

WAVERLEY BOROUGH COUNCIL

MINUTES OF THE AUDIT COMMITTEE – 17 SEPTEMBER 2013

SUBMITTED TO THE COUNCIL MEETING – 15 OCTOBER 2013

(To be read in conjunction with the Agenda for the Meeting)

- | | |
|------------------------------------|-------------------------|
| * Cllr Tom Martin (Chairman) | Cllr Stephen Hill |
| Cllr Richard Gates (Vice-Chairman) | * Cllr Jennifer O'Grady |
| * Cllr Jim Edwards | * Cllr Donal O'Neill |
| * Cllr Tony Gordon-Smith | |

* Present

Cllr Keith Webster, Portfolio Holder for Housing, was present for part of the meeting and spoke on Item 5, Internal Audit Recommendations Implementation Progress. Kathryn Sharp and Emily Hill from Grant Thornton were also present.

14. MINUTES (Agenda Item 1)

RESOLVED that the Minutes of the Meeting held on 25 June 2013 be confirmed and signed.

15. APOLOGIES FOR ABSENCE (Agenda Item 2)

Apologies for absence were received from Councillors Richard Gates and Stephen Hill.

16. DISCLOSURE OF INTERESTS (Agenda Item 3)

There were no interests declared under this heading.

PART I – RECOMMENDATIONS TO THE COUNCIL

17. POLICY REVISIONS (Agenda Item 10)

The Committee received the report on the updated Staff Code of Conduct and Whistle-blowing Policy both of which had been revised following recommendations from the external auditors, Grant Thornton, as well as an updated version of the Housing Benefits Prosecution Policy which had been revised to incorporate changes in legal requirements.

The Internal Audit Client Manager explained that aspects of the Staff Code of Conduct had been clarified to make sure that all members of staff were aware of their obligations. There had also been significant changes to the Housing Benefits Prosecution Policy in order to take into account the new benefits scheme.

The revised policies are set out at Annexes 1-3 to these minutes, as follows:-

- Annexe 1 Staff Code of Conduct
- Annexe 2 Whistle-blowing Policy
- Annexe 3 Housing Benefits Prosecution Policy

The Committee

RECOMMENDS that:

2. **The revised policies set out in Annexes 1-3 to these minutes be approved and adopted; and**
3. **Officers ensure that all staff are aware of these documents.**

PARTS II AND III – MATTERS OF REPORT

Background Papers

The background papers relating to the following report items in Parts II and III are as specified in the agenda for the Audit Committee.

Part II – Matters Reported in Detail for the Information of the Council

There were no matters falling within this category.

Part III – Brief Summaries of Other Matters Dealt With

18. **STATEMENT OF ACCOUNTS 2012/13 (Agenda Item 11)**

The Committee received the statement of accounts for the year ended 31 March 2013, and The Head of Finance informed the Committee that the Accountancy team had worked closely with representatives from Grant Thornton in the preparation of the accounts. He explained that international audit standards required the Committee to confirm that the accounts had been prepared on a 'going concern' basis, and added that Waverley's medium-term financial strategy projections were regularly reviewed, and supplemented with frequent budget monitoring reports to the Executive and Overview and Scrutiny Committees.

The Committee commented that the accounts had once again been extremely well prepared and wished to thank all those staff involved.

RESOLVED that

1. the Statement of Accounts for the financial year ended 31 March 2013 be approved; and
2. the Letter of Representation for 2012/2013 be approved; and
3. the Committee confirm that the accounts had been prepared on a going concern basis.

19. **INTERNAL AUDIT RECOMMENDATIONS IMPLEMENTATION PROGRESS (Agenda Item 5)**

The Committee was provided with an updated version of Annexe 1 to the report and then reviewed the progress made to date in implementing Internal Audit recommendations.

The Committee expressed concern that a number of recommendations relating to the Housing service were over two months overdue. The Head of Housing Operations and Portfolio Holder for Housing reassured the Committee that the audit recommendations were being taken seriously, but that the service was currently undergoing a series of changes relating to staffing and resources and that a report would be taken to the Executive asking it to agree additional spending on staffing. The Committee felt this was very important and agreed to support the proposals for extra staff in the report to the Executive.

Some members suggested that it would be useful to see an action plan for addressing the issues identified by the internal audit, and the Committee agreed that it would be useful to see an update at the next meeting in November. The Committee also felt that the new KPIs needed to be considered in detail, and it was agreed that this was something that could be done by the Corporate Overview and Scrutiny Housing Improvement Sub-Committee.

The Committee emphasised that future recommendations relating to the Housing service must have realistic due dates and then agreed that the following actions should be taken with regard to a number of outstanding recommendations:-

IA12/30.004	Aggregated Spend Analysis [Procurement]	Agreed to extend due date to 31.10.13
IA14/14.010	Fail/Pass Rates to be Aggregated [Responsive Repairs]	Agreed to extend due date to 31.12.13
IA14/14.012	Production of Routine Performance Indicators	Agreed to extend due date to 31.12.13
IA14/15.003	Reconciliation Between Contractor Records and Orchard	Agreed to extend due date to 31.12.13
IA14/15.004	Retention of Gas Certificates [Gas Servicing – Contact Management]	Agreed to extend due date to 31.12.13

RESOLVED that

1. the actions to the outstanding recommendations be approved as set out in the table above; and
2. the Head of Housing Operations's report to the Executive be updated with the comments from Audit Committee; and
3. the Corporate Overview and Scrutiny Housing Improvement Sub-Committee be asked to consider the new KPIs in detail.

20. INTERNAL AUDIT PLAN 2013/14 (Agenda Item 6)

The Committee's terms of reference include provision for the Committee to comment on the progress made in the Audit Plan. The Internal Audit Client Manager explained that it was proposed that two additional reviews be added and one review be deferred until the following year.

RESOLVED that the changes to the Internal Audit Plan 2013/14 be endorsed, and the current progress made be noted.

21. ANNUAL GOVERNANCE STATEMENT (Agenda Item 7)

The Committee received the Annual Governance Statement for 2012/13 which set out the key elements of the Council's internal control framework and identified issues to be addressed in the coming year. It would ensure that managers were aware of the importance of corporate governance and ensure that Waverley maintained high standards of governance.

The format of the report had been changed since last year to make it clearer, and the Committee commended officers for the excellent new format, which was very easy to read.

RESOLVED that the Annual Governance Statement be approved.

22. INTERNAL AUDIT CHARTER (Agenda Item 8)

The Committee received the revised Internal Audit Charter, which was a requirement of Public Sector Internal Auditing Standards. The charter would be reviewed annually.

RESOLVED that the Internal Audit Charter be approved.

23. NATIONAL FRAUD INITIATIVE UPDATE 2012/13 (Agenda Item 9)

The Committee received the report detailing the progress made by officers on the latest results of the Audit Commission's data-matching exercise known as the National Fraud Initiative.

It was noted that most of the recommended matches had been completed, but that the process regarding housing benefits was taking more time because of delays in getting data from third parties.

RESOLVED that the Committee note the resources and activity applied to complete the checks, and the resultant outputs of nearly £80,000 for 2011/12 being identified as payments to which residents were no longer entitled regarding housing benefit and single person discount.

24. AUDIT FINDINGS REPORT (Agenda Item 12)

Emily Hill from Grant Thornton introduced the Audit Findings Report. She informed the Committee that the Accounts had been received to required timescales and had been prepared to an excellent standard, with only minor narrative adjustments required. No changes were made to the Audit Plan which was considered by the Audit Committee on 25 June 2013.

Two minor control weaknesses were identified as part of the audit; however these did not have an impact on the financial statement, and had been communicated to officers to be actioned.

RESOLVED that the Audit Findings Report produced by Grant Thornton be received and noted.

25. FINANCIAL RESILIENCE REPORT (Agenda Item 13)

Kathryn Sharp from Grant Thornton introduced the report on Financial Resilience which was assessed as part of the Value for Money conclusion. It had taken into account strategic financial planning, financial governance and financial control. Two areas had been identified as potential risks or weaknesses, and officers had already submitted action plans for dealing with them.

RESOLVED that the Financial Resilience Report produced by Grant Thornton be received and noted.

26. AUDIT COMMITTEE UPDATE (Agenda Item 14)

The Committee received the Audit Committee Update from Grant Thornton which highlighted key issues that Members might find informative.

The Committee considered the emerging issues regarding the Local Government Pension Scheme. It was explained that a consultation was taking place with the aim of considering whether to reduce the number of administering authorities; the effect of this on Waverley would be that it may no longer be Surrey County Council administering the pensions, but a larger organisation covering a wider area.

RESOLVED that the Audit Committee update provided by Grant Thornton be noted.

The meeting commenced at 7.00 p.m. and concluded at 8.13 p.m.

Chairman

CODE OF CONDUCT

A GUIDE FOR WAVERLEY STAFF

To All Waverley Staff

Waverley's overall Purpose Statement includes the commitment to communicate and consult with openness and integrity as well as the belief in:-

- ☞ being democratically accountable;
- ☞ maintaining the highest ethical and professional standards;
- ☞ treating people with dignity, fairness and respect.

What Waverley is saying in these statements is that the community that it serves can expect the highest standards of conduct from all employees who work for Waverley.

To help you to help Waverley implement these principles from the Purpose Statement, this "Code of Conduct" has been produced.

The Code outlines the existing appropriate laws, regulations, standing orders and conditions of service and provides further guidance to assist you in the conduct of your day-to-day work. ~~It is particularly significant in the light of the challenges that we all face in the approaching new 'Best Value' environment.~~

~~Guided by the 'Best Value' watchwords "*challenge*", "*consult*", "*compare*" and "*compete*", the Government wants local authorities to become yet more effective, efficient and economic.~~

Working together and using this Code, we can all help not only to ensure that Waverley delivers value for money 'Best Value', but also that it continues to improve its reputation in the community whilst, at the same time, protecting and enhancing the reputation of staff.

Status of the Code

Waverley Borough Council has approved this Code of Conduct which will apply to all employees. Any new employees to the council are required to complete a declaration before they commence their employment that they accept and understand the contents of the Code. The primary aim of the Code is to provide advice and guidance to help staff ~~in these times of significant management change~~ and to lay down clear guidelines to help ensure the maintenance and improvement of standards and to protect staff from misunderstanding or criticism.

Its application will be reviewed and it will be updated as necessary in the light of the experience of its application in consultation with Staff Representatives.

For your information, the Code is based on the Code of Conduct which was drawn up by the (former) Local Government Management Board (LGMB) and approved by the local authority associations in England and Wales after consultation with appropriate bodies including the Trade Unions.

This code embraces the Seven Principles of Public Life also known as the "Nolan principles" and it is Waverley Borough Council's expectation that all staff and members shall comply with these principles.

Selflessness – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership – Holders of public office should promote and support these principles by leadership and example.

Who is covered by the Code?

The Code applies to all Waverley employees.

Inevitably some of the issues covered by the Code will affect senior, managerial and professional employees more than it will others, but the Code will cover all employees under a contract of employment with Waverley Borough Council.

Activities carried out by Waverley employees when they are acting, separately from their employment, as member of companies or voluntary organisations should, in so far as they affect Waverley Borough Council, continue to be subject to the standards within this Code.

The guidelines are set out in the following pages.

1. Standards

- 1.1 You are expected to give the highest possible standard of service to the public and, where it is part of your duties, to provide appropriate advice to councillors and fellow employees with impartiality.
- 1.2 You are encouraged, without fear of recrimination and through the agreed procedures set out in the document "A Guide for Waverley Staff - Public Interest Disclosure (Whistleblowing) at Work", to bring to the attention of the appropriate level of management any impropriety or breach of procedure that comes to your attention.
- 1.3 You are required to inform the Head of Organisational Development of any criminal convictions received during your employment.

2. Disclosure of Information

- 2.1 ~~It is generally accepted~~ Waverley believes that open government is best. The law requires that certain types of information must be available to members, auditors, government departments, service users and the public. Waverley itself may decide to be open about other types of information. You must not divulge any information which you know to be confidential. If you are in any doubt as to whether such information may be released to the public, you must consult with your Head of Service before doing so.
- 2.2 In Waverley the practice is to make as much information available as possible. All confidential information submitted to Council and all of its formal Committees is printed on pink paper. The information contained in these pink papers must remain confidential but may become 'open' in time. Pink paper

records may get photocopied. As a further means of identification, the word "Exempt" will be typed on the front page of the report in the top right-hand corner.

- 2.3 In addition, you need to be aware that the Data Protection Act and associated registrations place obligations on employees with regard to confidentiality.
- 2.4 You must not use information obtained in the course of your employment for personal gain or benefit, nor should you pass it on to others who might use it in such a way. Any particular information received by you from a councillor which is personal to that councillor and does not belong to the Authority must not be divulged by you without the prior approval of that councillor, except where such disclosure is required or sanctioned by law.
- 2.5 You must not supply to any person outside of Waverley any information that you learn as a consequence of your work about the private affairs of another member of staff unless you have the permission of the person concerned. You should exercise caution if speaking to Waverley colleagues about the private affairs of other colleagues and be aware of the potential impact of the things that you say.

3. Political Neutrality

- 3.1 You serve the Authority as a whole. It follows that you must serve all councillors and not just those of the controlling group and must ensure that the individual rights of all councillors are respected.
- 3.2 You may, as part of your normal duties, be required, in effect, to advise political groups within the Council. You must seek the approval of your Head of Service before giving such advice. Where approval is given, you must present your advice in ways which do not compromise your political neutrality.
- 3.3 Certain posts within Waverley are subject to political restrictions as defined in the Local Government and Housing Act 1989. You will be aware, under your terms and conditions of employment, whether you occupy such a post and you will be aware of the restrictions that apply.
- 3.4 Whether or not you are politically restricted, you must follow every lawful expressed policy of the Authority-Council and must not allow your own personal or political opinion to interfere with your work.

4. Public perception and Confidence

- 4.1 You must not do anything that might undermine public confidence in Waverley's high standards of governance.
- 4.2 The test should be how might members of the public perceive your actions. You should think carefully about any suggestion of an improper consideration or connection influencing how you carry out your work or make decisions.
- 4.3 If you are in any doubt please contact the Monitoring Officer or the S151 Officer or the Chief Executive for advice on what action, if any you should take to avoid any suggestion of improper conduct.

Relationships

54.1 If any declaration is added to the Register of Staff Interests (see 8.1) the following action must be taken:-

- a) You must withdraw from any dealings i.e. meetings, correspondence or policy changes that relate to the interest.
- b) If you attend any meetings where the business is raised as part of the discussions you must make a clear declaration and withdraw from the room until that discussion has ceased.

You must not enter into discussions with any of the participants in the matters relating to your registered interest. To do so could be in breach of this code of conduct and Waverley's Disciplinary Procedures will be applied under gross misconduct.

5.1.1 Councillors

You are responsible to the Authority through Waverley's senior managers. Your role may include giving advice to councillors and senior managers and whether or not that is the case, you are there to carry out the Authority's work. Mutual respect between employees and councillors is essential to good local government. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and should, therefore, be avoided.

54.1.22 You were asked to indicate at the time of your appointment whether you are related to a Waverley Councillor. You must notify your Head of Service if these circumstances change during the course of your employment with Waverley.

54.2 Contractors (see also the Council's Contract Procedure Rulestanding Orders : Number 26)

All relationships of a business or private nature with external contractors, or potential contractors, must be made know to your Head of Service who will advise whether or not you need write to the ~~Head of Democratic and Legal Services- Monitoring Officer~~ for the relationship to be noted in the Register of Staff Interests. Orders and contracts must be awarded on merit, by fair competition against other tenders in accordance with Contract Procedure Rules Standing Orders (Contracts) and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

54.2.1 If you are involved in engaging or supervising contractors or have any other official relationship with contractors, and have previously had or currently have a relationship in a private or domestic capacity with those contractors, you must declare that relationship to your Head of Service and you must write to the ~~Head of Democratic and Legal Services Monitoring Officer~~ for the relationship to be noted in the Register of Staff Interests.

54.3 The Local Community and Service Users

You must always remember your responsibility to the community you serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by Waverley's Statement of Purpose.

65. **Appointment and other Employment Matters**

65.1 If you are involved in the appointment of staff, you must ensure that the procedures set out in Waverley's recruitment policy are followed and that the appointments are made on the basis of merit. It would be unlawful for you to make an appointment decision which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, you must not be involved in an appointment where you are related to an applicant, or have a close personal relationship outside work with him or her.

65.2 Similarly, you should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner etc.

76. **Outside Commitments**

76.1 If you are graded in pay band 6 (old pay scales: Pay Band 7) or above, your Conditions of Service (Section 4) require you to devote your whole-time service to Waverley and not to engage in any other business or take up any additional employment without first obtaining written consent from your Head of Service. In the case of part-time staff in pay band 6 (old pay scales: Pay Band 7) and above, this condition continues to apply where Waverley service is your prime employment.

76.2 Whatever your Pay Band, you must be clear about your contractual obligations and must not take outside employment which conflicts with Waverley's interests or weakens confidence, in any way, in the conduct of Waverley's business. If in doubt, please raise the matter, in the first instance, with one of the strategic Human Resources team.

76.3 You must not carry out other employment activities whilst you are on duty with Waverley and you must not use Waverley's resources or facilities for that purpose, regardless of whether or not you are required to obtain or have been given permission to carry out other outside employment.

76.4 You must follow Waverley's rules on the ownership of intellectual property or copyright created during your employment. These are set out in Section 6.5 below.

76.5 Waverley Borough Council has adopted the following policy:-

76.5.1 all creative designs, writings, drawings etc produced by you in the course of your duties belong to Waverley Borough Council;

76.5.2 all inventions made by you are the property of Waverley Borough Council if made during the course of your normal duties, which include those described in your job description [currently and in the past and in the future] and any duties arising from an instruction of a relevant manager or other authorised officer of Waverley.

87. Personal Interests

87.1 You must declare to ~~the Monitoring Officer~~your Head of Service any financial and non financial interests that you consider could bring about conflict with Waverley's interests and ~~write to the Head of Democratic and Legal Services~~ for the details to be noted in the Register of Staff Interests.

8

~~7.2~~ You must declare to your Head of Service any non-financial interests which you consider could be perceived by others as being in conflict with the Authority's interests and write to the Head of Democratic and Legal Services for the details to be noted in the Register of Staff Interest.

~~7.3~~ You must declare to ~~the Monitoring Officer~~your Head of Service, membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct. This declaration will be noted in the Register of Interests/on your personal file.

87.23.1 The definition of what constitutes a "secret society" under 7.3 above is any lodge, chapter, society, trust or regular gathering or meeting which:

- (a) is not open to members of the public who are not members of that lodge, chapter, society or trust etc;
- (b) includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society, trust etc; and
- (c) includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy about the rules, membership or conduct of the lodge, chapter, society, trust etc.

98. Equality Issues

98.1 You are under an obligation to ensure that Waverley's policies relating to equality issues are complied with as well as, of course, the requirements of legislation relating to equality issues. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

98.2 Waverley's equality policy relating to staff is set out in its Equal Employment Opportunities Policy statement. Its policy [and procedures] aimed at ensuring fairness at work is set out in the document "A Guide for Waverley Staff - Dignity and Respect at Work". You must ensure that you are familiar with both these policies.

109. Tendering and the Separation of Roles During Tendering

109.1 If you are involved in activities that are subject, in some way, to the tendering process, you must make yourself aware of and follow Waverley's Financial Regulations and Contract Procedure Rules~~Standing Orders with Respect to Contracts~~.

109.2 It is important that you are clear on the separation of client and contractor roles within the Authority. If you are a senior employee who has both a client and contractor responsibility, you must be aware of the need for accountability and openness.

109.3 Regulations governing Competitive Tendering have particular requirements for ensuring that "in-house" contractor units are not involved in tender evaluation. If in doubt, please contact, in the first instance, the Council's Legal Section.

109.4 If you gain access to confidential information on tenders or costs for either internal or external contractors you must not disclose that information to any unauthorised party or organisation.

109.5 If you become involved with the preparation of the "externalisation" (e.g. Management Buy Out, Joint Venture, Trade Sale etc) of the service that you either work in or directly support, you must, as soon as you have formed an

intent to follow the "externalisation" route, inform your Head of Service and withdraw from any involvement in the contract awarding processes.

109.6 You must ensure that no bias is shown to anyone in the awarding of a contract. Your attention is drawn in this respect, in particular, to the need for circumspection when your relatives, associates and current or recent former employees are involved in businesses seeking contracts with Waverley.

110. Use of Financial Resources

110.1 You must ensure that you use public funds entrusted to you in a responsible and lawful manner. You should strive to ensure value for money to the local community and to avoid legal challenge to the Authority.

124. Protection of the Council's Property

124.1 You must take all reasonable precautions to ensure that the Council's equipment and other property that is placed in your charge is kept safe and is protected from damage.

124.2 In the general interests of security in the Council's offices, you should take care not to do anything which reduces the level of security. In particular, you must not leave open security doors through which you pass. Also, open windows can present a problem. You must ensure that windows in your office are closed when no staff are present if to leave them open would put security at risk. If you notice a potential lapse in security, you should bring it to the attention of the Head of Customer, IT and Office Services or one of the Caretaking Staff.

124.3 You should escort visitors to the Council Offices to and from the secure areas of the building and, if you feel it appropriate to let a member of the public through the security doors whose business you do not know, you must take them to the appropriate responsible person.

132. Information Technology (IT) - see also the Waverley "IT Acceptable Use Policy Computer Security Manual"

132.1 You must make yourself familiar with the IT Acceptable Use Policy guidance in the Computer Security Manual and follow the laid down procedures.

132.2 You must sign out of all applications if your terminal/personal computer (PC) is to be left unattended, in order to safeguard the integrity of the system.

132.3 You must not use a password that you are not authorised to use to enter an IT system which you know contains information to which you are not entitled to have access.

132.4 To help avoid unauthorised use, you should change your passwords on a regular basis and you must not disclose them to any other person.

132.5 In relation to computer software, you must only use appropriate software on Waverley equipment that is properly licensed to you or to Waverley.

NOTE: —Although this section of the Code is still valid, the advance in IT applications and the increased use of IT in Waverley are such that the Council has felt it necessary to produce an Addendum to the Code of Conduct that sets out Waverley's policy on the use of IT facilities. You must have read and understood this Addendum as a condition of your use of IT in the course of your employment with Waverley.

143. Use of Non-financial Council Resources for Personal Purposes

143.1 You should not use or abuse the Council's equipment and other resources for your own personal purposes, either at home or at the office, regardless of whether or not such use is for your personal gain.

143.2 However, in certain circumstances and with the prior agreement of an appropriate manager, it may be possible for you to make reasonable use of Waverley resources. In such a case, Waverley will make an appropriate charge for the use of its resources, for example, word processing and photocopying.

154. Corruption

154.1 You must be aware that it is a serious criminal offence for you to receive, corruptly, or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. **Under the Bribery Act 2010 Prevention of Corruption Act 1916, penalties for committing a crime under the Act are a maximum of 10 years imprisonment if an allegation is made against you in this connection, it is for you to demonstrate that any such rewards have not been obtained corruptly.**

165. Hospitality and Gifts

165.1 You should only accept offers of hospitality if there is a genuine need to impart information or represent the Local Authority in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the Authority should be seen to be represented. They should be authorised by your Head of Service, in advance whenever possible.

165.2 When hospitality has to be declined, those making the offer should be courteously but firmly informed of the procedures and standards operating within Waverley.

- 165.3 When receiving authorised hospitality you should be particularly sensitive as to its timing in relation to decisions which Waverley may be taking affecting those providing the hospitality.
- 165.4 Acceptance by you of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where your Head of Service gives consent in advance and is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc are required, you should claim any personal expenses involved from Waverley to avoid jeopardising the integrity of subsequent purchasing decisions.
- 165.5 You should not accept significant personal gifts from contractors and outside suppliers, although you may keep insignificant items of token value such as pens, diaries, etc when you are satisfied that there is no ulterior motive associated with the offer of the gift and where acceptance gives no danger of misinterpretation by a member of the public.
- 165.6 Gifts which fall outside the definition in 15.5 above should be politely refused and Waverley's policy on the acceptance of gifts should be explained. If you have any doubt, please seek advice from, in the first instance, your Head of Service.
- 165.7 If a gift is delivered to the office without prior warning, unless it falls within the scope of acceptable gifts (see 15.5), in consultation with your Head of Service, the gift should be returned.
- 165.8 All hospitality offered, whether or not it is accepted, and all gifts offered or received, whether or not they are accepted or returned, must be entered in the Register of Hospitality and Gifts on Backstage and a note made of the action taken.
~~This is, initially, kept by your servicedepartmental Administration Officer in loose leaf form but will, in due course, be sent to the Monitoring Officer Head of Democratic and Legal Services to be kept in the central Register.~~

176. Sponsorship - Giving and Receiving

- 176.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a Waverley activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of personal gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 176.2 Where Waverley wishes to sponsor an event or service neither you nor any partner, spouse or relative of yours must benefit personally from such sponsorship without there being full disclosure to your Head of Service of any such interest. Similarly, where Waverley through sponsorship, grant aid, financial or other means, gives support in the community, you should ensure that impartial advice is given and that there is no conflict of interest involved.

187. Concluding Remarks

If you have any comments or suggestions on the contents of this booklet or on the application of the advice that it contains, you should address them to your Head of Service or a member of the Strategic Human Resources team, either directly or through a Staff Representative.

WHISTLE-BLOWING POLICY

**FOR RESIDENTS (MEMBERS OF THE PUBLIC),
STAFF (EMPLOYEES),
CONTRACTORS, PARTNERS
AND COUNCILLORS**

Part A: The Policy

Part B: Procedures for dealing with a report

Part C: Contact details

Part A: A POLICY TO ENCOURAGE AND ENABLE ANYONE TO RAISE ISSUES OF CONCERN RELATED TO SUSPECTED IMPROPER CONDUCT IN THE CARRYING OUT OF THE COUNCIL'S BUSINESS.

Introduction

Waverley Borough Council seeks to ensure the proper conduct of its business through the application of its Contract Procedural Rules, Financial Regulations, Codes of Conduct and other related procedures, which reinforces the Council's commitment to effective governance, the highest possible standards of openness, honesty and accountability to embed an anti-fraud, anti-corruption and anti-bribery culture reinforcing Waverley's zero tolerance to fraud, corruption and bribery.

This policy supports that commitment by encouraging employees and others who may have serious concerns about any aspect of the Council's work to be able to raise those concerns in good faith, in confidence and without fear of recrimination.

The Council is committed to dealing responsibly and professionally with any genuine concern raised about malpractice, be it danger to staff or the public, financial malpractice, breach of legal obligations or damage to the environment. The making of deliberately false or malicious allegations by any employee of the Council will be regarded as a serious disciplinary offence.

This policy is in addition to the Council's complaints procedures and other statutory reporting procedures. The Council acknowledges the legal protection, under the Public Interest Disclosure Act 1998, provided for employees who make disclosures about improper practice.

Aim of the Policy

The aim of this Policy is to encourage anyone who may have concerns about improper conduct of the Council, elected Members or external organisations to disclose any allegation of malpractice within the Council, without fear of recrimination. This Policy is founded on the principle that service users and the public interest come first.

The Council's rules and procedures

A number of rules and procedures have been approved and adopted to ensure the Council's business is properly monitored and controlled. They form part of the Council's internal control process and system of governance and it is important that all members and staff are aware of, and abide by, them.

The most important of these are:

- Codes of Conduct for Employees and Members
- Financial Regulations
- Contract Procedure Rules

Version 1 Approved by June 2008 Audit Committee

Version 2 Endorsed by Audit Committee on 22 November 2011, Agreed by Council on 13 December 2011

Version 3 ~~Endorsed by~~ Presented to Audit Committee on 20th November 2012

Version 4 Presented to Audit Committee on 17th September 2013

Due for Revision in 2014

- Scheme of Delegation
- Employees' Conditions of Service

The Financial Regulations require all cases of actual or suspected fraud, corruption, bribery and theft to be reported immediately to the Section 151 Officer (Deputy Chief Executive) who will inform the Internal Audit Client Manager. The Strategic Director and Heads of Service must ensure that all staff are aware of the reporting requirement.

Concerns involving Fraud, Corruption and Bribery

Concerns can be raised if there is a reasonable belief that one or more of the following has occurred:

- Gross mismanagement.
- Actions contrary to the Codes of Conducts relating to staff and Members of the council.
- Actions that are illegal, fraudulent and/or corrupt.
- Actions that compromise health and safety at work.
- The concealment of any of the previous matters.
- Similar behaviour not otherwise described.

Safeguards

Harassment or Victimisation

The Council recognises that the decision to report a concern can be a difficult one, not least because of the fear of reprisal from those responsible for the misconduct. The Council will not tolerate harassment or victimisation and will take all reasonable measures to protect those who raise a concern in good faith. This does not mean that, if you are an officer of the Council making the disclosure and are already the subject of disciplinary or redundancy procedures, these will be halted as a result of the disclosure.

Confidentiality

The Council will protect the identity of the person making the disclosure (wherever possible) where that Officer has requested that his or her name be kept confidential. During the course of an investigation, the Council will keep a minimum number of people aware of who raised the matter. However, it must be appreciated that the investigation process may reveal the name of the source of the information, and a statement by the officer making the disclosure may be needed as part of the evidence.

Version 1 Approved by June 2008 Audit Committee

Version 2 Endorsed by Audit Committee on 22 November 2011, Agreed by Council on 13 December 2011

Version 3 Endorsed by Presented to Audit Committee on 20th November 2012

Version 4 Presented to Audit Committee on 17th September 2013

Due for Revision in 2014

Anonymous Allegations

This policy encourages those making a disclosure to put their name to the allegations. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council. In exercising that discretion, the factors to be taken into account would include:-

- I. the seriousness of the issue raised;
- II. the credibility of the concern; and
- III. the likelihood of confirming the allegation from attributable sources.

Untrue Allegations

If an allegation is made in good faith but is not confirmed by the investigation, no action will be taken against the officer making the disclosure. If, however, individuals make malicious or vexatious allegations, the allegations will not be taken further and disciplinary action may result. The judgement of whether an allegation is malicious or vexatious rests with the Monitoring Officer~~Internal Audit Client Manager? Or me as Head of Corporate Governance?~~, after consultation with other senior officers as necessary.

Whistle-blowing Policy Part B: Procedures for dealing with a report

How to report any concerns

You are advised in the first instance to report your suspicions to the Internal Audit Client Manager who manages the Council's Whistle-blowing arrangements, dealing with concerns that relate to members of staff, elected Members of the Council and other contractors/partners. Concerns can be reported by calling 01483 523333 and asking for one of the Council officers listed below (whose direct lines are also shown below) or alternatively by e-mailing them. Calls will be answered between 09.00 and 17.00 Monday to Thursday (09.00 to 16.45 on Fridays). If the person you call is not able to take your call, it will be possible to leave a message either on "Voicemail" or with the person answering your call. Reports can also be submitted using the web reporting facility on the Waverley web site www.waverley.gov.uk in "Report it" in Fraud and corruption. The more detailed the information provided will assist in the resolving any issues raised.

Letters can also be addressed to:

Internal Audit Client Manager
The Burys
Council Offices
Godalming
Surrey GU7 1HR

Alternatively your suspicions can be reported directly to the Chief Executive, Deputy Chief Executive or Strategic Director, or to the Head of Organisational Development. The Internal Audit Client Manager may where necessary suggest that the matter be referred to third parties that may deal with issues of Member conduct, or the Police.

Everyone is advised that they may, in confidence and without fear of recrimination, disclose concerns of suspected improper conduct at the levels set out below. Concerns are better raised in writing. You are invited to set out the background and history of the concern, giving names, dates and places where possible, and the reason for why the situation has raised particular concern. If you feel unable to put a concern in writing, you can telephone or arrange to meet the appropriate officer. It may be necessary if the need arises for the originator to be called as a witness at a later date.

If you do not wish to go through this reporting mechanism, or you are unhappy with the outcome of any investigation undertaken, please feel free to contact any of the other external organisations listed in this policy.

Employees are advised that they may raise their concerns with other external organisations such as the Citizens' Advice Bureau, addresses and telephone numbers can be found in the telephone directory. Alternatively the 'Public Concern

Version 1 Approved by June 2008 Audit Committee

Version 2 Endorsed by Audit Committee on 22 November 2011, Agreed by Council on 13 December 2011

Version 3 ~~Endorsed by~~ Presented to Audit Committee on 20th November 2012

Version 4 Presented to Audit Committee on 17th September 2013

Due for Revision in 2014

at Work' is a registered charity which is able to provide, free of charge, confidential and independent advice to people in these circumstances. Contact details for this organisation are included at the end of this policy.

How the Complaint will be dealt with

a) The Internal Audit Client Manager logs all reports and carries out a preliminary review in each case to determine the most appropriate course of action. The action will depend on the nature and seriousness of the concern and will also be logged. Any matters which fall within the scope of other existing procedures (e.g. complaints or discrimination issues) will be dealt with under these procedures. Some concerns may be resolved by agreed action without the need for investigation. Matters to be investigated may be:

- dealt with internally by the Internal Audit ~~Service~~ or other specialists ~~sections~~ such as the Benefit Investigations Team, Human Resources Advisors or
- referred to the Police or other external agency.

The decision as to who shall complete the investigation will be made by the Internal Audit Client Manager in consultation with the Section 151 Officer and Monitoring Officer.

Where an allegation is made against Senior Officers of the Council, including members of the Corporate Management Team, Section 151 Officer, Monitoring Officer, Head of Finance or the Internal Audit Client Manager, an appropriate body will be requested to complete the investigation, such as the External Auditors.

b) Within **three working days** of a concern being received, the Council will contact the complainant, (if contact details are supplied):

- acknowledging that the concern has been received,
- indicating how it proposes to deal with the matter,

The Council may also ask for more information where this would assist in the investigation.

c) Investigations may result in recommendations for changes to procedures and systems which will be incorporated into action plans. Follow-up reviews will be carried out to ensure that recommendations are implemented.

d) Investigations may lead to disciplinary action against employees conducted in accordance with the Council's Disciplinary Procedures. In this situation, the employee would be informed that the issue has been raised under the Whistle-blowing Policy. This may be in addition to any legal proceedings instigated by the police.

Version 1 Approved by June 2008 Audit Committee

Version 2 Endorsed by Audit Committee on 22 November 2011, Agreed by Council on 13 December 2011

Version 3 Endorsed by Presented to Audit Committee on 20th November 2012

Version 4 Presented to Audit Committee on 17th September 2013

Due for Revision in 2014

e) Where appropriate the Internal Audit Client Manager will refer findings to the Police for investigation or review, after discussion with the Chief Executive, Section 151 Officer -or the Monitoring Officer.

f) If you raise a matter and then later decide to withdraw your concern, the Council will respect your wishes wherever possible. However, if the matter is assessed as serious, then the Council will, where it is deemed appropriate, continue to investigate which may result in further evidence being required from you.

Whistle-blowing Policy part C: Contact Details

Internal Contact Details

Internal Audit Client Manager – Gail Beaton
Telephone: 01483 523260 e-mail: gail.beaton@waverley.gov.uk

Chief Executive – Mary Orton
Telephone: 01483-523208 e-mail: mary.orton@waverley.gov.uk

Deputy Chief Executive (Section 151 Officer) – Paul Wenham
Telephone: 01483-523238 e-mail: paul.wenham@waverley.gov.uk

~~Acting Head of Organisational Development – emma.mcquillan~~ Sarah Bainbridge
Telephone: 01483 523148 e-mail: sarah.bainbridge@waverley.gov.uk

Strategic Director – Damian Roberts
Telephone: 01483-523418 e-mail: damian.roberts@waverley.gov.uk

External Organisation Contact Details

Grant Thornton is the Council's external auditor, an independent body, which may be contacted if you feel that your suspicions of fraud or malpractice have not been satisfactorily dealt with through the internal route.

Grant Thornton

Kathryn Sharp
Audit Manager
Grant Thornton
The Explorer Building
Fleming Way
Manor Royal
Gatwick
RH10 9GT

Telephone: 01293 554130
e-mail: Kathryn.E.Sharp@uk.gt.com

Public Concern at Work
3rd Floor, Banks Chambers
6-10 Borough High Street
London
SE1 9QQ

Whistle-blowing Advice Line
Telephone: 0207 404 6609
General Enquiries 020 3117 2520
Fax 0207 403 8823
Website: www.pcaw.org.uk

E-mail

UK enquiries: whistle@pcaw.org.uk
UK Services: services@pcaw.org.uk

UK Helpline: helpline@pcaw.org.uk



Any concerns relating to Housing Benefits can be reported confidentially on the
| Department Work and Pensions Fraud hotline: 0800-854-440.

Version 1 Approved by June 2008 Audit Committee
Version 2 Endorsed by Audit Committee on 22 November 2011, Agreed by Council on 13 December 2011
| Version 3 ~~Endorsed by~~ Presented to Audit Committee on 20th November 2012
Version 4 Presented to Audit Committee on 17th September 2013
Due for Revision in 2014

REVENUES AND BENEFITS SECTION

BENEFIT INVESTIGATIONS TEAM

PROSECUTION POLICY

INTRODUCTION

As outlined in its Anti-Fraud, Anti-Corruption and Anti-Bribery Policy, Waverley Borough Council is committed to protecting the public purse through the investigation of suspected fraudulent claims for Housing Benefit and ~~Council Tax Benefit~~ Local Council Tax Support. Council officers who detect a fraudulent claim may take the view that the circumstances of the case are such that consideration should be given to prosecuting the individual or individuals involved in making the fraudulent claim.

The purpose of this policy is to ensure that Waverley Borough Council officers and the general public are aware of the principles that Waverley Borough Council will apply when making a decision on whether to prosecute a case of benefit or council tax support fraud. ~~fraud~~ These principles will be applied consistently in each case in order to ensure that cases are treated fairly and effectively.

The decision to prosecute an individual for benefit fraud is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. A prosecution can have serious implications for all involved in a case – victims, witnesses and defendants.

This policy also addresses Waverley Borough Council's alternatives to prosecution which will be applied in accordance with the principles in the policy.

GENERAL PRINCIPLES

Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way that Waverley Borough Council approaches each case.

Waverley Borough Council officers must be fair, independent and objective. They must not let any personal views about ethnic or national origin, gender, disability, ~~age~~ age ~~sex~~, religion us ~~or~~ belief ~~or~~ beliefs, political views, ~~or the sexual orientation~~, or gender identity of the suspect or witnesses influence their decisions. They must not be affected by improper or undue pressure from any source.

Waverley Borough Council must make sure that the right person is prosecuted for the right offence and that in doing so they act in the interests of justice and not solely for the purpose of obtaining a conviction. It is also important that an accurate recovery of benefits fraudulently obtained is achieved.

Waverley Borough Council is a public authority for the purposes of the Human Rights Act 1998, and must apply the principles of the European Convention on Human Rights, in accordance with the 1998 Act, when considering a prosecution or its alternatives.

As a result of amendments to the Social Security Administration Act 1992 introduced by Sections 46 to 48 of the Welfare Reform Act 2007 the Council has the power to investigate and prosecute offences relating to certain National Social Security Benefits that are administered by the DWP, and the Council will work with the DWP Fraud Investigation Service (FIS) where appropriate.

In the first instance cases involving National Social Security Benefits administered by the DWP will be offered to FIS to consider joint working. If this is refused then the Council will consider investigation and prosecution of all offences, including all relevant national benefits in payment. Each case will be treated on its own merits and in line with this Policy.

In joint working cases the decision to sanction or prosecute will be made on the total overpayment of all benefits involved.

THE DECISION TO PROSECUTE

The Revenues & Benefits Section's Benefit Investigations Team will initiate proceedings, with the Investigations Manager making a recommendation to the Head of Finance. If he considers that the case is appropriate for prosecution, having applied the principles contained in this policy and ensured that the case meets the evidential and public interest tests (see "The Policy Tests" below), a recommendation to prosecute will be made to the Deputy Chief Executive, who will apply the same principles and tests before deciding whether to authorise the case for prosecution. The Deputy Chief Executive will complete an "Authority to Prosecute Certificate" whenever authorising a case for prosecution. (In the absence of the Deputy Chief Executive the Chief Executive can authorise prosecution.)

If the Head of Finance decides, having applied the same principles and tests, that circumstances exist that lead him to believe that an alternative to prosecution (see "Alternative Sanctions" below) is more appropriate, it will be the Head of Finance who will authorise the taking of the appropriate alternative measure and the case will not be passed to the Deputy Chief Executive for authorisation.

Where the Deputy Chief Executive authorises a case for prosecution, the case will be passed to the Council's Legal Services Section for further consideration. Legal Services will test the case against their own principles, which include the two-stage test set out below in "The Policy Tests". This process will ensure that the necessary level of objectivity is applied to each case that is authorised for prosecution, and that it is right to proceed with a prosecution.

Throughout the whole of the process set out above, Legal Services will, where requested, provide guidance and advice to the Benefit Investigations Team on issues including, but not limited to, lines of inquiry, evidential requirements and statutory interpretation. This includes at any time before a case is considered for prosecution.

REVIEW

Review is a continuing process and Waverley Borough Council officers must take into account any change in circumstances in the case. Where any change arises, the Benefit Investigations Team should discuss the matter with Legal Services in order to decide whether the charges require changing, or whether the case should be stopped entirely. The Revenues & Benefits Section and Legal Services will work closely together in order to ensure that the correct decision

is reached in each case. The final responsibility for the decision whether or not a charge or a case should go ahead rests with the Legal Services Section.

THE POLICY TESTS

The decision to prosecute is a two-stage test. The first stage is the Evidential Test. If the case does not pass the Evidential Test it must not go ahead no matter how important or serious it may be. If the case does pass the Evidential Test, Waverley Borough Council officers must proceed to the second stage and decide if a prosecution is needed in the public interest – the Public Interest Test. The Revenues & Benefits Section will only consider recommending a case for prosecution where the case has passed both the Evidential and Public Interest tests.

THE EVIDENTIAL TEST

The Revenues & Benefits Section must be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

"A realistic prospect of conviction" is an objective test. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test to the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of a defendant's guilt.

When deciding whether there is enough evidence to prosecute, the Revenues & Benefits Section must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence is robust but there will also be cases in which the evidence may not be as strong as it first appears.

The Head of Finance, and other officers involved in the case, must ask themselves the following questions:

- 1. Can the evidence be used in Court?

- Is there any question over the admissibility of certain evidence?
- Is it likely that evidence will be held as inadmissible by the Court (e.g. because of the way in which it was gathered, or because it is hearsay evidence of a nature that would not be admitted?)

a. Is there any question over the admissibility of certain evidence?

2. b. Is it likely that evidence will be held as inadmissible excluded by the Court (e.g. because of the way in which it was gathered, or because of the rule against it is hearsay evidence of a nature that would not be admitted?)

- c. What is the importance of that evidence in relation to the evidence as a whole?
 - (Is there enough other evidence to provide a realistic prospect of conviction?)

- Is the evidence reliable?
 - (Are there any reasons to question the reliability of the evidence, including its accuracy or integrity?)
- Is the evidence credible?
 - (Are there any reasons to doubt the credibility of the evidence?)

If so, i

~~(Is there enough other evidence to provide a realistic prospect of conviction?)~~

~~3.2. Is the evidence reliable? (Are there any reasons to question the reliability of the evidence, including its accuracy or integrity?)~~

~~3. Is the evidence credible? (Are there any reasons to doubt the credibility of the evidence?)~~

~~4. Is there evidence which might support or detract from the reliability of a confession, such as the defendant's age, intelligence or level of understanding?~~

~~5. What explanation has the defendant given, and is the Court likely to find it credible in the light of the evidence as a whole, and does it support an innocent explanation?~~

~~6. If the identity of the defendant is likely to be questioned, is the evidence regarding this strong enough?~~

~~7. Is a witness's background likely to weaken the prosecution case?~~

~~8. Does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?~~

~~9. Are there concerns over the accuracy or credibility of a witness, and are these concerns based on evidence or simply information with nothing to support it?~~

Evidence should not be ignored because there is uncertainty that it can be used or is unreliable, but it should be looked at closely when deciding if there is a realistic prospect of conviction.

THE PUBLIC INTEREST TEST

In 1951 the Attorney General of the time, Lord Shawcross, made the classic statement on public interest that has been supported by Attorneys General ever since: *"It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution"*. (House of Commons Debates, volume 483, column 681, 29 January 1951.)

The Public Interest Test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the Court for consideration when sentence is being considered. ~~Waverley~~ Waverley's position in cases of benefit fraud is that a prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution (see "Alternative Sanctions" below).

Public interest factors for and against prosecution must be balanced carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the defendant.

Consideration of the following questions so as to identify and determine the relevant public interest factors tending for and against prosecution should enable officers to form an overall assessment of the public interest.

a. How serious is the offence committed? (relevant factors will include the considerations at b and c below).

- The offence is serious enough to warrant prosecution taking into consideration the extent of loss to public funds

b. What is the level of culpability of the suspect?

~~There follows a list of some common public interest factors both for and against prosecution. The list is not exhaustive and the factors that apply will depend on the facts of the case.~~

~~Some common public interest factors in favour of prosecution~~

- ~~— The defendant was in a position of authority or trust;~~
- ~~— The evidence shows that the defendant was a ringleader or an organizer of the offence;~~
- ~~— There is evidence that the offence was premeditated;~~
- ~~— There is evidence that the offence was carried out by a group;~~
- ~~— A conviction is likely to result in a significant sentence;~~
- Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated or planned; whether the suspect has previous criminal convictions / out of court disposals and any offending whilst on bail / subject to court order; whether the offending was/is likely to be continued/repeated/escalated; the suspect's age or maturity.
- ~~— The defendant has previous convictions or cautions that are relevant to the current offence;~~
- ~~— There are grounds for believing that the offence is likely to be continued or repeated;~~
- ~~— The offence, although not serious in itself, is widespread in the area where it was committed;~~

~~A prosecution would have a significant positive impact on maintaining community confidence;~~

- Regard should be had to whether the suspect is, or was at the time of the offence, suffering from significant mental or physical ill health. In some circumstances this may mean it is less likely a prosecution is required. However, consideration will also be given to how serious the offence was, whether it is likely to be repeated, and the need to safeguard the public or those providing care to such persons.

c. What are the circumstances of and harm caused to the victim?

- ~~— The offence is serious enough to warrant prosecution taking into consideration the loss to public funds~~
- ~~— The degree of criminality involved and the seriousness of the offence~~
- ~~— Some common public interest factors against prosecution~~

~~_____ The Court is likely to impose only a nominal penalty;~~
~~_____ The offence was committed as a result of a genuine mistake or misunderstanding (this factor must be balanced against the seriousness of the offence);~~
~~_____ There has been a long delay between the offence taking place and the date of the trial, unless:~~

- ~~_____ o The offence is serious;~~
 - ~~_____ o The delay has been caused in part by the defendant;~~
 - ~~_____ o The offence has only recently come to light; or~~
 - ~~_____ o The complexity of the offence has led to a long investigation.~~
 - Was the offence motivated by any form of discrimination?
 - Is a prosecution likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence; Is a prosecution likely to have an adverse effect on a victim's health?
- ~~_____ The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated;~~

d. Is the suspect under 18?

If so, the best interests of the child/young person must be considered, including whether a prosecution is likely to have an adverse impact on his/her future prospects that are disproportionate to the seriousness of the offending. Regard must be had to the principal aim of the youth justice system which is to prevent offending by children/young people, and to the obligations under the United Nations 1989 Convention on the Human Rights of the Child.

As a starting point, the younger the suspect the less likely it is a prosecution is required. However, there may be circumstances which mean that notwithstanding the fact a suspect is under 18, a prosecution is in the public interest. These include: the offence is serious; the suspect's past record suggests there are no suitable alternatives to prosecution; the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

e. What is the impact on the community?

f. Is prosecution a proportionate response?

Is prosecution proportionate to the likely outcome? The cost to the Council and the criminal justice system may be relevant, particularly if excessive when weighed against any likely penalty (but the public interest should not be decided on the basis of this factor alone). Cases should be prosecuted in a way that is consistent with effective case management.

g. Do sources of information require protecting?

h. Other considerations

- The defendant has put right the loss or harm caused (though defendants must not avoid prosecution solely because they have repaid, or have arranged to repay, the overpaid benefits);
- The Council is likely to receive negative publicity for taking the case to Court;
- A failure in benefit administration has contributed to the fraud, or Waverley Borough Council's procedures have not been followed.

Deciding on the public interest is not simply a matter of adding up the number of factors for and against on each side prosecution. Officers must reach a decision on how important each factor is in the circumstances of each case and go on to make an overall assessment.

SELECTION OF CHARGES

The Legal Services Section will be responsible for the selection of both the charges and the legislation to be used when considering a case for prosecution. They should select charges which:

1. reflect the seriousness and extent of the offending;
2. give the Court adequate powers to sentence; and
3. enable the case to be presented in as clear and simple way.

This means that Waverley Borough Council officers may not always choose or continue with the most serious charge where there is a choice. Officers should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

FINANCIAL CONSIDERATIONS

There is no value of loss to public funds below which prosecution should be excluded. However it may not be economically viable or in the public interest to proceed on monetary grounds alone if the loss to public funds is low. However, other factors in the case may lead the Revenues & Benefits Section to conclude that a case should be recommended for prosecution where the loss to public funds is low level. Such factors may include:

- -The offence is not a first offence;
- The offence(s) were planned or systematic;
- Other people were involved in the fraud;
- The duration of the offence;
- The claim was false from its inception;
- The fraud has involved an abuse of position or privilege;
- The person has refused to accept a Simple Caution or Administrative Penalty;
- There are grounds for believing that the offence is likely to have continued or been repeated;
- There has been no significant financial gain, but there is evidence of a deliberate attempt to commit benefit fraud.

Usually a case will be recommended for prosecution under summary legislation (triable only in the Magistrates' Court) where the overpayment is under £5,000. Cases involving overpayments of £5,000 or more will usually be recommended for prosecution under either-way legislation (triable in either the Magistrates' Court or Crown Court). However, factors such as those listed above may mean that a case involving an overpayment of less than £5,000 is recommended for

prosecution under either-way legislation, and a case involving an overpayment of £5,000 or more is recommended for prosecution under summary legislation.

Ultimately the level of criminality involved in committing an offence will determine whether a prosecution proceeds and the legislation that will be used.

ALTERNATIVE SANCTIONS

The Revenues & Benefits Section has the option of considering the following alternatives sanctions should they decide that the particular circumstances of the case mean that it would be more appropriate than prosecution having had regard to the "Financial Considerations" set out above, and subject to the agreement of the Head of Finance.

The case must still have met the Evidential and Public Interest tests for Council officers to consider offering an Administrative Penalty or Simple Caution.

NO FURTHER ACTION

Waverley Borough Council may consider closing the case without further action if:

- -To the Council's knowledge the person has never previously offended;
- The person has not made any false declaration;
- There was no planning involved in the process;
- There was no other person involved in the fraud;
- The offence is minor;
- The period over which the fraud has been committed is very short;
- The extent of the loss to public funds should be minimal

Where no further action is to be taken, the person will receive confirmation of the decision in writing from the Council.

ADMINISTRATIVE PENALTY

Consideration should be given to the use of the Ad Pen when it is not in the public interest to prosecute as a first option. For offences committed before 8th May 2012 this is a penalty of 30% of the overpaid benefit. For offences committed on or after 8th May 2012 this is a penalty of 50% of the overpaid benefit (minimum penalty £350) to a maximum of £2000, or £350 for an attempt to commit fraud that did not result in a overpayment of benefit. This is in accordance with the S115a of the Social Security Administration Act 1992. An Ad Pen can only be offered if the case could be brought to prosecution, as any person refusing an Ad Pen should be prosecuted.

~~Under section 115A of the Social Security Administration Act 1992 (as inserted by the Social Security Administration (Fraud) Act 1997), an Administrative Penalty is an offer to a person to pay, in the manner specified by the Secretary of State, a financial penalty if the person, by an act or omission, has caused benefit to be overpaid to them.~~

~~The amount of the penalty is 30% of the gross overpayment figure, and is offered to the person as an alternative to a prosecution being brought against them.~~

Waverley Borough Council may consider offering an Administrative Penalty if:

- The person has been interviewed under caution;
- The person has not admitted the offence during the interview under caution;
- The amount of the loss to public funds is of low level;
- The person has no relevant previous convictions;
- There was no planning involved;
- No other person is involved in the fraud.
- The person has the financial means to pay the penalty

This list is not exhaustive and the individual facts of each case must be taken into account. If the person refuses the Administrative Penalty, the case would usually then be recommended for prosecution.

SIMPLE CAUTION

A Simple Caution (formerly known as a Formal Caution, but now renamed to distinguish it from a Conditional Caution) is a non-statutory disposal for adult offenders. It may be used for cases involving first time, low-level offences where the public interest can be met by a Simple Caution.

A Simple Caution is administered instead of a prosecution where the person admits the offence, either in writing or while attending an interview under caution. They are informed that the Simple Caution may be cited if there is any subsequent conviction by a Court for another ~~different~~ benefit fraud offence. They will also be told that under Schedule 4 of the Welfare Reform Act 2009 and the Social Security (Loss of Benefit) Amendment Regulations 2010 they may be liable for a "One Strike" sanction in that a loss or reduction of their benefit may apply for a four week period.

(For offences committed after April 1 2013 see the section "Loss of Benefit") A record is kept of the caution and that the existence of a previous Simple Caution may affect the decision whether or not to prosecute if the person should reoffend.

Waverley Borough Council may consider offering a Simple Caution in the following circumstances:

- ~~The~~ The person has not offended before;
- The person has admitted the offence in the interview under caution;
- The amount of the loss to public funds is of low level;
- The person's ~~person's~~ attitude (e.g. whether they express genuine regret);
- There was no planning in the process;
- No other person is involved in the fraud.

This list is not exhaustive and the individual facts of each case must be taken into account. If the person refuses a Simple Caution, the case would usually then be recommended for prosecution.

LOSS OF BENEFIT

Important changes introduced by the passing of the Welfare Reform Act 2012 involve offences that occur wholly on or after April 1 2013 which result in a conviction, administrative penalty or caution. This now may also be subject to a loss of benefit sanction. This means a person may lose the right to continue receiving full benefit payments for a period of between 4 weeks to 3 years, determined by the level of offence committed.

COUNCIL TAX SUPPORT SCHEME

This scheme replaces council tax benefit from 1 April 2013 and Waverley has a similar duty to protect this scheme from attempted fraud and to deter those considering making a false claim.

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) Regulations 2013 brings in similar sanctions to those available for dealing with housing benefit fraud as follows:

- In cases where after investigation it is determined there is no fraudulent intent, a penalty of £70 may be applied without redress to the court to a person who negligently makes an incorrect statement or representation or gives incorrect information or evidence in respect of a claim under this scheme.
- People who fail to declare a change in circumstances within 21 days of it happening can have a £70 penalty applied without redress to the court and added to the Council Tax liability due.
- In more serious cases of false representation the authority will consider an administrative penalty of 50% of the overpayment subject to a minimum of £100 and a maximum of £1,000 as an alternative to prosecution.
- Prosecution will remain the ultimate sanction.

SINGLE PERSON DISCOUNT FRAUD (COUNCIL TAX)

Where an allegation is received stating that a Single Person Discount on Council Tax liability is being applied incorrectly due to a failure of the customer to declare their true circumstances, an investigation may take place.

If the allegation is substantiated, the case may be considered for a relevant sanction. And the Single Person Discount will be removed from the appropriate date and the council tax bill revised to include the overpaid discount.

In less serious cases either a Formal Caution or a Financial Penalty may be applied.

In more serious cases, prosecution proceedings may take place, subject to the approval of the Head of Finance and the Deputy Chief Executive

PROCEEDS OF CRIME

Whenever possible, Waverley will refer any suitable cases for financial investigation with a view to applying to the courts for a confiscation/restraint order of identified assets. This enables Waverley to seek to recover its losses from assets found to be proceeds of crime.

PUBLICITY

Waverley Borough Council's aim, and statutory responsibility, is to prevent the waste, theft and fraud of public money. With that in mind the Council has in place a wide range of measures

aimed at preventing benefits from being paid to those who are not entitled to them. These include measures to prevent and deter the commission of offences.

One such deterrent measure is the publication of details of convictions obtained by Waverley Borough Council. The publicity surrounding a conviction for benefit fraud has two positive effects. First, it deters others who may be seeking to claim benefit to which they are not entitled, and second it generates confidence in the general public that Waverley Borough Council takes a serious view of benefit fraud and is proactive in seeking to prevent it.

The Council will therefore consider publishing the name and address of each person convicted of benefit fraud, together with details of the offence(s) in question. In reaching a decision as to whether to publish the name(s) and address (es), the Council will take the following factors into consideration:

- The specific details of the offence committed.
- The public interest in disclosing personal information (for example, the deterrent effect referred to above).
- Whether the publication would be proportionate.
- The personal circumstances of the offender.
- Whether any other person may be affected by the publication (for example, family members).

This list is not exhaustive and other factors may be relevant in the circumstances of each individual case.

When, having considered the above factors, it is considered appropriate to publish details of a conviction the authority of the Deputy Chief Executive will be sought and, the Benefit Investigations Team will record the reasons for the publication, and the Monitoring Officer will maintain a central register of the records.

THIS POLICY IS NOT EXHAUSTIVE AND MAY BE SUBJECT TO CHANGE

Version 2 Endorsed by Audit Committee on 22nd November 2011
Version 3 Presented to Audit Committee on 17th September 2013
Due for revision 2015.

