



## **Anti-fraud and anti-corruption strategy**

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## **Introduction**

This document sets out the Council's strategy in relation to fraud and corruption. It has the full support of the Council's Elected Members and the Corporate Management Group.

Hastings Borough Council is a significant employer within East Sussex and as with other large organisations, the size and nature of our services puts us at risk to loss due to fraud and corruption both from within the Council and outside it.

The council is committed to the eradication of fraud, corruption and misappropriation and to the promotion of high standards of conduct. Our desire is to be a model of public probity, affording maximum protection to the funds we administer. To deliver the Council's corporate strategy we need to maximise the financial resources available to us. In order to do this we must reduce fraud and misappropriation to an absolute minimum.

Furthermore, the council recognises its responsibility to protect public funds and we will therefore, endeavour to implement secure systems and high standards of conduct.

We will take the strongest possible action against those who seek to defraud the Council. This includes our own Councillors, officers, contracting partners and external individuals and organisations.

## **What is theft?**

Theft is stealing any property belonging to the council or which has been entrusted to it (i.e. client funds), including cash, equipment, vehicles, data.

Theft does not necessarily require fraud to be committed. Theft can also include the stealing of property belonging to our staff or members whilst on council premises.

A person is guilty of theft under the Theft Act 1968 if:

- Section 1 – 'they dishonestly appropriate property belonging to another with the intent of permanently depriving the other of it'; or
- Section 24A - 'they dishonestly retain a wrongful credit'. For example where they do not report and repay an overpayment of salary or advance.

## **What is fraud?**

The Fraud Act of 2006 introduced the first legal definitions of fraud. These legal definitions are used for the criminal prosecution of fraud offences.

For the purposes of this strategy fraud is considered to be any action taken by an

individual, group or organisation which is designed to facilitate dishonest gain at the expense of, (or loss to) the Council, the residents of Hastings or the wider national community.

Offences can include:

- Fraud by false representation – for example by knowingly submitting overtime claims for work that has not been undertaken
- Fraud by failure to declare – for example failing to declare previous convictions when required to secure employment with Hastings BC
- Fraud by abuse of position – for example by awarding a contract that cannot be evidenced as being in the best interests of Hastings BC.

### **What is corruption?**

Corruption is the offering, giving, soliciting or acceptance of inducements designed to influence official action or decision making. These inducements can take many forms including cash, holidays, event tickets, meals.

From 1st July 2011, The Bribery Act 2010 became law in the UK introducing a new offence of failing to prevent bribery. The offence relates to commercial organisations, but Local Authorities too by virtue of 'carrying on a business' fall under the auspices of this Act.

### **What is financial malpractice/irregularity?**

This term is used to describe any actions which represent a deliberate serious breach of accounting principles, financial regulations or any of the Council's financial governance arrangements. They do not have to result in personal gain. They will include situations where undisclosed conflicts of interest result in some form of benefit.

### **The Hastings Context**

The council is responsible for the proper administration of its finances. This not only includes direct income and expenditure but also monies that we administer on behalf of the Government, on behalf of our clients and that for which we are the responsible accountable body. Anyone committing fraud, both inside and outside the organisation is in effect attacking all of these sources of income and expenditure and our valuable assets.

This strategy encompasses any action taken by an individual, group or organisation which is designed to facilitate dishonest gain (or a loss) at the expense of the Council, the residents of Hastings or the wider national community. It, therefore, includes theft, fraud, corruption and any financial irregularity or malpractice.

The council will be vigilant in all of these areas and will apply the same principles of deterrence, prevention, detection, investigation and resolution across all its services. The council will not be afraid to tackle difficult or uncomfortable cases and will take a

robust line and seek the maximum appropriate sanction in all areas of operation.

The Council's approach includes:

- An assessment of the Council's arrangements against potential fraud risks as identified by The Audit Commission and the National Fraud Authority
- A system of reporting serious activity to the Audit committee
- Directorate Fraud risk assessments
- Increased proactive investigations by Internal Audit of those areas considered more susceptible to fraud
- A training programme for a number of audit staff in relation to fraud investigation

### **The fraud threats**

The key threats of fraudulent and corrupt activity occurring within the Council are from:

- Contractors and Partners
- Public
- Staff
- Councillors

Our expectations from each of these groups is discussed below:

### **Contractors and Partners**

The increase in partnership arrangements to deliver services places an additional burden on the Council to ensure that public money invested in these services is appropriately used.

Those organisations undertaking work on behalf of, or in partnership with the council are required to maintain strong anti-fraud principles. We are happy to work with such organisations and to provide advice on anti-fraud measures. Through contract documentation we will ensure that our service providers and partners take the issue of fraud seriously.

The Council expects its partners to adopt a protocol for standards of conduct expected based on the 'Seven Principles of Public Life' (please see appendix 6).

In an era of increasing emphasis on partnership working, it is vitally important that our key partners espouse and promote the principles of good governance, accountability for decisions, effective risk management and the appropriate stewardship of public funds.

## **The Public**

Members of the public receive financial assistance and benefits from the council through a variety of sources. These include:

- Housing and Council Tax Benefit
- Temporary Accommodation
- Renovation and other housing related Grants
- Parking Concessions
- Business refurbishment schemes and grants
- Voluntary Sector Grants.

All of these areas have been the subject of attack by people committing fraud. This means less money is available for those in genuine need. Our fraud effort will be balanced against our desire to ensure genuine claimants receive their full entitlement.

Because of the scale of expenditure, Housing Benefit fraud receives significant attention from central Government. A number of initiatives have been implemented which are fully supported by the Council. These include:

- 'Do not direct' scheme
- National Fraud Initiative
- Housing Benefit Matching Service
- National Anti Fraud Network alerts

The council will participate in these schemes to the fullest extent.

Our seven key themes of Anti Fraud Culture, Deterrence, Prevention, Detection, Investigation, Sanction and Redress run through all of the fraud threats as set out below.

## **Staff**

It is recognised that the vast majority of staff are hard working and conscientious who conduct themselves in ways which are beyond reproach, above suspicion and fully accountable.

However, financial malpractice will not be tolerated and where evidence indicates such malpractice has taken place, action will be taken under the council's disciplinary procedure that may lead to dismissal. Criminal and/or Civil proceedings will also be pursued if appropriate.

There is a special responsibility on our Corporate Management to lead their staff by example. The council expects these officers to set the standard by their own behaviour. This includes placing the Council's interests above their own and the whole-hearted promotion of the seven principles of public life as laid down by the Committee on Standards in Public Life.

It is the responsibility of directors and managers to be aware of the appropriate financial and other anti-fraud regulations and to be responsible for ensuring conformance to them by the staff for whom they are responsible.

## **Councillors**

Our Councillors (or Elected Members) are expected to act in a manner which sets an example to the community whom they represent and to the staff of the council who implement their policy objectives. They are expected to conduct themselves in ways which are beyond reproach, above suspicion and fully accountable. Councillors should be particularly careful to ensure that all relevant circumstances are properly declared in any and all of their financial dealings. No financial malpractice will be tolerated and where evidence indicates such malpractice has taken place, a report will be made to the relevant Body.

## **Identifying the specific threats**

Each Service will be challenged to identify the risk of fraud and/or corruption occurring in their area. Where risks are identified, they will be responsible for ensuring they are placed on the risk register and that actions are undertaken to address those risks.

Internal Audit, through its programme of work will test the control environment within Services and compile reports on its findings, highlighting any weaknesses in controls. Services will be required to act upon those recommendations and Internal Audit will monitor progress.

The Fraud Investigators will highlight any system weaknesses that are identified as a result of an investigation. These will be addressed through an agreed action plan. The relevant service area manager is responsible for implementing the action plan and Internal Audit will monitor implementation.

The Council will develop tools to identify and quantify the amount of fraud to inform decision making on the resourcing of anti fraud activity and how and where that resource is deployed.

## **The Council's approach**

Our strategy to combat fraud, corruption and misappropriation is built upon seven key themes:

- Anti-fraud Culture;
- Deterrence;
- Prevention;
- Detection;
- Investigation;
- Sanction, and;
- Redress.

The themes exist within the overall context of an anti-fraud culture promoted by the council through its leaders, governance arrangements and general approach to fraud.

Everyone in the Council has a duty protect the public purse and should be aware of the potential for fraud and corruption in their area of work. However, to ensure the successful implementation of this strategy, specific responsibilities are detailed in Appendix 2 – Roles & Responsibilities.

## **The anti-fraud culture**

The council must have a strong and recognised anti-fraud culture. One where the council's leaders, both elected and employed, uphold the highest standards of conduct both in their duties and in their own personal financial dealings.

Leadership is a cornerstone of any organisation. Leaders set the example that the rest of the organisation follows. The elected Councillors in this organisation are expected to set an example to each other, our staff and the community that we serve. To this end the council fully endorses the Members Code of Conduct as adopted in our own constitution.

Similarly, there is a special onus upon the Corporate Management Group and Senior Officers to lead by example in their financial dealings, which are beyond reproach and fully accountable. This includes financial dealings away from the workplace. For example, it is difficult to set a good example if you are making false or misleading tax returns.

The message must be clear and simple that the Council will not tolerate any fraudulent or corrupt activity. Every pound lost through fraudulent or corrupt acts is a pound stolen from the residents of Hastings.

This Strategy will be available to all employees, contractors and partners and will link into other relevant policies and guidance, such as the:

- Staff Handbook
- Staff Code of Conduct
- Whistle Blowing Policy

## **Deterrence**

We recognise that our systems are vulnerable from attack, particularly by those who gain inside knowledge of control weaknesses. The most effective way to minimise fraud entering into any system is to deter those who may consider defrauding from committing the offence in the first place.

The Council will ensure that this policy and other supporting policies are publicised to the widest possible audience, including staff, partners and the public. We will actively promote the anti-fraud culture and the consequences for those found to have committed such offences.

The Council will seek the most appropriate sanction and redress against all those who commit fraud against the Council. We will publicise details of criminal convictions and provide statistical information in relation to disciplinary action to deter others who may have considered committing such offences themselves.

All Managers have a responsibility for ensuring that control measures are in place to minimise the risk of fraud. They must consider these risks whenever new guidance or procedures are written or existing ones revised.

Managers must ensure that all staff are aware of these procedures and of the controls in place. Where effective controls are in place, there is less opportunity to commit fraud and therefore, this may act as a deterrent.



## **Prevention**

Fraud, theft and corruption are costly, both in terms of reputational risk and financial losses. To reduce the risk of loss we must aim to prevent it from happening in the first place. There are a number of key processes, which can assist in prevention of fraud and corruption including:

- Internal Control and Monitoring Systems
- Employee Recruitment and Conduct
- Councillors Roles and Conduct

## **Internal control systems**

The council takes ultimate responsibility for the protection of our finances and those that are administered on behalf of the Government or the Community. In turn, our managers have a duty to protect their service area from losses due to fraud and irregularity and are responsible for implementing, monitoring and reviewing proper internal controls. Our Managers are expected to be fully familiar with the services they provide and must be cognisant of the fraud risks in their service area. Some services will be at particular risk of attack from external sources, for example:

- Housing Benefit
- Renovation Grants
- Homelessness and Housing.
- Purchasing

In fact any service which pays money directly, reduces a liability or gives a service of value where there is some sort of claim or application made, is at a high risk of fraud. In addition, all council services are susceptible to internal fraud through false pay (including failure to declare overpayments), allowance or sickness claims and abuse of their position by officers for private gain or the gain of relatives or friends.

Internal controls are only effective if they are properly conducted. Therefore, it is the responsibility of all managers to establish and maintain systems of internal control and to assure themselves that those controls are properly applied and appropriately monitored on the activities intended. This includes responsibility for the prevention and detection of fraud, corruption and financial malpractice.

We will implement strong systems of verification of all claims for all types of financial assistance. We will utilise all data available to corroborate information given by applicants for the purposes of prevention and detection of fraud. We will also monitor and review grants and assistance given to external organisations to ensure applications are genuine.

We will also expect our partners to have adequate controls in place to minimise fraud. We will provide fraud awareness training to our partners as required. We will also provide support and training to our community partners to help them implement proper controls and protect the funds they administer.

Our partners will be expected to have adequate recruitment procedures and controls when they are handling finance on behalf of the Council. This expectation will be written into all contract terms and agreements.

Our partners are expected to have adequate Whistle blowing Procedures and the Council's own procedure will be promoted to contractor staff working on behalf of the Council.

Internal Audit will ensure that an adequate and effective audit is undertaken of the Council's systems and processes. A Fraud Investigation Team (which may include staff from Benefit Investigations, People and Organisational Development and Legal Services as well as Internal Audit) will investigate allegations of fraud and corruption. Any system weaknesses that are identified as a result will be reported to the relevant Service Manager. These will be addressed through an agreed action plan. The relevant Service Manager is responsible for implementing the action plan and Internal Audit will monitor implementation.

Failure to implement adequate system controls following a loss to fraud will be the subject of a report to the relevant Chief Officer and/or Audit Committee. The Audit Committee will receive regular reports from Internal Audit regarding system failures, proposals for action and feedback on the implementation of action plans.

### **Employee Recruitment and Conduct**

All employees must abide by the Staff Handbook which forms part of each employee's contract of employment. Employees of the Council are also expected to follow any additional codes of conduct, either related to any professional body to which they are registered, additional Council codes of conduct relevant to their post, policies and procedures and immediately notify the council if they come into conflict with any such code.

Where agency staff are being employed in positions where they have access to finance, personal data or other assets, their references will be checked direct with their previous employer. The council should not rely only on references supplied by staffing agencies

The Benefit Fraud Team and Internal Audit will be proactive in raising awareness of the Authority's anti- fraud and corruption culture to staff through regular fraud awareness sessions at all levels.

### **Councillors roles and conduct**

All Councillors are bound to comply with the Members Code of Conduct and any ancillary codes that we implement. We will provide fraud awareness training to our Members and encourage an open and honest dialogue between Members and Officers.

We will ensure that the processes that are particularly vulnerable, such as planning, licensing, and disposals and tendering are adequately protected through internal control mechanisms and proactive reviews of member interests.

## **Joint working to prevent and combat fraud**

Fraud investigators will work with other local authorities and public sector bodies including:

- Department of Health
- Department for Work and Pensions
- the Police
- Her Majesty's Revenue & Customs
- Border & Immigration Agency

Where appropriate, we will participate in data matching exercises and will share information using legislation or legal gateways available to us and our partners. The Audit Commission has drawn up a Code of Data Matching Practice for its National Fraud Initiative (NFI), which is recognised by the Information Commissioner as complying with Data Protection legislation.

The council will make full use of its statutory powers to obtain information and will utilise the services of the National Anti-Fraud Network (NAFN) to support such information gathering.

## **Detection**

Whilst it is possible to reduce the potential for fraud and corruption within the Council, it is important to remember that it is not possible to eradicate it. Therefore, it is essential that staff are aware of what to do should they detect or suspect a fraud has or is taking place.

All members of staff, the public and Councillors are encouraged to contact the Head of Internal Audit with any suspicion of fraud, corruption, financial malpractice or the misuse of official position. In addition the council operates a Whistle blowing policy for those employees who wish to utilise the protection offered by the Public Interest Disclosure Act 1998.

Staff have a duty to assist the council with any matter under investigation. Failure to assist with an investigation may be considered as a breach of conduct or failure to comply with financial regulations. Alternatively, staff may wish to provide information under the Whistle blowing procedures. Failure to assist in an investigation may lead to disciplinary action.

The Fraud Response Plan provides guidance on what to do should an individual suspect fraud or corruption and can be found at the end of this policy.

Internal audit reviews will have regard to the possibility of fraud. Auditors and Investigators will receive reciprocal training to ensure that both have a full understanding of system controls and potential fraud areas.

We will utilise all methods available to detect fraud. This includes data matching, open source research, surveillance and intelligence led investigations where appropriate. We will participate fully in the Audit Commission's National Fraud initiative.

We will analyse fraud trends in order to identify high risk areas and undertake pro-active anti-fraud exercises based on that analysis. Where our partners are involved with the administration of our finances, or those for which we have responsibility, we will conduct pro-active anti-fraud exercises as we would for our own service areas.

## **Investigation**

Benefit Fraud and Internal Audit are charged with leading the Council's fight against fraud.

The teams work to the Chief Auditor, Head of Finance and Corporate Director Resources and will be free to examine all allegations of theft, fraud, financial misconduct, corruption and other behaviour affecting the finances or integrity of the Council, its Councillors and employees.

They will be fully trained in criminal investigation and will be required to work within the parameters of the relevant criminal law and within the Council's Code of Conduct for Investigation Officers.

They will investigate any allegation that may have a direct, or indirect, impact on the finances for which we are responsible. This will include cases where staff may have financial information relating to organisations which are, or have been, funded by the council or with whom the council have a contract.

We will utilise the Police in cases where their additional powers are required to secure evidence or recovery of funds or where the matter cannot be pursued in-house.

Where an investigation involves an Employee of the Council the Fraud Investigation Team will have regard to the possibility of both disciplinary and criminal action being taken. To ensure the specific actions are taken at the correct time the Chief Auditor or Benefit Investigation's Manager will ensure that Personnel and Organisational Development and Legal Services are notified of all investigations involving employees in line with agreed procedures. Similarly, the Executive Manager People and Organisational Development will inform the Chief Auditor of any disciplinary action investigation that could potentially include fraudulent activity or a breach of financial operating procedures.

If an allegation of fraud or corruption against a Councillor also results in a complaint of misconduct under the Members' Code of Conduct, the complaint will be dealt with in accordance with the Council's internal arrangements agreed by Council on 21 June 2012.

Our partners will provide full access to their financial records, as they relate to our finances, and their staff will be required to assist fully with any investigation. These conditions will be included in any contract terms or agreements. Personnel records of any person suspected of being involved in fraud will be made available to Fraud Investigators.

## **Sanction**

We will seek the strongest available sanctions against all who commit fraud against the Council, its clients or the public purse. This may include disciplinary action, prosecution, civil proceedings or a combination of all. Where the fraud is committed by an employee of a contractor or partner organisation, we will request that the organisation takes appropriate disciplinary action against the individual and/or we will require that they are removed from the Hastings account. The ability to request removal of staff will be written into contract terms.

The decision to recommend any or all of the above sanctions will be made on a case by case basis, having regard to the Discipline Procedure and Prosecution Policy in place at the time.

## **Disciplinary action**

At the conclusion of each investigation, the Fraud Investigators will produce a report. The manager whose responsibility encompasses the area of that investigation will formally accept the report and take the appropriate action (disciplinary or other).

In most cases, where there is objective evidence available to lead to a conclusion of fraud, theft, corruption, serious financial malpractice, or use of position for personal gain or for the gain of others, this is likely to constitute gross misconduct and may lead to summary dismissal.

This applies to employees who improperly benefit from the council as a corporate body and not just those who steal funds from their own unit. It also applies to employees who defraud or steal from the Council's clients. We will also take disciplinary action against staff who commit fraud against other Local Authorities, the Department of Work and Pensions or any other agency administering public funds.

Any case of fraud involving a Councillor will be subject to the Council's internal arrangements agreed by Council on 21 June 2012.

## **Criminal sanctions**

As with all disciplinary matters, where it is established by investigation that there are reasonable grounds for believing an employee is guilty of fraud, corruption or financial malpractice disciplinary action will be taken which may lead to dismissal.

In addition, the Corporate Director Resources (or his nominee) will decide whether further action is appropriate in respect of any criminal offences. This decision will be made on a case by case basis and within the Prosecution Policy in force at the time.

We will use the Council's own legal team, Department for Work and Pensions Solicitors and the Crown Prosecution Service, through the Police, to bring offenders to justice. As a deterrent, we will also publicise our successful sanctions in the local press.

## **Redress**

In all cases we will seek recovery of any fraudulently obtained amounts and we will utilise all means available to us to recover these amounts. This can include freezing assets, compensation orders, confiscation orders, civil litigation, recoup of monies paid through the pension fund and general debt recovery.

The Council Debt Recovery Strategy provides clear guidance on the measures it will take to effectively recover monies owed to the Council.

Additionally, where a criminal conviction has been secured we will utilise the power of the Courts to obtain compensation orders where appropriate. We will also consider the use of our partners' specialist skills in financial investigation to recover losses using the Proceeds of Crime Act 2002.

All partners and contractors will be responsible for any losses affecting council funds attributable to their employees. This will be written into contract terms.

## **Review**

This strategy will be the subject of continuous review to ensure it supports the strategic objectives of the Council. It will be reviewed no less than annually.

Internal audit will also conduct an annual review of the Council's operation against the strategy to ensure the anti-fraud and anti-corruption culture is embedded within Council services.

## **Appendix 1 - The corporate framework**

- The Constitution (including Financial Rules, Financial Operating Procedures, Standing Orders and the Scheme of Delegation)
- An established Audit Committee
- A Standards Committee in accordance with the Localism Act 2011 agreed by Council on 21 June 2012 and an adopted code of conduct for Members
- Members formally signing a declaration accepting the terms of the code of conduct
- Staff Code of Conduct
- Employees conditions of service
- An Officer appointed under Section 151 of the Local Government Act 1972, with statutory responsibility for the oversight of all financial affairs
- An Officer, appointed as Monitoring Officer, under section 5 of the Local Government and Housing Act 1989, with statutory responsibility for monitoring the legality of the Council's affairs
- Register of interest and gifts and hospitality procedures for Members and Officers
- Effective employee vetting procedures (recruitment checks, Independent Safeguarding Authority (ISA) and Criminal Records Bureau (CRB) where appropriate and a detailed staff code of conduct
- Effective disciplinary procedures
- An Internal Audit section with a responsibility for assessing and testing the Council's control environment, and for conducting investigations in relation to allegations of financial impropriety by employees and contractors
- A Whistle blowing policy
- An Anti-fraud and anti corruption strategy
- A Complaints procedure available to the public
- Public inspection of accounts and questions to the External Auditor
- An External Audit
- Dedicated Benefit Fraud Investigation Team whose work programmes includes proactive work determined by a formal risk assessment
- Participation in National anti-fraud initiatives.
- The promotion of awareness of anti fraud and corruption issues, reinforced by training and publicity.

## Appendix 2 - Roles and responsibilities

Role	Responsibility
Council	<ul style="list-style-type: none"> <li>• Facilitating an anti fraud and anti corruption culture</li> <li>• Demonstrate a commitment to this strategy and ensure it has the appropriate profile within the Council</li> </ul>
Cabinet	<ul style="list-style-type: none"> <li>• Ensure the strategy is effectively implemented across the Council</li> </ul>
Audit Committee	<ul style="list-style-type: none"> <li>• To approve the anti fraud and anti corruption strategy</li> <li>• To monitor and review the effectiveness of the Council's risk management arrangements, internal controls and related anti fraud and corruption arrangements</li> </ul>
Corporate Management Group	<ul style="list-style-type: none"> <li>• Ensure that there is strong political and executive support for work to counter fraud and corruption</li> <li>• Ensure consistency across Directorates in the implementation of this strategy</li> </ul>
Monitoring Officer	<ul style="list-style-type: none"> <li>• Ensure that a programme of work is undertaken that is designed to publicise expected standards of ethical conduct</li> <li>• Ensure that the progress in raising standards will be communicated to stakeholders</li> <li>• Ensure that effective Whistle Blowing arrangements are established</li> <li>• Ensure registers of interests, gifts &amp; hospitality are maintained</li> <li>• Ensure Councillors and officers are fully aware of their obligations in relation to probity</li> </ul>
Section 151 officer	<ul style="list-style-type: none"> <li>• Ensure that those working to counter fraud and corruption are undertaking this work in accordance with a clear ethical framework and standards of personal conduct</li> <li>• Ensure that those working to counter fraud and corruption are professionally trained and accredited for their role and attend regular refresher courses to ensure they are up to date with new developments and legislation</li> <li>• Ensure that there is a level of financial investment in counter fraud and corruption work that is proportionate to the risk that has been identified.</li> <li>• Ensure that reports on investigations include a section on identified policy and system weaknesses that allowed the fraud/ corruption to take place where appropriate</li> </ul>



Corporate Directors	<ul style="list-style-type: none"> <li>• Ensure the risks of fraud and corruption are identified, entered on the risk register and action plans implemented to reduce the risk to an acceptable level</li> <li>• Ensure the anti fraud and anti corruption strategy is implemented within their directorate</li> <li>• Ensure the risk of fraud and corruption is considered in all new processes</li> </ul>
Internal Audit	<ul style="list-style-type: none"> <li>• Support heads of service and their managers in identifying and mitigating risks for fraud and corruption</li> <li>• To undertake initial investigation into allegations of fraud and corruption to identify weaknesses in controls</li> <li>• Ensure all allegations are recorded and risk assessed</li> <li>• Conduct investigations in line with legislation, standards and rule of conduct</li> <li>• Notify People and Organisation Development &amp; Legal Services (and Benefit Investigations where appropriate) at the outset of investigations into employees and at the conclusion of investigation</li> <li>• Make recommendations where weaknesses identified and ensure action plans implemented to prevent reoccurrences</li> </ul>
Benefit Investigations	<ul style="list-style-type: none"> <li>• Ensure all allegations are recorded and risk assessed</li> <li>• Conduct investigations in line with legislation</li> <li>• Notify People and Organisational Development, Internal Audit &amp; Legal Services at the outset of investigations into employees and at the conclusion of investigation</li> <li>• Pursue the most appropriate criminal/ disciplinary sanction including prosecution</li> <li>• Provide support to Internal Audit in carrying out non-benefit related investigations where appropriate</li> </ul>
Executive Manager People and Organisational Development	<ul style="list-style-type: none"> <li>• Ensure that there is an effective propriety checking system (i.e. safe recruitment) implemented by appropriately trained staff in place</li> <li>• Provide advice to promote consistency</li> <li>• Ensure employment policies support the anti fraud and anti corruption strategy</li> <li>• Monitor effective and appropriate sanctions are applied in all appropriate cases</li> <li>• Inform Internal Audit and/ or Benefit Investigations at the outset of any conduct investigation</li> </ul>

Heads of Service	<ul style="list-style-type: none"> <li>• Ensure the anti fraud and anti corruption strategy is implemented within their service</li> <li>• Ensure that as part of the risk management process the Council attempts to identify accurately the nature and scale of losses to fraud and corruption and also takes into account fraud and corruption risks in relation to significant partnerships</li> <li>• Ensure that there are framework agreements in place to facilitate working with other organisations and agencies. Ensure that there are regular meetings to implement and update these agreements</li> <li>• Consider fraud and corruption risks within all new policies and systems and to revise existing ones to remove possible weaknesses</li> </ul>
Managers	<ul style="list-style-type: none"> <li>• Ensure all employees are aware of their responsibilities under the anti fraud and anti corruption strategy</li> <li>• Ensure all employees have read the Employee guide to Conduct, Probity and Standards, Employee Rules of Conduct and Employees conditions of service and understand their responsibilities</li> <li>• Ensure all employees understand the Whistle Blowers policy and reporting arrangements</li> <li>• Ensure employees are aware of the process for reporting allegations of fraud</li> <li>• Ensure accurate and timely reporting of gifts and hospitality</li> </ul>
Employees	<ul style="list-style-type: none"> <li>• Understanding of expected behaviour and of their responsibility to report suspected fraud or corruption and the appropriate methods to do so</li> </ul>

## **Appendix 3 - Fraud Response Plan**

### **Introduction**

Hastings Borough Council is committed to the highest possible standards of openness, probity and accountability in all its affairs. It is determined to develop a culture of honesty and opposition to fraud and corruption.

In line with that commitment, the Council's Anti-Fraud and Anti-Corruption Strategy outlines the principles we are committed to in relation to preventing, reporting and managing fraud and corruption.

This Fraud Response Plan reinforces the Council's robust approach by setting out the ways in which employees or members of the public can voice their concerns about suspected fraud or corruption. It also outlines how the Council will deal with such complaints.

### **Definition of fraud and corruption**

Fraud is defined as: "The intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to conceal the misappropriation of assets or otherwise for gain.

The full definition is included in the Anti-fraud and anti corruption strategy.

If you are in any doubt about the seriousness of your concern, advice and guidance can be obtained from Internal Audit on 01424 451526 or 01424 451524.

### **What should you do if you suspect fraud or corruption?**

The methods for reporting suspected fraud and corruption are laid out below.

### **What should an employee do if they suspect fraud or corruption?**

Employees are often the first to realise that there is something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

The Council's Whistle blowing Policy is intended to encourage and enable staff to raise serious concerns within the Council rather than overlooking a problem, informing the media or other external bodies. The relevant Trade Unions and professional organisations have been consulted in respect of this policy. A full copy of the Whistle blowing Policy can be obtained from the Internet.

In essence, employees should raise their concerns with their line manager or service head who will inform the Chief Auditor. However, under the terms of the policy staff can alternatively contact Internal Audit, Service Heads, or a number of prescribed external bodies directly as listed in the policy.

A member of staff may choose to report their concerns anonymously and such anonymity will be respected.

**You must not do any of the following:**

- Contact the suspected perpetrator in an effort to determine facts or demand restitution;
- Discuss the case facts, suspicions, or allegations with anyone unless specifically asked to do so by the Corporate Director Resources, Head of Finance, Internal Audit or People and Organisational Development.
- Attempt to personally conduct investigations or interviews or question anyone unless asked to do so by the Chief Auditor.

**What should a Manager do when suspected fraud or corruption is reported to them by a member of staff?**

- Listen to the concerns of your staff and treat every report you receive seriously and sensitively
- Make sure that all staff concerns are given a fair hearing. You should also reassure staff that they will not suffer because they have told you of their suspicions.
- Get as much information as possible from the member of staff, including any notes and any evidence they have that may support the allegation. Do not interfere with any evidence and make sure it is kept in a safe place.
- Do not try to carry out an investigation yourself. This may damage any internal audit or criminal enquiry.
- Report the matter immediately to the Chief Auditor

**What should Human Resources do if they suspect fraud or corruption?**

Issues around staff performance or behaviour are referred to People and Organisational Development under the Council's disciplinary procedures. If People and Organisational Development are contacted about such issues, they should consider whether it involves potential fraud or corruption. In such cases, both the Executive Manager People and organisational Development and Internal Audit should be contacted as soon as possible, who will assess whether the nature of the allegations come under the scope of the Fraud Response Plan. Irregularities on timesheets or travel and subsistence claims are potentially fraudulent acts.

Similarly, once a disciplinary investigation begins should fraud and corruption issues emerge, then Internal Audit should be contacted as soon as possible for advice on how to proceed. Interviews should only take place once this advice has been received (which may include an agreement on which issues could proceed and others which should not) to ensure, as far as possible, that any evidence collected will not adversely impact any potential criminal investigation.

**What should auditors do if they suspect fraud or corruption?**

If in the course of their duties a member of the Internal Audit team suspect fraud or corruption they should cease work on the assignment immediately, and report it to the Chief Auditor or their line manager.

## **What should a member of the public do if they suspect fraud or corruption?**

The council encourages members of the public who suspect fraud and corruption to contact the council should the suspect fraud or corruption.

If it relates to a member, council employee or an individual working on behalf of the council including agency workers and contractors, a referral can be made directly to the Chief Auditor.

Alternatively, where benefit fraud is suspected we encourage the public to make use of our fraud hotline 01424 451082 to report any suspected fraud or to report fraud through our web site at Hastings Borough Council (e-mail: [fraud@hastings.gov.uk](mailto:fraud@hastings.gov.uk)). We will evaluate all referrals received from members of the public and commence investigation into all appropriate cases.

## **Safeguards**

**Harassment or Victimisation:** The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment or victimisation and will take action to protect those who raise a concern in good faith.

**Confidentiality:** The Council will do its best to protect an individual's identity when he or she raises a concern and does not want their name to be disclosed. Individuals who raise concerns will not have their identity disclosed without their prior consent. It must be appreciated, however, that in some situations the investigation process may not be concluded unless the source of the information and a statement by the individual is produced as part of the evidence. It should be noted that, if the report suggests criminal activity, and the case is to be pursued by police, the identity of the person reporting the details may be needed at a later date if criminal proceedings are to be pursued effectively. It should also be noted, that although every effort can be made to protect the identity of the whistleblower, in some circumstances the identity may be quite obvious. In such circumstances, a discussion will take place between the Executive Manager People and Organisational Development and the Director Corporate Resources to agree a reasonable way forward.

**Anonymous Allegations:** This policy encourages individuals to put their names to allegations. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council. In exercising this discretion, the factors to be taken into account would include the:

- seriousness of the issues raised;
- credibility of the concern; and
- likelihood of confirming the allegation from attributable sources.

**Untrue Allegations:** If an allegation is made in good faith, but it is not confirmed by the investigation, no action will be taken against the originator. If, however, individuals make malicious or vexatious allegations, action may be considered against the individual making the allegation.

## **Alternative Methods of reporting fraud**

Alternative methods of taking a concern forward are:

- Through local councillors – for those living within the Hastings Borough Council boundary.
- Trade Union Representatives – employees may invite their Trade Union to raise a matter on their behalf.
- The Police – suspicions of fraud or corruption may be reported directly to the Police.
- The Local Government Ombudsman – this is an independent body set up by the Government to deal with complaints against Councils in the United Kingdom.
- Public Concern at Work – this is a charity which provides free and strictly confidential legal help to anyone concerned about a malpractice which threatens the public interest. They operate a help line on 020 7404 6609 or can be e-mailed at [whistle@pcaw.org.co.uk](mailto:whistle@pcaw.org.co.uk)

## **How will allegations of fraud or corruption be dealt with by the Council?**

Within 10 working days of a concern being received, the Corporate Director Resources or designated officer will write to the complainant:

- acknowledging that the concern has been received;
- indicating how it proposes to deal with the matter;
- giving an estimate of how long it will take to provide a final response;
- telling them whether any initial enquiries have been made; and telling them whether any further investigations will take place, and if not, why not.

The Council accepts that those people who reported the alleged fraud or corruption need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, they will receive information about the outcomes.

All investigations will be conducted in accordance with the relevant Council policies and procedures and where appropriate criminal legislation.

All interviews with staff will be conducted in line with the Council's disciplinary procedures. Should there be a possibility that the investigation could lead to a criminal prosecution then all relevant interviews must be carried out by or in conjunction with the Investigations Manager, or an officer suitably trained in the Police and Criminal Evidence Act.

Once the investigation has been completed, a written report will be prepared which states the facts discovered by the investigation. A recommendation will be made as to the appropriate course of action to be followed. This can include a disciplinary hearing, criminal proceedings or no further action.

## **Follow Up**

The Council will seek to recover any financial loss through the appropriate mechanism. This may involve either civil or criminal proceedings where it is cost effective to do so, the recovery from salary or accumulated pension benefits of staff, or a claim against the Council's insurers.

Any weaknesses in the system of controls will be identified in the investigation report and recommendations will be made in a subsequent systems report advising management as to how the controls can be improved to prevent any recurrence of fraud or corruption. This will also be reported to the Audit Committee.

## **Appendix 4 - Prosecution Policy**

The Council's anti-fraud and anti corruption strategy sets out our aims and objectives with regard to tackling fraud and corruption and includes the Authority's prosecution policy statement. It states that we will seek the strongest possible sanction against any individual or organisation that defraud, or seek to defraud the Authority. The use of prosecution will be governed by the following policy and the principles of the policy shall apply equally to any fraud against the Authority or against funds for which the Authority has responsibility.

The objectives of the prosecution policy is to ensure that:

- the council considers a full range of sanctions including criminal proceedings, in a just and consistent manner
- sanctions are applied in an effective and cost efficient manner
- the decision to prosecute is robust and transparent.

This policy is designed to provide a framework to ensure the most appropriate resolution to a case is reached. The decision to prosecute will have regard at all times to the Council's anti fraud and anti corruption policy objectives, the individual circumstances of each person concerned and the overall impact of the punishment to both the individual and the community.

A range of sanctions are available to the Council. These include:

- disciplinary action
- civil proceedings
- criminal proceedings (prosecution)
- formal caution
- administrative penalties.

In appropriate cases we will take more than one form of action. For example, where staff have defrauded the council we may take disciplinary, prosecution and civil recovery action.

The decision to take disciplinary action will be made with regard to the Council's disciplinary procedures and is independent of any decision to prosecute.

### **Criminal Prosecution**

One sanction available to the Council is criminal prosecution. We recognise that this is a serious step to take and the decision to refer cases for prosecution will not be taken lightly.

The ultimate decision on prosecution will be taken by the prosecuting body. In some cases this will be the Council's Legal Services. In these cases the decision to refer cases to the prosecuting authority will in the first instance be taken by the Investigating Manager.



In appropriate cases, we will also utilise the prosecution arm of the Department for Works and Pensions. This will usually be for cases involving joint investigations involving Local Authority and Department for Works and Pensions benefits. However, the decision to refer any offences against the Council to the Department for Works and Pensions solicitor will remain with the Investigations Manager in conjunction with their counterpart.

Where an investigation has been passed to the Police to investigate, they will liaise with the Crown Prosecution Service to make the ultimate decision on whether or not to prosecute.

When considering a case for prosecution it is generally accepted that there are two "tests" to be applied - the evidential test and the public interest test. These are currently set out in the Code for Crown Prosecutors 2004. The Evidential Stage test must be considered prior to the Public Interest Stage.

### **Evidential stage test**

Is there the required level of evidence to support a prosecution? Without this the case cannot go ahead no matter how important the case or how strong the public interest is in favour of prosecution.

The evidence must be acquired in a form which can be used by the court and be admissible and there must be enough evidence to form a realistic prospect of conviction. In order to ensure that a "realistic prospect of conviction" exists. Fraud Investigators will at all times ensure that investigations are conducted in accordance with relevant legislation and in line with published Codes of Practice and Guidance with regard to evidence gathering, interviewing and rules of disclosure.

The evidence gathered will be examined in the first instance by the investigator and their manager. When both are satisfied that sufficient evidence exists to successfully prosecute and that the Public Interest Stage is also satisfied the case file will be passed on to either the Council's Legal Services, the Department for Works and Pensions Solicitor or the Crown Prosecution Service via the Police. All prosecutors will then apply their own inspection of the evidence to ensure that both tests are met.

### **Public interest test**

In order to ensure consistency and correctness when considering a case for Sanction/Prosecution, the guidelines applied by the Crown Prosecution Service- as detailed in Section 10 Prosecution of Offences Act 1985, will be followed by fraud investigators. In addition the guidance provided by the DWP, in relation to benefit fraud will also be considered. Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction.

### **Housing Benefit fraud**

In the area of Housing Benefit fraud, there are two additional sanctions which are available to the Council. These are the formal caution and administrative penalty and can be offered in certain circumstances as an alternative to prosecution.

## **Formal Caution**

A formal caution is an oral warning given to a person who it is believed has committed an offence; the seriousness and circumstances of which do not appear to be serious enough to warrant Prosecution. This would normally apply to low value benefit fraud, or possibly short term failure to notify changes in circumstances. The Caution is recorded on the DWP database.

In order to offer a Caution the Council must be satisfied that sufficient evidence exists to justify criminal proceedings. The person must have admitted to the offence and must make a written admission of the offence acknowledging that they are willing to receive a Caution. If a person accepts the Caution, the Council will not pursue criminal proceedings in respect of that offence.

If the caution is not accepted the matter should normally then be referred for prosecution on the basis of the original facts.

## **Administrative Penalty**

The Council will consider financial penalties, as an alternative to a criminal prosecution, in cases where the criteria for prosecution have been fulfilled but the offenders personal circumstances indicate that a financial penalty would be a suitable solution.

This provision is in accordance with the Social Security Administration (Fraud) Act 1997 which allows the Authority to administer a penalty (currently 30% of the amount of benefit fraudulently obtained). The Council will recoup the administrative penalty payments in addition to any repayments of the overpaid benefit.

If the financial penalty is not accepted by the offender as the alternative remedy, then the matter will be referred back for pursuit of a criminal prosecution as will any case where a claimant had agreed to pay an administrative penalty but subsequently withdraws their agreement within a specified time.

More detailed information on Formal Cautions and Administrative Penalties can be found in the Council's Benefit Fraud sanction guidelines.

## **Appendix 5 – Anti Money Laundering Policy**

### **1. Introduction**

- 1.1 Money laundering can be defined as “a process that makes money with an illegal origin appear legal so that they may be used”. Legislation concerning money laundering is included within the Proceeds of Crime Act 2002 (the POCA) and Money Laundering Regulations 2007.
- 1.2 Whilst public authorities are not subject to the requirements of the 2007 Regulations, the Council should embrace the underlying principles of the money laundering legislation by taking all reasonable steps to minimise the likelihood of money laundering including putting in place proper policies and procedures.
- 1.3 This policy, which is supplemented by accompanying guidance notes, forms part of the Council's approach to dealing with the risk of fraud as set out in its Anti-Fraud Strategy and Whistle Blowing Policy. These policies form part of the Council's Corporate Governance framework.

### **2. What is Money Laundering?**

- 2.1 Money laundering is the process by which the proceeds of crime or terrorism funds are changed so that they appear to come from a legitimate source.
- 2.2 The POCA 2002 defines the primary money laundering offences as:
  - concealing, disguising, converting, transferring criminal property or removing it from the UK
  - entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
  - acquiring, using or possessing criminal property
  - doing something that might prejudice an investigation - for example falsifying a document
  - failure to disclose
  - “tipping off”<sup>1</sup>
- 2.3 So long as the Council does not undertake activities which might be interpreted, under POCA, as falling within the regulated sector<sup>2</sup>, the offences of failure to disclose and tipping off do not apply.
- 2.4 CIPFA's view is that, 'it is prudent and responsible practice for public service organisations, including those outside the scope of the regulations, to put in place appropriate and proportionate anti-money laundering safeguards and

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<sup>1</sup> Tipping off is where someone informs a person or people who are, or suspected of being involved in money laundering, in such a way as to reduce the likelihood of being investigated or prejudicing an investigation.

<sup>2</sup> The regulated sector refers to activities which should be regulated under the Financial Services and Markets Act 2000.

reporting arrangements, designed to enable them to detect and avoid involvement in the crimes described in the legislation and regulations.'

### **3. The Scope of this Policy**

- 3.1 The first 4 offences under POCA listed above could apply to any individual and therefore this policy applies to all employees of Hastings Borough Council and its elected members. The policy aims to maintain the high standards of conduct which currently exist within the Council by preventing criminal activity through money laundering. The policy sets out the procedures which must be followed to enable the Council to comply with its legal obligations.
- 3.2 The key requirement on employees is to promptly report any suspected money laundering activity to the Council's Money Laundering Reporting Officer.
- 3.3 Failure by any employee to comply with the procedures set out in this Policy may lead to disciplinary action being taken against them. Any disciplinary action will be dealt with in accordance with the Council's Disciplinary Policy and Procedure. Failure by any elected member to comply with the procedures may lead to action being taken by the Standards Committee.

### **4. Purpose and Intent**

- 4.1 The statutory requirements concerning anti money laundering procedures are extensive and complex. The purpose for this policy is to enable the council to meet its legal obligations in a way that is proportionate to the low risk to the Council of contravening the legislative framework.
- 4.2 Whilst the risk to the Council of contravening the legislation is low, it is important that all employees and elected members are familiar with their responsibilities: serious criminal sanctions may be imposed for breach of the legislation.
- 4.3 Any employee could potentially be caught by the money laundering provisions if they suspect money laundering and either become involved with it in some way and /or do nothing about it.

### **5. Detail of the Policy**

- 5.1 The Council's policy is to do all we can to prevent, wherever possible, the Council and its staff being exposed to money laundering, to identify the potential areas where it may occur and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases. It is every member of staff's responsibility to be vigilant.
- 5.2 The arrangements that the Council have put in place are detailed in the following paragraphs.

### **6. The Money Laundering Reporting Officer (MLRO)**

- 6.1 The Council has nominated an officer to receive disclosures about money laundering activity within the Council. This is the Section 151 Officer (Head of

Finance). In the absence of the MLRO, the Chief Auditor is the authorised deputy.

## **7. Procedures**

### **7.1 Cash Payments**

7.1.1 No payment to the Council will be accepted in cash if it exceeds £10,000 without guidance from the MLRO/Deputy MLRO. Cash is defined as including notes, coins or travellers cheques in any currency.

### **7.2 Reporting to the Money Laundering Reporting Officer**

7.2.1 Any employee who suspects money laundering activity must report their suspicion promptly to the MLRO, or to the MLRO's deputy if appropriate using the attached Form (Annex A). If preferred, suspicions can be discussed with the MLRO or deputy first.

7.2.2 The employee must follow any subsequent directions of the MLRO or deputy and must not themselves make any further enquiries into the matter.

7.2.3 The MLRO or deputy must promptly evaluate any Disclosure Report, to determine whether it should be reported to the Serious and Organised Crime Agency (SOCA).

7.2.4 The MLRO or deputy must, if they so determine, promptly report the matter to SOCA on their standard report form and in the prescribed manner.

7.2.5 In cases where legal professional privilege may apply, the MRLO must liaise with the Head of Legal in deciding whether or not the matter should be reported to SOCA.

7.2.6 All employees are required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation and at no time and under no circumstances should employees voice any suspicions to the person(s) suspected of money laundering.

7.2.7 Examples of the potential areas where money laundering may occur and further details of how suspicions should be recorded and reported are provided in a guidance note (Annex B).

### **7.3 Customer Due Diligence**

7.3.1 The regulations regarding 'regulated activities' are subject to strict requirements to establish procedures for the reporting, training, client identification and record keeping.

7.3.2 POCA requires that where an organisation is carrying out certain, 'regulated activities', then extra care needs to be taken to check the identity of the customer or client. This is known as carrying out Customer Due Diligence.

7.3.3 Regulated activity is defined as the provision 'by way of business' of advice about tax affairs; accounting services; treasury management, investment or other financial services; audit services; estate functions; services involving the formation, operation or arrangement of a company or trust or, dealing in goods wherever a transaction involves a cash payment of 15,000 Euros or more.

7.3.4 It is unlikely that the Council will be undertaking 'regulated activities', but should this apply, guidance is given in Annex B.

#### 7.4 Guidance and Training

7.5 In support of this policy and procedures the Council will:

- Make all employees and members aware of the requirements and obligations placed on the Council and on themselves as individuals by the anti-money laundering legislation.
- Provide advice and guidance through targeted training to those employees most likely to be exposed to or suspicious of money laundering situations.

### 8. **Monitoring and Review Process**

8.1 This policy will be monitored and reviewed on an annual basis by the MRLO to ensure that it remains fit for purpose.

8.2 The effectiveness of this policy will be considered as part of the annual review of the effectiveness of the Corporate Governance arrangements.

### 9. **References**

9.1 Further information can be obtained from the MLRO and the following sources:

- The Council's Anti-Fraud Strategy
- CIPFA's Proceeds of Crime ( Anti-Money Laundering) – Practical Guidance for Public Service Organisations, 2005
- CIPFA's Combating Financial Crime – Further Guidance on Anti-Money Laundering for Public Services Organisations 2009
- Anti-Money Laundering (Proceeds of Crime and Terrorism) – Second Interim Guidance for Accountants – CCAB
- SI 2007 No 2157 - The Money Laundering Regulations 2007

### 10. **Appendices**

Annex A - Disclosure Reporting Form

Annex B - Proceeds of Crime (Anti-Money Laundering) Guidance

**Money Laundering Reporting Officer Disclosure Form**

Date of Disclosure:

Officer making disclosure (inc. Job Title):

Contact Details:

Subject Details:

Title:

Surname:

Forename:

Date of Birth:

In the case of a legal entity (company):

Name:

Address:

Company No. (if known):

Type of Business:

VAT No. (If known):

Reason for disclosure:

The MLRO or Deputy MLRO will confirm receipt of a completed Disclosure Form within 3 working days

## **Proceeds of Crime (Anti-Money Laundering)**

### **Guidance for Employees**

#### **1. Purpose**

- 1.1 This guidance should be read in conjunction with the Council's Anti- Money Laundering Policy and aims to help employees understand the legal and regulatory requirements relating to money laundering, as they affect both the Council and you personally.
- 1.2 It aims to raise the awareness of the potential for money laundering activity involving the Council and what you should do if you become suspicious.

#### **2. What is Money Laundering and what laws exist to control it?**

- 2.1 Money laundering is the process by which the proceeds of crime or terrorism funds are changed so that they appear to come from a legitimate source.
- 2.2 In recent years new laws and regulations have been passed which shift significantly the burden for identifying acts of money laundering away from government agencies and more towards organisations and their employees. They prescribe potentially very heavy penalties, including imprisonment for those convicted of breaking the law.
- 2.3 The legal and regulatory framework that relates to money laundering is summarised below:
  - The Proceeds of Crime Act 2002 (POCA) (as amended by the Serious Organised Crime and Police Act 2005)
  - The Terrorism Act 2000 (TA) (as amended by the Anti-Terrorism and Security Act 2001 and the Terrorism Act 2006)
  - The Money Laundering Regulations 2007 (the 2007 Regulations)
- 2.4 The POCA 2002 defines the primary money laundering offences and thus prohibited acts under the legislation as:
  - concealing, disguising, converting, transferring criminal property or removing it from the UK
  - entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
  - acquiring, using or possessing criminal property
  - doing something that might prejudice an investigation - for example falsifying a document
  - failure to disclose
  - "tipping off" (under new section 333a)



- 2.5 Concealing is where someone knows or suspects a case of money laundering, but conceals or disguises its existence. Arranging is where someone involves himself in an arrangement to assist in money laundering. Acquisition (etc) is where someone seeks to benefit from money laundering by acquiring, using or possessing the property concerned.
- 2.6 Tipping off is where someone informs a person or people who are, or are suspected of being, involved in money laundering in such a way as to reduce the likelihood of being investigated or prejudicing an investigation.
- 2.7 Although the term 'money laundering' is generally used when describing the activities of organised crime for which the legislation and regulations were first and foremost introduced, to most people who are likely to come across it or be affected by it, it involves a suspicion that someone they know, or know of, is benefiting financially from dishonest activities.
- 2.8 Criminal property is defined very widely in the law relating to money laundering. It includes not only the proceeds of crime committed by someone else but also possession of the proceeds of an individual's own crime, for example, the retentions of money from the non-payment of income tax. It does not matter how small the amount of money involved is. It also includes the proceeds of crimes that take place abroad.
- 2.9 All the money laundering offences may be committed by an organisation or by individuals working for it.
3. What are the obligations for the Council?
- 3.1 The Council and its employees are subject to the first four offences of POCA outlined above in paragraph 2.4 above.
- 3.2 So long as the Council does not undertake activities which might be interpreted, under POCA, as falling within the regulated sector, the offences of failure to disclose and tipping off do not apply. The regulated sector refers to activities which should be regulated under the Financial Services and Markets Act 2000.
- 3.3 If the Council does carry out any 'regulated activities' then extra care needs to be taken to check the identity of the customer or client. This is known as carrying out Customer Due Diligence. Customer due diligence records must be kept for 5 years after the end of the business relationship.
- 3.4 The 2007 regulations refer to 'relevant business' and 'relevant persons.' Public authorities are not listed and therefore are not subject to the requirements of the 2007 regulations.
- 3.5 The consequences for staff committing an offence are potentially very serious. Whilst it is considered most unlikely that a member of staff would commit one of the main offences, in certain circumstances the failure to disclose a suspicion of a case of money laundering is a serious offence in itself and there are only very limited grounds in law for not reporting a suspicion.

#### **4. What is the Council's Policy on Money Laundering?**

- 4.1 The Council's policy is to do all we can to prevent, wherever possible, the Council and its staff being exposed to money laundering, to identify the potential areas where it may occur and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases. It is every member of staff's responsibility to be vigilant.
- 4.2 The Council has accepted the responsibility to ensure that those of its staff who are most likely to be exposed to money laundering can make themselves fully aware of the law and, where necessary, are fully trained.
- 4.3 The Council has implemented procedures for the reporting of suspicious transactions and if necessary making an appropriate report to the Serious Organised Crime Agency (SOCA).
- 4.4 The Council has nominated an officer to receive and manage the concerns of staff, to make internal enquiries, to advise staff who they feel should make a report and to co-ordinate suspicious activity reports to SOCA. This is the Head of Finance.

#### **5. How do I recognise suspicious activity that may be linked to Money Laundering?**

- 5.1 It is impossible to give a definite list of ways to spot money laundering but the following suggested risk areas which taken alone or with other factors, may suggest the possibility of money laundering:
- A new client
  - A secretive client e.g. refuses to provide requested information without a reasonable explanation
  - Concerns about the honesty, integrity, alleged association with criminality, or location of a client
  - Illogical third party transactions: unnecessary routing or receipting of funds from third parties or through third party accounts:
  - Involvement of an unconnected third party without logical reason or explanation
  - Payment of substantial sums in cash or a large cash deposit (The Council policy is not to except a payment of over £5,000 in cash)
  - Absence of obvious legitimate source of funds
  - Payment of monies then cancellation of transactions and request for return of funds
  - Over payment with requests for refunds
  - Movement of funds overseas, particularly to a higher risk country or tax haven
  - Where, without reasonable explanation, the size, nature, and frequency of transaction or instructions (or the size, location of type of client) is out of line with normal expectations
  - Cancellation or reversal of an earlier transaction
  - Requests for release of client account details other than on the normal course of business.

- Companies and trusts: extensive use of corporate structures and trusts in circumstances where the client's needs are inconsistent with the use of such structures
  - Over complicated financial systems
  - Poor business records or internal accounting controls
  - A previous transaction for the same client which has been or should have been reported to the MLRO
  - Unusual property investment transactions if there is no linked substantive property transaction involved (surrogate banking)
  - Property related transactions where funds are received for deposits or prior completion from an unexpected source or where instructions are given for the settlement of funds to be paid to an unexpected destination
  - More than one solicitor used in a sale or purchase or there is an unexplained or unusual geographical use of the solicitor in relation to property transactions
- 5.2 Facts which tend to suggest that something odd is happening may be sufficient for a reasonable suspicion of money laundering to arise.

## **6. What should I do if I suspect a money laundering activity?**

- 6.1 Money laundering offences apply to your own actions and to matters in which you become involved. If you become aware that your involvement in a matter may amount to money laundering then you must discuss it with the MLRO and not take any further action yourself.
- 6.2 There is no clear definition of what constitutes suspicions. Common sense will be needed. If you are considered likely to be exposed to suspicious situations, you will be made aware of these by your line manager and where appropriate training will be provided. If in any doubt seek advice from the MRLO.
- 6.3 You should report your suspicions immediately to the Council's MLRO.
- 6.4 The report must include as much detail as possible, for example:
- Full details of the people involved (including yourself, if relevant), eg name, date of birth, address, company names, directorships, phone numbers, etc;
  - Full details of the nature of their/your involvement;
  - The types of money laundering activity involved;
  - The dates of such activities, including: whether the transactions have happened, are ongoing or are imminent;
  - Where they took place;
  - How they were undertaken;
  - The (likely) amount of money/assets involved;
  - Why, exactly, you are suspicious – the SOCA will require full reasons;
  - Any other available information to enable the MLRO to make a sound judgment as to whether there are reasonable grounds for knowledge or suspicion of money laundering and to enable him to prepare his report to the SOCA, where appropriate.

You should also enclose copies of any relevant supporting documentation.

6.5 Once you have reported the matter to the MLRO you must follow any directions given. You must not make any further enquiries into the matter yourself. All members of staff are required to cooperate with the MLRO and the authorities during any subsequent money laundering investigation.

6.6 Similarly, at no time and under no circumstances should you voice any suspicions to the person(s) whom you suspect of money laundering.

## **7. How do I know if I should carry out Customer Due Diligence?**

7.1 The regulations regarding customer due diligence are detailed and complex, but there are some simple rules that will help you decide if it is necessary.

- Is the service a regulated activity? (Regulated activity is defined as the provision 'by way of business' of advice about tax affairs; accounting services; treasury management, investment or other financial services; audit services; estate functions; services involving the formation, operation or arrangement of a company or trust or, dealing in goods wherever a transaction involves a cash payment of, 15,000 Euros or more.)
- Is the Council charging for the service i.e. is it 'by way of business'?
- Is the Service being provided to a customer other than a UK public authority?

If the answer to any of these questions is no then you do not need to carry out customer due diligence.

If the answer to all these questions is yes then you must carry out customer due diligence before any business is undertaken for that client.

If you are unsure whether you need to carry out customer due diligence then you should contact the MLRO.

7.2 Where you need to carry out customer due diligence then you must seek evidence of identity, for example:

- Checking with the customer's website to confirm their business address
- Conducting an on-line search via Companies House to confirm the nature and business of the customer and confirm the identification of any directors
- Seeking evidence from the key contact of their personal identity, for example, their passport, and position within the organisation.

7.3 The requirement for customer due diligence applies immediately for new customers and should be applied on a risk sensitive basis for existing customers. Ongoing customer due diligence must also be carried out during the life of a business relationship but should be proportionate to the risk of money laundering and terrorist funding, based on the officer's knowledge of the customer and a regular scrutiny of the transactions involved.

7.4 If at any time, you suspect that a client or customer for whom you are currently, or are planning to carry out a regulated activity, is carrying out money laundering or terrorist financing, or had lied about their identity then you must report this to the MLRO.

- 7.5 In certain circumstances enhanced customer due diligence must be carried out. For example, where:
- The customer has not been physically present for identification
  - The customer is a politically exposed person (A politically exposed person is an individual who at any time in the preceding year has held a prominent public function outside of the UK, and EU or international institution/body, their immediate family members or close associates)
  - There is a beneficial owner who is not the customer – a beneficial owner is any individual who holds more than 25% of the shares, voting rights or interest in a company, partnership or trust.
- 7.6 Enhanced customer due diligence could include any additional documentation data or information that will confirm the customer's identity and/or the source of the funds to be used in the business relationship / transaction. If you believe that enhanced customer due diligence is required then you must consult the MLRO prior to carrying it out.
- 7.7 Customer due diligence records and details of the relevant transactions(s) for that client must be retained for at least 5 years after the end of the business relationship.
- 7.8 An electronic copy of every customer due diligence record must be sent to the MLRO to meet the requirements of the regulations and in case of inspection by the relevant supervising body.

## The Seven Principles of Public Life

### *Selflessness*

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

### *Integrity*

2. Members should not place themselves in situations where integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. Members should show integrity by consistently treating other people with respect, regardless of their race, age, religion, gender, sexual orientation, disability or position, for example as an officer or employee of the authority.

### *Objectivity*

3. Members should make decisions in accordance with the law and on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

### *Accountability*

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

### *Openness*

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

### *Honesty*

6. Members should not place themselves in situations where their honesty may be questioned, should not behave dishonestly and should on all occasions avoid the appearance of such behaviour. Members should declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

### *Leadership*

7. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

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