
APPENDIX 2 - TO THE FINANCIAL AND SECURITY REGULATIONS

ARGYLL AND BUTE COUNCIL

Anti-Fraud Strategy

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1. **INTRODUCTION**

- 1.1 Argyll and Bute Council is a large organisation and the size and nature of our services puts us at risk of loss due to fraud and corruption both from within the Council and outside it.
- 1.2 We are committed to making sure that the opportunity for fraud and corruption is reduced to the lowest possible risk. Where there is the possibility of fraud, corruption and other problems, we will deal with it in a firm and controlled manner.
- 1.3 An important part of this approach is an anti-fraud and anti-corruption strategy, which we will use to advise and guide members and staff on our approach to the serious issues of fraud and corruption. This document provides an overview of our policy in this matter and includes a 'fraud response plan' which provides more detailed guidance on how to deal with fraud and corruption.
- 1.4 The main message is that we expect all members, employees, consultants, contractors, and service users, to be fair and honest, and to give us any help, information and support we need to deal with fraud and corruption.

1.5 The strategy set out in this document covers the following areas:

- ∇ Our written rules
- ∇ How we expect our members and employees to behave
- ∇ Preventing fraud and corruption
- ∇ Detecting and investigating fraud and corruption
- ∇ Training
- ∇ Publicising our activities to prevent fraud

1.6 The Anti Fraud and Corruption Strategy is compliant with Equalities Bill 2006 and an E I A will be undertaken to ensure ongoing compliance

2. **OUR WRITTEN RULES**

2.1 We have a number of procedures and rules to make sure that our financial, working and organisational procedures are properly controlled. These are an important part of our internal control process, and it is important that all members and staff know about them.

2.2 The most important of these are as follows:

- ∇ Council Standing Orders
- ∇ Contract Standing Orders/Procurement manual
- ∇ Financial and Security Regulations
- ∇ Scheme of Delegation
- ∇ Guidance-Code of Conduct for Employees
- ∇ Protocol for Member / Officer Relations
- ∇ Public Interest Disclosure Policy
- ∇ Housing Benefit and Council Tax Benefit Security Strategy and Referral
- ∇ Employees' Conditions of Service

There is also the Councillors National Code of Conduct.

2.3 Individual departments have also introduced their own measures, which are designed to control their activities. Examples include accounting control procedures, working manuals and operating procedures.

2.4 Executive Directors must make sure that all staff have access to these rules and regulations and that staff receive suitable training.

2.5 Members and employees must make sure that they read and understand the rules and regulations that apply to them, and act in line with them.

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- 2.6 If anyone breaks these rules and regulations we may take formal action against them. This may include ending their employment with the Council in respect of employees and, in respect of members. It will be the responsibility of the Executive Director of Customer Services as Monitoring Officer to report matters to the appropriate authority.

3. HOW WE EXPECT COUNCIL MEMBERS AND EMPLOYEES TO BEHAVE

- 3.1 We expect all people and organisations who are in any way associated with us to be honest and fair in their dealings with us and our clients and customers. We expect our members and employees to lead by example in these matters.
- 3.2 Our Ethical Framework, or internal rules, for members and employees set out an approach to work that is both honest and fair. Members and employees must act in line with the Ethical Framework at all times. The Council has also developed a Code of Corporate Governance which will assist in protecting the Council from fraud.
- 3.3 Our members and employees have an essential and integral part to play in dealing with fraud and corruption and we will encourage our staff and members to inform us if they suspect a case of fraud.
- 3.4 We will deal with all information fairly and confidentially. We will endeavour not to reveal the names of the people who gave us the information. Our fraud response plan (Appendix 1) and our Public Interest Disclosure Policy (Appendix 2) give more advice on this issue.
- 3.5 The Nolan Committee sets out the seven guiding principles that apply to people who serve the public. We will develop our working behaviour around these principles.
- 3.6 We expect our Executive Directors to deal firmly and quickly with anyone who is responsible for fraud or corruption. The Executive Director of Customer Services in consultation with the Chief Executive, the Executive Director within whose Department the fraud is alleged to have occurred and the Head of Strategic Finance and the Internal Audit Manager may refer matters to the police where they suspect any criminal activity has occurred.
- 3.7 We must ensure that any investigative process is not misused and, therefore, any abuse, such as raising unfounded malicious allegations against a colleague, will be dealt with as a disciplinary matter.

4. PREVENTING FRAUD AND CORRUPTION

- 4.1 We believe that if we are to beat fraud and corruption, we must prevent it from happening in the first place. It is essential that we have clear rules and procedures, within which members, employees, consultants and contractors can work. These include the main corporate rules, which are set out in section 2.
- 4.2 We must regularly review and update our written rules.
- 4.3 Managing the risk of fraud is the responsibility of the Council's Management. Executive Directors must make sure that suitable levels of internal check are included in working procedures, particularly financial procedures. It is important that duties are organised so that no one person can carry out a complete transaction without some form of checking process being built into the system.
- 4.4 We must follow our procedures when employing new staff. If possible, we must check the previous employment records of anyone we are considering employing. This applies to both temporary and permanent staff.
- 4.5 We are committed to working and co-operating with other organisations to prevent organised fraud and corruption. Wherever possible, we will be prepared to help and exchange information, subject to the requirements of Data Protection, with other Councils and organisations to deal with fraud. We will participate in any national anti fraud initiatives.
- 4.6 This kind of work needs to be tightly controlled particularly in relation to data protection issues.
- 4.7 The Public Interest Disclosure Policy provides a process for people to give us information which may be given in confidence that may prevent fraud and corruption.
- 4.8 We will make sure that full details of reporting facilities are widely published to the public, members and employees, and that all information we receive in this way is investigated and dealt with. This will include an online form for any person to report suspected fraud. Such referrals will be carefully handled to ensure that the process is not subject to abuse.

5. **DETECTING AND INVESTIGATING FRAUD AND CORRUPTION**

- 5.1 You should read this section with our fraud response plan (Appendix 1) and our Prosecution Policy and Housing Benefit and Council Tax Benefit Security Strategy and Referral Policy (Appendices 3 and 4 respectively).
- 5.2 Employees must report any suspected cases of fraud and corruption to the appropriate line manager, or, may do so in terms of the Public Interest Disclosure Policy to the Executive Director of Customer Services. Reporting cases in this way is essential to the anti-fraud and corruption strategy and makes sure that:
- ∇ suspected cases of fraud and corruption are investigated properly,
 - ∇ the fraud response plan is carried out properly,
 - ∇ there is a standard process for dealing with all suspected cases of fraud and corruption,
 - ∇ people and our interests are protected.
- 5.3 The Council's Public Interest Disclosure Policy is intended to encourage and enable anyone to raise serious concerns. Employees reporting concerns in this way are afforded certain rights through legislation (Public Interest Disclosure Act 1998).
- 5.4 The Executive Director of Customer Services in consultation with the Chief Executive, and the Executive Director within whose Department the fraud is alleged to have occurred will decide on the type and course of the investigation. This will include referring cases to the police where necessary. The alleged fraud will also be reported to the Head of Strategic Finance and the Internal Audit Manager. We will prosecute offenders and we will carry out our disciplinary procedures where appropriate. We will ensure that any internal proceedings do not prejudice any criminal case. For further guidance on this see Appendix 5.
- 5.5 The Internal Audit Manager, whilst not participating in the investigation of the alleged fraud, will liaise with the Executive Director of Customer Services in his Investigation of the alleged fraud and in particular;
- 1 Examine current Council policies, procedures and financial controls, their current working and effectiveness in relation to the alleged fraud;
 - 2 Report to the Strategic Management Team in relation to the adequacy of current Council policies, procedures and financial controls in relation to the alleged fraud and make recommendations for their revision;

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- 3 Provide advice and assistance to the Executive Director of Customer Services in relation to Council policies, procedures and financial controls and control issues relevant to the investigation of the alleged fraud.
- 5.6 In respect of any case of alleged fraud or corruption discovered by or referred to the Executive Director of Customer Services he shall;
- 1 Deal promptly and confidentially with the matter;
 - 2 Maintain full documentation of all evidence received and comply with the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002 in relation to the release of information in relation to the alleged fraud;
 - 3 Ensure that the investigation is carried out having regard to the Councils policy under the Regulation of Investigatory Powers (Scotland) Act 2000 and it's obligations under the Human Rights Act 1998;
 - 4 Ensure that the evidence is sound and adequately reported;
 - 5 Report findings to the Strategic Management Team;
 - 6 Liaise with the Internal Audit Manager in accordance with paragraph 5.5 hereof.
- 5.7 In cases relating to Housing Benefits and Council Tax Fraud the action taken will follow the prosecution policy outlined in Appendix 4. All other instances of fraud the action taken will follow the prosecution policy outlined in Appendix 3.
- 5.8 The Accounts Commission has powers to request or carry out an investigation into fraud and corruption.

6. TRAINING

- 6.1 We understand that the key to introducing a successful anti-fraud and anti-corruption strategy and making sure it continues to apply will depend on programmed training and the way all our employees respond.
- 6.2 We support the idea of providing training for our employees who are involved in or managing internal control systems to make sure that their responsibilities and duties are regularly reviewed and reinforced.
- 6.3 We are also committed to training and developing our employees who are involved in investigating fraud and corruption and we will provide suitable training.

7. CONCLUSION

- 7.1 We are committed to tackling fraud and corruption whenever it happens. Our response will be effective and organised and will rely on the principles included in this document.
- 7.2 We will continue to review our rules and procedures and will make sure that this strategy document is regularly reviewed to make sure it stays effective.

Appendix 1 to Anti Fraud Strategy

Fraud Response Plan

1. Introduction

- 1.1 Argyll and Bute Council is committed to the highest possible standards of openness, probity and accountability in all its affairs. It is determined to develop a culture of honesty and opposition to fraud and corruption.
- 1.2 In line with that commitment, the Council's Anti-Fraud Strategy outlines the principles we are committed to in relation to preventing, reporting and managing the investigation and prosecution of fraud and corruption.
- 1.3 This Fraud Response Plan reinforces the Council's robust approach by setting out the ways in which employees or members of the public can voice their concerns about suspected fraud or corruption. It also outlines how the Council will deal with such complaints.

2. What Do We Want To Know About?

- 2.1 This Plan is intended to be implemented where suspicions of fraud or corruption have been raised.

Fraud is defined as:

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

Corruption is defined as:

"The offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person".

- 2.2 Concerns or allegations which fall within the scope of other, existing, procedures (eg child protection or discrimination issues) will normally be referred for consideration under those procedures.

- 2.3 Fraudulent or corrupt acts may include:

Systems Issues - i.e. where a process/system exists which is prone to abuse by either employees or public (eg Planning Applications)

Financial Issues - i.e. where individuals or companies have fraudulently obtained money from the Council (eg invalid invoices/work not done, Housing Benefit fraud).

Equipment Issues - i.e. where Council equipment is used for personal use, (eg personal use of Council vehicles)

Resource Issues - i.e. where there is a misuse of resources (eg theft of building materials)

Other Issues - i.e. activities undertaken by officers of the Council which may be:

- ∇ unlawful,
- ∇ against the Council's Standing Orders or policies,
- ∇ below established standards or practices,
- ∇ improper conduct (e.g. receiving hospitality).

This is not an exhaustive list.

3. Safeguards

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

Confidentiality – The Council will do its best to protect an individual's identity when he or she raises a concern and does not want their name to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the individual may be required as part of the evidence.

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

- ∇ the seriousness of the issues raised
- ∇ the credibility of the concern
- ∇ the likelihood of confirming the allegation from attributable sources

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

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4. What Should An Employee Do If They Suspect Fraud Or Corruption?
- 4.1 Employees are often the first to realise that there is something seriously wrong within the Council. If they have serious concerns in relation to fraud or corruption within the council they should report this to their line Manager. However, they may not express their concerns in this way because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 4.2 The Council's Public Interest Disclosure Policy is intended to encourage and enable staff to raise serious concerns within the Council rather than overlooking a problem or blowing the whistle to the media or other external bodies.
- 4.3 A copy of the Public Interest Disclosure Policy is attached as Appendix 3.
5. What Should A Member Of The Public Do If They Suspect Fraud Or Corruption?
- 5.1 The Council encourages members of the public who suspect fraud and corruption to contact the Chief Executive or Executive Director of Customer Services in the first instance. Members of the public may report matters to the Executive Director of Customer Services in terms of the Public Interest Disclosure Policy. Both the Executive Director of Customer Services and the Head of Strategic Finance have obligations to maintain and review the Council's Financial and Security Regulations and any suspected breach of these may be reported to either of them.
- 5.2 Argyll and Bute Council wishes to maintain procedures with the following aims:
- ∇ To develop an anti-fraud culture
 - ∇ To deter, prevent, detect and investigate fraud and corruption
 - ∇ To see appropriate action against those who commit or seek to commit some sort of fraud or corruption
 - ∇ To obtain compensation in respect of any losses to the Council
- 5.3 The possible courses of action taken by the Council are outlined below.
- 5.4 The Executive Director of Customer Services can be contacted by phone on 01546 602127 or by writing to; The Executive

Director of Customer Services, Kilmory Lochgilphead, Argyll. In addition the Council has an online enquiry form to allow information to be submitted in this way also.

6. How Will Allegations Of Fraud Or Corruption Be Dealt With By The Council?

6.1 For issues raised by employees or members of the public, the action taken by the Council will depend on the nature of the concern. The matters raised may:

- ∇ be investigated internally, and/or
- ∇ be referred to the Police

6.2 Within 10 working days of a concern being received, the Chief Executive, Executive Director of Customer Services or designated officer will write to the complainant:

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

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

7. Alternative Methods For Taking A Complaint Forward

7.1 If either a member of the public or an employee feel it is right to take the matter outside these processes, the following are possible ways forward:

- ∇ your local Councillor – If you are unsure how to contact them, call the Council on 01546 602127 for advice.
- ∇ the Accounts Commission – who are the organisation appointed to scrutinise the Council's finances and performance. By law, they must be completely independent from the Council.
- ∇ your Trade Union – employees may invite their Trade Union to raise a matter on their behalf.
- ∇ the Police – suspicions of fraud or corruption may be reported directly to the Police.
- ∇ the Scottish Public Services Ombudsman– this is an independent body set up by the Government to deal with

complaints against public bodies such as Councils in Scotland

- ∇ Public Concern at Work – this is a charity which provides free and strictly confidential legal help to anyone concerned about a malpractice which threatens the public interest. They operate a helpline on 0171 404 6609 or can be e-mailed at whistle@pcaw.demon.co.uk.

APPENDIX 2 to Anti Fraud Strategy

PUBLIC INTEREST DISCLOSURE POLICY

1. INTRODUCTION

1.1 Argyll and Bute Council is committed to the highest standards of openness, probity and accountability. These high standards are coupled with a positive approach to enabling employees and others who become aware of wrongdoing, improper conduct or other failures of a substantive nature to bring attention to their concerns. The Council's Public Interest Disclosure Policy is, therefore, designed –

- To set out a process for the investigation of certain disclosures of information which are made in the public interest;
- To provide protection from reprisal or victimisation for individuals who make such disclosures in good faith; and
- Thus to provide a genuine recourse for legitimate representations without encouraging a climate in which they become malicious, trivial or routine.

1.2 There are existing procedures in place which enable employees of the Council to raise a grievance relating to their own employment. The Public Interest Disclosure Policy is designed to deal with matters which fall outwith the scope of the Grievance or Disciplinary Procedures

2. SCOPE

2.1 In the context of the work of Argyll and Bute Council, a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the person making the disclosure, tends to show one or more of the following –

- (a) That a criminal offence has been committed, is being committed or is likely to be committed,
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he/she is subject,
- (c) That any person has failed, is failing or is likely to fail to comply with any obligation as to their conduct or otherwise imposed on that person by –
 - The Argyll and Bute Council Protocol governing relations between Members and Officers.
 - The Council's Standing Orders, Contract Standing Orders, Procurement Manual or Financial and Security Regulations.
 - The Argyll and Bute Code of Conduct for Officers.

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- (d) That the health or safety of any individual has been, is being or is likely to be endangered.
 - (e) That the Council has committed, is committing or is likely to commit to a course of action which is unlawful
 - (f) That the Council has taken, is taking, or likely to take a course of action, or there has been a corresponding failure, which is likely to give rise to a finding of maladministration on the part of the Council
 - (g) That information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

A qualifying disclosure is made in accordance with this policy if the person –

- (a) Makes the disclosure in good faith
- (b) Reasonably believes that the information disclosed, and any allegation contained in it, are substantially true
- (c) Does not make the disclosure for purposes of personal gain
- (d) In all the circumstances of the matter, believes it is reasonable for the person to make the disclosure.

2.2 Any disclosure alleging a breach of the Councillors Code of Conduct issued under the Ethical Standards & Public Life Etc (Scotland) Act 2000 in respect of a Councillor should be referred by the person making the disclosure to the Office of the Chief Investigating Officer, the Standards Commission for Scotland, Forsyth House, Innova Campus, Rosyth Euro Parc, Rosyth, KY11 2UU – telephone – 01383 428 033 – fax – 01383 428 019 – email: investigations @ standardscommision.org.uk

3. SAFEGUARDS

3.1 The Council recognises that taking a decision to report a concern of the type covered by this policy can be a difficult one, not least because of the fear of reprisal. The Council makes it clear that it will not tolerate any reprisals under any circumstances and will take action to protect a person who makes a qualifying disclosure.

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- 3.2 If a disclosure is made in good faith but is not confirmed by subsequent investigation, no action will be taken against the person making the disclosure. The Council will, however, protect itself, its Members and Employees against malicious allegations and will take appropriate action against any person who makes such an allegation. The Council will also take such reasonable steps which may be open to it to minimise the impact on any of its Members or Employees of an allegation which is either malicious or unfounded.
- 3.3 Nothing in this Policy means that if a person is already the subject of any action or procedure against them (including in the case of employees, disciplinary procedures) that those procedures will necessarily be halted as a result of a disclosure made under this policy.

4. **CONFIDENTIALITY**

- 4.1 In a culture of openness, and against the Council's stated policy that it will protect a person who may make a disclosure in good faith and in the public interest, and to assist any investigative process, it is clearly desirable that the person who makes a disclosure should be prepared to do so on an attributable basis. The Council will, however, take reasonable steps, but cannot guarantee, to protect the identity of a person who makes a disclosure and does not wish his or her name to be disclosed, subject to the following factors –
- (a) The seriousness and nature of the issues raised
 - (b) The likelihood of confirming any allegation from other attributable sources
 - (c) The need for evidential statements as part of any investigation
 - (d) The credibility of the allegation, and, in all the circumstances, the need to allow a person against whom an allegation is made to test the veracity and substance of it
 - (e) The likelihood, in all the circumstances, of unwarranted reprisals being directed against a person who makes a disclosure.
- 4.2 The Officer conducting the investigation will, however, take all necessary steps to ensure that the name of a person who makes a disclosure is not disclosed to others within the Council except, strictly, on a need to know basis in order to further the due completion of the investigation and the Council's response to it. (See paragraph 5 below).
- 4.3 The Council will not disclose in any public document the name of any person who makes a disclosure, nor will the Council disclose that person's name to any third party outside the Council except –

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- Where an offence may have been committed and there is considered to be an obligation to report that to the Police or Procurator Fiscal, or to co-operate with enquiries instituted by the Police or the Fiscal
 - Otherwise where there would be any failure on the part of the Council to comply with any legal obligation on them.

4.4 Allegations expressed anonymously will not normally be considered. In exercising any discretion to consider any anonymous allegation, the factors which will be taken into account are –

- The seriousness and nature of the issues raised
- The credibility of the concerns
- The likelihood of confirming the allegations from other attributable sources

5. DISCLOSURES AND THEIR INVESTIGATION

5.1 As noted earlier, this Policy is designed to provide recourse for legitimate representations to be made about wrongdoing, improper conduct or other failure of a substantive nature. Any person making a disclosure in terms of this Policy should do so to the Council's Monitoring Officer. The Monitoring Officer will decide –

- (a) Whether the matter is one which should be dealt with under the Council's Grievance or Disciplinary Procedures, and, if so, will refer the matter to the appropriate Officer.
- (b) Whether the matter is one which should be dealt with under any Complaints or other procedure of the Council, and, if so, will refer the matter to the appropriate Officer.
- (c) Whether the matter is one which should be investigated in terms of this Policy and, if so, will conduct an investigation in terms of this Policy.
- (d) In the absence of an investigation in terms of this Policy, what other action, if any, should be taken.

5.2 Notwithstanding and without prejudice to the statutory obligations placed on the Monitoring Officer, for the purposes of this Policy the function of the Monitoring Officer is to investigate a disclosure of information, and any allegation contained in it, relating to any matter contained in paragraph 2.1 of this Policy.

5.3 The purpose of an investigation under this Policy will be to determine which of the following findings is the case –

- (a) That there is no evidence of any failure to comply with any of the matters set out in paragraph 2.1 above,

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- (b) That no action needs to be taken in respect of the matters which are the subject of the investigation
 - (c) That any matter which is the subject of investigation can be remedied by compliance with any recommendations which are made in the report of the investigation
 - (d) That there is evidence of a failure on the part of a Councillor in relation to any of the matters referred to in paragraph 2.1 above in which case, with the exception of a matter in respect of which a criminal offence may have been committed, the report of the investigation will be submitted to the Council which will consider what action, if any, should be taken.
 - (e) That there is evidence of a failure on the part of a person, who is not a Councillor but has been appointed or co-opted to any Committee or Sub-Committee or Policy Performance Group of the Council, in relation to any of the matters referred to in paragraph 2.1 above in which case, with the exception of a matter in respect of which a criminal offence may have been committed, the report of the investigation will be referred to the Audit Committee which will consider what action, if any, should be taken.
 - (f) That there is evidence of a failure on the part of an Officer of the Council in relation to any matter referred to in paragraph 2.1 above, in which case the report of the investigation will be referred to the Chief Executive who will determine what action, if any, should be taken.
 - (g) That there is evidence of a systematic or procedural failure on the part of the Council in relation to any matter referred to in paragraph 2.1 above, in which case the report of the investigation will be referred to the Chief Executive and /or the Council to determine what action, if any, should be taken.
 - (h) That otherwise the matters which are the subject of the investigation should be referred to the Council's Audit Committee.

5.4 For the purpose of conducting an investigation in terms of this Policy, the Monitoring Officer –

- (a) May conduct the investigation personally, or may authorise another person to do so
- (b) May obtain information from such persons and in such manner, and make such enquiries, as she/he thinks fit

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- (c) May require any Officer or Member to provide such information or explanation as may be necessary for the purpose of conducting the investigation
 - (d) Must give any person who is the subject of any allegation which is being investigated the opportunity or opportunities to respond to and comment on any allegation and must, in the course of any interview, allow that person to be accompanied by any other person
 - (e) May require any Officer or Member holding or accountable for any document or record (held in any medium) relating to the investigation to give access to such document or record.
 - (f) May, to assist the investigation, obtain advice from any person inside or outside the Council who is qualified to give it.
- 5.5 A copy of any report of any investigation must be given to any Member or Officer of the Council who is the subject of the report before the report is finally disposed of by the Monitoring Officer as set out in paragraph 5.3 above.

6. DECISIONS AND RECOMMENDATIONS OF AUDIT COMMITTEE

- 6.1 The audit Committee shall decide whether or not there has been a failure on the part of any person who is the subject of a report in terms of Paragraph 5.3(e), with the exception of a matter in respect of which a criminal offence may have been committed until any criminal proceedings have been disposed of.
- 6.2 Where the Audit Committee decides that there has been no such failure on the part of any such person it will give notice to that effect to the person concerned.
- 6.3 Where the Audit Committee decides that there has been such a failure as is mentioned in Paragraph 6.1 above, the Committee must decide, having regard to the Statutory authority or basis on which that person has been nominated, appointed or co-opted , whether the nature of the failure is such that either –
 - (a) The Council is to advise the person concerned that there has been a failure on his or her part, and specify the details of that failure; or
 - (b) Submit a report to Council, which report will be considered in public, advising that there has been a failure on the part of such a person concerned, specifying the details of that failure, which report may include a recommendation that any one of the following courses of action should be taken by the Council –

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- (i) That the person concerned be afforded the opportunity of apologising to the Council in respect of the failure; or
 - (ii) That the person concerned should be the subject of a resolution of censure expressing the Council's disappointment that there has been a failure on the part of such a person concerned; or
 - (iii) That the Council remove the person concerned from any one or more positions to which the person was appointed by the Council or any of its Committees or Sub-Committees, and/or that the person be removed from membership of any one or more Committee, Sub-Committee, or Policy Performance Group of the Council;
 - (iv) That the Council request the persons nominating or appointing body to remove or withdraw their nomination or appointment and remove that person from any Committee, Sub-Committee, or Policy Performance Group of the Council;
- 6.4 Before submitting a recommendation in terms of paragraph 6.3(b) to the Council, the Audit Committee will provide a copy of their report, including any recommendation contained in it, to the person concerned.
- 6.5 In considering a recommendation in terms of paragraph 6.3(b) the Council will afford an opportunity to the person concerned to make a statement to the Council, and it will not be open to the Council to pass a resolution which would, in respect of the person concerned, be more onerous than the course of action recommended by the Audit Committee.

ARGYLL AND BUTE COUNCIL

Prosecution & Sanction Policy

2010/2011

Argyll and Bute Council Revenues and Benefits Unit

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1. INTRODUCTION

The intention of any prosecution and sanction policy should be to provide an appropriate punishment for those persons who commit benefit fraud and act as a deterrent.

The policy should also provide guidelines, which will achieve a consistency of approach to dealing with benefit fraud so that potential fraudsters are aware of the likely outcome of committing a fraud.

Only by deterring fraud, by prosecuting or, where appropriate, applying sanctions as an alternative to prosecution, can we hope to convey the message to the public that Argyll and Bute Council will not tolerate abuse of the benefits scheme and the Council is prepared to prosecute, or ask others to prosecute, appropriate cases throughout the full range of benefit fraud.

Sanctions can be in the form of either an Administrative Caution, or as an Administrative Penalty.

2. POLICY

The Council's policy in relation to fraud is:

- To prevent and deter fraud;
- To detect it as quickly as possible;
- To investigate it efficiently by the use of a formal risk analysis matrix to ensure concentration on high and medium risk cases.
- To prosecute offenders, or impose sanctions where appropriate.

Ultimately, the desired effect of regular prosecutions and sanctions is to deter potential offenders.

3. FORMS OF SANCTIONS

In cases where benefit has been paid as a result of a fraudulent claim, any overpayment will be recovered and the following sanctions may be considered:

- the offender may be prosecuted
- the offender may be offered an Administrative Penalty as an alternative to prosecution
- the offender may be offered an Administrative Caution as an alternative to prosecution.

Individual circumstances will be taken into account when considering the appropriate sanction to apply.

Decisions regarding the use of administrative sanctions are the responsibility of the Counter Fraud Manager or the Revenues and Benefits Manager. They will consider which, if any, sanction should be applied and make their decision in accordance with this policy.

Officers employed on investigative duties will be responsible for delivering administrative sanctions.

Prosecution will be considered where an offender has declined to accept an Administrative Caution or an Administrative Penalty.

Investigators will refer cases for possible prosecution to the Counter Fraud Manager. Where prosecution is considered appropriate, the Counter Fraud Manager will discuss the case with the Revenues and Benefits Manager who will decide whether to proceed. Where the offender is an employee of the council or an elected member, the case will be brought to the attention of the Director of the Department in which the employee works who shall consider what steps are necessary in the investigation and disciplinary process. If the identified case of fraud involves a Member of the Council then the issue will be referred immediately to the Chief Executive and the Director of Customer Services who as monitoring officer will refer the matter to the appropriate authorities.

In preparing the files for prosecution the Counter Fraud Unit will deal directly with the Procurator Fiscal and submit cases to the Crown Office and Procurator Fiscal Service electronically via their website www.copfs.gov.uk. The Unit will liaise with the Procurator Fiscals office in order to progress cases and obtain advice for future improvements in our fraud processes.

In cases that have been jointly investigated by Argyll and Bute Council and DWP Fraud Investigation Service, the decision to impose a sanction will be made in accordance with the Partnership Agreement that is in place at the time between the two organisations and with reference to current legislative guidance.

4. REVIEW

This policy will be reviewed in line with DWP guidance and or on the direction of the Procurator Fiscal.

5. CASES SUITABLE FOR PROSECUTION

Argyll and Bute Council proposes that prosecutions will be sought where there is clear evidence of fraud and either the amount of the fraud exceeds £5,000 or other factors apply which make the consideration of prosecution the first option.

Other factors may include cases where:

- the fraud has continued over a long period of time.
- the fraud was calculated and deliberate
- the fraud was committed by a person employed by Argyll and Bute Council.

However, automatic consideration for prosecution will be where the following factors apply;

- the person has previously been convicted of benefit fraud
- forged or counterfeit documents have been used
- the offer of an Administrative Caution or Administrative penalty is refused by the person who committed the fraud.
- the person has repeatedly failed to attend pre-arranged interviews under caution.

In considering whether prosecution is appropriate, thought should be given to other factors, which might weigh against this course of action. These include cases where:

- the person suffers from poor physical or mental health
- the person is elderly or infirm
- there are exceptional mitigating circumstances.

6. ADMINISTRATIVE PENALTY

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

In considering a case for offering a penalty, due regard will be given to any exceptional circumstances of the offender (eg, age, health, finances) and or any mitigating circumstances , as well as the type and nature of the fraud committed.

Legislation surrounding the use of Administrative Penalties is contained in Section 115A (2) of the Social Security Administration Act 1992, as amended by the Social Security Administration (Fraud) Act 1997.

A person may be offered the option of agreeing to pay an administrative penalty, if they have, by act or omission, caused benefit to be overpaid to them.

The amount of the penalty is 30% of the value of the overpaid benefit.

There must be grounds for instituting criminal proceedings against the

person for an offence relating to the overpayment on which the penalty is based.

The decision to offer an administrative penalty is made by the local authority. There is no right of review against the decision to offer or not offer a penalty nor can the person ask the local authority to review the amount of the penalty, which is prescribed in the legislation. However, normal rights of review apply in respect of the overpayment determination.

Argyll and Bute Council will offer administrative penalties as an alternative to prosecution where there is clear evidence of fraud and the amount of the overpayment is less than £5,000.

The following conditions must be satisfied before a person is offered the choice of agreeing to pay an administrative penalty:

- the case is not so serious that the first option should be prosecution
- there are grounds to institute criminal proceedings.
- there has been no inordinate or inexcusable delay in the investigation or administration of the case, which may lead to the case being time-barred, or breaching the defendant's right to a fair trial under Article 6 of the Human Rights Act.
- the person has been notified of the decision and appeal rights on the amount and recoverability of the overpayment
- the administrative penalty can only be offered on any part of a recoverable overpayment that has accrued since 18 December 1997

There is no requirement for the person to admit to the offence before an administrative penalty can be offered.

Where a person agrees to pay the penalty, no proceedings will be instituted against them relating to the overpayment on which the penalty is based.

Any agreed administrative penalty will be recovered using the methods that are used to recover overpayments as per the Councils Overpayment Recovery Policy.

Administrative Penalties have no standing for the purposes of Court proceedings. Because of this, the fact that a person has previously agreed to pay an administrative penalty for an earlier overpayment cannot be mentioned in Court.

Where a person declines to accept an Administrative Penalty, criminal proceedings will be considered.

Whilst the penalty cannot be cited in Court, the Council can inform the Procurator Fiscal that the defendant declined to accept the offer of

an Administrative Penalty.

7. ADMINISTRATIVE CAUTION

An Administrative Caution is a warning given in certain circumstances as an alternative to prosecution to a person who has committed an offence. An administrative caution can only be considered when there is sufficient evidence to justify instituting criminal proceedings and the person has admitted the offence during an 'interview under caution'.

In considering a case for offering a caution, due regard will be given to any exceptional circumstances of the offender (i.e.:- age, health, finances) and/or any mitigating circumstances of the claimant, as well as the type and nature of the fraud committed.

The use of cautions is purely administrative and there is no legislation covering their use.

Argyll and Bute Council will offer an Administrative Caution as an alternative to prosecution where there is clear evidence of fraud and the amount of the overpayment is less than £5,000.

The following conditions must be satisfied before a person is offered a caution:

1. the person has admitted the offence during an interview under caution,
2. the person is 18 or over,
3. the offence is minor,
4. the person has not offended before,
5. the person's attitude towards their offence indicates that a caution would be an appropriate punishment

Where a person declines to accept an Administrative Caution, criminal proceedings will be considered.

Where criminal proceedings are taken, the Court will be informed that the case has been taken because the person refused the offer of an Administrative Caution. Whilst the caution cannot be cited in Court, the council can refer to it when submitting the case to the Procurator Fiscal (PF).

8. MITIGATING FACTORS

When considering whether criminal proceedings are appropriate, the following circumstances are taken into account:

- any distressing domestic or family circumstances
- any exceptional financial difficulties

-
- the age of the customer
 - the mental and / or physical health of the customer or partner

Prosecution may not be appropriate if the customer or partner is affected by any of the above.

9. VOLUNTARY DISCLOSURE

Criminal proceedings will not be appropriate if the customer or partner makes a full and complete voluntary disclosure.

Voluntary disclosure occurs when an offender voluntarily reveals a fraud that the Council is previously unaware of. If this happens, the Council will continue to investigate the fraud but will not pursue a prosecution.

A disclosure is **not** voluntary if:

- the admission is not a complete disclosure of the fraud;
- admission of the fraud is only made because discovery of the fraud is likely, for example;
 - one of the offender's friends or neighbours is also caught defrauding the Council; or
 - the offender knows the Council is questioning their employer in the course of a survey or fraud drive;
 - the offender was already the subject of a criminal investigation and detection is likely.
- disclosure comes to light in some other way, for example, by the issue of a review form;
- offender admits all the facts as soon as challenged;
- offender supplies the correct facts when making a claim to Legal Aid.

10. MENTAL OR PHYSICAL CONDITION OF OFFENDER OR PARTNER

Criminal proceedings will not be appropriate if the mental or physical condition of the offender or partner means that prosecution is not desirable. The strain of an interview under caution or an appearance in Court might have serious consequences on a customer or partner who is not mentally or physically strong.

Points to consider:

1. if the offender suffers from a serious mental or physical condition i.e.:- a nervous disposition, particularly if they have contemplated suicide;
2. the offender suffers from a mental illness such that the Court might be more sympathetic towards them than towards the Council;

-
3. the offender is pregnant and confinement is either due within three months or she is not in good health. If the offence is serious take proceedings but consider deferring them until after the confinement;
 4. the physical condition of the offender is such that the Court might be more sympathetic towards them than the Council. Weigh this possibility against the gravity of the offence;
 5. the health of the offender's partner may suffer. This would normally only apply if the partner suffers from a serious condition that may worsen if proceedings are taken.

Medical evidence would be required before finalising the decision.

11. SOCIAL FACTORS

Social factors can make criminal proceedings undesirable for example when:

- the Court and / or the public would think a prosecution inappropriate, for example, when the customer is driven to an offence by a tragic domestic circumstance;
- prosecution is highly undesirable because of the possibility of trauma to an innocent third party, i.e.:- an illegitimate, adopted or foster child would become aware of their true status;
- the offender is young and immature and would appear to the Court as someone who could be dealt with effectively without proceedings.
- being a young offender does not automatically prevent proceedings from going ahead. For example, prosecution may be desirable when;
 - the offender has already been involved with the police;
 - the offence shows an adult degree of sophistication; or

12. TECHNICAL FACTORS

Technical factors that can affect a decision to prosecute or not are:

- inadequate evidence
- flawed investigation
- lax administration

13. INADEQUATE EVIDENCE

Criminal proceedings are not appropriate, if there is insufficient evidence to justify proceedings, or the evidence cannot be obtained, i.e.:- because of unreliable witnesses, corroboration.

14. FLAWED INVESTIGATION

Criminal proceedings are not appropriate if an investigation is deficient

and fails to provide all the necessary evidence to take proceedings. In this circumstance closure is appropriate. A flawed investigation might occur if a customer plausibly asserts that the Investigating Officer behaved improperly, for example by deceiving or intimidating them.

15. LAX ADMINISTRATION

Lax administration can allow a fraud to succeed. If the Council plays a significant part in allowing an offence to occur because of lax administration, in such circumstances criminal proceedings are not appropriate.

Lax administration can occur when:

- despite having incomplete information, benefit is still paid
- the interviewing officer completes the claim form badly
- obvious flaws in a statement or document are missed

16. DELAY

Criminal proceedings are not appropriate if any case is subject to unjustifiable delays. Courts look very critically at the:

- time it takes to bring offences to Court; or
- length of time the customer has been left, possibly in anxiety with the case unresolved.

ARGYLL AND BUTE COUNCIL

Benefit Fraud Strategy 2010/2011

Argyll and Bute Council Customer Services Revenues and Benefits Unit

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1 INTRODUCTION

In the management and provision of its services, Argyll and Bute Council is unequivocally set against any form of benefit fraud from within the council, external organisations, benefit claimants, landlords or employers.

The Council will develop and maintain the principles of openness, honesty and accountability in the provision of its services and the conduct of its business, while respecting the need for confidentiality when it is proper and lawful to do so.

The Council is committed to the prevention, detection and investigation of benefit fraud, and will seek to prosecute or apply other appropriate sanctions to perpetrators of benefit fraud.

The Council will introduce and operate confidential and effective arrangements for its staff, members, residents, taxpayers and any other persons to be able to report any suspicions or concerns they may have concerning any benefit fraud.

This strategy document also supports Argyll and Bute Councils Anti-Fraud Strategy, the Customer and Support Services Service Delivery plan, the Prosecution and Sanction Policy and Fraud Business plan.

2 INVESTIGATING BENEFIT FRAUD

The council is aware of the high risk within the benefit system for fraud, error or irregularity and the necessity to protect the public purse from abuse.

There are essentially three main ways of defrauding the system:-

- **Initial Eligibility** -claimants supply fraudulent information on their initial application form.
- **Changes in Circumstances** - claimants fail to notify changes, which could reduce or terminate their benefit entitlement.
- **Fraud by Landlords** - landlords create false tenancies or continue to receive benefit for individuals who have moved away.

The council has invested resources in establishing a team of officers dedicated to identifying, investigating and preventing Benefit fraud.

The council recognises that deliberate abuse of the Benefit scheme by an individual or individuals in order to obtain money from the council to which there is no legal entitlement is a criminal offence.

3. THE BENEFIT FRAUD INVESTIGATION TEAM

The principal objective of the Benefit Fraud Investigation Team is to 'Provide a professional and effective Investigation Service'. This will be delivered by the:-

- Confidential and consistent treatment of information received,
- Proper investigation by experienced and PINS (Professionalism in Security) accredited Counter Fraud Investigators,
- Effective channels of communication to receive information from sources both internal and external to the organisation.

The Counter Fraud Manager is responsible for following up any allegation of fraud received and will do so, through clearly defined procedures, and will ensure that

- Cases are dealt with promptly and are investigated to a satisfactory conclusion,
- All evidence received is recorded and kept securely,
- All evidence has been correctly obtained and adequately supported,
- A logical decision is made as to the appropriate sanction in accordance with the council's prosecution and sanction policy.

The Benefit Fraud Investigation Team will investigate in accordance with all appropriate legislation governing benefit fraud investigations and the Investigators Code of Conduct, by:

- Using all legislative powers,
- Pursuing all lines of enquiry,
- The application of new technology and the Fraud Management System,.
- Undertaking data matching exercises utilising data from Housing Benefit Matching Service and the National Fraud Initiative,
- Actively making use of shared intelligence with other organisations using all available legal gateways,
- Continuous review of working practises,
- Undertaking joint working with DWP Fraud Investigation Service (FIS),
- Identifying fraud trends and patterns and where possible instigates proactive investigations.

4. SURVEILLANCE

The Council acknowledges its responsibilities in relation to the Regulation of Investigatory Powers (Scotland) Act 2000. Legal Services have participated in the development of a corporate policy document which will

adhere to the provisions outlined with the legislation.

5. APPOINTMENT OF LOCAL AUTHORITY AUTHORISED OFFICERS

Argyll and Bute Council will appoint Local Authority Authorised Officers, authorised by the Chief Executive. The Authorised Officers will use their power as stipulated under the provisions within the Social Security Administration Act 1992, as amended by the Social Security Administration (Fraud) Act 1997. All Authorised Officers will be issued with a Certificate of Authority, detailing their powers under the Social Security legislation.

6. JOINT WORKING WITH DEPARTMENT OF WORKS AND PENSIONS (DWP)

Argyll and Bute Council is committed to joint working with the DWP Fraud Investigation Service (FIS) and has a current Memorandum of Understanding with the DWP FIS that will be reviewed annually.

The agreement sets out the framework for co-operation between Argyll and Bute Council and DWP FIS. This agreement sets out local arrangements and has been personalised to take into account local issues in association with the Joint Operational Board.

7. DATA MATCHING

Data matching is a powerful way of finding possible fraud. However, it requires careful preparation and management, and professionally conducted and managed investigations into the reasons for discrepancies.

Argyll and Bute Council intends to continue taking part in: -

- Housing Benefit Matching Service (HBMS)
- National Fraud Initiative (NFI)
- Credit Reference Agency (CRA)

These services facilitate the cross matching of data between Argyll and Bute Council, other Local Authorities and Government departments.

8. TRAINING

The council recognises that the success of its Benefit Fraud Strategy will significantly depend on the effectiveness of planned training, awareness and responsiveness of employees throughout the organisation.

To facilitate this, the council will ensure that employees are provided with the necessary knowledge, skills and awareness to help ensure the success of its Benefit Fraud Strategy.

This will be achieved by:-

- Ensuring fraud awareness training is incorporated into induction training for new staff, and is ongoing for all Customer Services staff at regular intervals
- Provide fraud awareness training to stakeholders and other relevant outside organisations

The fraud awareness training will be constantly reviewed to reflect changes in legislation.

9. SKILLS AND EXPERTISE

The Council will ensure that Counter Fraud Officers possess the expertise to interview, gather evidence, interview under caution and prepare evidence for court.

10. FRAUD REFERRALS

Referrals account for the majority of leads that the Counter Fraud Officers receive, therefore guidance in what to refer is of great importance.

All Benefit, Housing and Customer Service Centre (CIS) staff have intranet/desktop access to procedures advising them of the process to follow when fraud is suspected.

11. INTERNAL SECURITY

A Fraudulent claim made by an Employee or a Member of the Council

Any identified case of benefit fraud which involves an Employee of the Council will, in addition to actions outlined within the Prosecution and Sanction Policy, also be the subject of the Council's Disciplinary Procedures. In such instances, the case will be brought to the attention of the Director of the department in which the employee is employed who shall consider what steps are necessary in the investigation and disciplinary process.

Any identified case of fraud which involves a Member of the Council will be referred immediately to the Chief Executive and the Director of Customer Services who, as Monitoring Officer will refer the matter to the appropriate authorities.

It will be the responsibility of the Benefits Manager to advise the relevant persons, immediately after it becomes apparent that a fraudulent act may have been committed by an Employee or Member of the Council.

Complaints relating to an Elected Member may be made to the Standards Commission for Scotland.

Any complaint against employees of the council will be dealt with under the provisions of the council's Disciplinary Policy.

12. PROSECUTION AND SANCTION POLICY

A policy for determining which offences are to be dealt with through a criminal prosecution and a procedure for managing the process has been set by the council.

Argyll and Bute Council has agreed a Prosecution and Sanction Policy for the prosecution of offenders who have committed a fraudulent act in obtaining or attempting to obtain Housing Benefit and/or Council Tax Benefit.

Argyll and Bute Council has the right to refer cases to the Procurator Fiscal involving fraudulent claims for Housing Benefit and/or Council Tax Benefit.

We will also participate in prosecutions involving Housing Benefit and Council Tax Benefit where other relevant Social Security Benefits are/were also in payment, where the law allows.

13. HEALTH AND SAFETY

Officers involved on Counter Fraud duties will adhere to Argyll and Bute Council's Health and Safety Policy.

14. CONCLUSION

The council has in place a clear set of systems and procedures to assist it in combating the constant threat of fraud and corruption. The council is determined that these arrangements will be regularly reviewed to ensure that they keep pace with best practice in relation to fraud prevention and detection.

The council will maintain a continuous overview of existing systems of control, as well as reviewing on a regular basis all relevant policies, procedures and regulations.

APPENDIX 5A

Guidance on responding to a fraud situation - what you should do start

The golden rules for responding correctly

The ultimate golden rule is that evidence should be collected and handled without compromising it or a future criminal investigation and prosecution.

RESPOND APPROPRIATELY TO INITIAL SUSPICION	If it is safe to do so, an initial investigation should be carried out to identify what further action is necessary. If there is an indication of fraud or anything requiring further investigation, this should be recorded and passed promptly to Internal Audit Services. All staff should be made aware of and follow the guidance in Appendix 2.
CONFIDENTIALITY	All information received as part of the fraud investigation should be treated as confidential and should only be shared with those who have a need to know.
GET ADVICE	Services should consult with HR before taking any action. Feel free at any point to contact Internal Audit for guidance or help.
PLAN CAREFULLY	Carefully evaluate evidence, assess risk and plan actions. Take the time to do this well. Again assistance can be provided by Internal Audit.
REFER EFFECTIVELY	If necessary agree with Internal Audit who will be responsible for the investigation. Internal Audit will be happy to act in an advisory capacity in a number of circumstances rather than lead the work.
STAY IN CONTROL	Investigation work should be well monitored and controlled with regular meetings with all parties involved to review progress and decide future actions. Controlling time and cost is also important.
KEEP GOOD RECORDS	Keep first class records, particularly where evidence of criminality is obtained. Evidence and documentation must be stored securely in its original condition.
BE CAREFUL ABOUT INTERVIEWING	Interviews, which should only be used for fact finding, should be carefully planned, undertaken and recorded. Interviews should always be carried out by two people. The interviewee should be allowed to be accompanied. A formal record should be kept of the interview. Never interview a criminal suspect before consulting the Police and giving them the opportunity to investigate. The Head of Governance and Law will be happy to advise.
STOP AT THE RIGHT TIME	Referring the matter at the right time is essential to achieving a successful outcome. Guidance will be provided by Internal Audit .
FOLLOW UP ACTION TAKEN	Make sure that the Council learns from the experience and strengthens internal control.

APPENDIX 5B
Initial response checklist
Being told about a fraud

All information received must be treated as confidential and should only be shared with those who have a need to know

1. Note details of the informant.

- Name
- Address and telephone number
- Position
- Accept information that is provided anonymously, but encourage the person to give their details by suggesting this would help a future investigation if they can be contacted for further information.

2. Be responsive to concerns raised.

- Encourage an informant to voice concerns
- Assure them that their concerns will be taken seriously and properly looked into
- Make sure that the conversation is conducted privately and cannot be overheard inappropriately
- Listen carefully and attentively.

3. Refer to an appropriate Manager.

- If you are not the appropriate person it would be best to stop a conversation at a suitable opportunity so that they can be involved.
- If the informant has given contact details tell them that a senior member of staff will contact them.

4. Ask questions to try to get as much information as possible.

- Probe and clarify where necessary
- Find out if the informant has any evidence – e.g. documents
- Ask open questions – who, what, where, when, why, how.

5. Check if the informant wants to make a Public Interest Disclosure Act 1998 (PIDA).

- An informant may qualify to make a protected disclosure if they give their name and are an employee
- Tell them briefly about PIDA
- Ask them if they are making a disclosure or would like to do so
- Reassure the informant all information will be treated in confidence

Think you just found a fraud?

Consider personal safety and leave immediately if at risk from a suspect.

1. As soon as possible make a note of your concerns ensuring this is kept secure and cannot be overseen.

- Who
- What
- Where
- When
- Why
- How.

2. Make copies of any documentation on site that may be relevant and is readily accessible.

- Computer records and outputs – Seek support from Head of Support and Customer Services to ensure evidence is protected from contamination and destruction and is collected correctly
- Financial documents such as invoices
- Procedure documentation
- Reports

3. Convey your suspicions as soon as possible to the appropriate Manager.

- Initial information and evidence obtained should be evaluated
- Further investigation work should be carefully considered and planned
- Involve Audit Services if necessary

Don't do these!

1. Don't unduly challenge and never ridicule an informant about the reliability of their information.

- We want to know everything they know, even if it is wrong
- There will be time afterwards to evaluate what has been said and to determine what action should be taken
- Be open and approachable.

2. Don't confront anyone suspected or accused.

- A fraudster should not be alerted before the investigating parties are ready to take action
- Inappropriately interviewing a suspect can compromise a criminal investigation
- Wrongly accusing someone can do serious damage to careers, relationships and professional credibility.

3. Don't tell anyone who does not need to know.

APPENDIX 5C

How is an investigation managed?

Objectives

The objectives of an investigation are to:

- identify if fraud has taken place
- identify the dishonest persons
- estimate the financial loss and make recovery
- act fairly by collecting balanced evidence to support or disprove allegations and suspicions of fraud
- recommend and agree action to improve internal control
- consider taking formal action where needed.

How to investigate

The approach to investigation work is summarised below:

When fraud is suspected:-

- Evaluate the information, evidence and sources
- Assess risk
- Plan and prioritise the work required
- Gather evidence from records, documents and enquiries
- Decide on further courses of action

At all stages consideration should be given to the cost and benefits of doing the work.

The first and second steps of evaluation and assessing risk should always be undertaken. These are essential to gain an adequate understanding of the circumstances, risks and possible courses of action.

Meetings should be held regularly to re-evaluate evidence gathered and to re-assess risk as the investigation progresses. In making the assessment of risk, try to anticipate the whole potential extent for fraud. Think of the worse case scenario. For example, if an employee is able to commit a fraud in one area, how many other areas might also be at similar risk and should be checked? This will help to identify the gaps in knowledge towards which further investigative enquiries need to be made.

The investigation cycle continues until the objectives of the investigation have been achieved or further useful evidence is unlikely to be available. The evidence that has been obtained can then be evaluated in its entirety and appropriate action considered.

APPENDIX 5D

How should evidence be obtained and kept?

Evidence handling and record keeping must be excellent.

Golden rules for evidence gathering and record keeping

The ultimate golden rule, here again, is that evidence should be collected and handled without compromising it or a future criminal investigation and prosecution. The guidance covers investigations which involve a team of staff. Most investigations in Services will be done by a single manager and not all the steps will be required.

ESTABLISH A FILING SYSTEM STRAIGHT AWAY	Chronicle in an investigation logbook every action taken during the investigation. Also keep an exhibits record for evidence gathered.
GET ENOUGH ADMINISTRATIVE SUPPORT	Keep right up to date with filing and record keeping.
OBTAIN ORIGINAL DOCUMENTARY EVIDENCE	Obtain original documentary evidence (e.g. invoices) where possible. Give a receipt and a copy of what is taken.
RECORD INTERVIEWS AND CONVERSATIONS	Conversations, information received and actions taken should be recorded contemporaneously.
MAINTAIN EVIDENCE SECURELY IN ORIGINAL CONDITION	Make sure original documents or items are not marked or damaged in any way. Store securely and work on copies.
GET ADVICE ABOUT OBTAINING AND USING IT AND FORENSIC EVIDENCE	IT and forensic evidence requires specialist skills to meet criminal standards. Get advice from the Head of Governance and Law and head of Support and Customer Services.
DON'T THROW ANYTHING AWAY	File everything including rough notes and working papers to avoid potential allegations of destroying evidence.

APPENDIX 5E

What you shouldn't do

This section looks at the main risks and how they can be avoided.

The cardinal sins

The ultimate cardinal sin is to compromise a future criminal investigation by the Police or other agency and therefore the chances of a successful prosecution.

RUSH AN ILL PLANNED INVESTIGATION	Poorly managed investigations may jeopardise criminal prosecution and other action. Investigations should be well planned and involve staff with appropriate skills and experience. If in doubt call Internal Audit .
CONDUCT A CRIMINAL INVESTIGATION	This is the responsibility of the Police. When reasonable suspicion of a criminal offence is established, report the matter to Internal Audit and discuss the way forward.
INTERVIEW CRIMINAL SUSPECTS	This is the responsibility of the Police. Stop any ongoing interviews once reasonable suspicion arises or a confession is made. Don't start any new interviews of suspects. Never try to interview under caution. Report the matter to Internal Audit and discuss the way forward.
COMPROMISE EVIDENCE	The courts expect the original evidence to be produced in its original condition. Make a copy to work on and keep the original in a secure and safe file.
COMPROMISE COMPUTER EVIDENCE	If you switch a computer on or off you immediately compromise the evidence it may contain. Taking evidence from a computer involves specialist skills to copy hard drives and access networks appropriately. Specialist advice must be obtained. Report this to Head of Support and Customer Services and discuss the way forward.
THROW EVIDENCE AWAY	Keep everything. The law generally requires the prosecution to disclose all material evidence to the defence. This may include the audit files.
MOUNT COVERT SURVEILLANCE	Whilst the Council is a body to which the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) applies, we do not normally use covert surveillance. Don't follow people around or take pictures of them without their knowledge. This would be committing an offence.
USE INFORMANTS	Whilst the Council is a body to which the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) applies, we do not normally use covert surveillance. You cannot direct someone to find out information outside the normal course of the audit. So, for example, you cannot direct a member of the public "to keep an eye on things and let me know when it happens again". You can encourage them to contact you with further information which you are willing to take into account as part of the audit if they wish.

INTERCEPT COMMUNICATIONS	Accessing personal e-mail and post without the permission of the individual concerned can be illegal under <i>RIPSA</i> and / or the <i>Data Protection Act 1998</i> . Get legal advice about your proposed enquiries in advance of taking any actions of this nature.
BREACH DATA PROTECTION REQUIREMENTS	Under <i>Section 29 of the Data Protection Act 1998</i> , data can be shared between organisations for purposes of preventing and detecting crime. However, obtain legal advice about the specific acquisition, use and sharing of computer data.
BECOME AN EXPERT WITNESS	The evidence should speak for itself and the expression of opinion should be unnecessary or properly limited. Always take legal advice if you are asked to make a statement to the Police or you have been called as a witness at trial. An ordinary witness states what they found, heard or saw. An expert witness offers professional opinion on the evidence and this should be avoided.

It is important to keep in mind that evidence gathered during an audit investigation may subsequently be called upon in a criminal prosecution, civil law action or disciplinary / dismissal case. The action that can be taken against a fraudster will be compromised if it is possible to highlight procedural weaknesses in the investigation or evidence gathering process which may lead to evidence being ruled inadmissible or otherwise discredited.