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| **Allerdale Borough Council**  **Counter Corruption Framework**  **July 2015** |  |

**Introduction**

Allerdale Borough Council aims to provide community leadership and quality services.

In carrying out its functions and responsibilities, the Council has always adopted a culture of openness, with core values including taking personal responsibility to do the right thing and expects that its elected members and employees at all levels will adopt the highest standards of propriety and accountability. This is achieved by leading by example and by an understanding of and adherence to rules, procedures and agreed practices. These standards are also expected from organisations that have dealings with the Council (e.g. suppliers and contractors).

Allerdale Borough Council values its reputation for ethical behaviour and for financial probity and reliability. It recognises that over and above the commission of any crime, any involvement in bribery will also reflect adversely on its image and reputation. Consequently the Council will not tolerate the offering, giving, solicitation or acceptance of any bribe to or from any person or body associated with it.

Allerdale Borough Council is taking measures to; prevent the Council and its employees being exposed to money laundering activity, identify areas in which money laundering may occur and comply with the specific relevant legal and regulatory requirements, especially the process for reporting actual or suspected money laundering cases. It is the responsibility of every employee to be vigilant and act promptly in all suspected cases.

Allerdale Borough Council is committed to supporting employees and others who have serious concerns about any aspect of the Council’s work to come forward and voice those concerns without fear of reprisal. A whistleblowing process has been established that preserves confidentiality and anonymity to encourage individuals to raise their concerns regarding not just fraud, corruption and financial irregularity, but any unlawful act or unethical or other inappropriate behaviour. The Council’s Whistleblowing Policy remains as a separate document to make it more readily accessible to employees of the Council and those of its contractors and suppliers.

These Policies fully support the Council’s desire to conduct all its business with honesty and integrity, in a manner that is free from fraud, corruption and impropriety in whatever form it takes. They demonstrate that the Council will not tolerate any party who it either employs or works with entering into acts of fraud, corruption or malpractice that would damage its reputation or financial standing. They reiterate that the Council is committed to dealing firmly with illegal activity and financial irregularity, and will deal equally with perpetrators from inside (elected members and employees) and outside the Authority in a consistent manner that is proportionate to the incident. These Policies, however, will not compromise the Council’s Equal Opportunities Policy or any obligations as an employer.

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| SECTION AAnti-Fraud, Corruption and Bribery Policy |  |

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## 1. Introduction

1.1 In light of the report of the Committee on Standards in Public Life in January 2013, several well-publicised fraud and corruption cases within local government, the Local Government Act 2000, and the Fraud Act 2006 the Council has produced this Anti-Fraud, Corruption and Bribery Policy.

The Bribery Act 2010 represents a fundamental change in UK laws in this area of business for many generations, modernising and consolidating earlier legislation. This Policy incorporates the Council’s response to this legislative change.

1.2 The Council is already in a strong position due to the framework of guidance, systems, procedures and specific functions, designed to frustrate any attempted fraudulent or corrupt act, that have already been put in place, e.g. Constitution, Financial Regulations, systems, procedures and codes of conduct for its elected members and employees and to assist it in dealing with theft, fraud, corruption, bribery, irregularity or malpractice when it occurs. The Council will build on this by implementing guidance contained in the Local Government Fraud Strategy – Fighting Fraud Locally through the three themes – acknowledge; prevent; pursue.

The existing framework is a combination of culture, prevention, deterrence and detection measures with appropriate investigation procedures together with awareness and training. The steps to be taken if such an act occurs are set out in the Theft, Fraud, Corruption and Bribery Response Plan at Section B. The Council is determined that these arrangements will keep pace with any future developments in techniques to both prevent and detect fraudulent or corrupt activity that may affect its operations. This Policy will be reviewed regularly, and updated where appropriate.

* 1. All elected members and employees are expected to be alert to theft, fraud, corruption and bribery and how it can occur and report any suspected incidents in accordance with the procedures set out in the Theft, Fraud, Corruption and Bribery Response Plan (see section B) or using safeguards provided by the Council’s Whistleblowing arrangements.
  2. Any employee found to be involved in theft, fraud, corruption, bribery, irregularity or malpractice is liable to disciplinary action, dismissal and prosecution. Appropriate action will be taken against third parties including the possible termination of contracts.
  3. The Council also benefits from a high degree of external scrutiny of its affairs by a variety of bodies such as the external auditors, inspection bodies, the Local Government Ombudsman, the Information Commissioner’s Office and HM Revenues & Customs. These bodies are important in highlighting any areas where improvements can be made.
  4. This Policy is the responsibility of the Head of Governance (Monitoring Officer) supported by the Assurance, Risk and Audit team and will be periodically presented for approval by the Audit Committee.

## 2. Definitions

2.1 **Fraud** – “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”.

In addition, fraud can also be defined as “the intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to mislead or misrepresent”.

2.2 Anyone committing fraud against the Council could be convicted under the Fraud Act 2006. The following offences carry a maximum 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/her position in order to grant contracts or offers discounts to friends, relatives or associates.

2.3 **Corruption** – The offering, giving, soliciting or acceptance of an inducement or reward which may influence the action taken by the Authority, its elected members or employees.

2.4 **Bribery** –There are four offences under the Bribery Act 2010, as follows:

* Giving, promising or offering a bribe
* Requesting, agreeing to receive or accepting a bribe
* Bribery of a foreign public official
* Corporate failure to prevent bribery

Those convicted face fines and or imprisonment.

Corporate failure to prevent bribery is a new crime introduced by the Act. Organisations that are unable to demonstrate that they have implemented ‘adequate procedures’ to prevent corrupt practices within their business, or by third parties on their behalf, could be exposed to unlimited fines.

2.5 The Council will manage its bribery risks through the implementation of a range of measures that support the following principles for implementing adequate procedures:

* proportionality
* top level commitment
* risk assessment
* due diligence
* communication
* monitoring and review

Bribery risks will be identified, evaluated and managed in accordance with the Council’s Risk Management Framework and Integrated Assurance Strategy.

2.6 For the avoidance of doubt, any employee of the Council or other person or company associated with it shall not offer, give, solicit or accept any bribe, whether in cash or by way of any other type of inducement, to or from any person or body, wherever they are situated and whether they are:

* + a public official or body
  + a private person
  + a company
  + any individual employee, agent or other person or body acting on the Council’s behalf

in order to gain any commercial, contractual or regulatory advantage for the Council in a way which is unethical or in order to gain any personal advantage, financial or otherwise for the individual or body or any person(s) or third parties associated with them. The inducement being intended to influence the individual or body to perform a function or activity improperly or to otherwise act in a way which may not be in the interests of the Council.

## 3. Culture

3.1 The culture of the Council has always been one of openness and the core values of fairness and trust support this. The Council’s culture therefore supports the opposition to fraud, corruption and bribery.

The Council’s elected members and employees play an important role in creating and maintaining this culture through their behaviour and vigilance. They are positively encouraged by the Council’s Whistleblowing Policy to raise concerns regarding fraud, corruption and bribery, immaterial of seniority, rank or status, in the knowledge that such concerns will, wherever possible, be treated in confidence.

The prevention and detection of theft, fraud, corruption, bribery, irregularity or malpractice and the protection of the public purse are everyone’s responsibility.

3.2 This culture alone cannot guarantee immunity from fraud, corruption and bribery. The Council is embarking on steps to raise awareness amongst members and employees, giving them the confidence to act when suspicions are aroused. An assessment of the fraud, corruption and bribery risks will be undertaken to ensure the Council develops and maintains an appropriate strategy and response to manage those risks on an on-going basis including prevention, detection and pursuing the full range of sanctions available.

3.3 Concerns must be raised when members or employees reasonably believe that one or more of the following has occurred, is in the process of occurring, or is likely to occur:

* a criminal offence
* a failure to comply with a statutory or legal obligation
* improper or unauthorised use of public or other funds
* a miscarriage of justice
* maladministration, misconduct or malpractice
* the offering, giving, solicitation, or acceptance of any bribe
* endangering of an individual’s health and safety
* damage to the environment
* deliberate concealment of any of the above.

3.4 The Council will deal firmly with those who commit fraud, bribery or who are corrupt, or where there has been malpractice. The Council’s Theft, Fraud, Corruption and Bribery Response Plan provides details of how this will be achieved. See Section B of this document.

There is, of course, a need to ensure that any investigation process is not misused and all actions are taken in a fair and equitable manner in accordance with legislation, in particular the Human Rights Act, Race Relations Act and any policies or procedures that may have an impact. Therefore, any abuse (such as employees raising malicious allegations) may be dealt with as a disciplinary matter.

When fraud, corruption or bribery have occurred because of a breakdown in the Council’s systems or procedures, the Council will ensure that appropriate improvements in systems of control are implemented to prevent a reoccurrence.

## 4. Prevention

4.1 **The Role of Elected Members**

As elected representatives, all members of the Council have a duty to citizens to protect the Authority from all forms of abuse and avoid conflicts of interest.

This is achieved through this Anti-Fraud, Corruption and Bribery Policy, and compliance with the Council’s Financial Regulations and Constitution, including the Code of Conduct for Members at Section 13 and relevant legislation.

Elected members sign to the effect that they have read and understood the Council’s Code of Conduct when they take office. These conduct and ethical matters are specifically brought to the attention of members during induction and include the declaration and registration of interests. The Head of Governance (Monitoring Officer) advises members of new legislative or procedural requirements.

4.2 **Responsibilities of the Corporate Director (Resources)**

All incidents of fraud, corruption, irregularity etc. will be brought to the attention of the Corporate Director (Resources) as set out in the Theft, Fraud, Corruption and Bribery Response Plan. This reflects the seriousness the Council attaches to such incidents. Investigations will only proceed on his authorisation, ensuring a consistent and proportionate approach will be taken.

The Corporate Director (Resources) will ensure:

* the environment exists to embed anti-fraud culture
* the capability of the Council’s response is appropriately resourced to enable analysis,investigation, sanction and recovery.
* resources are available to capture fraud data to comply with the Local Government Transparency Code.

4.3 **Responsibilities of the Head of Governance (Monitoring Officer)**

TheHead of Governance (Monitoring Officer) is responsible for the Council’s management of corporate fraud. This entails:

* implementing anti-fraud and corruption initiatives from Government and anti-fraud and corruption organisations,
* driving fraud risk management,
* establishing a fraud incident log and mechanism for Transparency Code disclosures,
* providing leadership to embed an anti-fraud and corruption culture.

4.4 **The Role of Managers**

Managers at all levels are responsible for the communication and implementation of this Policy in their work area. They are also responsible for ensuring that their employees are aware of and understand the Council’s Financial Regulations, Accounting Instructions and Procurement Procedures, and that the requirements of each are being met in their everyday business activities. They should establish an appropriate hierarchy of authority and separation of duties to prevent and minimise incidents of fraud and irregularity and avoid conflicts of interest. In addition, managers must make their employees aware of the requirements of the Code of Conduct for employees and ensure any declarations of interest are refreshed periodically.

Managers are expected to strive to create an environment in which employees feel able to approach them with any concerns they may have about suspected irregularities, and to make employees aware of the Council’s ‘Whistleblowing Policy’.

The Council recognises that a key preventative measure in dealing with fraud, corruption and bribery is for managers to take effective steps at the recruitment stage, with support from Human Resources colleagues, to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts. The Council has a recruitment procedure, which contains appropriate safeguards on matters such as obtaining written references and verifying qualifications held. As with other public bodies, police checks are undertaken on employees working in certain types of employment. Further checks may be introduced in areas where an increased risk of potential fraud and corruption has been identified. These allow the Council to exercise due diligence in the selection of employees.

4.5 **Responsibilities of Employees**

Each employee is governed in their work by the Council’s Constitution and Financial Regulations, Procurement Procedures, Code of Conduct for employees and other policies (e.g. Health and Safety, Computer and Telephony Usage Policy etc.). Included in these are guidelines on gifts and hospitality, professional and personal conduct and conflicts of interest. These are referred to all employees as part of their contract of employment when they join the Authority. Copies can be provided by managers or by Human Resources if required, and are available on the intranet.

Additionally, employees are responsible for ensuring that they follow the instructions given to them by management, particularly in relation to the safekeeping of the assets of the Authority. This includes information and employees should also ensure they comply with the provisions of the Data Protection Act at all times. These should be included in induction training and procedure manuals.

Employees are expected to be always aware of the possibility that theft, fraud, corruption or bribery may occur in the workplace and to share their concerns with management. Concerns should be raised, in the first instance, directly with their supervisor or manager or alternatively with their Head of Service, the Head of Governance (Monitoring Officer), the Corporate Director (Resources) or a member of the Assurance, Risk and Audit team. See section B paragraph 3.2 for further information. Other possible reporting routes are set out in the Council’s ‘Whistleblowing Policy’.

4.6 **Conflicts of Interest**

Both elected members and employees must ensure that they avoid situations where there is a potential for a conflict of interest in accordance with their respective codes of conduct. Managers should be alert to scenarios that could place employees at risk and make arrangements to refresh their register of interests on a periodic basis. Such situations can arise with externalisation of services, tendering, planning and land issues, etc. Effective role separation will ensure decisions made are seen to be based upon impartial advice and avoid questions about improper disclosure of confidential information.

4.7 **Official Guidance**

In addition to the Constitution, Financial Regulations, Accounting Instructions and codes of conduct, service units may have their own procedures to prevent and detect fraud. Procurement Procedures provide safeguards to ensure an open and transparent tendering process including the evaluation and selection of suppliers that is free from bias and allows the Council to exercise appropriate due diligence according to the nature and scale of the requirement. There may also be audit reports that recommend methods to minimise losses to the Authority. Managers and employees must be made aware of these various sources of guidance and alter their working practices accordingly.

4.8 **The** **Role of Assurance, Risk and Audit**

The Public Sector Internal Audit Standards require internal auditors to be knowledgeable to evaluate the risk of fraud. This vital preventative supporting role is delivered through ensuring that management have put systems and procedures are in place to prevent and detect fraud and corruption. The Council’s Assurance, Risk and Audit team will review these systems and procedures as part of their planned audit assignments consisting of:

* System based audits aimed at optimising control therefore assisting towards fraud prevention.
* Financial procedure and regularity audits including tests designed to detect certain types of fraud
* Supporting the business to map and evaluate the assurance in place including counter fraud measures
* Establishing and maintaining a fraud, corruption and bribery risk assessment, associated action plan and liaising with colleagues to implement appropriate mitigating actions.

The Assurance, Risk and Audit team provides support to the Head of Governance (Monitoring Officer) in managing corporate fraud. This includes investigating cases of alleged or suspected fraud or irregularity as and when required in accordance with the Theft, Fraud, Corruption and Bribery Response Plan, with the exception of revenues and benefits fraud (see below). They liaise with management to recommend changes in procedures to prevent further losses to the Council.

4.9 **The Role of External Auditors**

Independent external audit is an essential safeguard in the stewardship of public money. This role is delivered through the carrying out of specific reviews that are designed to test (amongst other things) the adequacy of the Council’s financial systems, and arrangements for preventing and detecting fraud and corruption. It is not the external auditor’s function to prevent fraud and irregularity, but the integrity of public funds is at all times a matter of general concern. However the external auditor has a responsibility to review the Authority’s arrangements to prevent and detect fraud and irregularity, and arrangements designed to limit the opportunity for corrupt practices. External auditors are always alert to the possibility of fraud and irregularity, and will act without undue delay if grounds for suspicion come to their notice.

4.10 **Co-operation with Others**

The Assurance, Risk and Audit team will keep under review procedures and arrangements to develop and encourage the exchange of information on national and local fraud and corruption activity in relation to local authorities with external agencies such as:

* Police
* County, unitary and district authorities
* National Fraud Authority
* National Fraud Initiative
* National Anti-Fraud Network
* Department of Works and Pensions
* Government departments.

The Council participates in the National Fraud Initiative data matching exercise for which the Section 151 Officer (Head of Financial Services) is accountable. She is supported by the Assurance, Risk and Audit Manager who acts as the key contact ensuring the relevant employees are advised of the data set requirements and have access to the NFI system to upload the data, also co-ordinating the action taken on matches returned by the exercise.

The Council will seek to use technology to facilitate data analysis, both internally and exploring the possibilities of sharing data with other organisations for the purpose of fraud prevention and detection.

## 5. Deterrence

5.1 **Disciplinary Action**

Theft, fraud, corruption and bribery are serious offences against the Council and employees will face disciplinary action if there is evidence that they have been involved in these activities in accordance with the Disciplinary Procedure. Disciplinary action may be taken in addition to, or instead of, criminal proceedings, in a consistent and proportionate manner depending on the circumstances of each individual case.

Suspected theft, fraud, corruption or bribery by elected members will be dealt with as allegations of a breach of the Code of Conduct for Members and will be referred to the Standards Committee for investigation and decision in accordance with their procedures and the provisions of the Localism Act 2011.

5.2 **Prosecution**

Suspected Housing and Council Tax Benefit fraud is referred to the Department for Work and Pensions (DWP) Single Fraud Investigation Service. Cases involving corporate fraud or corruption committed by elected members, employees or external parties will be considered on an individual basis and it is highly likely that the Council will seek to prosecute offenders wherever appropriate. However, the Council also recognises that it may not always be in the public interest to refer cases for criminal proceedings.

The Council will always seek to recover losses and will use both civil and criminal litigation as necessary. It is vital to demonstrate that crime does not pay.

5.3 **External parties**

Contracts with third parties are drawn up to include clauses designed to protect the Council in the event of any incident of fraud, corruption or bribery on the part of a body associated with it.

The Council is entitled under its current Standard Terms and Conditions of Contract to terminate a contract forthwith and to recover from the contractor or supplier the amount of any loss resulting from such termination if it:

* Is convicted of a criminal offence
* Is guilty of conduct bringing it or the Council into serious public disrepute
* directly or indirectly offers, promises or gives an inducement or reward for improper performance of the contract
* commits any offence under the Bribery Act, legislation or common law concerning fraudulent acts, or defrauding, attempting or conspiring to defraud the Council.

Earlier contracts that do not include these terms and conditions will be replaced as they come to an end and a new procurement undertaken. Risks to the Council presented by contracts that do not contain these terms and conditions will be evaluated as part of a fraud and bribery risk assessment and appropriate mitigating action identified.

5.4 **Publicity**

The Council will optimise the opportunities to use publicity as a deterrent in association with its anti-fraud, corruption and bribery activity. All anti-fraud, corruption and bribery activities, including prosecutions, may be publicised in order to make employees and the public aware of the Council’s commitment to taking action on fraud and corruption when it occurs.

In appropriate cases where financial loss to the Council has occurred, the Council will seek to recover the loss and advertise this fact.

## 6. Detection and Investigation

6.1 **General**

There are numerous systems controls in place to deter fraud, corruption and bribery, but it is often the vigilance of employees and members of the public that aids detection. Whilst individuals should never approach or accuse others directly or attempt to gather evidence regarding their suspicions, details should be recorded at the time to assist in the reporting and initial review of any incidents.

In some cases frauds are discovered by chance or ‘tip-off’ and arrangements are in place to enable such information to be properly dealt with, in accordance with the requirements of the Human Rights Act 1998 and Regulation of Investigatory Powers Act 2000.

Whatever the source, it is imperative that the Council has access to an appropriate investigative resource, consisting of trained and experienced investigators working to established professional standards, in order to ensure a successful outcome. The Council will consider collaboration with other organisations to achieve this as appropriate.

6.2 **Assurance, Risk and Audit**

The Assurance, Risk and Audit team plays an important role in managing the risk of fraud and corruption. Included in their annual plans are reviews of the effectiveness of financial system controls which include fraud prevention and detection measures put in place by management. Spot checks and unannounced visits may be undertaken if required.

Whilst this approach may result in the detection of instances of fraud and corruption, this is not the role of the Assurance, Risk and Audit team.

6.3 **Revenues and** **Benefits Fraud**

The Revenues and Benefits Shared Service is committed to the effective, accurate and secure delivery of Housing Benefits and Council Tax support.

The Single Fraud Investigation Service at the DWP is responsible for all benefit fraud investigations, in accordance with the requirements of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigation Act 1996 (CPIA), the Regulation of Investigatory Powers Act 2000 (RIPA) and other relevant legislation.

Responsibility for the validity of Council Tax Support and discounts remains with Allerdale Borough Council. Employees request details from customers where information suggests customers are ineligible and amend records accordingly.

6.4 **Reporting**

All suspected irregularities should only be reported, as per the Council’s Theft, Fraud, Corruption and Bribery Response Plan (see Section B). This is essential to the Policy, and:

* ensures the consistent treatment of information regarding fraud, corruption and bribery
* ensures consistent and proportionate action is taken in respect of all reported incidents
* facilitates a proper and thorough investigation by an appropriately trained and experienced team, working to professional standards in accordance with the requirements of the Human Rights Act 1998, PACE, CPIA and RIPA.

This process will apply to all the following areas:

* internal fraud, corruption or bribery
* other fraud, corruption or bribery by Authority employees
* fraud, corruption or bribery by suppliers and contractors’ employees
* external fraud (the public).

Alleged fraud, corruption or bribery by elected members will be reported to the Head of Governance (Monitoring Officer) to be dealt with by the Standards Committee in accordance with their procedures.

A register of all suspected and confirmed cases of fraud, corruption and bribery will be maintained by the Head of Governance (Monitoring Officer) and this will be reported annually to the Audit Committee as part of an evaluation of the Authority’s fraud response.

## 7. Awareness and Training

* 1. The clear messages of this Anti-Fraud, Corruption and Bribery Policy will be communicated and available to all elected members and employees. This will be supplemented by appropriate training for employees and members so that they can recognise and avoid acts of fraud, corruption and bribery by themselves and others. Employees will be encouraged to be vigilant and report any suspicions of fraud, corruption and bribery. Suitable channels of communication are available that are confidential and preserve anonymity if required.
  2. The Council recognises that the continuing success of this policy and its general credibility will depend in part on the effectiveness of appropriate training and the awareness of the issues amongst elected members and employees throughout the Council. To facilitate this, positive and appropriate provision will be made for employees via their development plans. This includes specialist training where appropriate (e.g. for the Assurance, Risk and Audit team).

Plans are underway to roll out an e-learning fraud awareness training package to all employees supplemented with regular newsletter style updates communicated to members and employees via the intranet.

This Policy, the Council’s ‘Whistleblowing Policy’ (Confidential reporting code), and the Council’s Theft, Fraud, Corruption and Bribery Response plan (see Section B) will be made available to members and employees via the intranet.

## 8. Monitoring and review

8.1 This Policy and the procedures referred to within it will be reviewed periodically to evaluate their effectiveness to manage fraud, corruption and bribery risks in the light of experience and changes in the business. Improvements identified will be introduced as necessary.

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| SECTION BTheft, Fraud, Corruption and Bribery Response Plan |  |

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## 1. Introduction

1.1 This procedure note sets out the responsibilities of employees and actions to be taken in cases where theft, fraud, corruption, bribery, irregularity, or damage is suspected within the Council. Definitions of each act are set out below:

**Theft** Dishonestly appropriating property belonging to another with the intention of permanently depriving them.

**Fraud** The intentional distortion of financial statements, other records, or false representation by persons internal or external to the organisation carried out to conceal the misappropriation of assets or otherwise of gain.

**Corruption** The offering, giving, soliciting or accepting of an inducement or reward that may influence the action of any person.

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

**Irregularity** The intentional distortion or mis-statement of financial statements or accounting records and or the misappropriation of assets.

**Damage** The act of arson, vandalism, or sabotage to property, including computer systems and records.

## 

## 2. Discovery of Theft, Fraud, Corruption or Bribery

2.1 All instances of the acts as set out in Section 1 – Introduction, should be reported immediately. See Section three Reporting below. Where financial irregularities are thought to be deliberate then the possibility of fraud, corruption or bribery 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.

2.2 Cases of fraud, corruption or bribery 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

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

2.4 Where suspicions are aroused during audit reviews the details should be immediately brought to the attention of the Head of Governance (Monitoring Officer) or the Assurance, Risk and Audit Manager who should in turn report to the Corporate Director (Resources). Consideration should then be given to consulting with the Police, depending on the scale of the incident, at the discretion of the Corporate Director (Resources).

2.5 When suspicions are reported in confidence they must be handled in accordance with the provisions of the Council’s Whistleblowing Policy. The wishes of the individual disclosing information regarding confidentiality and anonymity must be respected so that the value of that Policy is not diminished.

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

## 3. Reporting

3.1 **Confidentiality:**

All employees nominated to deal with suspected incidents will treat enquiries confidentially and make arrangements for the reporting employee to make contact anonymously and at their convenience if required.

In accordance with the Council’s Whistleblowing Policy employees and others are entitled to confidentiality or anonymity regarding any information they provide, and throughout any subsequent investigation, if they so choose. Employees handling these enquiries must take extra care so as not to disclose the identity of the reporting employee, inadvertently or otherwise, or allow speculation such that their identity could be discovered.

Any failures to preserve confidentiality or anonymity will discredit the Council’s Whistleblowing Policy. Consequently individuals with serious concerns will either simply not report them or will make disclosures externally that could have been dealt with in house.

3.2 **First point of contact:**

An employee should normally discuss their suspicions with their Head of Service or service manager or discuss the matter confidentially with the Head of Governance (Monitoring Officer) or a member of the Assurance, Risk and Audit team. The employee and the Head Governance (Monitoring Officer) will then agree on the next course of action. If the suspicion seems well founded, either the employee or the Head of Governance (Monitoring Officer) will inform the Corporate Director (Resources) directly.

If an employee suspects his or her Head of Service or service manager, the employee should report their suspicions directly to the Corporate Director (Resources) or the Head of Governance (Monitoring Officer).

If the suspicion involves a Chief Officer or elected member, the matter should be reported directly to the Corporate Director (Resources). If the suspicion involves the Corporate Director (Resources), 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 Head of Governance (Monitoring Officer). Allegations involving elected members should be reported directly to the Head of Governance (Monitoring Officer) and will be dealt with by the Standards Committee in accordance with their procedures rather than this response plan.

The manager receiving the initial report should address any concerns the reporting employee has if they are reporting confidentially in accordance with the Council’s Whistleblowing Policy. See paragraph 3.1 above.

## 4. Managing the Investigation

4.1 **Authorisation**

Investigations are not to be carried out without the knowledge and authorisation of the Corporate Director (Resources). In the event that the suspicion involves the Corporate Director (Resources) 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.

4.2 **Appointment of Investigating Officer:**

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

4.3 **Diary of Events:**

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

4.4 **Does it appear a criminal act has taken place?**

In some cases, this question may be asked more than once during an investigation. The answer to the question obviously determines if there is to be a fraud or other criminal investigation. 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. Please see paragraph 4.5 below.

Employees performing an investigation must be aware of and act in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA). Guidance is available within the Council’s RIPA policy, a copy of which can be found in the Assurance, Risk and 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.

4.5 **Involving Third Parties:**

The Corporate Director (Resources) 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 there is the earliest possible consultation with the Police. In any event, the Police should be contacted before any 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 that are able to provide this, rather than proceed in house and risk compromising the investigation.

4.6 **Involving the Police:**

Some managers may mistakenly be reluctant to involve the Police in the belief that:

* They are only interested if the alleged criminal offence is of a significant monetary value; or that the Police are not interested because of potentially complex issues involved that render little chance of a successful prosecution.
* The Council would prefer to deal with the incident itself, keeping it quiet while implementing dismissal and pursuing recovery through civil action.
* The Police want hard evidence before they will pursue investigations, but when it is provided they advise that the rules of evidence have not been complied with (see 4.4 above).
* The disciplinary process has to wait behind a Police prosecution.

Protracted internal investigations often unnecessarily delay involving the Police, thereby diminishing the value of co-operation with them. However, properly organised investigations, conducted by individuals with inside working knowledge, will be of great assistance to any subsequent Police enquiry, and therefore management should not be discouraged from liaising with the Police as soon as the issues involved are identified.

4.7 **Internal Investigation:**

If it appears a criminal act has not taken place the next step should normally be an internal investigation to determine the facts to see if any disciplinary action is needed, whether anything can be done to recover the loss, and what may need to be done to improve internal control to minimise the risk of the event happening again.

Broadly, where no criminal act has taken place the event could have three outcomes. The most serious would be where it is decided there has been gross misconduct, this could involve dishonesty, but not with criminal intent. The outcome is likely to be dismissal if an employee is involved. Less serious would be if it was decided that there was negligence or an error of judgement that caused the event. This is unlikely to lead to dismissal, but might involve disciplinary procedures. Finally, it may be concluded that there was no case for the individual to answer.

4.8 **Recovering a Loss:**

In each case, the InvestigatingOfficer in conjunction with the Head of Governance (Monitoring Officer) should consider what can be done to recover any loss. Where this is likely to require a civil action, it will probably be necessary to seek legal advice. Where external legal advisers are used, the InvestigatingOfficer must ensure there is co-ordination between the various parties involved. In addition to civil litigation, use will be made of POCA when appropriate.

4.9 **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 Insurance Officer should be consulted where appropriate.

4.10 **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) and 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.

## 5. Gathering Evidence

5.1 **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 an independent person usually helps to keep the statement to relevant facts.

5.2 **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 he held securely 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 (see 4.4 above and 5.8 below).

5.3 **Considering if suspect should be interviewed:**

The Corporate Director (Resources) 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 Head of People Resources, and the Police. If a crime is suspected, it is recommended that the Police are consulted before any interview with the suspect takes place (see 4.4)

5.4 **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 B3 for further information on interviewing.

5.5 **Is evidence gathered sufficient for dismissal?**

Under UK employment legislation dismissal must be for a ‘fair’ reason. The manner of dismissal must also be reasonable. It is therefore important that no employee should be dismissed without close consultation with the Head of People Resources. The Head of People Resources 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.

* 1. **Surveillance:**

Should surveillance be required, the procedure under the Council’s RIPA Policy and Guidance Notes should be followed.

* 1. **Review events with Police:**

Whether or not the evidence gathered is thought to be sufficient for dismissal or prosecution, if there is evidence of fraud or another criminal offence, the Police should be consulted at this stage if they are not already involved.

5.8 **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. the Assurance, Risk and Audit team 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 will need to be 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.

## 6. Responsibilities of the Corporate Director (Resources)

6.1 Authorisation of any investigation into any reported incidents taking a consistent and proportionate approach.

6.2 Initial Responses:

* Considering whether an investigation steering group is necessary.
* Informing the Head of Governance (Monitoring Officer).
* Informing the relevant Head of Service (unless he or she is under suspicion).
* Informing other managers, if appropriate.
* Ensuring arrangements are made to preserve the confidentiality and or anonymity of the reporting employee throughout the initial review and any subsequent investigation.

6.3 Review the recommendation of the Head of Governance (Monitoring Officer) 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.

6.4 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.

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

6.6 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.

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

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

6.9 Manage any public relations issues that may arise and liaise with the Investigating Officer throughout the investigation.

6.10 Review the outcome.

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

6.12 Liaise with the Head of Governance (Monitoring Officer) where appropriate.

6.13 Report the outcome as necessary to the Chief Executive and or the Corporate Director (Operations) and the Audit Committee.

6.14 Should the suspicions relate to the Corporate Director (Resources) these responsibilities will fall to the Chief Executive. If the suspicions relate to the Chief Executive the responsibilities will be under taken by the Leader of the Council working with the Head of Governance (Monitoring Officer).

## 7. Responsibilities of the Head of Governance (Monitoring Officer)

* 1. Appointing an employee to lead the investigation (the Investigating Officer).

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

* 1. Reviewing the recommendations of the Investigating Officer based on their initial enquiries and refer to the Corporate Director (Resources) for authorisation to proceed.
  2. To manage the investigation on behalf of the Corporate Director (Resources) and keep him or her informed of significant events.
  3. 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.

## 8. Responsibilities of the Investigating Officer

8.1 The Investigating Officer, will organise the investigation on behalf of the Corporate Director (Resources) reporting to the Head of Governance (Monitoring Officer) in the first instance. See Appendices B1 and B3. He or she will ensure that the approach taken will preserve the requested confidentiality or anonymity of the reporting employee.

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

8.3 If authorised by Corporate Director (Resources) the Investigating Officer will set up a full investigation by:

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

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

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

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

8.7 The Investigating Officer will arrange any necessary recovery action.

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

8.9 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.

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

* Prime documents should be removed to a safe place 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.

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

## 9. Responsibilities of Heads of Service

9.1 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.

## 10. Responsibilities of the Head of People Resources

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

* Investigations.
* Suspension.
* Disciplinary proceedings.
* Dismissal.

10.2 Liaise with the employee’s union representative, if appropriate.

10.3 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).

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| SECTION CAnti-Money Laundering Policy |  |

**Contents**

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## 1. Introduction

* 1. The Proceeds of Crime Act 2002 (POCA), the Terrorism Act 2000 and the Money Laundering Regulations 2007 place obligations on the Council and its employees with respect to suspected money laundering. This Policy has been developed to ensure those obligations are achieved, the key points being:
* The reporting and detection of suspected money laundering.
* Employees must be vigilant for the signs of money laundering.
* Any employee who suspects money laundering activity must report this promptly to the Council’s Money Laundering Reporting Officer (see reporting form for completion by the employee suspicious of activity).
* The Council no longer accepts payments by cash at its Customer Service Centres. However cash payments can be made at Paypoint outlets up to a maximum of £200 per transaction or up to £1,000 at Post Offices.
* Where the Council is carrying out certain activities regulated under Financial Services legislation during day to day business then the customer due diligence procedure must be followed, for example some Treasury Management activities are regulated by the Financial Conduct Authority.
* The Money Laundering Regulations are complex and detailed and should there be any doubt about the policy requirements, please request further information from your manager.

## The Policy

* 1. The Policy applies to all employees and members, and sets out procedures for the reporting of suspected money laundering activities with the aim to reduce potential criminal activity. The Policy defines procedures that will assist the Council to comply with its legal obligations.
  2. The Policy should be read alongside the Council’s Whistleblowing Policy, Anti-Fraud, Corruption and Bribery Policy and the Treasury Management Practice – money laundering guidelines.
  3. Failure of an employee to comply with the procedures defined within this Policy may lead to disciplinary action in line with the Council’s Disciplinary Procedure.
  4. Failure of a member to comply with the procedures defined within this Policy would be reported to the Leader of the Council for further action, for example a possible report to the Standards Committee.

## 3. What is Money Laundering?

* 1. Money laundering is a term used which relates to offences involving the proceeds of crime or terrorism funds. The following acts are defined as primary acts of money laundering:
* Concealing, disguising, converting, transferring criminal property or removing it from the UK POCA (section 327).
* To enter into or become concerned in an arrangement which you know or suspect will assist the acquisition, retention, use or control of criminal property or on behalf of another person (POCA section 328).
* Acquiring, using or possessing criminal property.

Two secondary offences are also defined which relate to:

* the failure to disclose any of the three primary acts and
* tipping off (POCA section 330).

Tipping off is where someone informs a person or persons involved in, or suspected to be involved in money laundering acts, in such a way as to reduce the likelihood of their being investigated.

* 1. While the risk to the Council of breaching legislation is considered to be low, employees in all areas should be aware that they could be potentially exposed to money laundering acts. It is important that all employees are aware of their responsibility to report any suspicions of money laundering activity as detailed within this policy (see section 5 Reporting). All employees are responsible to act promptly and report any suspicions to the Money Laundering Reporting Officer to prevent any breach of legislation which can lead to serious criminal penalties.

3.3 Cash is the favoured method for criminal transactions due to its flexibility and limited traceability. The fact that the Council no longer accepts cash payments through its Customer Service Centres does not mean that the risk of money laundering is removed. The opportunity to gather information from the customer at the time of the transaction has passed to others, but the nature and purpose of the transaction itself remains unchanged. Unusual payment transaction patterns and refund activity should be highlighted and considered from the money laundering perspective.

## 4. The Money Laundering Reporting Officer (Monitoring Officer)

* 1. The employee nominated to receive disclosures about money laundering activity is the Head of Governance (Monitoring Officer). The Money Laundering Reporting Officer will deal with all disclosures confidentially and make decisions on reporting the activity to the National Crime Agency (NCA) in the appropriate manner. All reports will be retained for five years.

Contact details:

Head of Governance (Monitoring Officer)

01900 702887

## 5. Reporting

* 1. Any employee who suspects money laundering activity should report their suspicions promptly to the Money Laundering Reporting Officer (MLRO) using the form attached, referenced AML Form 1 shown at Appendix C2. A separate document template consisting of the form only is provided for ease of completion and reporting. The first section is for completion by the employee with suspicions of money laundering activity. Upon receipt of this report the MLRO may contact you directly to discuss the content of the report as required. The MLRO completes the second part of AML Form 1.
  2. No further enquiries should be made about the suspected money laundering after reporting to the MLRO for action. No further steps in any transaction relating to the suspected money laundering should be made without authorisation from the MLRO. For example, if repeated overpayments are received to a specific account seek guidance from the MLRO before the amounts are refunded as an Allerdale Borough Council payment.
  3. No disclosure should be made to others that would indicate suspicions of money laundering. Any employee reporting should not discuss the matter with others or record on file that a report has been made to the MLRO as this may result in the suspect becoming aware of the situation.
  4. The MLRO will promptly evaluate any disclosure report (AML Form 1) to determine whether it should be reported to the NCA.
  5. The MLRO will, if necessary, promptly report the matter to the NCA on the standard electronic report form in the prescribed manner via [www.nationalcrimeagency.gov.uk/](http://www.nationalcrimeagency.gov.uk/)
  6. Failure to report a disclosure to NCA is considered a criminal offence without reasonable grounds. All disclosures will be retained on file for five years.

## 6. Customer Due Diligence

* 1. Extra care needs to be taken when the Council is carrying out activities regulated under Financial Services legislation, this is known as customer due diligence (CDD), for example treasury management activities, charging for a service as a business or a customer other than a UK public authority. Due to the nature and stringent guidelines for regulated business, you will be aware if your duties involve regulated activities.
  2. If CDD applies, you must seek evidence of identity, for example:
* Check the business’s website to confirm their business address.
* Conduct an on-line search via Companies House to confirm the nature of business and identity of any directors.
* Seek evidence from the key contact of their personal identity following the guidelines for identifying customers (see the Council’s cashiering procedure notes section seven below for guidance).

6.3 Identification must be retained for six years after the end of the business relationship.

## 7. Guidance and Training

* 1. The Council will make all employees aware of the requirements and obligations placed on the Council and on themselves as individuals by anti-money laundering legislation and give targeted training to those most likely to encounter money laundering.
  2. See Appendix C1 at the end of this document for examples of how money laundering activity may occur.

## 8. Further information

Further information can be obtained from the following sources:

* “Proceeds of Crime (Anti-Money Laundering) – Practical Guidance for Public Service Organisations” – CIPFA
* [www.nationalcrimeagency.gov.uk/](http://www.nationalcrimeagency.gov.uk/)

# SECTION D Glossary of Terms and References

**Bribery**

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

**Corruption**

The offering, giving, soliciting or accepting of an inducement or reward that may influence the action of any person.

**Fraud**

The intentional distortion of financial statements, other records, or false representation by persons internal or external to the organisation carried out to conceal the misappropriation of assets or otherwise of gain.

**Irregularity**

The intentional distortion or mis-statement of financial statements or accounting records and or the misappropriation of assets.

**Theft**

Dishonestly appropriating property belonging to another with the intention of permanently depriving them.

**Whistleblowing**

Raising a concern about wrongdoing, risk or malpractice with someone in authority either internally and or externally.

**Fraud Act 2006**

Defined fraud in law for the first time.

**Bribery Act 2010**

Replaced old and fragmented legislation with modern and consolidated bribery law providing an effective and comprehensive scheme of bribery offences.

**Regulation of Investigatory Powers Act 2000 (RIPA)**

Legislation to ensure covert surveillance is carried out in the appropriate manner and provides for public authorities to give authorisation to carry out covert surveillance activities.

**Police and Criminal Evidence Act 1984 (PACE)**

Governs the major part of police powers of investigation including, arrest, detention, interrogation, entry and search etc. The act attempts to strike a fair balance between the practice of their powers by those in authority and, the rights of members of the public.

**Criminal Procedure and Investigation Act 1996 (CPIA)**

**Proceeds of Crime Act 2002 (POCA)**

Provides for the confiscation or civil recovery of the proceeds from crime and contains the principal money laundering legislation in the UK.

**Terrorism Act 2000**Introduces specific money laundering offences in connection with Terrorism.

**Money Laundering Regulations 2007**

Implements the requirements of the European Union 3rd Money Laundering Directive.

# Appendix A1

# Examples and Indicators of Fraud

**Fraud by False Representation**

A person commits this offence if they:

* Dishonestly make a false representation; AND
* Intend by making the representation, to make a gain for themselves or another or to cause a loss or to expose another to the risk of loss

In practice this could be:

* A falsified or exaggerated expenses claim by an employee.
* Claiming to have qualifications that the applicant does not have on a job application form

**Fraud by (wrongfully) Failing to Disclose Information**

A person commits this offence if they:

* Dishonestly fail to disclose to another person information which they are under a legal duty to disclose; AND
* Intends, by failing to disclose the information to make a gain for themselves or another, or to cause loss to another or to expose another to a risk of loss.

In practice this could be:

* Not disclosing a criminal conviction on a job application form
* Withholding details of financial status when applying for a grant

**Fraud by Abuse of Position**

A person commits this offence if they:

* Occupy a position in which they are expected to safeguard, or not to act against, the financial interests of another person; AND
* Dishonestly and secretly abuse that position; AND
* Intend, by means of abusing that position, to make a gain for themselves or another or to cause a loss to another or to expose another to a risk of loss.

In practice this could be:

* Setting up a fictitious employee in the payroll system with the intent of making payments into their bank account
* Making a purchase for personal use using the Council’s purchasing and accounts payable systems

In each case it is not necessary to successfully achieve the intended outcome, e.g. getting the job or receiving money, there could still be a conviction on the basis of intent.

**Indicators of Fraud**

Invoices and other official documents are not submitted on headed paper

Duplicate documents e.g invoices, claim or application forms

Altered documents (correcting fluid, different pen or handwriting, also photocopies as this could be an attempt to conceal alterations)

Requests for payment for goods, works or services that have not been delivered or completed.

Notification of bank account changes

Tender submissions priced much higher or lower than the others received

Complaints from public or employees regarding service quality

Claim or application form details are not readily verifiable

Text is erratic, difficult to read or with details missing

Delayed completion or submission of expenses or other claim forms

Lack of vouchers or receipts to support expenses, petty cash or other expenditure claims

Changes in normal patterns of cash takings, expense claims and similar

Individual appearing to be living beyond their means

Individual under constant financial or other stress

Individual not taking annual leave (preventing others becoming involved in their work) or avoiding taking leave at key times e.g. monthly reconciliation or reporting

Individual is always first to arrive and last to leave

Individual reluctant to change roles even for career development

Exclusively dealing with a particular individual

# Appendix A2

# Examples of Bribery

**Procurement**

A potential supplier could offer a bribe in return for awarding them a contract.

**Grants**

An applicant for grant funding could offer a bribe in return for awarding them the funding that they might not meet the criteria for.

**Licensing**

An applicant may offer a bribe in order to obtain a licence.

**Monitoring and enforcement**

Employees could be offered a bribe in return for overlooking unacceptable or illegal activity.

**Fees and charges**

Employees may be offered a bribe to waive a fee or charge.

**Making payments**

Employees could be offered a bribe to inflate or make a payment or refund that would not otherwise be due.

Bribes may not always be a monetary payment, but could be in the form of gifts or hospitality. The Council’s codes of conduct set out the procedures for gifts, hospitality and the declaration of interests.

# Appendix B1

# 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 an Investigating 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, the Assurance, Risk and Audit team, 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 B2

# 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.

**Mareva Injunction 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 Mareva Injunction 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 Mareva Injunction 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 tortuous 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 B3

# 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 People Resources and or the Head of Governance (Monitoring Officer) 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.

# Appendix C1

# Money Laundering examples

All employees should be vigilant to suspicious activity, in particular when dealing with monetary transactions and when procuring works.

The Chartered Institute of Public Finance and Accountancy (CIPFA) have issued the following examples for situations which may give rise to money laundering or the suspicion of it:

* Those involved in the handling of criminal property look for ways to secure and safeguard the proceeds of their criminal activities.
* Although other ways exist, cash is the mainstay of criminal transactions, being the most reliable and flexible, and having little or no audit trail.
* Criminals often transport cash out of the UK using couriers, usually through airports, to pay into banks overseas, to purchase property abroad, or to pay to their families.
* In the UK, the most popular method of laundering money is thought to be the purchase of property, followed by investment in front companies (these are companies used as a front or ‘decoy’ for illegal activities) or high cash turnover businesses (frequently legitimate businesses), or funding a lifestyle.
* After property, the most significant assets bought by criminals are jewellery, artwork, antiques, cars and boats.
* The investment of cash in financial products with a view to selling them quickly (if necessary at a loss) is used.
* Criminals use trusts to launder money because of their secretive nature and flexibility, often using front companies to hide identities.
* Gambling large amounts of cash at relatively low odds is used, since winnings are usually received in the form of cheque payments
* Criminals use ‘layering’ to confuse the audit trail – this involves passing transactions through several stages, often eventually banking the proceeds as business income, and transferring the money overseas to a country whose regulatory regime is weaker.

Any transaction involving an unusually large amount of cash should cause questions to be asked about the source. This will particularly be the case where cash paid exceeds the amount necessary to settle a transaction, and the person(s) concerned requests a non-cash refund of the excess. This will include double payments.

The reason for the use of trusts or offshore funds for handling the proceeds or settlement of a transaction should be questioned.

Care should be exercised and further enquiries may be needed where:

* a third party intermediary becomes involved in a transaction
* the identity of a party is difficult to establish or is undisclosed
* a company is used by a third party and the ultimate ownership is concealed or difficult to establish
* a party is evasive as to the source or destiny of funds.

It should be remembered that the money-laundering regime adopts an ‘all-crimes’ approach. Whilst the above examples are largely concerned with significant transactions which organisations may effect with third parties, the offences under the Proceeds of Crime Act (notably sections 327-329) may apply to a very wide range of more everyday activities within an organisation.

For example, being complicit in crimes involving the falsification of claims, benefiting from non-compliance with the conditions attaching to a grant, or facilitating employment on which tax is not paid.

**How could money laundering occur within Allerdale Borough Council?**

Money laundering may occur during day to day business activities within the Council; these are issues all employees should be aware of:

**Credit Union**

* Completing cash transactions regulated under Financial Services legislation: Consider any large cash deposit made through the Council’s Paypoint arrangements and bring to the attention of the Credit Union.

**Treasury Management (refer to Treasury Management Practices nine)**

* Are business relationships documented for loans and investments?
* Are customers identified and information retained for five years after the transaction?

**Reputation**

* Use local knowledge. Allerdale is a tight knit community and local knowledge is invaluable. This increased knowledge may increase suspicions, if in doubt, report it!
* Think about the impact on the Council if lack of awareness is identified and inappropriate relationships are formed.

**Business rates (NNDR)**

Consideration of the following examples of best practice:

* Are business directors identified as bona fide?
* Is the business legitimate and have we confirmed this?
* Is information retained?

**Licensing**

* Have we identified the customer requesting a licence?
* Has the nature of the relationship been clearly defined and is the application viable and legitimate?

**Training**

* Employees must be vigilant at all times.
* If in doubt, report it.
* The Money Laundering Policy should be adhered to and further guidance requested from the Money Laundering Reporting Officer where needed.
* Access further information via the sources in section eight of this document, for detailed guidance.

**Employees visiting businesses and properties**

* If suspicious activity is suspected during a property visit, employees should report the matter via the money laundering reporting procedure.

**Identification**

* Only original forms of valid identification and verification should be accepted in line with the cashiering procedure notes.
* Identification should be retained for reference for five years after the relationship has ended. Reference to the transaction to which the identification relates should also be clearly documented.

**Procurement**

* Are tender documents clear and is it stipulated that employees performing contract works are legitimate?
* Are new suppliers identified as bona fide?

**Debtors**

* Cash overpayments are repeatedly received to a debtor account without reasonable explanation, and refunds are given in the form of an Allerdale Borough Council payment. This may be a means to conceal the source of money obtained from illegal activities.

# Appendix C2

# AML Form 1

**For completion by the Employee suspicious of activity**

CONFIDENTIAL

**Report to Money Laundering Reporting Officer**

**Money laundering activity**

**To: Monitoring Officer - Money Laundering Reporting Officer**

From: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[insert name of employee]

Directorate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[insert post title and business unit]

Ext/Tel No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

URGENT YES/NO

Date by which response needed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Details of suspected offence:**

|  |
| --- |
| **Names(s) and address(es) of person(s) involved:**  [if a company/public body please include details of nature of business] |

|  |
| --- |
| **Nature, value and timing of activity involved:**  [Please include full details e.g. what, when, where, how. Continue on a separate sheet if necessary] |

|  |
| --- |
| **Nature of suspicions regarding such activity:**  [Please continue on a separate sheet if necessary] |

**Has any investigation been undertaken (as far as you are aware)?** (Please tick the relevant box)  Yes  No

**If yes, please include details below:**

|  |
| --- |
|  |

**Have you discussed your suspicions with anyone else?**

(Please tick the relevant box)  Yes  No

**If yes, please specify below, explaining why such discussion was necessary:**

|  |
| --- |
|  |

**Have you consulted any supervisory body guidance re money laundering? (e.g. the Law Society)** [please tick the relevant box]

Yes  No

**If yes, please specify below:**

|  |
| --- |
|  |

**Do you feel you have a reasonable excuse for not disclosing the matter to NCA? (e.g. are you a lawyer and wish to claim legal professional privilege?** [Please tick the relevant box]  Yes  No

**If yes, please set out full details below:**

|  |
| --- |
|  |

**Signed:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Dated:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Please do not discuss the content of this report with anyone you believe to be involved in the suspected money laundering activity described. To do so may constitute a tipping off offence, which carries a maximum penalty of five years’ imprisonment.**



**For completion by the Money Laundering Reporting Officer (MLRO)**

**THE FOLLOWING PART OF THIS FORM IS FOR COMPLETION BY THE MLRO**

**Date report received:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date receipt of report acknowledged:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CONSIDERATION OF DISCLOSURE:

|  |
| --- |
| **Action plan:** |

OUTCOME OF CONSIDERATION OF DISCLOSURE:

|  |
| --- |
| **Are there reasonable grounds for suspecting money laundering activity?** |

**If there are reasonable grounds for suspicion, will a report be made to NCA?** [Please tick the relevant box]  Yes  No

**If yes, please confirm date of report to NCA: \_\_\_\_\_\_\_\_\_\_ and complete the box below:**

|  |
| --- |
| **Details of liaison with NCA regarding the report:**  **Notice period: \_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_**  **Moratorium Period: \_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_** |

**Is consent required from NCA to any ongoing or imminent transactions which would otherwise be prohibited acts?** [Please tick the relevant box]  Yes  No

**If yes, please confirm full details in the box below:**

|  |
| --- |
|  |

**Date consent received from NCA:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date consent given by you to employee:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**If there are reasonable grounds to suspect money laundering, but you do not intend to report the matter to NCA, please set out below the reason(s) for non-disclosure:**

|  |
| --- |
| [Please set out any reasonable excuse for non-disclosure] |

**Date consent given by you to employee for any prohibited act transactions to proceed:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |
| --- |
| **Other relevant information:** |

**Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS**