity through advertising campaigns in diverse media areas to discourage those who would potentially commit fraud;
- Encourage publication of court convictions in order to dissuade potential future offenders;
- Ensure that there is a clear reporting route available for staff and the public to report suspicions of fraudulent and corrupt activity;

- Ensure that where a criminal offence is suspected that it is referred to the DAP Counter Fraud Team;
 - Ensure that the DAP Counter Fraud Team are identified as a reporting line within the Whistleblowing Policy if the whistle-blower feels that this would be the most effective route.
- 4.3 A strong anti-fraud culture that is driven from the top down must underpin any preventative approach. This requires continuous active promotion and needs to include staff, members of the public and 3rd parties involved in the provision and procurement of the Council's services. An anti-fraud culture will seek to motivate staff and ensure that they understand the importance of tackling fraud and corruption, recognise fraud and corruption and know how and where to report it.
- 4.4 The Council will seek to change attitudes and behaviours towards fraud and corruption, positively re-enforcing individuals' responsibility for preventing, detecting and reporting fraud, and deterring future criminal activity against the Council.

5. Pursue

- 5.1 Prevention is always preferable. However, determined fraudsters will evade even the best controls, and where fraud and corruption does occur enforcement must be comprehensive. The Counter Fraud Team will appropriately investigate all allegations to a conclusion, ensuring that where relevant the offender is prosecuted or other appropriate sanction is applied.
- 5.2 The Council will ensure that the public, and potential fraudsters, are made aware that when public funds are stolen, every effort will be made to recover losses and confiscate assets gained as a result of criminal activity.
- 5.3 The Council commits to:
- Using the services of a dedicated Counter Fraud Team to investigate all allegations of fraud and corruption concerning Devon County Council;
 - Ensuring that the Counter Fraud investigators (either employed or contracted) are trained to the appropriate standard, with investigations carried out in a professional manner and evidence collected and retained in accordance with the law;
 - Encouraging a higher priority for the recovery of fraudulent losses, to include the use of civil sanctions;
 - Ensuring legal capability and capacity is sufficient to pursue fraudsters;
 - Aid in the creation a more collaborative and supportive law enforcement response across Devon to encourage co-operation and joint working (e.g. across all 10 Devon Local Authorities, Trading Standards, the DWP, HMRC, UK Border Agency and the NHS etc);
 - Consider the use of Compensation Orders or the Proceeds of Crime Act to recover profits made by fraudulent means;
 - Use publicity from successful Prosecutions to deter others who could potentially commit similar offences in the future.

6. Protect

6.1 The Council commits to protecting against serious and organised crime, protecting individuals from becoming victims of crime and protecting against the harm that fraud can do to the community.

6.2 This will also cover protecting public funds, protecting its organisational integrity and reputation from fraud and cybercrime, and also protecting itself from future frauds as far as can be reasonably expected.

7. Information Technology and Data Matching

7.1 The Council undertakes to make better use of the information that it already holds for various Council activities in order to drive out fraud from its systems. It will look to continuously improve and expand its ability to acknowledge, prevent and detect fraud in all areas of its business through:

- The use of internal Data Matching checks to proactively Prevent/Detect fraudulent activity.
- Information Sharing: Intelligence is key in the modern fight against fraud. All appropriate Internal /External Data warehousing / matching opportunities will be explored and maximised
- Using a proactive/joined up approach to investigations across the Council and Cross boundary (if appropriate) that will generate income and savings;

8. Sanctions Guidelines

8.1 The Council seeks to provide value for money services to the public and has a statutory duty to protect the Public Purse.

8.2 In the interest of making fair and balanced decisions, the Council will refer to sanction guidelines, taking into account various factors, not only the monetary value of the offence. All cases will be evaluated on their own merit and any mitigating circumstances will be taken into account.

8.3 The Council will co-operate with other agencies such as the Department for Work and Pensions, the Police and the Crown Prosecution Service to secure the conviction of offenders. Devon County Council will also instigate criminal proceedings independently of these organisations where appropriate.

8.4 These guidelines will assist in determining the appropriate action to be taken in relation to each case. The initial recommendation on what action is most appropriate to take lies with the Investigator. The Counter Fraud Team Manager will then make a recommendation based on the evidence for consideration by the Head of Devon Audit Partnership in accordance with the Public Interest test. Ultimate decision making lies with Devon County Councils Head of Legal.

9. Legislative Framework

9.1 These guidelines take into account the requirements of the following legislation:-

- [The Social Security Administration Act 1992](#)
- [The Social Security Administration \(Fraud\) Act 1997](#)

- [Regulation of Investigatory Powers Act 2000](#)
- [Police and Criminal Evidence Act 1984](#)
- [Data Protection Act 2018](#)
- [Local Government Act 2000](#)
- [Criminal Procedures Investigation Act 1996](#)
- [Criminal Justice and Public Order Act 1994](#)
- [Human Rights Act 1998](#)
- [Fraud Act 2006](#)
- [Theft Act 1968 & 1978](#)
- [Prevention of Social Housing Fraud Act 2013](#)
- [Proceeds of Crime Act 2002](#) (POCA)
- [Equality Act 2010](#)

10. Sanctions available to the Local Authority

10.1 When the Local Authority is able to prove an offence beyond reasonable doubt, or the offender makes a full confession that they have committed a criminal offence against the authority, the Council has the following sanctions available to it:

- Administer a Local Authority Formal Caution
- Administer a fixed penalty
- Prosecution through the Magistrates Court
- Seizure and liquidation of assets via POCA

11. Standards of Evidence

11.1 The Council will use the most appropriate deterrent against future fraudulent activity. This requires each referred case to be looked at on its individual merits; making reference to any previous sanction or conviction if applicable, before deciding on any further action.

11.2 Prosecution and the alternatives to prosecution have to follow the rules of law. Criminal offences have to be proved “beyond reasonable doubt” and not on the “balance of probability” rules applied to civil matters.

11.3 Substantive evidence is essential before the Council can determine if a sanction is justified. Evidence must be legally admissible and put forward in a legally acceptable form. The Council must therefore be satisfied that evidence is of a quality which would withstand scrutiny in a court of law. In the first instance the Counter Fraud Team Manager will assess the quality of evidence gained in the course of an investigation, ensuring that the evidence is:

- Clear
- Admissible

- Substantial
- Reliable

11.4 The Counter Fraud Team Manager will also check the case in the first instance to ensure:

- That there is sufficient evidence to show action, knowledge and, where appropriate, intent, by the individual concerned;
- That all the evidence has been obtained in accordance with the relevant legislation.

12. Formal Cautions

12.1 Formal cautioning is based on the principle that no prosecuting authority is under an obligation to prosecute. The use of formal cautions is purely administrative and there is no legislation covering their use. A Formal Caution may only be offered if an admission of guilt has been made and cannot be offered if the claimant refutes or denies the allegation. It is given as an official warning to a person who has committed a fraud related offence against the Council.

12.2 A Formal Caution will only be considered and administered when:-

- There is sufficient evidence to justify instigating criminal proceedings;
- The offence has been admitted during an interview under caution (A caution should never be considered purely on the basis that the claimant “will accept a caution”);
- The offender has no unspent relevant previous convictions, cautions etc;
- The person agrees to sign documentation in which they admit the offence;
- The person agrees to be cautioned and acknowledges the caution;
- Cautions will not be administered to a person under the age of 18.

12.3 For a case where the Investigating Officer has recommended a caution, the recommendation will be reviewed and sanctioned by the Counter Fraud Team Manager. The caution may be administered by the Counter Fraud Team Manager (an appropriate Accredited Counter Fraud Specialist may administer a caution in the absence of the aforementioned).

12.4 If the person is subsequently prosecuted for another offence, the caution may be cited in court. If the person refuses to accept a caution, the alternative course of action should be criminal proceedings. Therefore, the quality of evidence for a caution must be of the same standard as that required for a prosecution.

13. Administering a fixed or civil penalty

13.1 Currently the DAP Counter Fraud Team has not been authorised to administer fixed or civil penalties for offences. However, this may change in the future depending on changes in overarching policies.

Prosecutions

13.2 The Council recognises that it is likely to be appropriate to prosecute where there is clear evidence that an offence has been committed. In taking such action, the Council will make fair and consistent decisions, and will ensure that there is sufficient evidence to make conviction more likely than acquittal.

13.3 If one or more of the following factors are apparent within a case, that case may be considered for prosecution as the first option:

- The defendant is alleged to have committed the offence while under an order of the Court;
- The gross adjudicated cost to Devon County Council or its partners is £5000 or over. (In line with the minimum sentencing guidelines for fraud offences);
- False identities or other personal details have been used;
- False or forged documentation has been used;
- Official documents have been altered or falsified;
- The person concerned occupied a position of trust;
- The person concerned assisted or encouraged others to commit offences;
- There is evidence of premeditated or organised fraud;
- The person concerned has relevant previous convictions;
- The person has previously been convicted of fraud;
- The offer of a formal caution or other sanction or solution has been refused;
- There is evidence of collusion.

14. Factors for consideration by the officer responsible for the final case review and decision on whether to prosecute

14.1 In all cases where the Investigating Officer and the Counter Fraud Team Manager have, based on evidence, concluded that an individual should be prosecuted, a number of factors need to be taken into consideration when deciding whether to instigate the prosecution action.

14.2 The presence within a case of any of the Public Interest factors referred to in 16.1 below may preclude it from prosecution, downgrade it to an alternative sanction or a decision to take no further action; each case will be assessed individually.

15. Public Interest

15.1 If the evidence obtained justifies proceedings, the Council must then consider whether this would be in the public interest, taking into account [The Code for Crown Prosecutors](#) which gives guidance on the general principles to be applied when making a decision regarding prosecutions.

15.2 Common factors include:

- Age
- Social factors
- Mental illness
- Physical illness
- Voluntary disclosure
- Technical factors

16. Summary

- 16.1 The guidelines outlined in this strategy cover the main areas that the Council consider when dealing with alleged fraudulent activity. As well as the above Devon County Council is committed to improving fraud awareness throughout its own organisation and those of its partners.
- 16.2 Whilst the Council appreciates the majority of people are honest, it will continue to fight abuse of the 'Public Purse' by those who falsely claim/apply for money/property/support to which they are not entitled. All investigations will be undertaken by trained staff that will respect the rights of all customers, abide by the law and act in the public interest.