



Fraud Response Plan

Assurance, Risk and Audit

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1. Introduction

The Council's Counter Fraud, Bribery and Corruption Policy and Strategy makes it clear that the Council is committed to adopting a zero tolerance approach to fraud, bribery and corruption from both internal and external sources. Where fraud, bribery or corruption is suspected the Council will deal with the allegations seriously in accordance with council procedures.

This Fraud Response Plan provides guidance to members and staff on the procedures that should be followed where a fraud is suspected or discovered. It includes reporting requirements, responsibilities for actions and how allegations will be investigated. It should be read in conjunction with the Council's Counter Fraud, Bribery and Corruption Framework, and the Whistleblowing Policy.

It is important to ensure that a structured and consistent approach is implemented by the Council for the investigation of any cases of fraud, bribery and corruption. This Fraud Response Plan sets out the council's approach to ensure:

- members and staff are aware of how to report any allegations of fraud, bribery or corruption;
- there is a clear understanding of who will lead investigations and appropriate staff are informed and involved;
- information about the investigation is retained by officers involved in the case in accordance with the council's information management and retention policies;
- further losses of funds or assets where fraud may have occurred are prevented and the recovery is maximised;
- evidence is gathered to support an allegation and inform further action;
- evidence necessary for possible disciplinary and criminal action is established and secured;
- any adverse effects or publicity on the business of the council or any other partner organisations involved are minimised;
- a review is undertaken of the reasons for the incident and action taken to improve control, strengthen procedures and prevent recurrence.

2. Discovering a suspected fraud

All instances should be reported immediately, see Section 3 'Reporting a suspected fraud' below. Where financial irregularities are thought to be deliberate then the possibility of fraud should be considered. Individuals must not approach or accuse others directly regarding their suspicions or attempt to gather evidence to support those suspicions as any subsequent investigation could be compromised if the correct procedures have not been followed.

Cases of fraud often come to light in the following ways:

- management follow up areas where there is evidence that controls are not being applied
- routine systems checks
- tip offs from a third party
- internal or external whistle blowing

Initial reports should be treated with discretion and caution as apparently suspicious circumstances may turn out to have a reasonable explanation or the report could be malicious.

Where suspicions are aroused during audit reviews the details should be immediately brought to the attention of the Monitoring Officer (Head of Governance) or the Assurance, Risk and Audit Manager who should, in turn, report to the Corporate Director. An investigation will be commenced in which consideration will be given to consulting with the Police, depending on the scale of the incident, at the discretion of the Chief Executive.

Officers should be aware of the procedures for interviewing those believed to be involved and in particular, the conditions of the Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedure and Investigation Act 1996 (CPIA) which determine whether the evidence collected will be admissible in Court.

3. Reporting a suspected fraud

The procedures detailed below should be followed for all suspected cases of fraud, bribery and corruption involving council staff, its partners and suppliers. There may be instances where third parties are attempting to defraud or scam the Council, for example submitting bogus invoices or changing bank details of suppliers and any concerns such as these should be reported to the Assurance, Risk and Audit Manager, who will investigate further and arrange for alerts to be circulated to relevant areas of the Council.

Action by employees

As soon as possible after you discover the suspected fraud, in the first instance you should raise your concerns or suspicions with your line manager. If you feel unable to approach your line manager, you should report any concerns or suspicions of financial irregularity to the Section 151 Officer (Head of Finance) in accordance with the Council's financial regulations before immediately informing the Assurance Risk and Audit team. The next course of action will then be agreed. If the suspicion seems well founded, either the employee or the Section 151 Officer (Head of Finance) will inform the Corporate Director directly.

If the suspicion involves an elected member, the matter should be reported directly to the Corporate Director. If the suspicion involves the Corporate Director, the matter should be reported to the Chief Executive. If the suspicion relates to the Chief

Executive, the matter should be referred to the Leader of the Council liaising with the Monitoring Officer (Head of Governance). Allegations involving elected members should be reported directly to the Monitoring Officer (Head of Governance) and will be dealt with by the Standards Committee in accordance with their procedures rather than this response plan.

Alternatively, you may choose to report your concerns or suspicions anonymously via the Council's whistleblowing reporting procedures outlined in the Whistleblowing Policy, whilst total anonymity cannot be guaranteed, every effort will be made not to reveal your name. If criminal activity is found, however, and the case is forwarded to the police, then your identity may be needed at a later date.

Action by managers

If you have reason to suspect fraud, bribery or corruption in your work area, or a concern has been reported to you by a member of your staff, you should do the following:

- listen to the concerns of your staff and treat every report seriously and sensitively. Reassure staff that their concerns will be taken seriously and passed on to the appropriate officer
- obtain as much information as possible from the member of staff, including any notes or evidence to support the allegation. Do not interfere with this evidence and ensure it is kept securely
- do not attempt to investigate the matter yourself or attempt to obtain any further evidence as this may compromise any internal audit, disciplinary or police investigation
- report the matter immediately in accordance with this Fraud Response Plan.

Action by members

If a member has suspicions about fraud, bribery or corruption whether it be a fellow elected councillor, officers of the council or partner organisations of the council they should report this to the chief executive or the Assurance Risk and Audit team at the earliest opportunity.

Contact details

Assurance, Risk and Audit Manager

Tel: 01900 702988

Email: emma.thompson@alldale.gov.uk

Assurance, Risk and Audit Officer

Tel: 01900 702987

Email: paula.mckenzie@alldale.gov.uk

Assurance, Risk and Internal Auditor

Tel: 01900 702671

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Malicious allegations

All members and staff should be aware that malicious or vexatious allegations will not be tolerated and may be dealt with as a disciplinary matter.

4. Managing the Investigation

Authorisation

The council's internal control systems are designed to deter fraud, but, such activity may nevertheless occur. Financial Regulations require that the Section 151 Officer (Head of Finance) is notified immediately of all financial or accounting irregularities or suspected irregularities or, of any circumstances which may suggest the possibility of irregularities including those affecting cash, stores, property, remuneration or allowances. Reporting of suspected irregularities is essential as it facilitates proper investigation and ensures the consistent treatment of information regarding fraud, bribery and corruption. The Assurance Risk and Audit Service will be notified and may be asked to investigate, or an investigation may be undertaken by the relevant Head of Service.

Investigations are not to be carried out without the knowledge and authorisation of the Corporate Director, in the event that the suspicion involves the Corporate Director the Chief Executive will provide authorisation. If the suspicion involves the Chief Executive, it will fall to the Leader of the Council to provide authorisation. The Corporate Director or all Heads of Service are required to notify the Section 151 Officer immediately of all suspected financial or accounting irregularities as soon as they are notified of them.

Assurance Risk and Audit will evaluate the credibility and context of any potential fraud to assess what action is required and determine the nature and scope of any investigation. At this point an Investigating Officer may be appointed.

Appointment of Investigating Officer:

An Investigating Officer will be appointed to investigate the incident, who would normally be a member of the Assurance, Risk and Audit section acting on behalf of the Monitoring Officer (Head of Governance), although in some cases it could be another Head of Service or a service manager. The Investigating Officer should be independent of the area under investigation.

The Monitoring officer (Head of Governance) and Assurance Risk and Audit Manager should be informed of any investigation that has been initiated independently of the Assurance Risk and Audit Service.

The investigator will discuss the case with the Corporate Director (or the appropriate alternative as outlined above if the suspected fraud involves the Corporate Director) and HR Manager (or the Monitoring Officer (Head of Governance) or ARA Manager if the suspected fraud involves the HR Manager) to determine whether it is

appropriate to suspend any staff whilst the investigation is conducted. This may be at the commencement of the investigation or as the investigation progresses and information/ evidence comes to light.

The Investigating Officer will:

- deal promptly with the matter and take into consideration the security of evidence and assets
- establish the facts and secure and record evidence
- interview suspects and witnesses
- report on the findings

Diary of Events:

The Investigating Officer should initiate a diary of events to record the progress of the investigation.

A written report will be prepared following the conclusion of the investigation for consideration by the relevant head of service and will be available as evidence in any disciplinary hearing, tribunal or court case. The results of an investigation will be confidential and will not be discussed or disclosed to anyone other than those who have a legitimate need to know.

Where an employee is a member of the Local Government Pension Scheme, the senior audit investigator will ensure a flag is placed on the individual's pension record as an indicator that the person is under investigation and there is a possibility that any losses suffered by the council could be recovered from the individual's pensionable benefits using the council's pension forfeiture policy.

5. Referral to the Police and Action Fraud

If, during an investigation, evidence is found that suggests a criminal act has taken place, it should be referred to the Monitoring Officer (Head of Governance) who will make a decision with the Chief Executive as to whether to inform the police and/ or Action Fraud.

Action Fraud is the UK's national reporting centre for fraud and cyber-crime, to which potentially criminal cases should be reported.

The Investigating Officer in conjunction with the Monitoring Officer (Head of Governance) will report the case to the police and/ or Action Fraud for consideration and expect them to independently investigate and prosecute where appropriate. The Investigating Officer will be the single point of contact and support and work with the police and/ or Action Fraud in any resultant investigation as necessary.

If a criminal event is believed to have occurred then a verbal caution must be issued, as per PACE, if the interview is to proceed. The Police and the Council's external auditors should be informed if this has not already been done.

Officers performing an investigation must be aware of and act in accordance with the Regulation of Investigatory Powers Act 2000 as amended (RIPA). Guidance is available within the Council's RIPA policy, a copy of which can be found in the Internal Audit Section of the Intranet Document Store.

In practice, it may not be obvious if a criminal act has taken place. It is therefore prudent to ensure from the outset that evidence is gathered and held securely in accordance with PACE and CPIA so that it remains admissible should it develop into a criminal investigation.

The Investigating Officer will liaise with communications to ensure steps are taken to deal with any media contact should the Crown Prosecution Service decide to prosecute.

Involving Third Parties:

The Chief Executive (or the appropriate alternative as outlined above if the suspected fraud involves the Chief Executive) will decide, depending on the circumstances of the case, when the Police are called in and or the Council's external auditors informed.

If a criminal act is suspected, particularly fraud, corruption or bribery, it is essential that the Police are consulted at the earliest opportunity. In any event, the Police should be contacted before any covert or overt action is taken which may alert suspects and precipitate the destruction or removal of evidence. This includes taking action to stop a loss or tighten controls.

It is vital that those involved have the necessary skills and expertise to conduct the investigation in accordance with PACE, CPIA and RIPA. It may be necessary to collaborate with other organisations who are able to provide this, rather than proceed in house and risk compromising the investigation.

Recovering a Loss:

If the results of the investigation indicate the Council has suffered a loss then restitution will be sought of any benefit or advantage obtained, and the recovery of costs will be sought from the individual or organisation responsible.

If an employee has been dismissed following the Council's disciplinary process or has resigned prior to the conclusion of the investigation, the individual concerned will be requested to make good the loss in the first instance. The Investigating Officer in conjunction with the Monitoring Officer (Head of Governance) will arrange for an invoice to be raised for the value of the loss, against the individual.

Where possible, recovery will be sought under Regulation 93 of the Local Government Pension Scheme Regulations 2013 (or the corresponding equivalent regulation in earlier legislation). Where that is not possible, or it would take an unreasonable length of time or incur a disproportionate cost, and recovery under Regulation 91 of the Local Government Pension Scheme Regulations 2013 (or the corresponding equivalent regulation in earlier legislation) is possible, then this will be

pursued instead. The Investigating Officer in conjunction with the Monitoring Officer (Head of Governance) will initiate proceedings to recover the loss this way.

The Council's Human Resources department provides advice for managers who receive requests for references for employees who are dismissed as a result of a disciplinary investigation or who resign during a disciplinary investigation.

If the case is forwarded to the police and as a result a criminal conviction is obtained, it normally follows that a 'proceeds of crime' hearing will be held, in court, to ascertain whether the loss suffered by the council can be recouped from the individual's assets. If, following this hearing, the loss (or partial loss) is still outstanding and the individual is a member of the Local Government Pension Scheme, then action will be initiated to recover any outstanding loss from the individual's pensionable benefits using the right to recover/forfeit. Under regulation 93 of the Local Government Pension Scheme Regulations 2013 ("the Regulations"), the former employer of a LGPS member can apply to the relevant LGPS Fund to recover or retain money owed in certain circumstances.

Where the police decide not to investigate, the Crown Prosecution Service does not issue charges, or a 'not guilty' verdict is delivered by a court, the director of corporate services will advise on the prospects for recovering losses and costs through the civil court.

Insurance:

The possibility of recovering a loss through insurance should not be overlooked. There may be time limits for making a claim and in certain cases claims may be invalidated if legal action has not been taken. The Council's Financial Services Officer responsible for Insurance should be consulted where appropriate.

Disciplinary and Dismissal Procedures:

The Disciplinary Procedures of the Council have to be followed in any disciplinary action taken by the Authority towards an employee (including dismissal). The Investigating Officer will prepare a report documenting their investigation for submission to the Head of Governance (Monitoring Officer), the manager who will hear the case and chair the disciplinary hearing, if this is recommended, to determine the appropriate action to take against the employee.

Investigations involving elected members will be dealt with by the Standards Committee in accordance with their procedures and the provisions of the Localism Act 2011.

6. Gathering Evidence

Witnesses:

If a witness to the event is prepared to give a written statement, it is best practice for an appropriately experienced employee to take a chronological record using the witness' own words. The witness must be happy to sign the document as a true

record, but the involvement of the investigating Officer usually helps to keep the statement to relevant facts.

Physical Evidence:

Upon taking control of any physical evidence, it is essential that a record is made of the time and place it is taken. It must be held securely in a lockable unit and any access recorded. If evidence consists of several items, for example, many documents, each one should be tagged with a reference number corresponding to the written record.

Considering if suspect should be interviewed:

The Corporate Director will consider the report of the Investigating Officer and consider if the suspect should be interviewed. In this consideration, he or she may consult others e.g. the Chief Executive, the Human Resources Manager, and the Police. If a crime is suspected, it is recommended that the Police are consulted before any interview with the suspect takes place.

Interview:

The requirements of PACE must be considered before any interview with a suspect is performed, since compliance with PACE determines whether evidence is admissible in criminal proceedings. If in doubt about the requirement of PACE it is important to seek specialist advice. See Appendix C for further information on interviewing.

Is evidence gathered sufficient for dismissal?

Under UK employment legislation dismissal must be for a 'fair' reason and conducted in a reasonable manner. It is therefore important that no employee should be dismissed without close consultation with the Human Resources Manager. The Human Resources Manager should be consulted about the provision of references for employees who have been dismissed or who have resigned following suspicions of theft, fraud, corruption, bribery etc.

Surveillance:

Should surveillance be required, the procedure under the Council's RIPA Policy and Guidance should be followed. Any party involved with the investigation should not undertake any investigation without first consulting the Council's RIPA Policy and Guidance, failure to comply could result in the need for the Council to pay the subject compensation and will likely cause significant reputational damage.

Admissibility:

For the purpose of criminal evidence proceedings, the admissibility of evidence is governed by PACE and CPIA. For non-criminal (for example, civil or disciplinary) proceedings, PACE does not apply, but should nevertheless be regarded as best practice.

The collection of evidence must be co-ordinated if several parties are involved in an investigation e.g. Internal Audit and Police. Evidence gathering requires skill and experience and professional guidance should be sought where necessary. There is a considerable amount of case law concerning the admissibility of evidence. Documentary evidence should be properly recorded, it should be uniquely numbered and include accurate descriptions of when and where it was obtained as well as by and from whom. In criminal actions, evidence on or obtained from electronic media needs a document confirming its accuracy.

7. Responsibilities

Authorisation of any investigation into any reported incidents must take a consistent and proportionate approach.

Initial Responses:

- considering whether an investigation steering group is necessary
- informing the Monitoring Officer (Head of Governance)
- informing the relevant Head of Service (unless they are under suspicion)
- informing other managers, if appropriate
- ensuring arrangements are made to preserve the confidentiality and or anonymity of the reporting officer throughout the initial review and any subsequent investigation.

Review the recommendation of the Monitoring Officer (Head of Governance) based on the preliminary findings of the Investigating Officer and decide whether to:

- discontinue the investigation if suspicions are not substantiated
- continue with a full internal investigation
- involve the Police, external audit or other bodies

Agree the objectives and terms of the investigation as proposed by the Investigating Officer ensuring consistency and proportionality is maintained and confidentiality and or anonymity is preserved as required.

Agree the resources that are necessary for the investigation as recommended by the Investigating Officer and the Monitoring Officer (Head of Governance).

Inform and consult with the Chief Executive at the first opportunity where the loss exceeds £1,000 or where the incident may lead to adverse publicity.

Inform the Chief Executive and or the Corporate Director as necessary that an investigation is underway.

Discuss with the Chief Executive and or the Corporate Director, where appropriate, as to whether other persons should be informed of the investigation.

Manage any public relations issues that may arise and liaise with the Investigating

Officer throughout the investigation.

Review the outcome.

Liaise with the Head of Human Resources in considering whether any action is required against an employee.

Liaise with the Monitoring Officer (Head of Governance).

Report the outcome as necessary to the Chief Executive and or the Corporate Director and the Audit Committee.

Should the suspicions relate to any of the named persons which will be involved in any investigation as outlined in this Fraud Response Plan, the responsibility shall be automatically delegated to their senior officer. For widespread fraud or incidents involving a number of the named persons normally involved in investigations, considerations should be made as to whether internal or external legal or audit advice and support is required.

Responsibilities of the Head of Governance (Monitoring Officer)

Appointing an officer to lead the investigation (the Investigating Officer).

Identifying the skills, expertise and resource needed to conduct the investigation and ensure the Investigating Officer can access these.

Reviewing the recommendations of the Investigating Officer based on their initial enquiries and refer to the Corporate Director for authorisation to proceed.

To manage the investigation on behalf of the Corporate Director and keep him or her informed of significant events.

To maintain a log, which contains details of all reported suspicions, including those dismissed as minor or otherwise not investigated. The log will also contain details of actions taken and conclusion reached. This log will be submitted to the Audit Committee annually, which will report any significant matters to the Executive.

Responsibilities of the Investigating Officer

The Investigating Officer, will organise the investigation on behalf of the Corporate Director reporting to the Monitoring Officer (Head of Governance) in the first instance. He or she will ensure that the approach taken will preserve the requested confidentiality or anonymity of the reporting officer.

If the Investigating Officer is not a member of the Assurance Risk and Audit section and depending on the nature of the suspicions, they may ask Assurance Risk and Audit to carry out an initial review to gather evidence to form part of their recommendation to enable the Corporate Director to assess the scale and implications and determine whether further action should be taken.

If authorised by Corporate Director the Investigating Officer will set up a full investigation by:

- agreeing terms of reference, scope, key issues and target dates etc. with the Monitoring Officer (Head of Governance) and Corporate Director
- identifying staffing and other resource needs, the likely cost with the Monitoring Officer (Head of Governance) and agreeing these with the Corporate Director
- establishing reporting arrangements to monitor progress and cost of the investigation

The Investigating Officer overseeing the investigation should maintain a Diary of Events to record the progress of the investigation.

The Investigating Officer will be the point of contact for liaison with the Police, external auditors etc.

The Investigating Officer will report progress to the Head of Governance (Monitoring Officer) and recommend action (internal disciplinary action or prosecution).

The Investigating Officer will arrange any necessary recovery action.

The Investigating Officer will prepare a summary report, identifying system weaknesses and lessons to be learnt together with an action plan specifying officers responsible and completion dates.

The Investigating Officer will collate such information as is necessary to comply with the Local Government Transparency Code with regard to counter fraud and corruption activity.

It is important that all documentation and articles are collated at an early stage. Advice can be obtained from the Cumbria Constabulary and guidelines are set out in the Chartered Institute of Public Finance and Accountancy (CIPFA) booklet; The Investigation of Fraud in the Public Sector and key points include:

- Prime documents should be removed to a safe, lockable unit with copies being used for working purposes (in order to maintain confidentiality, batches of documents as opposed to individual items should be removed)
- Working papers should be dated, initialled and set out in such a way that a lay person could understand them and they could be presented in court
- Observation of activities should be undertaken by two employees, in accordance with RIPA
- Interviewing should observe PACE requirements

When gathering evidence each case must be treated according to the circumstances taking professional advice if necessary.

Responsibilities of Heads of Service

The Head of Service will make any necessary arrangements in the directorate:

- To arrange for the employee(s) under suspicion to undertake alternative duties or be suspended pending the outcome of the investigation and provide alternative cover.
- Secure any documents or premises that could be interfered with.
- Arrange to have documents etc. available for scrutiny.
- To ensure that the Investigating Officer has unlimited and unrestricted access to all employees, and to all information, records etc. which will be required for the purpose of the investigation.

Responsibilities of the Human Resources Manager

If employees are involved, advise on personnel and procedural issues in relation to:

- Investigations
- Suspension
- Disciplinary proceedings
- Dismissal

Liaise with the employee's union representative, if appropriate.

If it is determined necessary for an employee(s) to be dismissed, carry out the termination of employment procedures. Advise managers about the wording of future references, if any, for such employee(s).

Appendix A

Good Practice for Investigation

Points of good practice for any investigation include:

- Having an established line of communication with the local Police or County Fraud Squad
- Identifying a Lead Officer responsible for the investigation. The Investigating Officer should be independent of the area under investigation
- Define the objectives of the investigation
- Define scope and timing of the investigation and likely outputs
- Seek advice where necessary from such sources as the Police, Assurance, Risk and Audit, external auditors and legal advisers
- Agree resources required for the investigation.
- Define responsibilities
- Budget for and monitor resources used
- Monitor progress and inform others as required
- Consider lessons to be learned e.g. how control can be improved
- Draw up an action plan based on the lessons learned
- Keep proper records including a Diary of Events
- When the investigation is completed, review the Theft, Fraud, Corruption and Bribery Response Plan and update as necessary

Appendix B

The Law and its Remedies

Introduction

Criminal law may impose sanctions on the defendant for causing loss, while the civil law may assist the Council to recover its loss.

In civil law the method of concealment (in the case of fraud) is unlikely to be a key factor in the value of compensation or the drafting of the Statement of Claim.

In criminal law, the nature of the deceit is highly relevant in the framing of charges, but the law is not primarily concerned with restitution or recovery of the proceeds of fraud or theft; although there are statutory powers to award compensation and to order restitution or forfeiture in some circumstances. However, criminal law now requires the financial benefits (to the criminal) to be quantified as part of the investigation process. The proceeds direct, and indirect, can now be seized and dealt with by the Court of trial.

There is no reason why a criminal prosecution and civil process cannot be taken at the same time if the evidence supports such action. However, there are dangers in unilateral uncoordinated action.

Civil Law Remedies

The following is a brief description of some of the more common civil law remedies. It is not comprehensive and legal advice should be sought before action is taken.

Moneys had and received

The claim will refer to funds of the Plaintiff, which have been 'had and received' by the Defendant and the Plaintiff's – and will seek their recovery.

Interest

The Plaintiff may be entitled to interest on the amount lost, and there are claims for interest under Court rules and statute.

Tracing

Tracing is an equitable remedy for the recovery of assets. Its meaning is that the trail by which assets have been removed must be followed through the hands that they pass through after leaving the control of the Plaintiff.

Freezing Order or Restraint Order

In some cases a Court Order can be used to freeze the assets of a person suspected of fraud or a person who has been convicted of a criminal offence in respect of their fraudulent activity. A Freezing Order may be used in conjunction with

criminal or civil proceedings. A Restraint Order can only be related to criminal proceedings, when it may be a simpler alternative to a Freezing Order where proceedings have been or are about to be instituted.

Damage for Deceit

A Defendant may become liable in tort to the Plaintiff for damages arising out of the Act, and if the Plaintiff can establish this liability, there is entitlement to be put back into the position that he or she would have been in if the tortious Act had not been committed. If successful, this claim may result in the award of damages beyond the mere recovery of assets stolen.

Criminal Law

The following are brief descriptions of some of the criminal offences most relevant in this context. It is not comprehensive and legal advice should be sought before action is taken.

Theft

The misappropriation of Council assets for gain or otherwise:

“A person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.”

(Section 1 of the Theft Act 1968)

Fraud

‘The intentional distortion of financial statements or other records by persons internal or external to the organisation which is carried out to conceal the misappropriation of assets or otherwise for gain.’

Anyone committing fraud against the Council could be convicted under the Fraud Act 2006. The following offences carry a maximum sentence of 10 years imprisonment:

- Fraud by false Representation e.g. using a false identity to open a bank account
- Fraud by failure to disclose information e.g. a person who intentionally fails to disclose information when applying for grants
- Fraud by abuse of position e.g. an employee who abuses his position in order to grant contracts or offers discounts to friends, relatives or associates

Obtaining Services Dishonestly

It is an offence for any person, by any dishonest act, to obtain services for which payment is required, with intent to avoid payment. The person must know that the services are made available on the basis that they are chargeable, or that they might be.

Corruption

The strict definition (in the context of the Prevention of Corruption Acts) is:
“The offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person.”

In practice, corruption means more generally taking decisions for inappropriate reasons – e.g. awarding a contract to a friend, or appointing employees because of political views.

Bribery

The offering, giving, promising, agreeing to receive, soliciting or acceptance of a financial or other advantage to or from any person or body for the improper performance of a function or activity.

The Bribery Act 2010 introduces a new crime of “failure to prevent” bribery, which means that organisations unable to demonstrate that they have implemented “adequate procedures” to prevent corrupt practices within their organisation, or by third parties on their behalf, could be exposed to unlimited fines

Damage

Relates to arson, vandalism or sabotage of property, including computer systems and records.

Section 1(1) Criminal Damage Act 1971

Any person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage such property, or being reckless as to whether any such property will be destroyed or damaged.

There are many other offences dealing with criminal activity.

Appendix C

Interviews

General

Interviews can be carried out internally and if appropriate continue following the issue of a caution, if there is evidence that a criminal act has taken place, in accordance with the Police and Criminal Evidence Act 1984 (PACE). If this is not possible then the caution and interview must be carried out by the Police. This depends on who is doing the interview and what the purpose is.

In the first instance this means it may be a manager whose purpose is to find out the facts. The manager has the right to ask an employee to account for his actions in respect of that employment. If a manager starts the interview with a caution, he or she is telling the suspect that he or she does not have to answer legitimate management questions. This may have an adverse effect on the disciplinary power to dismiss for failing to give an explanation. For this reason it is important to involve the Head of Human Resources and or the Monitoring Officer (Head of Governance) and Audit before interviewing a suspect if the manager is not experienced in such situations.

It should be a gross misconduct and or dismissal offence if the employee refuses to answer questions about his or her actions as an employee. If the employee knowing the criminal law refuses to answer on the grounds that he or she might incriminate himself, that is his or her right, and if he or she asks that question he or she should be told so. He or she is still dismissed.

The same situation applies to auditors, both internal and external. They should not normally administer a caution.

If the question of an interview under caution arises then by that stage the Police should have been informed and given the option to be involved. PACE is essentially a matter for Police Officers and other designated investigators (Section 67 PACE).

All interviews must be conducted fairly. In particular comments such as 'if you do not tell me the truth you will get the sack' will render any evidence obtained inadmissible under Section 78 PACE.

Interviews conducted by managers, internal or external auditors may be admissible in a criminal trial at the discretion of the trial Judge (Section 78 PACE). The question of fairness will always be a crucial point. Having said that, current criminal case law is moving towards absolute exclusion of such interviews in a criminal process. This should not deter management from carrying out an internal interview to find out what happened. It is the right of the Council to do so.

It should be noted that investigations carried out prior to an individual being charged are open to discovery by that individual's defence.

Interview Procedure:

All interviews that take place under caution must follow the recognised procedure as detailed within PACE and interviewers should ensure that they understand the requirements of PACE before initiating an interview.

It is important that the suspected individual is advised of the reason for requesting the interview, and told that anything he or she says may be used as evidence against him or her. This verbal statement must be given as follows:

‘You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.’

It is also critical that the suspect(s) be told that he or she is not under arrest, and may leave the interview at any time.



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Date

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