



ASHFIELD DISTRICT COUNCIL

FRAUD RESPONSE PLAN

Director of Legal and Governance
(Monitoring Officer)

APPROVED:
Audit Committee = [10 February 2020]

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INTRODUCTION

The Fraud Response Plan has been developed to provide assurance of a consistent, thorough and effectively managed response to any allegations of fraud affecting the Council.

REPORTING FRAUD

Employees and Members are required to report – to their line manager or a Nominated Individual – if they have concerns about possible fraud affecting the Council; this includes suspected fraud involving employees, Elected Members, Contractors, Suppliers, members of the public.

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For purposes of reporting concerns about possible fraud or corrupt behaviour, the **Nominated Individuals** are:

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- The Chief Executive
- The Monitoring Officer
- The Corporate Finance Manager (as Chief Finance Officer)
- The Head of Internal Audit, (Central Midlands Audit Partnership – CMAP)

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Line Managers or Nominated Individuals will consider any expression of concern and determine whether:

- (i) It is sufficiently well founded to merit a formal investigation; or
- (ii) No further action is required.

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If (i) refer to the Monitoring Officer.

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If (ii) explain to the reporter the reason for the decision and retain a written note of the concern and the determination made.

MANAGING INVESTIGATIONS

The Monitoring Officer is responsible for overseeing investigations of suspected fraud or corruption. To discharge that responsibility she shall:

- Ensure that the Chief Executive is informed without delay of any allegations involving Elected Members or members of the Corporate Leadership Team;
- Ensure that the Chief Executive is informed of allegations against other employees, suppliers or contractors where available evidence indicates that the allegation may be well founded;
- Consult with the Chief Executive and Monitoring Officer on the need to inform police, external audit or other parties – at the time of the initial referral or at any time during the investigation;
- Consider the need to comply with the Regulation of Investigatory Powers Act (RIPA). The Council has a RIPA Policy which sets out the process for carrying out investigations requiring compliance with RIPA.
- Appoint and provide Terms of Reference to an Investigating Officer;

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- Ensure that the Investigating Officer has access to the resources required to conduct the investigation in line with the Terms of Reference;
- Ensure that the subject of any investigation receives timely and appropriate notification; and
- Advise the Head of Internal Audit (CMAP), of any investigation initiated who will enter the details on the Fraud Log.

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The Investigating Officer shall be a senior officer of the Council or an appropriately qualified member of CMAP. The Investigating Officer shall:

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- carry out the investigation in line with the Terms of Reference issued by the Monitoring Officer;
- ensure that the investigation complies with the Council's Disciplinary Procedure;
- maintain a Diary of Events recording the progress of the investigation and any matters arising;
- keep the Monitoring Officer advised of the progress of the investigation;
- keep the Monitoring Officer advised of the resources committed to the investigation;
- ensure that the Monitoring Officer is informed without delay if new evidence indicates a need to inform the police or other parties; having gathered sufficient evidence for the purpose;
- gather sufficient evidence to support a conclusion as to whether or not the concern under investigation is well founded;
- issue a report recommending one or more of the following:
 - criminal proceedings be instituted by the Council;
 - evidence gathered be forwarded to the police;
 - internal disciplinary action;
 - no action be taken against individuals; and
- recommend, if appropriate, a review of aspects of the internal control framework.

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The Investigating Officer shall, at a minimum, provide the Monitoring Officer with weekly updates on the progress of the investigation.

The Investigating Officer shall be provided with such advice and guidance as may be required by Legal Services and HR to ensure that there are no breaches of HR policies, employment law or other relevant legal requirements (such as Data Protection) and to assist with the assessment of any potential criminal proceedings.

The Chief Executive shall determine the content and timing of any statements made to the media or to another third party about an instance of suspected fraud or corruption. No other employee shall make such a statement without the Chief Executive's express authority.

EVIDENCE GATHERING

The Investigating Officer shall be responsible for gathering, recording and for the secure custody of the evidence required for the investigation. The following guidance

shall be followed in the evidence gathering process to ensure that the Council can demonstrate that it takes a consistent approach to all investigations.

Physical Evidence

Physical evidence might include: written quotations, tenders and contracts; written correspondence; cheques, paying-in slips or other vouchers; items of Council property; CCTV footage and photographs.

Evidence is to be collected and secured without delay. The Investigating Officer shall record the date, time and location at which each item of evidence is secured and the individual securing the evidence. If evidence consists of several items, for example many documents, each one shall be tagged with a reference number corresponding to the written record. The Investigating Officer shall ensure that all evidence is held securely and record any individuals other than the Investigating Officer who are subsequently allowed access.

Where the Investigating Officer considers that the current condition of land, real property or other assets is relevant to an investigation, sufficient photographs shall be taken to evidence conditions at a time and date that the Investigating Officer shall certify. The Investigating Officer shall record the individual who takes any photographs commissioned and each photograph taken shall be annotated to show location; date and time taken; and the facts that it evidences (e.g. length of grass on an area of public open space; state of disrepair of a Council property; condition under which assets are stored).

Where photographs evidence the behaviour of the subject of the investigation (or other relevant parties) the Investigating Officer shall ensure and certify that they were obtained in a manner consistent with RIPA requirements.

Evidence Held in Electronic Format

If it is suspected that relevant information is held on a subject's official PC or laptop, the Investigating Officer shall:

- ensure that **no attempt is made to access such information** as this will change the data accessed and compromise its value as evidence;
- liaise with the **Service Manager**, ICT, to ensure that:
 - the PC/laptop is isolated and placed in a secure container for transport to an appropriate forensic consultant;
 - the subject's access permission to be suspended to prevent any alteration of data held on shared areas; and
 - copies are secured of any relevant data held on shared areas.

If it is suspected that there is relevant information on the subject's business e-mail account, the Investigating Officer shall liaise with the **Service Manager**, ICT to suspend the subject's e-mail account and arrange for the subject's e-mail transactions to be secured.

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If it is considered that mobile phones or data recording media that have been issued to the subject by the Council for business purposes might hold relevant information, the Investigating Officer shall take custody of them. The Investigating Officer shall again ensure that **no attempt is made to access such information** and arrange for the secure transport of those items to an appropriate forensic consultant.

The Investigating Officer shall consult with the HR Manager and the Service Manager, ICT, if it is suspected that other employees may hold relevant information in electronic format.

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The Investigating Officer shall consult with the Chief Executive and Monitoring Officer if it is suspected that relevant information may be held by an Elected Member in electronic format.

Witnesses

The Investigating Officer shall seek to identify all potential witnesses to any matters under investigation. To do so:

- direct questions may be put to the individual raising the matter;
- processes may be analysed to determine individuals involved in relevant transaction flows (e.g. processing and certification of creditor invoices);
- office layouts may be analysed to identify individuals who might have witnessed events or overheard conversations;
- the subject of the investigation should (when interviewed) be given the opportunity to identify supporting witnesses.

The Investigating Officer should carry out preliminary enquiries to determine which, if any, potential witnesses can provide evidence useful to the investigation. It should be made clear to any reluctant witness that an employee's contractual obligations include a requirement to co-operate with any investigation of misconduct (except where there is a risk of self-incrimination).

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Where the Investigating Officer determines that a witness can provide significant, relevant information a written statement shall be taken. Other than in exceptional circumstances, the Investigating Officer shall agree with the witness a time and date for the interview that allows:

- the Investigating Officer to plan the interview and identify the key themes to be pursued and the facts to be established;
- the Investigating Officer to ensure that someone is available to make a contemporaneous record of the interview; and
- the witness to refer to diaries or other prompts to memory.

Unless time pressures preclude doing so, the Investigating Officer shall provide the witness with a copy of the notes made of the interview and invite the witness to sign and return that copy if they are satisfied that the notes represent an accurate record of the interview.

Interview with Subject

Unless the evidence gathered from other sources makes it clear that the concerns under investigation are unfounded, the Investigating Officer shall interview the subject of the investigation. The purpose of any first interview shall be for information gathering purposes and the following general conditions should be met:

- the Investigating Officer shall prepare a written schedule of questions based upon an analysis of:
 - the original concern referred to the Monitoring Officer;
 - the Terms of Reference issued;
 - evidence obtained; and
 - witness statements.
- to identify the information required from the subject.
- The HR Manager shall be advised of the intention to interview and given the opportunity to comment on the proposed schedule of questions and any employment law or issues of Council policy that need to be addressed.
- The Investigating Officer shall ensure that a second officer attends the interview for the purpose of maintaining a contemporaneous record of the questions posed and the subject's responses and any other statements. Audio recording equipment may be used if it is available and the subject agrees (in which case a copy will be provided to the subject).
- The Investigating Officer shall at the start of the interview tell the subject:
 - what is being investigated;
 - the role of the Investigating Officer;
 - the issues about which information/clarification are to be sought;
 - that the subject is not being interviewed under caution and that statements made during the interview would not be admissible for a criminal prosecution; but
 - that the recorded statement may be used as evidence in a disciplinary hearing.

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DISCIPLINARY ARRANGEMENTS

The outcome of an investigation may be one of the following:

- Evidence of criminal activity leading to a referral to the Police and subsequent prosecution(s): in such circumstances the Monitoring Officer shall consult with the HR Manager to determine whether it is appropriate to undertake disciplinary action in parallel with criminal proceedings.
- Evidence of criminal activity leading to a referral to the Police and a subsequent decision not to proceed with a prosecution: in such circumstances the Monitoring Officer shall determine whether the Council should mount a private prosecution. If the decision is taken to prosecute, the Monitoring Officer shall again consult with the HR Manager, to determine whether it is appropriate to undertake disciplinary action in parallel with criminal proceedings.
- Evidence provides assurance that there has been no criminal behaviour but indicates possible misconduct on the part of one or more employees: in such

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circumstances the Monitoring Officer shall consult with the HR Manager to determine whether it is appropriate for the Investigating Officer to be involved in the disciplinary process.

- Evidence provides assurance that there has been no criminal behaviour but indicates possible misconduct on the part of one or more Elected Members: in such circumstances Monitoring Officer shall consult with the Chief Executive to determine what action is appropriate.
- Evidence provides assurance that there has been no criminal behaviour or misconduct: in such circumstances the Monitoring Officer shall notify the Head of Internal Audit (CMAP), who will close the entry in the Fraud Log. The Monitoring Officer will also ensure that the subject of the investigation receives prompt notification of this outcome.

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If the decision is taken that an employee may have a disciplinary case to answer, the investigative process to be followed must comply with the Council's Disciplinary Procedure.

RECOVERY PROCESS

The Monitoring Officer shall be responsible for commissioning and managing actions taken to limit losses suffered by the Council as a result of discovered fraud; to facilitate the recovery of such losses; and to mitigate risks arising from identified control deficiencies. The Monitoring Officer shall:

- consider on receiving a referral whether the potential materiality of losses is such as to require immediate action to stop losses. The Monitoring Officer shall keep the issue of action to stop loss under continuous review in light of progress reports from the Investigating Officer.
- consider on receiving a referral whether weaknesses in controls or supervision identified require immediate action to mitigate ongoing risks. The Monitoring Officer shall keep the issue of action to remedy control deficiencies under continuous review in light of progress reports from the Investigating Officer.

If investigations establish that the Council has suffered financial losses as a result of dishonesty, recovery options are, broadly speaking:

- to claim against the relevant insurance policy;
- to take civil action against the individual(s) responsible;
- to make a claim on an employee's accumulated superannuation benefits; or
- to agree recovery terms with the individual(s) responsible.

The Monitoring Officer shall ensure that the Council's Insurance Officer is made aware of potential losses and that any necessary notifications are made to the Council's insurers. The Monitoring Officer shall liaise with the Insurance Officer to ensure that the Council does not, by action or omission, invalidate its insurance cover. The Monitoring Officer shall liaise with the Insurance Officer to ensure that properly quantified claims can be made without delay and that the Council claims to the full extent of its insurance coverage.

The Monitoring Officer shall determine the civil recovery action most likely to remedy losses suffered by the Council.

- in the event that the individual(s) responsible make an offer of restitution issues to be considered would include: whether the amounts offered address fully the Council's losses and costs; and the impact of such an offer on criminal proceedings or proceedings by third parties.
- in the event that the individual(s) responsible are members of the Local Government Superannuation Scheme, the Scheme's Regulations provide for the forfeiture of pension rights after conviction.

REVIEW PROCESS

The Monitoring Officer has a responsibility for the maintenance of the Council's internal control framework. At the conclusion of any investigation of suspected fraud or corruption, the Monitoring Officer shall ensure that a review is undertaken to identify:

- whether there are fundamental weaknesses in the control framework that made that incident of fraud or corruption possible;
- whether there were any failures on the part of management to operate designated controls that allowed the fraud or instance of corruption possible; and
- whether there are any practical opportunities to address those control issues.

The Monitoring Officer will normally commission CMAP to undertake such reviews and the results of any review will be reported to Audit Committee as part of the Annual Governance Statement.

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REPORTING AND ACCOUNTABILITY

The Head of Internal Audit (CMAP) shall maintain a Fraud Log, recording all expressions of concern received by the Monitoring Officer and detailing the response to, and outcome of, each response. The Annual Governance Statement shall contain a summary of those referrals, the responses, and the outcomes. The Annual Governance Statement shall also summarise the results of the reviews commissioned by the Monitoring Officer.

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