

Agenda

Audit Committee

Date:	Thursday, 20 March 2014 at 6:15 pm
Venue:	Town Hall, St Annes
Committee members:	Councillor John Singleton JP (Chairman) Councillor Brenda Ackers (Vice-Chairman) Councillors Ben Aitken, Christine Akeroyd, Leonard Davies, Howard Henshaw, Linda Nulty, Louis Rigby

Item		Page
1	Declarations of Interest: Any member needing advice on Declarations of Interest should contact the Monitoring Officer before the meeting.	1
2	Confirmation of Minutes: To confirm the minutes of the previous meeting held on 30 January 2014 as a correct record as attached.	1
3	Substitute Members: Details of any substitute members notified in accordance with council procedure rule 23(c)	1
4	Internal Audit Annual Plan 2014-15	3 - 10
5	Counter Fraud Policies Annual Review	11 - 27
6	Regulation of Investigatory Powers Act 2000 : Authorisations	28 - 30

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www.fylde.gov.uk/council-and-democracy/constitution

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REPORT

REPORT OF	MEETING	DATE
RESOURCES	AUDIT COMMITTEE	20 MARCH 2014

INTERNAL AUDIT ANNUAL PLAN 2014-15

SUMMARY

The terms of reference for the Audit Committee include approving but not directing internal audit's plan. This report outlines the Internal Audit Plan for the financial year 2014-15 and briefly describes the methodology used in its development and production.

RECOMMENDATIONS

The Committee approves the Annual Internal Audit Plan 2014-15

CABINET PORTFOLIO

This item falls within the following cabinet portfolio(s):

Finance and Resources

-

Councillor Karen Buckley

SUMMARY OF PREVIOUS DECISIONS

There are no previous decisions relevant to this report.

REPORT

Background

1. Standards for Internal Audit in local government are set out in the Public Sector Internal Audit Standards (PSIAS) and a Local Government Application Note introduced by the Chartered Institute for Public Finance. The PSIAS confirm that the Council should periodically prepare a risk based plan of Internal Audit activity. The Plan aims to meet all professional Standards relating to Internal Audit in the Public Sector.
2. The plan is designed to support an annual opinion on the effectiveness of the systems of governance, risk management and internal control across the Council and is informed by the audit strategy, consultation with stakeholders and a dynamic assessment of risks.

Audit Plan Development

3. The work of the Internal Audit Service is to provide independent assurance and to report upon the effective and efficient application of internal controls, governance arrangements and risk management at the Council. All Internal Audit reports form part of the evidence to enable the Chief Executive and Leader of the Council to sign the Annual Governance Statement (the obligatory statement in the Annual Accounts).
4. External Audit also places reliance upon Internal Audit work coverage to ensure that system controls are adequate and effective; this reduces the extent of External Audit testing.
5. The work also enables compliance with the Council's Constitution and Code of Corporate Governance. Reports will make recommendations to address any weaknesses identified and give direction on how to support continual improvements by providing professional advice and guidance
6. The Internal Audit Plan considers many factors and ensures that all stakeholders' contributions are included. The main drivers used to formulate the Audit Plan are detailed below:
 - ◆ Corporate priorities
 - ◆ Engagement with Directors and Section 151 Officer
 - ◆ Review of corporate risks
 - ◆ Recent significant change to the Council or its operations
 - ◆ Cumulative audit knowledge and experience
 - ◆ Level of assessed risk within each service
 - ◆ Cyclical programme of audit work (strategic plan)
 - ◆ Areas where external audit may wish to place reliance
7. The work of the team may be broken down into several main services to the Council:
 - ◆ Risk Based: To provide assurance on the arrangements in place to manage key business risks. These are the audits that focus on risks in service and directorate plans and the corporate risk register and are designed to provide management and members with assurance that appropriate steps are being taken.
 - ◆ System and Compliance: To provide assurance to statutory officers and key stakeholders that key systems and processes are operating as intended and will include work on the core financial systems.
 - ◆ Anti-Fraud, Irregularity and Probity Programme: There will be ongoing proactive testing of systems and processes to identify potential fraud and misappropriation, as well as potential non-compliance with policies and procedures. In addition there is an allocation of resource for dealing with whistleblowing referrals and the investigation of potential irregularity, wrongdoing, fraud and corruption.
 - ◆ Advice and Guidance: Internal Audit provides ongoing advice across the Council. Whether through attendance at working groups or responding to email or telephone enquiries this remains an area where early advice and support can help maintain a robust control environment.
 - ◆ Follow Up Work: To provide assurance that improvements agreed by managers have been implemented in accordance with the approved action plan. This work is essential to ensure the 'value added' by internal audit is realised.

Prioritisation of Audit Reviews

8. In order to make best use of audit resources, the need for audit reviews in individual areas is considered, based on a risk assessment, which considers:
 - ♦ materiality - the relative value of funds flowing through a system or in the case of non-financial systems the comparative impact on service delivery and the control environment
 - ♦ business risk - the extent to which the system is perceived to be well managed
 - ♦ assurance - a factor to reflect the latest available assurance rating awarded by Internal Audit following an audit review of the area
 - ♦ sensitivity - the external profile of the service
 - ♦ time - a factor to represent the time since the area was last subject to audit

The risk scores are statistically weighted and provide a level of relative risk for each area of work.

9. This risk assessment is then translated into a five year strategic audit plan which shows the planned frequency of audit reviews, and an annual operational plan, which sets out the areas to be covered in the current year, taking into account resource constraints.
10. Planned audit work has been discussed with the Chief Executive and all members of Management Team, in particular the Section 151 Officer, to ensure wherever possible their major concerns are being addressed.

Other Factors

11. Key financial systems are audited on an ongoing basis, such that a review of each main system takes place in alternate years. Usually the follow up work is completed in the succeeding year so that annual coverage is maintained.
12. In addition to those activities identified as a result of the above process some other areas are also reviewed annually - these include corporate governance and anti-fraud activities. These topics are not subject to the risk assessment process.
13. It should also be emphasised that within the dynamic environment that the Council operates, business risks are prone to change and the plan is not intended to be regarded as rigid. Areas for review can and will emerge in-year. As a result, the Plan should be treated as a working document, subject to amendment, as necessary, to reflect changing corporate conditions or demands as well as reflecting any changes or refinement in the Council's Strategic Risk Register.
14. A contingency provision has also been included in the plan to cover changes in circumstances after the completion of the risk assessment, such as specific management requests for audit, ad hoc work, on-demand tasks and special investigations. This recognises that the plan, whilst produced on an acknowledged risk basis, remains a flexible document.
15. There are a number of audit reviews from 2012-13 that will be ongoing at the end of March 2014 and the days to complete these are also included in the current year's plan.

Conclusion

16. The Audit Plan for the 2014-15 financial year is attached as an Appendix.

IMPLICATIONS	
Finance	<p>The Accounts and Audit Regulations 2011 require the Council to ensure that its financial management is adequate and effective and that it has a sound system of internal control which facilitates the effective exercise of its functions and which includes arrangements for the management of risk.</p> <p>There is a statutory requirement for the Council to undertake an adequate and effective internal audit of its accounting records and of its system of internal control in accordance with the proper practices in relation to internal control (Accounts and Audit Regulations 2011)</p> <p>The work of internal audit is designed to provide assurance to the Council's statutory officers including the Section 151 Officer.</p>
Legal	None
Community Safety	None
Human Rights and Equalities	None
Sustainability and Environmental Impact	None
Health & Safety and Risk Management	<p>The agreement of an annual audit plan will assist the Council to put in place an appropriate control framework and effective internal controls that provide reasonable assurance of effective and efficient operations, financial stewardship, probity and compliance with laws and regulations.</p>

REPORT AUTHOR	TEL	DATE	DOC ID
Savile Sykes	01253 658413	20 March 2014	

LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Internal Audit Strategic Plan 2014-18	21/02/14	All background papers or copies can be obtained from Savile Sykes, Head of Internal Audit on 658413 or email saviles@fylde.gov.uk

Attached documents

1. Internal Audit Annual Plan 2014-15

APPENDIX

INTERNAL AUDIT ANNUAL PLAN 2014-15

The Plan indicates how the work of internal audit links to the four corporate objectives and priorities of the Council, together with the additional governance and assurance category, as follows:

CORPORATE OBJECTIVES

To Promote the Enhancement of the Natural & Built Environment (PLACE)	To Encourage Cohesive Communities (PEOPLE)	To Promote a Thriving Economy (PROSPERITY)	To Meet Expectations Of Our Customers (PERFORMANCE)	Governance & Assurance (PROBITY)
1	2	3	4	5
Development Management Parks & Open Spaces Coast & Countryside Waste Services Infrastructure	Public Health Housing Crime Reduction Arts & Heritage Leisure	Employment Economic Development Public Protection Tourism Car Parking	Council Finances Budget Management Performance Customer Focus Service Delivery	Governance Framework Democratic Processes Accountability Stewardship Ethical Standards

INTERNAL AUDIT ANNUAL PLAN 2014-15

Description of Audit Area	Indicative Days	Comment	Corporate Plan				
			1	2	3	4	5
Core Financial Systems							
Council Tax	20	Key financial system. This is a system review to provide assurance over the effectiveness of a core financial system. This is a joint audit with Blackpool Council internal audit.				x	x
Council Tax (FCAT)	20	Key financial system. Testing matrix for compliance with approved management procedures and internal controls.				x	x
Creditors	20	Key financial system. Full system and compliance audit to provide assurance over the effectiveness of a core financial system.				x	x
Housing Benefits (FCAT)	20	Key financial system. Testing matrix for compliance with approved management procedures and internal controls.				x	x
National Non-Domestic Rates (FCAT)	20	Key financial system. Testing matrix for compliance with approved management procedures and internal controls.				x	x
Sundry Debtors	20	Key financial system. Full system and compliance audit to provide assurance over the effectiveness of a core financial system.				x	x
Other Risks							
Attendance Management	18	To test there are effective controls in place for the management of attendance				x	
Cemetery & Crematorium	10	To test there are effective controls in place for income management and cash handling				x	x
Complaints	18	A periodic review of the arrangements for handling customer complaints				x	x
Recruitment	18	A periodic review of the recruitment process to provide assurance that the systems of control are followed and consistently applied			x	x	
Section 106 Agreement	18	A review of the arrangements for the management of Section 106 monies	x		x	x	
Procurement	18	A periodic review to provide assurance that governance, risk management and internal control arrangements support effective letting of contracts	x		x	x	x

Description of Audit Area	Indicative Days	Comment	Corporate Plan				
			1	2	3	4	5
Corporate Governance							
Annual Governance Review	10	Annual review of governance arrangements in support of the process for evidencing and compiling the Annual Governance Statement					x
Audit Committee – Review of Effectiveness	2	Annual self-assessment with the Chair and Vice Chair of the Committee in relation to the effectiveness of the Audit Committee					x
Ethical Governance	18	A periodic review to ensure compliance with codes of conduct, declarations of interests and gifts/hospitality				x	x
Internal Audit - Review of Effectiveness	3	Annual assessment of internal audit service against Public Standards for Internal Audit – CIPFA checklist					x
Individual Voter Registration	8	Slippage Item: Completion of a review focusing on the project in place for managing changes to elector registration		x			x
Performance Management							
Data Quality Review	4	Slippage Item: Completion of review to ensure sickness absence performance data is accurately compiled and reported				x	
Computer Audit							
ICT	15	Specific areas to be agreed with management following risk assessment. The audit will be led by LCC Computer Audit team				x	
ICT Probity	8	Compliance with policies on use of email, use of internet and use of social media				x	x
ICT Service Management	3	Slippage: Completion of a review to evaluate the core service functions within the ICT environment, identifying areas for improvement as well as key risks to ICT functions and processes				x	
Anti-Fraud							
Expenses	8	Probity review focusing on the controls in place for mileage claims submitted via the e-claims system				x	x
Fuel Cards	8	Probity review focusing on the controls in place for the purchase of diesel and petrol using fuel cards	x			x	x
National Fraud Initiative	8	Co-ordination of the Council’s response to the NFI including data collation, review of matches and action to address anomalies		x		x	x
Prevention of Fraud & Corruption	2	To review key anti-fraud policies and arrangements		x		x	x

Description of Audit Area	Indicative Days	Comment	Corporate Plan				
			1	2	3	4	5
Follow Up							
Follow Up	20	Follow-up of agreed Internal Audit recommendations and updating action plans				x	
Communication & Consultancy							
General Consultancy and Advice	22	Professional advice and assistance to all services in support of a robust control environment		x		x	
Communication and Liaison	22	Reporting and presentations/attending meetings and groups		x		x	x
Reactive Work							
Contingency	50	Contingency to respond to emerging risks					
TOTAL AUDIT WORK	431						
Audit Team							
Management & Administration	136						
Non-Audit Work							
Benefit/Corporate Fraud Service	6	Shared service monitoring and liaison. The fraud service is provided by Preston City Council					
Corporate & Democratic Core	18	Committee attendance, corporate initiatives					
Directorate Matters	3	Directorate briefings, service planning					
Risk Services	6	Annual strategic risk identification and facilitation of MT risk assessment process					
Other	13	Reactive duties possibly including controlled stationery, health & safety, office relocation etc.					
TOTAL DAYS ALLOCATED	613						

REPORT

REPORT OF	MEETING	DATE
INTERNAL AUDIT	AUDIT COMMITTEE	20 MARCH 2014

COUNTER FRAUD POLICIES ANNUAL REVIEW

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

The Audit Committee's terms of reference include the adoption and approval of counter fraud policies, which include the Anti-fraud & Corruption Policy and Strategy, the Whistleblowing Policy, the Anti-Money Laundering Policy, Anti-Bribery Policy, Housing & Council Tax Benefits Sanction Policy and the Forensic Readiness Policy. Together these policies create an integrated approach to tackling fraud.

RECOMMENDATIONS

To approve the policy documents attached as Appendices to this report and the amendments described.

CABINET PORTFOLIO

This item falls within the following cabinet portfolio(s):

Finance and Resources - Councillor Karen Buckley

SUMMARY OF PREVIOUS DECISIONS

All significant amendments to counter fraud policies or the adoption of new policies are approved annually by the Audit Committee.

REPORT

1. The Audit Committee's terms of reference and the work plan include the approval of counter fraud policies. It was agreed in March 2010 that an annual review would take place as part of the committee's work plan to avoid dealing with this important area in a piecemeal fashion.

2. All counter fraud policies were approved by the committee twelve months ago with the exception of the Housing/Council Tax Benefit Sanction Policy, which was amended to reflect prevailing legislation and approved in January 2013. In order to ensure that an effective and up-to-date framework for countering fraud and corruption is maintained a further comprehensive review of all the following policies and strategies has been undertaken:
 - ◆ Anti-fraud and Corruption Policy
 - ◆ Anti-fraud and Corruption Strategy
 - ◆ Whistleblowing Policy
 - ◆ Anti-Bribery Policy
 - ◆ Anti-Money Laundering Policy
 - ◆ Forensic Readiness Policy
3. All the above policies have been refreshed but there are no significant amendments requiring committee approval.
4. The only substantial legislative change affecting the suite of counter fraud policies has been in relation to benefits. From 1st April 2013, Council Tax Benefit, which was administered by councils under the terms of the Social Security Administration Act 1992, was abolished and replaced by the Council Tax Reduction Scheme, administered under the terms of the Local Government Finance Act 1992. This report recommends a new Council Tax Reduction Scheme Sanctions Policy to reflect this legislative change.
5. Regulations under The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 have created statutory offences in relation to fraud against the Council Tax Reduction Scheme and given the Council powers to investigate and prosecute those offences.
6. The arrangements are not dissimilar to those in place for Council Tax Benefit fraud and the Council's robust approach will not change. Adoption of the proposed policy will allow the Council to investigate fraud against the Council Tax Reduction Scheme alongside other frauds and deal with cases in a consistent manner.
7. The proposed Council Tax Reduction Scheme Sanctions Policy sets out:
 - ◆ the sanctions which are available
 - ◆ the criteria for deciding which sanction to apply
 - ◆ the effects and implications of applying each available sanction
 - ◆ voluntary disclosure arrangements
 - ◆ publicity and reporting arrangements
8. The existing Housing/Council Tax Benefit Sanction Policy has been amended to reflect the CTRS arrangements and to incorporate a consistent approach to dealing with both types of fraud.


IMPLICATIONS	
Finance	The policies seek to minimise the financial impact of fraud and corruption and support the public stewardship of funds
Legal	The policies assist in good governance and the probity of Council actions and decision-making. Where appropriate the policies will ensure the Council is compliant with prevailing legislation and regulations
Community Safety	None arising directly from the report
Human Rights and Equalities	None arising directly from the report
Sustainability and Environmental Impact	None arising directly from the report
Health & Safety and Risk Management	None arising directly from the report

REPORT AUTHOR	TEL	DATE	DOC ID
Savile Sykes	01253 658413	20 March 2014	

LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013	2013	All background papers or copies can be obtained from Savile Sykes, Head of Internal Audit on 658413 or email saviles@fylde.gov.uk

Attached documents

1. Council Tax Reduction Scheme Sanctions Policy
2. Housing/Council Tax Benefits Sanctions Policy

FYLDE COUNCIL – COUNTER FRAUD		
Topic	Council Tax Reduction Scheme – Sanctions Policy	

1. Introduction

- 1.1 This document sets out the Council’s policy for applying sanctions to persons and organisations external to the Council who commit Council Tax Reduction Scheme fraud against it.
- 1.2 The principle guiding the policy is that the Council is committed to protecting public funds through its investigations into cases of Council Tax Reduction Scheme fraud and will seek to prosecute or apply other appropriate sanctions to perpetrators. Consequently any person or group of persons who commits Council Tax Reduction Scheme fraud against the Council can expect to be sanctioned accordingly.
- 1.3 In recognition of the Council’s stated aim and its status as a responsible steward of public funds this Policy aims to enable fraud to be effectively countered and deterred. Its specific objectives are to:
- ♦ ensure that fraud is punished through effective sanctions
 - ♦ assist in the selection of the most appropriate sanction
 - ♦ ensure that sanctions are successfully applied
 - ♦ maximise the deterrent effect of successful sanctions
 - ♦ help obtain adequate recompense where necessary
 - ♦ maintain and generate public confidence in and respect for the Council, by helping to ensure that justice is seen as being done
- 1.4 In **all** cases where a fraud is identified in respect of the Council Tax Reduction Scheme, the Council will seek to recover the debt from the fraudulent party.

2 Scope and Definitions

- 2.1 For the purposes of this Policy, fraud means: ‘the intentional distortion of financial statements or records by any persons which is carried out to conceal assets or otherwise for gain’.
- 2.2 This meaning also includes making financial gain, or an attempt to make financial gain, by knowingly failing to advise of changes to information previously supplied.
- 2.3 This Policy covers only Council Tax Reduction Scheme fraud against the Council by external persons or organisations. This may include, amongst others benefit claimants, landlords and agents
- 2.4 The Policy sets out:

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- ◆ the sanctions which are available
- ◆ the criteria for deciding which sanction to apply
- ◆ the effects and implications of applying each available sanction
- ◆ voluntary disclosure
- ◆ publicity and reporting
- ◆ keeping the Policy timely and relevant

3 Sanctions Available

There are four sanctions available:

- 3.1 Prosecution - Criminal proceedings may be brought against alleged offenders and the case heard in Court with a view to obtaining a criminal conviction and an appropriate sentence.
- 3.2 Simple Caution - A simple caution may be given where there is evidence of a criminal offence but the public interest does not require a prosecution. A simple caution is a statement by an authorised person that is accepted in writing by the claimant, that the claimant has committed an offence for which there is a realistic prospect of conviction. A simple caution may only be used where a prosecution could be properly brought.
- 3.3 Penalty - For the Council Tax Reduction Scheme, Regulation 11 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, allows the Local Authority to apply a Penalty of 50% of the amount of excess reduction (rounded down to the nearest whole penny) subject to a minimum of £100 and a maximum of £1000 as an alternative to prosecution. The Penalty is levied in addition to the amount of excess reduction. Upon accepting the Penalty the person has 14 days in which to change their decision.
- 3.4 Overpayment Recovery and Civil Court Action - A strict requirement to repay monies fraudulently obtained is in itself another major deterrent to fraud, and may be additional to any other sanctions that are applied. Recovery may also include Civil Court action. In **all** cases where a fraud is identified in respect of the Council Tax Reduction Scheme, the Council will seek to recover the debt from the fraudulent party.

4 Criteria For Deciding Which Sanction To Apply

- 4.1 The Council is committed to protecting public funds through its investigations into cases of Council Tax Reduction Scheme fraud. Where it is suspected that a claimant or landlord has committed fraud against the Council, and enough evidence has been gathered to sustain a prosecution, the Council must decide what course of action to follow. Consideration will be given to any overpayments of Housing Benefit, Council Tax Benefit or National Benefits when considering the appropriate sanction.

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- 4.2 The initial decision about what action may be most appropriate lies with the Fraud Manager or Senior Fraud Officer who will submit a report to the Director of Resources or his/her nominated representative making recommendations on the appropriate sanction, taking into account the factors outlined further in this policy. If approved the report will be counter signed. If it is not approved, a case conference will take place to discuss what action, if any, is appropriate.
- 4.3 It must be understood that all frauds will be treated rigorously and prosecution will be considered in every case
- 4.4 However, where the evidential requirement for prosecution is satisfied but the excess reduction/overpayment is less than £2,000, it will often not be in the public interest to prosecute and in those circumstances a simple caution or a penalty may be offered.
- 4.5 Even in cases with excess reduction/overpayment of more than £2000, circumstances may exceptionally lead to a conclusion that it is not in the public interest to prosecute. In such cases it may nevertheless be judged appropriate to offer a simple caution or a Penalty, having considered all of the factors of the case. The reasons for this must be documented by the officer making the sanction decision and agreed by the Director of Resources or his/her nominated representative.
- 4.6 A simple caution can only be given to someone who accepts one. If a claimant declines to accept a simple caution (because they deny the offence or for some other reason), the alternative sanction will normally be prosecution.
- 4.7 It may be appropriate to prosecute a person who has not been paid any benefit or received a Council Tax Reduction but where the attempt to defraud was so serious as to justify a prosecution.

5. Prosecution

- 5.1 In cases where the excess reduction/overpayment identified is over £2000, or if the person has refused to accept a simple caution or penalty the Council will normally seek to prosecute. The decision on whether to refer a case for prosecution lies with the Senior Fraud Officer/Fraud Manager and the Director of Resources or his/her nominated representative.
- 5.2 In making this decision the following tests will be considered in accordance with the Code for Crown Prosecutors:

- ♦ **Is there sufficient evidence for a realistic prospect of a conviction?**

In making this assessment, the decision-makers will follow advice from the council's lawyers and will have regard to whether the evidence can be used in court, whether it is credible and whether it is reliable.

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- ♦ **The public interest**

A prosecution will usually take place unless the decision-maker is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. Relevant factors in assessing the public interest will include the seriousness of the offence, the level of culpability of the suspect, and whether prosecution is a proportionate response.

6. Penalty

- 6.1 For the Council Tax Reduction Scheme, Regulation 11 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, allows the Local Authority to apply a Penalty of 50% of the amount of excess reduction (rounded down to the nearest whole penny) subject to a minimum of £100 and a maximum of £1000 as an alternative to prosecution. The Penalty is levied in addition to the amount of excess reduction. Upon accepting the Penalty the person has 14 days in which to change their decision.
- 6.2 A Penalty may be offered in cases of attempted fraud as an alternative to prosecution, where an offence of Council Tax Reduction Scheme fraud has been committed but the fraud is discovered and stopped before any award of Council Tax Reduction is made. In these cases the amount of the Penalty would be £100.
- 6.3 Where an overpayment of Housing Benefit, Council Tax Benefit or National Benefits is also being considered for the offer of a Penalty these will also be dealt with under the existing provisions of the Social Security Administration Act 1992.
- 6.4 If a Penalty is not accepted or it is withdrawn the Authority must consider whether to prosecute, therefore all cases must be prepared up to prosecution standard.
- 6.5 The offer of a Penalty should happen at a special interview. The person should be told at the interview that:
- ♦ It is not an interview under caution
 - ♦ In light of the evidence available, it is believed there are grounds for instigating criminal proceedings for the alleged offence
 - ♦ It has been decided to offer them the alternative of agreeing to pay a Penalty instead of their case being referred for prosecution
 - ♦ They will be expected to make a decision on whether to agree to pay a Penalty, by the end of the interview

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- ◆ Acceptance of the Penalty is not an admission of guilt
- ◆ Recovery of the Penalty will occur in the same way as recovery of the overpayment
- ◆ They have 14 days in which to change their mind should they accept the Penalty
- ◆ Failure to repay the Penalty or default on instalments will result in them facing civil proceedings for recovery

6.6 The officer who conducted the interview under caution will not conduct the special interview.

6.7 The Council may consider issuing a Penalty if:

- ◆ To the Council’s knowledge the person has never previously offended
- ◆ The person has not admitted the offence during an interview under caution
- ◆ The excess reduction/overpayment is under £2000
- ◆ A simple caution is not appropriate
- ◆ The person is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished

If the person refuses the Penalty, the case will usually be referred for prosecution.

7. Simple Caution

7.1 The Council may consider issuing a simple caution if:

- ◆ To the Council’s knowledge the claimant has never previously offended
- ◆ The person has fully admitted the offence in an interview under caution. A caution cannot be issued if the claimant refutes or denies the allegation
- ◆ Criminal proceedings are not the first option
- ◆ A Penalty is not appropriate
- ◆ The offence is minor
- ◆ The fraud has continued for a relatively short period, normally no longer than 12 months

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- ◆ The overpayment/excess reduction is under £2000
- ◆ An additional factor that will be taken into account is the person’s subsequent attitude e.g. genuine expression of remorse for their actions
- ◆ The claimant is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished, and they have admitted the offence

If the person refuses the caution, the case will usually be referred for prosecution

8. Overpayment Recovery and Civil Court Action

- 8.1 Regardless of what criminal proceedings or other sanctions have been deemed appropriate in accordance with this Policy, the amended amount of Council Tax will remain payable and subject to recovery by the Council Tax team.
- 8.2 Civil Court Action may also be considered as a means of recovering any amounts deemed to be lost due to fraud or corruption. Such action shall be conducted under arrangements approved by the Director of Resources.

9. Voluntary Disclosure

- 9.1 This will occur when claimants, of their own free will, reveal a fraud of which the Council has been unaware. It does not apply to cases where, for example:
- ◆ The disclosure is prompted by a belief that the fraud would have been discovered
 - ◆ The claimant has discovered that they were already being investigated
 - ◆ The disclosure was prompted by, for example, a visit

Any voluntary disclosure will be taken into consideration when the decision on appropriate action is taken.

- 9.2 Each case arising from voluntary disclosure will be considered on its own merits to determine the most appropriate course of action. In all cases considered for sanction, it is essential that each case is subject to scrutiny on the basis of its own particular details. The circumstances of each individual case will ultimately determine the eventual sanction route.

10. Publicity and Reporting


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- 10.1 Since a principal objective of this policy is to deter fraud, then any successful prosecutions or other sanctions should be suitably publicised where appropriate.
- 10.2 While any successful prosecution result will be considered for publicity, particular attention will be given to frauds that are large in value and/or where the offender has received a significant sentence. Only when damage to the Council's reputation is threatened, will publicity not be considered.
- 10.3 Following a successful prosecution the Fraud Manager shall arrange with the Council's Communication Officer for a suitably worded press release to be prepared.
- 10.4 Other press releases may be considered from time to time, regardless of particular recent cases, such as reports of sanctions applied over a period.
- 10.5 Use shall also be made of Council-produced publications such as 'Grapevine' and the Council e-newsletter, intranet and internet websites to report results both to the public and to staff.
- 10.6 The Fraud Manager shall, at least annually, provide Housing Benefits assessment staff with a summary of results. Many of the results will be due to their vigilance and it is in the Council's best interest to support and encourage this.

11. Review

- 11.1 The Director of Resources or his/her nominated representative shall review the Policy. This will include:
- ♦ monitoring its effectiveness,
 - ♦ taking account of any relevant changes in legislation and government guidance,
 - ♦ taking account of any structural changes either within the Council or between the Council and external organisations,
 - ♦ reviewing its relevance in view of changes in technology,
 - ♦ reviewing it in the light of comments received both inside and outside the Council.
- 11.2 The next review date for this Policy is March 2015.

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FYLDE COUNCIL – COUNTER FRAUD		
Topic	Housing and Council Tax Benefit - Sanctions Policy	

1. Introduction

- 1.1 This document sets out the Council’s policy for applying sanctions to persons and organisations external to the Council who commit Housing and Council Tax Benefit fraud against it.
- 1.2 The principle guiding the policy is that the Council is committed to protecting public funds through its investigations into cases of Housing and Council Tax Benefit fraud and will seek to prosecute or apply other appropriate sanctions to perpetrators. Consequently any person or group of persons who commits Housing and Council Tax Benefit fraud against the Council can expect to be sanctioned accordingly.
- 1.3 In recognition of the Council’s stated aim and its status as a responsible steward of public funds this Policy aims to enable fraud to be effectively countered and deterred. Its specific objectives are to:
- ♦ ensure that fraud is punished through effective sanctions
 - ♦ assist in the selection of the most appropriate sanction
 - ♦ ensure that sanctions are successfully applied
 - ♦ maximise the deterrent effect of successful sanctions
 - ♦ help obtain adequate recompense where necessary
 - ♦ maintain and generate public confidence in and respect for the Council, by helping to ensure that justice is seen as being done
- 1.4 In **all** cases where a fraud is identified in respect of Housing and Council Tax Benefit, the Council will seek to recover the debt from the fraudulent party.

2 Scope and Definitions

- 2.1 For the purposes of this Policy, fraud means: ‘the intentional distortion of financial statements or records by any persons which is carried out to conceal assets or otherwise for gain’.
- 2.2 This meaning also includes making financial gain, or an attempt to make financial gain, by knowingly failing to advise of changes to information previously supplied.
- 2.3 This Policy covers only Housing and Council Tax Benefit fraud against the Council by external persons or organisations. This may include, amongst others benefit claimants, landlords and agents
- 2.4 The Policy sets out:

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- ◆ the sanctions which are available
- ◆ the criteria for deciding which sanction to apply
- ◆ the effects and implications of applying each available sanction
- ◆ voluntary disclosure
- ◆ publicity and reporting
- ◆ keeping the Policy timely and relevant

3 Sanctions Available

There are four sanctions available:

- 3.1 Prosecution - Criminal proceedings may be brought against alleged offenders and the case heard in Court with a view to obtaining a criminal conviction and an appropriate sentence.
- 3.2 Simple Caution - A simple caution may be given where there is evidence of a criminal offence but the public interest does not require a prosecution. A simple caution is a statement by an authorised person that is accepted in writing by the claimant, that the claimant has committed an offence for which there is a realistic prospect of conviction. A simple caution may only be used where a prosecution could be properly brought.
- 3.3 Penalty - A financial penalty amounting to a statutorily determined percentage of the gross adjudicated overpayment can be offered as an alternative to prosecution where there is enough evidence to prosecute but where prosecution may not be the first option. A fixed penalty may also be offered in attempt cases where the fraud has been committed but the fraud is discovered and stopped before any overpayment of benefit is made.
- 3.4 Overpayment Recovery and Civil Court Action - A strict requirement to repay monies fraudulently obtained is in itself another major deterrent to fraud, and may be additional to any other sanctions that are applied. Recovery may also include Civil Court action. In **all** cases where a fraud is identified in respect of Housing and Council Tax Benefit, the Council will seek to recover the debt from the fraudulent party.

4 Criteria For Deciding Which Sanction To Apply

- 4.1 The Council is committed to protecting public funds through its investigations into cases of Housing and Council Tax Benefit fraud. Where it is suspected that a claimant or landlord has committed fraud against the Council, and enough evidence has been gathered to sustain a prosecution, the Council must decide what course of action to follow. Consideration will be given to any overpayments of National Benefits and excess reduction/overpayment of Council Tax Reduction Scheme when considering the appropriate sanction.
- 4.2 The initial decision about what action may be most appropriate lies with the Fraud Manager or Senior Fraud Officer who will submit a report to the Director of Resources or

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his/her nominated representative making recommendations on the appropriate sanction, taking into account the factors outlined further in this policy. If approved the report will be counter signed. If it is not approved, a case conference will take place to discuss what action, if any, is appropriate.

- 4.3 It must be understood that all frauds will be treated rigorously and prosecution will be considered in every case
- 4.4 However, where the evidential requirement for prosecution is satisfied but the excess overpayment is less than £2,000, it will often not be in the public interest to prosecute and in those circumstances a simple caution or a penalty may be offered.
- 4.5 Even in cases with overpayment of more than £2000, circumstances may exceptionally lead to a conclusion that it is not in the public interest to prosecute. In such cases it may nevertheless be judged appropriate to offer a simple caution or a Penalty, having considered all of the factors of the case. The reasons for this must be documented by the officer making the sanction decision and agreed by the Director of Resources or his/her nominated representative.
- 4.6 A simple caution can only be given to someone who accepts one. If a claimant declines to accept a simple caution (because they deny the offence or for some other reason), the alternative sanction will normally be prosecution.
- 4.7 It may be appropriate to prosecute a person who has not been paid any benefit but where the attempt to defraud was so serious as to justify a prosecution.

5. Prosecution

- 5.1 In cases where the overpayment identified is over £2000, or if the person has refused to accept a simple caution or penalty the Council will normally seek to prosecute. The decision on whether to refer a case for prosecution lies with the Senior Fraud Officer/Fraud Manager and the Director of Resources or his/her nominated representative.
- 5.2 In making this decision the following tests will be considered in accordance with the Code for Crown Prosecutors:

- ♦ **Is there sufficient evidence for a realistic prospect of a conviction?**

In making this assessment, the decision-makers will follow advice from the council’s lawyers and will have regard to whether the evidence can be used in court, whether it is credible and whether it is reliable.

- ♦ **The public interest**

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A prosecution will usually take place unless the decision-maker is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. Relevant factors in assessing the public interest will include the seriousness of the offence, the level of culpability of the suspect, and whether prosecution is a proportionate response.

6. Penalty

6.1 Section 115A of the Social Security Administration Act 1992, as amended by Section 15 of the Social Security (Fraud) Act 1997, allows the Local Authority to apply a penalty (30% for offences committed wholly before 8th May 2012 of the total overpayment), as an alternative to prosecution. This penalty is levied in addition to the amount of overpayment. Upon accepting the penalty the claimant has 28 days in which to change their decision.

For offences committed wholly on or after 8th May 2012 the Welfare Reform Act 2012 amends the Social Security Administration Act 1992 as follows:

- ◆ To allow administrative penalties to be offered in attempt cases as an alternative to prosecution, where an offence of benefit fraud has been committed but the fraud is discovered and stopped before any overpayment of benefit is made. In these cases the amount of the administrative penalty would be £350
- ◆ To provide for a minimum penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2000)
- ◆ To reduce the period which an individual (including a colluding employer) may withdraw their agreement to pay the penalty ('cooling off period') from 28 to 14 days.

6.2 Where an overpayment of National Benefits is also being considered for the offer of a Penalty these will also be dealt with under the existing provisions of the Social Security Administration Act 1992. Excess reductions/overpayments of Council Tax Reduction Scheme will be dealt with under the provisions of Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

6.3 If a Penalty is not accepted or it is withdrawn the Authority must consider whether to prosecute, therefore all cases must be prepared up to prosecution standard.

6.4 The offer of a Penalty should happen at a special interview. The person should be told at the interview that:

- ◆ It is not an interview under caution
- ◆ In light of the evidence available, it is believed there are grounds for instigating criminal proceedings for the alleged offence

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- ◆ It has been decided to offer them the alternative of agreeing to pay a Penalty instead of their case being referred for prosecution
- ◆ They will be expected to make a decision on whether to agree to pay a Penalty, by the end of the interview
- ◆ Acceptance of the Penalty is not an admission of guilt
- ◆ Recovery of the Penalty will occur in the same way as recovery of the overpayment
- ◆ They have 14 days in which to change their mind should they accept the Penalty
- ◆ Failure to repay the Penalty or default on instalments will result in them facing civil proceedings for recovery

6.5 The officer who conducted the interview under caution will not conduct the special interview.

6.6 The Council may consider issuing a Penalty if:

- ◆ To the Council's knowledge the person has never previously offended
- ◆ The person has not admitted the offence during an interview under caution
- ◆ The overpayment is under £2000
- ◆ A simple caution is not appropriate
- ◆ The person is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished

If the person refuses the Penalty, the case will usually be referred for prosecution.

7. Simple Caution

7.1 The Council may consider issuing a simple caution if:

- ◆ To the Council's knowledge the claimant has never previously offended
- ◆ The person has fully admitted the offence in an interview under caution. A caution cannot be issued if the claimant refutes or denies the allegation
- ◆ Criminal proceedings are not the first option
- ◆ A Penalty is not appropriate

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- ♦ The offence is minor
- ♦ The fraud has continued for a relatively short period, normally no longer than 12 months
- ♦ The overpayment is under £2000
- ♦ An additional factor that will be taken into account is the person's subsequent attitude e.g. genuine expression of remorse for their actions
- ♦ The claimant is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished, and they have admitted the offence

If the person refuses the caution, the case will usually be referred for prosecution

8. Overpayment Recovery and Civil Court Action

- 8.1 Regardless of what criminal proceedings or other sanctions have been deemed appropriate in accordance with this policy, overpayments of Housing Benefit will remain recoverable. The amended amount of Council Tax will remain payable and subject to recovery by the Council Tax team
- 8.2 Civil Court Action may also be considered as a means of recovering any amounts deemed to be lost due to fraud or corruption. Such action shall be conducted under arrangements approved by the Director of Resources.

9. Voluntary Disclosure

- 9.1 This will occur when claimants, of their own free will, reveal a fraud of which the Council has been unaware. It does not apply to cases where, for example:
- ♦ The disclosure is prompted by a belief that the fraud would have been discovered
 - ♦ The claimant has discovered that they were already being investigated
 - ♦ The disclosure was prompted by, for example, a visit

Any voluntary disclosure will be taken into consideration when the decision on appropriate action is taken.

- 9.2 Each case arising from voluntary disclosure will be considered on its own merits to determine the most appropriate course of action. In all cases considered for sanction, it is

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essential that each case is subject to scrutiny on the basis of its own particular details. The circumstances of each individual case will ultimately determine the eventual sanction route.

10. Publicity and Reporting

- 10.1 Since a principal objective of this policy is to deter fraud, then any successful prosecutions or other sanctions should be suitably publicised where appropriate.
- 10.2 While any successful prosecution result will be considered for publicity, particular attention will be given to frauds that are large in value and/or where the offender has received a significant sentence. Only when damage to the Council's reputation is threatened, will publicity not be considered.
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11. Review

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- 11.2 The next review date for this Policy is March 2015.

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REPORT



REPORT OF	MEETING	DATE
RESOURCES	AUDIT COMMITTEE	20 MARCH 2014

REGULATION OF INVESTIGATORY POWERS ACT 2000: AUTHORISATIONS

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

Councillors are obliged to review the use of covert surveillance and covert human intelligence sources by the council at least quarterly. In the quarters to December 2013 and March 2014, there were no authorised operations.

RECOMMENDATION

To note the information in the report.

CABINET PORTFOLIO

This item falls within the following cabinet portfolio(s):

Finance and resources - Councillor Karen Buckley

SUMMARY OF PREVIOUS DECISIONS

A report about the use of covert surveillance and covert human intelligence sources is brought regularly to the Audit Committee for noting.

On 29 July 2013, the council resolved to note a report about the council's use of surveillance powers and changes in the legal framework governing them and to adopt an updated policy on the council's use of such powers.

REPORT

1. The Regulation of Investigatory Powers Act 2000 ("RIPA") regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.

2. Fylde Council is therefore included within RIPA framework with regard to the authorisation of both directed surveillance and of the use of covert human intelligence sources.
3. Directed surveillance includes the covert surveillance of an individual in circumstances where private information about that individual may be obtained. A covert human intelligence source (“CHIS”) is a person who, pretending to be someone that they are not, builds up a relationship of trust with another person for the purpose of obtaining information as part of an investigation.
4. Directed surveillance or use of a CHIS must be authorised by the chief executive or a director and confirmed by a Justice of the Peace. All authorisations are recorded centrally by the Head of Governance.
5. Regulations under RIPA require councillors to consider a report on the use of RIPA at least quarterly.
6. This is the required quarterly report on the use of RIPA. The information in the table below is about authorisations granted by the council during the quarters concerned.

Quarter	Directed surveillance	CHIS	Total	Purpose
Oct – Dec 2013	0	0	0	
Jan – Mar 2014 ¹	0	0	0	

IMPLICATIONS	
Finance	No direct financial implications. This work will be delivered within existing revenue budget resources
Legal	The report is for the information of councillors and is produced to comply with the council’s obligations under the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010. The council is only able to authorise surveillance under RIPA if it is for the purpose of preventing or detecting crime or preventing disorder. Such authorisation must be endorsed by a Justice of the Peace.
Community Safety	An authorising officer should consider any community safety issues among the other relevant factors in deciding whether to authorise surveillance
Human Rights and Equalities	None arising directly from this report.
Sustainability and Environmental Impact	None arising directly from this report.
Health & Safety and Risk Management	None arising directly from this report.

¹ Correct to the date the report was written. Officers will verbally update members if the figures have changed by the date of the meeting.

REPORT AUTHOR	TEL	DATE	DOC ID
Ian Curtis	01253 658506	7 March 2014	

LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
None		



Minutes

Audit Committee

Date:	Thursday, 30 January 2014
Venue:	Town Hall, St Annes
Committee members:	Councillor John Singleton JP (Chairman) Councillors Ben Aitken, Christine Akeroyd, Leonard Davies, Howard Henshaw ADK (Malaysia), Linda Nulty, Louis Rigby
Officers:	Paul O'Donoghue, Saville Sykes, Andrew Wilsdon, Katharine McDonnell
Other attendees:	Tim Cutler (KPMG)

1. Declarations of interest

Members were reminded that any disclosable pecuniary interests should be declared as required by the Localism Act 2011 and any personal or prejudicial interests should be declared as required by the Council's Code of Conduct for Members. There were none on this occasion.

2. Confirmation of minutes

RESOLVED: To approve the minutes of the Audit Committee meeting held on 14 November 2013 as a correct record for signature by the Chairman.

3. Substitute members

There were no substitutions.

4. External Audit Plan 2013/2014

Tim Cutler, representing KPMG, presented the Audit Plan for the 2013/2014 financial year. He informed members that the Audit Commission had not changed the remit for external auditors, so the report covered the approach to financial statements and value for money, as it had done in previous years.

It was RESOLVED that the KPMG Audit Plan for 2013-14 which is in line with previous years, be noted.

5. KPMG Certification of Claims and Returns – Annual Report 2012/2013

Tim Cutler, representing KPMG, presented the report which summarised the key outcomes from the certification work on the Council's 2012/2013 Claims and Returns. He advised there was no issues or errors with the claims, which were verified without amendment. He drew members' attention to the overall fee which was lower than previously advised and he confirmed that this would be £14,743 for 2012/2013, a reduction of £2,992 on the previous year. He also informed the Committee that the fees had now been confirmed by the Audit Commission and were therefore now final fees rather than draft fees as indicated in the agenda papers.

It was RESOLVED to note the KPMG annual report on the Certification of Claims and Returns for 2012/2013.

6. Internal Audit Interim Report 2013/2014

Savile Sykes, Head of Internal Audit, presented a report which summarised the work undertaken by internal audit from April to December 2013 and performance information for the same period. In taking the committee through the various sections of the report, with regard to the assurance levels in table 2, he emphasised that the average assurance score for reviews undertaken to date was 3.7 which equated to substantial assurance, whilst the main financial systems reviewed to date had a better average score of 4.7 which equated to full assurance.

He referred to the Agreed Recommendation Implemented set out in Table 4 and advised the committee of completion dates for the recommendations not yet completed.

Following a discussion, it was RESOLVED to note the Internal Audit Interim Report 2013/2014.

7. Strategic Risk 2013/2014

Andrew Wilsdon, Risk and Emergency Planning Officer, presented a report which summarised the work undertaken in completing the Strategic Risk Actions contained in the 2013/2014 Risk Register.

He advised that there were 46 individual actions contained within the Risk Register, 37 had been due for completion by 31 December 2013, 25 had been fully completed, 5 were currently in progress and 7 had not been started. Andrew provided detail regarding the 7 delayed actions explaining that the majority were matters beyond the Council's control.

In response to questions regarding the recent adverse weather conditions, Mr Wilsdon provided information to members regarding the partnership working undertaken between the Council, Environment Agency, the Met Office, neighbouring coastal authorities and Lancashire Resilience Forum. He also provided information regarding the Council's emergency plan and the wider Lancashire Emergency Plan, for dealing with flooding.

After discussion, it was RESOLVED that, the Strategic Risk Actions for 2013/2014 be noted and that the actions be further reviewed at the June meeting.

8. Regulation of Investigatory Powers Act 2000: Authorisations

Saville Sykes, Head of Internal Audit, presented a report on the Regulation of Investigatory Powers Act 2000: Authorisations. He advised the committee that information regarding the use of covert surveillance and covert human intelligence sources by the Council had to be brought before councillors at least quarterly. In the quarters to September and December 2013, there were no authorised operations.

It was RESOLVED that the Committee note the information in the report.

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