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# Merton Council

## Standards and General Purposes Committee Agenda

### Membership

#### Councillors:

Peter McCabe (Chair)  
Adam Bush (Vice-Chair)  
Agatha Mary Akyigyina OBE  
Ben Butler  
John Dehaney  
Brenda Fraser  
Dickie Wilkinson  
David Williams MBE JP  
Hina Bokhari  
Mary Curtin  
Thomas Barlow  
Pauline Cowper

#### Substitute Members:

Peter Southgate  
Omar Bush  
Stan Anderson  
Sally Kenny  
Nick McLean  
Jenifer Gould

**Date: Monday 9 September 2019**

**Time: 7.15 pm**

**Venue: Committee Rooms CDE, Merton Civic Centre, London Road, SM4 5DX**

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All Press contacts: [communications@merton.gov.uk](mailto:communications@merton.gov.uk), 020 8545 3181

# Standards and General Purposes Committee Agenda

## 9 September 2019

1	Apologies for Absence	
2	Declarations of Pecuniary Interest	
3	Minutes of the previous meeting	1 - 6
4	Anti-Fraud and Anti-Corruption Strategy Review	7 - 32
5	Local Government Ethical Standards - A review by the Committee on standards in public life	33 - 38
6	Regulation of Investigatory Powers Act Authorisations	39 - 40
7	Complaints against Members <i>A verbal update to be provided at the meeting.</i>	
8	Work Programme	41 - 42

### **Note on declarations of interest**

Members are advised to declare any Disclosable Pecuniary Interest in any matter to be considered at the meeting. If a pecuniary interest is declared they should withdraw from the meeting room during the whole of the consideration of that matter and must not participate in any vote on that matter. If members consider they should not participate because of a non-pecuniary interest which may give rise to a perception of bias, they should declare this, withdraw and not participate in consideration of the item. For further advice please speak with the Assistant Director of Corporate Governance.

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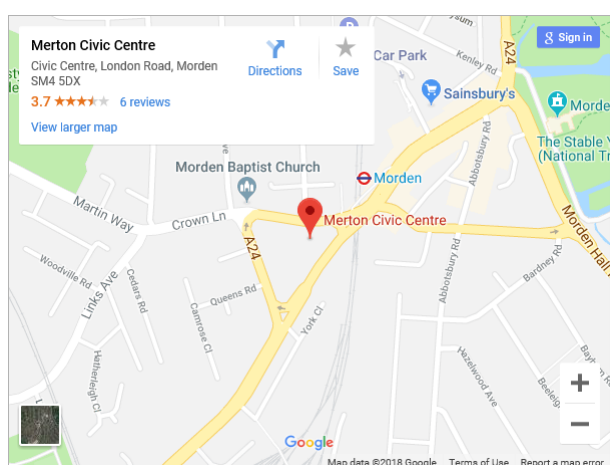
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# Agenda Item 3

## STANDARDS AND GENERAL PURPOSES COMMITTEE 25 JULY 2019

(7.15 pm - 9.08 pm)

PRESENT Councillors Councillor Peter McCabe (in the Chair),  
Councillor Adam Bush, Councillor Ben Butler,  
Councillor John Dehaney, Councillor Brenda Fraser,  
Councillor Dickie Wilkinson, Councillor Sally Kenny, Councillor  
Stan Anderson, Councillor David Williams,  
Councillor Hina Bokhari, Councillor Nigel Benbow and  
Councillor Russell Makin

### ALSO PRESENT

Pam Donovan – Independent Person

Simon Mathers – Ernst and Young  
Simon Luk – Ernst and Young

Caroline Holland (Director of Corporate Services), Paul Evans  
(Assistant Director of Corporate Governance), Margaret Culleton  
(Head of Internal Audit), Roger Kershaw (Assistant Director of  
Resources), Steve Bowsher (Chief Accountant), Nemashe  
Sivayogan (Head of Treasury and Pensions), Bindi Lakhani  
(Head of Accountancy) and Amy Dumitrescu (Democratic  
Services Officer)

### 1 APOLOGIES FOR ABSENCE (Agenda Item 1)

Apologies were received from Councillors Agatha Akyigyina and Mary Curtin.  
Councillors Stan Anderson and Sally Kenny attended as their substitutes.  
Councillors Nigel Benbow and Russell Makin attended the meeting, replacing  
Councillors Thomas Barlow and Pauline Cowper.

Apologies were received from Independent Person Clive Douglas.

### 2 DECLARATIONS OF PECUNIARY INTEREST (Agenda Item 2)

There were no declarations of interest.

### 3 MINUTES OF THE PREVIOUS MEETING (Agenda Item 3)

RESOLVED: That the minutes of the meeting held on 14 March 2019 were agreed as  
a correct record.

### 4 FINAL ACCOUNTS (Agenda Item 4)

The External Auditor presented the report advised that the audit of the Pension Fund  
Accounts was complete subject to letters due to be signed by various parties

following the Committee meeting. The Auditors expected to provide an unqualified opinion.

A large amount of work had been required late in the day following the McCloud judgement (relating to pension liabilities for all ages rather than only older pension members) and therefore the liabilities for the Local Government Pension Scheme had been re-assessed. Currently the Government had been denied an appeal on this judgement and therefore the additional liabilities needed to be recognised. There was one disclosure on the Pension Fund.

In relation to the Council accounts, the Pension fund liability had led to a rerun of the actuary assessments and this was reflected in the amended statements.

The External Auditor gave an overview of the areas of focus for and advised that there had been no significant changes to the accounts arising from the audit. The External Auditor informed the Committee that in relation to CIF, auditors were satisfied that this was well dealt with by officers and only some small changes had been made, with an unqualified opinion proposed.

The External Auditor noted that there were no other reporting issues and members noted that the contingent liability had been discussed at length during the Pension Fund Investment Advisory Panel and comfort had been given in line with other bodies satisfying the panel on these issues.

The External Auditor gave an overview of the Audit Results Report for the main Council accounts including the updated scope and advised that the auditors were working hard to ensure the work was completed by the deadline of 31 July 2019 and were being well supported by officers to achieve this.

The External Auditor advised that there was one unadjusted difference in relation to the DSG (dedicated schools grant).

In relation to valuation of PPE (Property, Plant and Equipment) the auditors were content that there were no significant adjustments to be made this year and whilst detailed recommendations for improvement would be made, officers had worked hard to improve PPE records and had been successful in doing so.

Value for Money assessments were fully complete and resulted in an unqualified opinion and auditors were content that the content of the MTFs (Medium Term Financial Strategy) was comprehensive and with reasonable assumptions.

In relation to the DSG a recovery plan had been produced however this was not factored into the MTFs and would lead to a budget gap going forward.

Following recommendations made last year in comparison to this year, auditors noted that whilst this was a work in progress officers were doing all of the right things to improve where improvements were required.

Members expressed concern regarding the DSG and the Director for Corporate Services advised that since the introduction of the DSG, the DfE (Department for Education) had allowed for deficits to be carried over and did not expect these to be funded by Council general resources.

The Chair thanked the auditors for their hard work which was recognised by the Committee.

#### RESOLVED:

1. That Committee approved the audited Statement of Accounts, including the Group Accounts and the Pension Fund Accounts (Appendix 2), subject to any further comments from the External Auditor.

2. That Committee noted any comments made by the Pensions Fund Advisory Panel regarding the Pension Fund Accounts.
3. That Committee noted EY's Audit Results Report (Appendix 4) for the Pension Fund accounts under the International Standard on Auditing (ISA) 260.
4. That Committee noted EY's Audit Results Report (Appendix 3) for the Statement of Accounts under the ISA 260.
5. That the Chair signed the Statement of Responsibilities for the Statement of Accounts (Appendix 2).
6. That the Chair signed Letters of Representation (Appendices 3 and 4) for the Statement of Accounts and Pension Fund Accounts.

5 FEE LETTERS FOR THE COUNCIL AND PENSION FUND ACCOUNTS  
(Agenda Item 5)

The External Auditor presented the Fee Letters and in response to members questions advised that there was no additional fee for questions received from members of the public.

6 INTERNAL AUDIT ANNUAL REPORT (Agenda Item 6)

The Head of Internal Audit presented the report advising that a reasonable assurance would be agreed subject to the limited assurance reports for Declarations of Interest (for officers) and Procurement, the actions for which were due at the end of July 2019.

In response to member questions, the Head of Internal Audit and Director of Corporate Services advised that the declarations of interest process was currently under review and that there had been increased work in this area including publishing further guidance on the Council's intranet.

In response to further questions, the Head of Internal Audit advised that the Accounts Receivable had not been audited in 2018/19 as this was done on a three year rolling programme and has been added to the 2019/10 audit plan.

RESOLVED: That the Committee reviewed and commented on the Internal Audit Annual Report 2018/19.

7 ANNUAL GOVERNANCE STATEMENT (Agenda Item 7)

The Head of Internal Audit presented the report.

In response to member questions, the Director of Corporate Services advised that there would be a report from the Brexit Working Group at the September meeting of Cabinet looking at the potential impact of Brexit and how the impact would be dealt with.

RESOLVED: That the Committee agreed the Annual Governance Statement.

8 LOCAL GOVERNMENT ETHICAL STANDARDS - A REVIEW BY THE  
COMMITTEE ON STANDARDS IN PUBLIC LIFE (Agenda Item 8)

The Monitoring Officer presented the report and gave an overview of the recommendations. The report had concluded that standards for Councillors were generally high and the changes proposed would require a legislative change and therefore were not expected to be brought in at present however the report outlined a number of good practice indicators to be implemented shortly.

Members expressed the view that currently there were not mechanisms in place to widely scrutinise organisations such as the SLWP (South London Waste Partnership) and further discussion on this would take place at the next meeting.

A further report would be brought to the Committee for discussion at the next meeting.

#### RESOLVED:

1. That the Committee noted the recommendations of the Committee on Standards in Public Life.
2. That the Committee agreed the best practice actions described in Paragraph 3.

#### 9 APPOINTMENT OF INDEPENDENT PERSON (Agenda Item 9)

The Democratic Services Officer presented the report. Members requested whether as the appointments of each of the two Independent Persons were required within a short period of time, the appointments could be phased so these coincided. Officers agreed to ensure that the appointments were phased going forward.

RESOLVED: That the Standards and General Purposes Committee agreed that an interview panel comprising one Councillor from each political group should be appointed to interview and to recommend to Council the appointment of one Independent Person to serve for a period of three years.

#### 10 COMPLAINTS AGAINST MEMBERS (Agenda Item 10)

The Committee noted a verbal update from the Monitoring Officer, advising that there had been no new complaints since the previous meeting.

The Monitoring Officer informed the Committee that a previous complaint from 2017 had been referred to the Ombudsman. Whilst the original finding by the Independent Person and Monitoring Officer had been that the complaint did not require further investigation, the Ombudsman finding had been that some additional factors needed to be taken into account and therefore an Independent experienced person should be appointed to reconsider the complaint.

The external person had visited the Council in the week prior to the Committee meeting and findings from the work were expected within 3 weeks following the Committee. The Monitoring Officer advised that if an update was required this would be provided at the next meeting of the Committee.

#### 11 WORK PROGRAMME (Agenda Item 11)



Members discussed whether given recent improvements and progress, the Temporary and Contract Staff report was required at every meeting. It was agreed that the report would be presented at alternate meetings going forward and this would be reviewed in twelve months' time.

The Work Programme was noted and agreed.

## 12 EXCLUSION OF THE PRESS AND PUBLIC (Agenda Item 12)

RESOLVED: That the public were excluded from the meeting during consideration of item 13 on the grounds that it is exempt from disclosure for the reasons stated in the report.

## 13 TEMPORARY AND CONTRACT STAFF UPDATE (Agenda Item 13)

The Director of Corporate Services presented the report and provided updates on recent recruitments. Members expressed that once a HR lead was recruited to the currently vacant post, the post holder should continue to challenge the use of agency and temporary contract staff.

RESOLVED: That members noted the progress made to monitor and control the use of temporary workers and consultants.

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## **Committee: Standards and General Purposes Committee**

**Date: 9 September 2019**

Agenda item:

Wards: All Wards

### **Subject: Anti-Fraud and Anti-Corruption Strategy review**

Lead officer: Caroline Holland- Director of Corporate Services

Lead member: Chair of Standards and General Purposes Committee

Forward Plan reference number:

Contact officer: Margaret Culleton Head of Internal Audit

[Margaret.culleton@merton.gov.uk](mailto:Margaret.culleton@merton.gov.uk)

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### **Recommendation:**

Approve the revised Anti-Fraud and Anti-Corruption Strategy

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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

1.1 The Anti-Fraud and Anti Corruption Strategy sets the council's approach to preventing, detecting, investigation and action against fraud and corruption, both internally and externally. We will:-

- Encourage prevention.
- Promote detection.
- Ensure effective investigation where suspected fraud or corruption has occurred.
- Take appropriate action against offenders

## **2. Details**

2.1 The Strategy supports the Council's strategic objectives, it forms an important part of the Council's governance arrangements, and the detailed provisions are implemented via corporate and departmental management arrangements, structures, people and systems. Effective implementation will support achieving maximum benefits from Council's finances, help to concentrate both the Council's and its partners' on delivering services to those in genuine need, promote public confidence and reduce crime.

2.2 These arrangements are subject to continuing internal review and improvement.

### **3 The proposed Anti-Fraud and Anti-Corruption Strategy**

- 3.1 This strategy has been updated to be aligned with the recently refreshed strategies for the councils in the audit and fraud partnership to ensure a consistent process for fraud referrals and prosecutions. The proposed Strategy is included as Appendix A to this report. The Strategy is designed to help maximise the application of approved resources to meet genuine service needs and to minimise irrecoverable losses. It should enhance public confidence and seeks to bring to justice those who commit acts of fraud or corruption against the Council.
- 3.2 Underpinning the Strategy there is a framework, toolkit of Policies and Procedures, including The Staff Disciplinary Code and Whistleblowing Policy, and these are reviewed on a regular basis to ensure that they support the Strategy and the Council's objectives.

### **4. Legislation**

- 4.1 The major piece of legislation in relation to the Anti-Fraud and Anti-Corruption Strategy is the Fraud Act 2006 that came into force in January 2007. The Act states there is a general offence of fraud with three ways of committing it:

- (a) Fraud by false representation;
- (b) Fraud by failing to disclose information; and
- (c) Fraud by abuse of position

It also creates new offences of:

- (a) Obtaining services dishonestly;
- (b) Possessing, making and supplying articles for use in frauds, and
- (c) Fraudulent trading applicable to non-corporate traders

- 4.2 In addition, the Bribery Act 2010 updated and extended existing legislation against corruption which dated back to 1889. It created 4 new offences of:

- (a) Offences of bribing another person;
- (b) Offences relating to being bribed;
- (c) Bribery of a foreign official, and
- (d) Failure of commercial organisations to prevent bribery.

- 4.3 The Trading Standards Service are authorised to enforce the provisions of The Fraud Act 2006 as part of any investigations carried out by them, and will use that legislation in relation, for example, to rogue builders and those responsible for placing counterfeit goods on the market place, which has been a significant issue with regard to some of our indoor markets.

4.4 The South West London Fraud Partnership (SWLFP) provide resources to investigate any allegations of fraud and corruption and if the allegation is found to be correct appropriate action will be taken against the individual(s), following consultation with the relevant parties, i.e. Head of Internal Audit, Head of Human Resources, Legal Services, Section Head.

4.5 The Council's use of its specific powers under the Regulation of Investigatory Powers Act 2000 (RIPA) namely covert surveillance and acquisition of communications data is monitored by the IPCO. The Council's systems were last inspected in March 2017 and have been deemed fit for purpose and its authorisations of the use of its powers deemed to be lawful.

## **5. Publishing this strategy**

5.1 The revised Strategy will be placed on the Council's website and intranet. Directors will make suitable arrangements for The Strategy to be discussed and reinforced at the regular team, section, service and directorate meetings that happen within departments.

## **6. Future reviews of the strategy**

6.1 The Head of Internal Audit, in consultation with the Head of South West London Fraud Partnership, the Head of Human Resources, Legal Services (SLLP) and other relevant officers, will continue to review the Strategy on an ongoing basis, with formal reviews by the Standards and General Purposes Committee, including notification of any necessary changes arising from the ongoing review process.

## **7. Conclusion**

7.1 The proposed Strategy provides a cohesive framework for minimising the Council's exposure to fraud and corruption and endorses the various mechanisms currently in place. The proposals for future reviews reflect the need to maintain the effectiveness of the Strategy over time and to maximise its impact via co-ordination with the review of relevant codes, policies and procedures.

## **8. Alternative options**

8.1 None for the purposes of this report.

## **9 Consultation undertaken or proposed**

9.1 The Head of Human Resources reports that they have been consulted on the review and revision of the Strategy, which, as indicated has important links with the Codes of Conduct for Members and for Employees, the Whistleblowing Policy and the Employees' Disciplinary Code

## **10 Timetable**

10.1. None for the purposes of this report.

## **11 Financial, resource and property implications**

11.1 None

## **12 Legal and statutory implications**

12.1 This report sets out Fraud Act 2006, Bribery Act 2010 and Regulation of Investigatory Powers Act 2000 (RIPA)

## **13. Human rights, equalities and community cohesion implications**

13.1 Human Rights implications are considered in the conduct of all investigations. For example if directed surveillance is felt necessary this will be carried out in accordance with the Regulation of Investigatory Powers Act 2000.

13.2 Investigations will take into consideration Equality and Diversity implications. Investigations may reveal weaknesses in financial management and other monitoring systems, e.g. ethnic monitoring. Ensuring action is then taken in respect of these weaknesses plays a role in ensuring that Council Resources are used to enable fair access to quality services.

## **14 Risk management and health and safety implications**

14.1 Each allegation is considered on a risk basis as to the amount of resources that should be employed in the investigation.

14.2. Some allegations involve Health and Safety matters and these are referred to the appropriate Council Section for investigation

### **Appendices – the following documents are to be published with this report and form part of the report**

- Appendix A – Anti fraud and Anti-Corruption policy

**Appendix A**

**ANTI-FRAUD AND ANTI-CORRUPTION STRATEGY**

**Introduction**

1. The Council is committed to the highest possible standards of openness, probity and accountability in order to ensure the proper use of public funds. This Anti-Fraud and Anti-Corruption Strategy (the Strategy) establishes the Council’s objectives in this respect and sets out a cohesive framework to manage effectively the risks associated with fraud and corruption involving staff, Members or third parties.
2. We recognise and adopt the national Local Government Fighting Fraud and Corruption Locally standards (FFCL). These standards are based around the three main headings of “Acknowledge”, “Prevent” and “Pursue” and from this the Council has developed the following strategy.

<p><b>ACKNOWLEDGE</b></p> <p><i>Acknowledging and understanding fraud risks:</i></p>	<ul style="list-style-type: none"> <li>• Committing support to tackling fraud.</li> <li>• Being clear on what we are seeking to combat – we are clear about what constitutes fraud, bribery, theft, and financial malpractice/irregularities.</li> <li>• Assessing and understanding the risks – we are proactive in assessing and responding to the risks of fraud and corruption to which the Council is exposed.</li> </ul>
<p><b>PREVENT</b></p> <p><i>Preventing and detecting fraud</i></p>	<ul style="list-style-type: none"> <li>• having an effective anti-fraud culture – we take a professional, integrated and proactive approach to countering fraud and are clear about the roles and responsibilities of our members, staff, partners and contractors.</li> <li>• We have a corporate framework which underpins the operation of the Council and has a number of elements which exist to help protect the Council against fraud. This includes documented codes, procedures and protocols to guide behaviour</li> <li>• Anti-Fraud training is essential in ensuring that staff and members understand the importance of tackling fraud, are able to recognise fraud and abuse and know how and where to report suspicions of fraud. Continuous and active promotion of the council’s robust stance against fraud and corruption should also be made to members of the public, contractors and partners to whom we work with to deliver services</li> <li>• Making use of information and technology</li> </ul>

Anti-Fraud and Anti-Corruption Strategy

<p><b>PURSUE</b></p> <p><b><i>Being robust in pursuing and punishing fraud and recovering losses</i></b></p>	<ul style="list-style-type: none"> <li>• taking integrated action to investigate fraud;</li> <li>• pursuing appropriate and proportionate sanctions to punish those committing fraud;</li> <li>• seeking redress to recover losses;</li> <li>• learning from our experiences and those of others and taking remedial and positive action to improve controls to prevent future fraud losses.</li> <li>• Collaborating across local authorities and with other agencies including the police</li> </ul>
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3. Fraud and corruption are defined for the purposes of this Strategy as follows:

Fraud: Any dishonest act or omission, whether by fraudulent representation, failure to disclose information, or abuse of position, by an individual or organisation, which is intended to make a gain, cause a loss, or risk of loss (whether or not an actual gain has been made or loss suffered) to the Council, the residents of the Borough, or wider community.

Corruption: An act of collusion, where a person benefits indirectly from a fraud perpetrated for the direct benefit of another or, the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person.

5. These definitions are not intended to, nor shall they, limit any investigation by the Council into any alleged fraud, nor shall they prejudice or in any way compromise any criminal prosecution or civil action taken in respect of them.
6. In law, offences of fraud and corruption are addressed within the Fraud Act 2006 which created a general offence of fraud with three ways of committing it:
- Fraud by false representation;
  - Fraud by failing to disclose information; and
  - Fraud by abuse of position.

it also created offences of:

- Obtaining services dishonestly;
- Possessing, making and supplying articles for use in frauds; and
- Fraudulent trading applicable to non-corporate traders.

and The Bribery Act 2010 which has created four offences:



- Offences of bribing another person;
- Offences relating to being bribed;
- Bribery of a foreign official; and
- Failure of commercial organisations to prevent bribery.

### **Aims and objectives**

7. The Council aims to minimise fraud and corruption relating to Council finances and services in order to support its corporate objectives of delivering high quality, value for money services in line with the Council's key objectives. The Strategy is designed to:
  - (a) help maximise the application of approved resources to meet genuine service needs by rejecting bogus claims and by deterring fraud and minimising irrecoverable losses;
  - (b) raise awareness of the risk of fraud and corruption, promoting detection and enhance public confidence through engaging with stakeholders and staff to report crime, and to minimise the reputational risk to the Council from adverse publicity;
  - (c) pursue a zero-tolerance policy and take action against persons who commit acts of fraud or corruption against the Council;
  - (d) protect residents and businesses from fraud committed by non-corporate traders, and bring to justice those who commit acts of fraud, using relevant legislation as appropriate; and
  - (e) support the Council in defending itself against prosecution under The Bribery Act 2010.

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

8. The Council is determined that the culture and tone throughout the organisation is one of honesty and opposition to fraud and corruption and it will take positive and effective action on fraud and corruption within Council services, whether delivered directly or via contractors, voluntary organisations, partnerships or other devolved management organisations, and its finances. Staff and Members are therefore expected to lead by example and thereby help to promote strong anti-fraud and anti-corruption attitudes within the Council and when dealing with third parties.
9. The Localism Act 2011 places a duty on the Council to promote and maintain high standards of conduct by Members and Co-Opted members, and to adopt a Code of Conduct which is consistent with the Nolan Principles of Public Life (see Annex A).

## Anti-Fraud and Anti-Corruption Strategy

10. Directors and managers are required to ensure that the risks of fraud and corruption are effectively managed at strategic and operational levels, and with competent and trained staff working within systems that incorporate effective anti-fraud and anti-corruption controls, and with appropriate targets and performance review for all risk areas.
11. There is an expectation and requirement that all individuals and organisations associated in whatever way with the Council will act with integrity. This includes partners, contractors, voluntary organisations, service users and the general public, all of who are important participants within the Strategy.
12. The Council is committed to working in partnership with the Police, to liaising with other mainly public sector agencies in respect of fraud and corruption, and to maximising the use of internal and external data matching.
13. The Council respects the rights of individuals but it will use all possible lawful means to protect Council services and finances from fraudsters, and it will fully meet relevant legislative requirements relating to fraud and corruption, including money laundering.
14. The Council, through its Trading Standards and Community Safety Teams, works in partnership with the police in respect of fraudulent activities of traders, particularly in the areas of combating rogue builders and those responsible for placing counterfeit goods in the market place, and will use proceeds of crime legislation as appropriate against such persons.
15. The risk of fraud and corruption is considered across the Council as part of Risk Management. This includes the recognition of the risk of 'Loss, waste or damage to the Council's property or resources' through fraud. Directors are additionally required to provide assurance that controls are in place, designed to highlight any deficiencies. Where the controls are not deemed to be operating to a suitable degree, then a remedial plan is required to be taken to strengthen the control and mitigate the risk.

### **Whistleblowing**

16. Appropriate web/email and other contact points are maintained with anti-fraud and anti-corruption publicity to help develop staff and public intolerance of public sector fraud and corruption within the borough. The Council's own Whistleblowing Policy encourages staff to report proper concerns about fraud and corruption and gives information on how this should be done.
17. It is important to promote an atmosphere or environment in which whistleblowers both internal and external continue to be motivated to come forward and do so without fear of retribution.

**Standards, contract documentation, codes and declarations**

18. The Members Code of Conduct set out the personal responsibilities of Members and staff for ensuring integrity in the conduct of the Council's business, and sets out the anti-fraud and anti-corruption responsibilities of chief officers and the s.151 Officer. The Code sets out the standards of conduct that Members must observe. It covers standards of general behaviour, disclosable pecuniary interests, relationships, information, gifts and hospitality, and the use of Council facilities.
19. The Code of Conduct for Employees covers standards, disclosure, political neutrality, relationships, recruitment, other commitments, personal interests and related party transactions, equality, tendering roles, corruption, resources, hospitality, gifts and sponsorship.
20. The Employees' Disciplinary Code sets down the procedures for disciplinary action and reinforces the required standards of conduct by identifying examples of serious and gross misconduct and setting out the available sanctions relating to them. Such offences include failure to notify gifts, theft, and falsification of documents, corruption, false accounting, providing false information, and obtaining Council services without genuine entitlement. Offences also include those within or outside the Council's employment that prevent the employee from continuing to do their job or seriously call into question the employee's fitness to continue in their job or where the Council's reputation and integrity is likely to have been damaged. Fraud and corruption fall within the definitions of gross misconduct and major offence.
21. Registers of interests, gifts and hospitality and related party transactions are in place and Members and employees, where applicable, are required to comply with all related policies, procedures and disclosure requirements.
22. The Council's core contract conditions maintained by the Legal Services (South London Legal Partnership – SLLP) require those that contract with the Council to provide access for Auditors, to implement whistleblowing policies and procedures and to refrain from offering inducements or corruptly seeking the award of a contract.

**Responsibilities**

23. The Council is responsible for ensuring that its affairs are managed in accordance with proper standards of financial conduct and for preventing and detecting fraud and corruption. All employees and Members are responsible for their own conduct and for contributing towards the safeguarding of Council standards as detailed in their respective codes. In addition some employees and Members have specific roles that contribute to achieving the Council's anti-fraud and anti-corruption objectives.

## Anti-Fraud and Anti-Corruption Strategy

Standards and General Purpose Committee are responsible for matters relating to Internal Audit and External Audit and the Anti-Fraud and Anti-Corruption Strategy and for promoting and maintaining high standards of conduct by Members and Co-Opted Members. This includes the application of the Members Code of Conduct, related training and briefing, compliance with rules relating to the registration and declaration of interests and of the receipt of gifts and hospitality, and complaints of breaches of the Members' Code of Conduct.

All Council Members: are personally responsible for ensuring integrity in the conduct of the Council's business, in particular by ensuring that they are aware of the Council's anti-fraud and anti-corruption policies and procedures, and by alerting the relevant chief officer or the Head of Internal Audit to any suspected breach.

The Monitoring Officer: is responsible for reporting to the Council/Executive contraventions of any enactment or rule of law, or maladministration following investigation.

The Chief Financial Officer: has statutory responsibility for the proper administration of the Council's financial affairs and for reporting (to the Council and the external auditor) unlawful expenditure, unlawful accounting entries and unlawful actions likely to cause a loss or deficiency. They direct responsibility for the main financial systems and exercises corporate control over services that are subject to the wide-ranging devolvement of day-to-day service delivery and financial management. Corporate control to minimise the opportunity for fraud and corruption is exercised mainly via delegations, segregation, financial instructions, accounting requirements, budgetary control, management control, Internal Audit and other anti-fraud functions within the Council. They are responsible for advising the Committee and chief officers on the maintenance and implementation of an anti-fraud and anti-corruption policy and associated arrangements for appropriate treatment and registration, by employees and members, of relevant interests, gifts and hospitality.

Chief Officers and Managers: Managers are responsible for the effective operation of internal control including the prevention and detection of fraud and corruption. Chief Officers are responsible for notifying the Head of Internal Audit immediately of any suspected fraud, theft, irregularity, improper use or misappropriation of the Council's property, assets, resources or services.

The Internal Audit Service: The Council is under a duty to maintain an adequate and effective system of internal audit of the Council's accounting records and control systems. Internal Audit Service reviews the adequacy and effectiveness of internal control, and, amongst other things, seeks to identify serious defects that might permit the occurrence of fraud and corruption. This is supported by follow-up work to ensure

compliance with agreed action plans. Internal Audit also has specific responsibilities for data matching and fraud and corruption investigations.

The Money Laundering Reporting Officer (Head of Internal Audit): to whom staff are required to disclose money laundering suspicions, and who is responsible for reporting to the National Criminal Intelligence Service. In the case of a Member, the Head of Internal Audit is responsible for co-ordinating investigations in consultation with the Council's Monitoring Officer, and the latter will invoke the relevant provisions of the Members' Code of Conduct.

South West London Fraud Partnership (SWLFP) are responsible for the investigation of all allegations of fraud or corruption. All referrals will be risk assessed and where there are reasonable grounds to suspect fraud, corruption or other irregularity, an investigation will take place in accordance with agreed investigative procedures.

- Where an employee is the perpetrator and/or the fraudulent recipient they will liaise with the employing Department who will invoke the relevant provisions of the Employees' Disciplinary Code.

Contractors and Partners are expected to adhere to the principles outlined in the Strategy. The Council expects its partners to ensure that they have effective controls in place to minimise fraud and bribery, and where issues are identified that they are properly investigated and appropriate remedial action taken.

### **Deterrence**

24. Deterrence is achieved when potential perpetrators of fraud and corruption consider that the risks (of being caught, punished and any gains removed) outweigh the perceived benefits arising from criminal actions. The Council seeks to deter potential perpetrators from targeting its finances and services and it does this via a high profile anti-fraud and anti-corruption reputation generated by:
- (a) a strong anti-fraud and anti-corruption culture involving Members, employees, and stakeholders including partners, contractors, service users and the public;
  - (b) clearly communicated policies on prosecution, civil recovery and disciplinary action;
  - (c) effective systems and actions on prevention, detection, investigation, sanctions and restitution;
  - (d) appropriate declarations on relevant Council documents (particularly application forms) concerning illegal acts, sanctions, data matching and verification requirements;

## Anti-Fraud and Anti-Corruption Strategy

- (e) positive and regular publicity to exploit the deterrent effect of hotlines and whistleblowing and to report all successful prosecutions unless there are clear grounds not to publicise; and
- (f) the requirements for officers and Members (including those representing the Council on Partnerships) to register and declare interests, gifts and hospitality and related party transactions.

### **Prevention**

25. Directors and managers are responsible for establishing, maintaining and operating appropriate and effective systems and controls to prevent fraud and corruption. Effective risk management aimed at targeting high-risk areas and supported by effective preventative controls will maximise such prevention. Directors and managers are also required to provide prior-notification to Internal Audit of significant proposed changes to systems of internal control.
26. Effective internal control will operate via a cohesive system of checks on the day-to-day transactions and activities that operate continuously as part of the routine system whereby the work of one person is proved independently or is complementary to the work of another. Effective preventative controls cover organisation structures, delegations, segregation of duties, physical controls, checking, security, authorisation, supervision and review.
27. Internal Audit uses a risk-based approach, including detailed testing of preventative controls, to review the adequacy and effectiveness of internal control on a cyclical basis across Council services and has regard to the risks of fraud and corruption.
28. The Council recognises that effective recruitment and staff vetting arrangements are essential to ensure the integrity of new staff. The vetting arrangements relate to criminal convictions, police checks for specified posts and the robust verification of qualifications, the right to work in the United Kingdom and probing the reasons for any gaps in employment references. These areas of good practice are requirements for Contractors, Voluntary Organisations and Partnerships to put in place and are reinforced via contract conditions and Partnership agreements. Induction training introduces new staff to the Council's corporate codes and requirements, with regular refreshers via newsletter and through intranets to maintain staff awareness of the key issues. Induction training introduces new staff to the Council's corporate codes and requirements.
29. The South West London Fraud Partnership provide fraud and corruption awareness training in the areas of highest risk.

## Detection

30. Directors and their managers are responsible for establishing, maintaining and operating appropriate and effective detective controls aimed at identifying fraud and corruption. Effective top-level management and budgetary control supported by appropriate risk management and effective detailed controls will maximise the detection of fraud and corruption. Detective controls also include good audit trails and strict referral criteria where indicators of fraud or corruption are identified.
31. Internal Audit carries out detailed transaction testing on a cyclical basis across Council services and has regard to the possibility of fraud and corruption. The Internal Audit strategy also includes some pro-active fraud work involving focused and detailed testing, specifically directed at those Council services where there is a high inherent risk of fraud and corruption.
32. The Council is committed to data matching across the Council's own systems for the purposes of the detection of fraud and corruption and to data matching initiatives involving other public bodies. Effective liaison and information sharing arrangements are also maintained with other agencies in order to aid detection and investigation.
33. Council staff are an important element in combating fraud and corruption and are encouraged and expected to raise such concerns where they are related to Council activity. The Council's Whistleblowing Policy sets out how employees should raise concerns and how they will be dealt with. This includes special procedures for fraud and corruption, which should always be reported directly to the Head of Internal Audit. Members should report suspected fraud and corruption to the Head of Internal Audit, who will consult with the Monitoring Officer.
34. The Council's core contract conditions, including those in relation to Voluntary Organisations, also set down requirements relating to probity and inducements, assistance with legal proceedings, and personnel issues. This includes the need for whistleblowing policies to be put in place highlighting that the Council's own policies & procedures would generally suffice with little adaptation.
35. The Anti-Fraud and Anti-Corruption Guidance informs managers what they should and should not do when they become aware of the possibility of fraud or corruption and in particular the requirements for confidentiality and the preservation of evidence. Complaints that indicate possible fraud or corruption are to be dealt with in accordance with the Guide. Relevant staff are trained for surveillance activity and to combat money laundering, and relevant detailed guidance notes are included on the intranet.

## Anti-Fraud and Anti-Corruption Strategy

36. Appropriate hotlines and other contact points are operated in order to maximise the detection of fraud and corruption via information received from Council employees, Members and the general public.

### **Investigation**

37. The South West London Fraud Partnership (SWLFP) undertakes the Council's internal enquiries into alleged or suspected fraud and corruption and maintains an immediate response capability in this respect. Trained Fraud Investigators undertake investigations in accordance with legislation, regulations and codes so as to ensure that actions are not prejudicial to the outcome of a case, and to preserve the rights of the individuals.
38. Formal complaints about Member misconduct are dealt with by the Monitoring Officer and the Standard and General Purposes Committee; these may be linked to investigations by the SWLFP. For the most serious cases of alleged misconduct, such as corrupt or fraudulent practice, it is likely that the matter would be referred to the relevant authority for criminal prosecution.
39. The SWLFP will liaise as necessary with the police and, in consultation with the relevant Director and Head of Internal Audit, will formally refer criminal cases to the police for investigation. All such liaison and referrals shall be conducted in accordance with the protocol for partnership working between the police and the public sector partners. Other external agencies will be involved as necessary.
40. The Employees' Disciplinary Code will be invoked where appropriate in cases of fraud and corruption and Directors, in consultation with the Head of Human Resources should consider the necessity for suspending an employee from work pending the conclusion of a case.
41. Failings in internal control will be reported to the Head of Internal Audit and Service Directors in order that appropriate preventative measures can be implemented where possible to avoid the recurrence of similar incidences.

### **Sanctions**

42. Sanctions are determined at the end of an investigation, subject only to applying any necessary interim or precautionary measures or sanctions, for example to prevent continuing fraudulent or corrupt activity or behaviour.
43. The Council will invoke the highest level of sanction by applying appropriate criminal or civil (including disciplinary and regulatory) sanctions in all cases where the evidence suggests that fraud, corruption, financial irregularity or malpractice have been committed. In cases of proven fraud, the Council will seek the prosecution of



suspected offenders. However, the ultimate decision for criminal cases referred to the police rests with the Crown Prosecution Service who will prosecute where there is both a realistic prospect of conviction (the evidential test) and it is in the public interest.

44. The Police may decide to caution an offender in accordance with Home Office guidelines. This is subject to admission of the offence and the agreement to be cautioned. The police caution is not a criminal record but the caution record is held for five years and details will be given to a Court when passing sentence for a similar offence.
45. The Council will undertake private prosecutions, and the application of the evidential and public interest tests are reflected in the Council's approved Fraud and Prosecution Policy, see [Annex B](#). The policy also provides for administrative penalties where the amounts and circumstances do not merit further action. The SLLP are responsible for providing legal advice and for undertaking civil actions and private prosecutions. The Council also undertakes private prosecutions where parking permit misuse involves road traffic offences.
46. Action under the Employees' Disciplinary Code will be invoked in all cases of employee fraud, corruption or misuse of Council assets or services. Theft, attempted theft, falsification of a document for gain or advantage, or obtaining Council services without proper entitlement and payment, or other dishonesty, are all examples of gross misconduct that will be dealt with as major offences under the Employees' Disciplinary Code. The timing of disciplinary action will have regard to ongoing police investigations or prosecution and the Head of SWLFP will advise on the most appropriate timing.

### **Restitution**

47. The recovery of Council losses arising from fraud and corruption shall be maximised in order:
  - (a) to minimise the residual financial impact on the Council;
  - (b) to punish the offender; and
  - (c) to deter offenders and others from defrauding the Council or committing related acts of corruption.
48. Where it is in the public interest, losses will be fully and accurately quantified including all relevant costs and damages. Compensation and/or Confiscation Orders will be requested in criminal cases and civil action will be taken where appropriate including cases already subject to criminal prosecution. Injunctions and restraint orders will be pursued where necessary to protect the Council's interests. Direct recovery from the perpetrator will be considered where appropriate on a no prejudice basis, and the repossession of Council assets will be pursued.

## Anti-Fraud and Anti-Corruption Strategy

49. Any third party liability will be established and pursued in order to recover residual losses and this could include banks, Council contractors and the Council's insurers. Directors, through their service managers, will initiate such claims, having regard to advice from Internal Audit and from the Council's Insurance Manager as appropriate. The Council regularly reviews its risk exposure and maintains appropriate insurance cover in respect of anticipated/possible claims.

### **Reporting to officers and Members**

50. The Heads of Internal Audit and Head of Fraud report to and discuss activity levels and outcomes in relation to fraud, corruption and financial irregularities with the Shared Service Board on a quarterly basis. In addition Interim and Annual Internal Audit Reports that include activity levels and outcomes are reported to and discussed with each Director. The Internal Audit Annual Report is considered by the Directors' Board and this contains corporate activity levels and outcomes, comparisons with prior years and commentaries on any actions required.
51. In order to provide early warning to key Members of a significant fraud and any corruption case involving an employee, the Head of Internal Audit will inform, on a private and confidential basis and as appropriate, this will include the Leader of the Council, the Leader of the Opposition and the Chair of the Standards and General Purposes Committee. In all such cases the Head of Internal Audit will also inform the employing Director. The information will be purely background in order to avoid any possibility this could prejudice any potential hearing.
52. The Standards and General Purposes Committee receives an Annual Report and an interim update from the Head of South West London Fraud Service that highlights activity levels and outcomes across the Council together with any planned action.

The Anti-Fraud & Anti-Corruption Statement is planned to be reviewed and reported to Standards and General Purposes Committee at least once every three years.

### **Publicity**

53. Internal publicity provides feedback to staff to both inform them of the types of issues arising and to seek to deter further offences being committed by highlighting the successful investigations and the robust nature of the potential outcomes.
54. External publication via a Press Release or Council Newsletter for high profile cases or for reports of levels of activity and outcomes also provide the opportunity to reinforce the Council's zero tolerance, robust action and the message of deterrence.

### **Sources of Assurance**

55. The Council's anti-fraud and anti-corruption work and its results of Authorised Officers' powers are subject to regular review by the External Auditor and the Investigatory Powers Commissioner's Office (IPCO). The Council will use these external validations to ensure that it maintains the highest possible standards and results in respect of its anti-fraud and anti-corruption responsibilities. The complaints process also forms an important part of the external validation process.
56. The Annual Report to the Standards and General Purposes Committee provides summarised case information on instances of fraud, corruption and financial irregularities.
57. Internal assurances are provided via the Head of Internal Audit and each Director provides a signed annual certificate of assurance on the effectiveness of controls in managing the risks of fraud and corruption.

**ANNEX A**

**THE NOLAN PRINCIPLES OF PUBLIC LIFE**

Whenever conducting the business of the Council, or acting as a representative of the Council, the following principles govern the conduct of Members and Co-Opted Members:

<b>Selflessness</b>	Members should serve only the public interest
<b>Integrity</b>	Members should not place themselves under any financial or other obligation to outside individuals or organisations.
<b>Objectivity</b>	Members should make decisions on merit.
<b>Accountability</b>	Members should be accountable to the public for their decisions and actions.
<b>Openness</b>	Members should be as open as possible and should give reasons for their decisions and actions
<b>Honesty</b>	Members should declare any private interests and resolve any conflicts in a way that protects the public interest.
<b>Leadership</b>	Members should promote and support these principles by example, and should act in a way that preserves public confidence.

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**ANNEX B****LONDON BOROUGH OF MERTON****PROSECUTION/SANCTION POLICY**

Merton has the responsibility to protect funds through its work against fraud. The work of the service consists of prevention, detection and investigation of fraud and corruption within and against it.

This policy forms the principles the London Borough of Merton exercises in judging cases that give rise to potential sanctions.

A range of sanctions is available to the Council. These include disciplinary action, civil proceedings, criminal proceedings, confiscation proceedings, formal cautions and administrative penalties. In appropriate cases we take more than one form of action. For example, where staff have defrauded the Council we may take disciplinary, prosecution and civil recovery action.

Fraud Investigations will be referred to and undertaken by the South West London Fraud Partnership. Recommendations for potential sanctions will then be made to the Head of Internal Audit, who will refer these onto Chief Offices for consideration.

This policy is set out in the following parts

- Local Authority Caution
- Administrative Penalty
- Other fraud
- Employee Fraud
- Member Fraud
- Prosecution
- Prosecution consideration
- Redress
- Publicity

This policy is intended to provide a fair, consistent and efficient approach.

**Local Authority Caution**

A caution may be issued for a blue badge or Council Tax Reduction penalty in the following circumstances: -

- The claimant has never previously offended
- There was no planning involved in the fraud
- Penalty action is not appropriate
- The offence is minor

## Anti-Fraud and Anti-Corruption Strategy

- The amount of overpayment is relatively low or the fraud has taken place over a relatively short period of time
- The offence was admitted during an interview under caution
- The person has expressed remorse of regret
- It may not be in the public interest to prosecute, i.e. there might be social or medical factors to consider
- There is a strong likelihood of the full amount being repaid.

### **Administrative penalty**

An administrative penalty may be issued for an offence on Council Tax. The penalty is the equivalent of a fine- amounting to 50% of the overpaid benefit (S115a of the Social Security Administration Act 1992). The amount is not negotiable with the claimant.

### **The authority may consider issuing an Administrative Penalty in the following circumstances**

- The claimant has never previously offended
- There was no planning involved in the fraud
- There was no other person involved in the fraud
- A caution is not appropriate
- The offence is minor
- The amount of overpayment is relatively low or the fraud has taken place over a relatively short period of time
- The offence was not admitted during the Interview under Caution.
- It may not be in the public interest to prosecute i.e. there may be social or medical factors to consider.

A Council Tax Reduction Penalty is offered as an alternative to prosecution. The penalty is an extra amount of money to pay, which is calculated at 50% of the total overpayment. In other words, if overpaid Council Tax Reduction is £1000, the Penalty would be £500, so the total amount they would have to pay back would be £1,500. The penalty is subject to a minimum amount of £100 and a maximum of £1,000.

If the person accepts the offer of a penalty, they will not be prosecuted for the offence they have committed. They do have the right to refuse the offer, but this may result in them being taken to court instead.

### **Other Fraud**

In all other cases of fraud, for example direct care payments, renovation grants, voluntary sector grants, regeneration funding, insurance claims, blue

badges, residents' parking, student awards, licences, school places, market traders and other applications for financial assistance, The Council also considers criminal prosecution. The factors that affect our decision to prosecute are based on the evidential and the public interest tests. This includes cases of attempted fraud such as applications for renovation grants where the financial estimates are deliberately misstated, and false applications for direct care payments.

Prosecutions are undertaken for a number of reasons by service areas outside of the South West London Audit Partnership (SWLAP) and South West London Fraud Partnership (SWLFP) e.g. Trading Standards, Environmental Health, who have their own procedures for deciding on appropriate sanctions and redress.

### **Employee Fraud**

All cases of fraud, theft, financial misconduct, serious and intentional breach of financial regulations and corruption committed by officers are serious breaches of the disciplinary rules. Normally such cases will be considered as gross misconduct where dismissal would be considered a likely sanction.

Where a financial loss has been identified we always seek to recover this loss either through the civil or criminal process.

Where appropriate under this policy we refer cases to the relevant prosecuting authority for criminal prosecution.

### **Member Fraud**

All cases of fraud, theft, financial misconduct, and corruption committed by Members are serious breaches of the trust placed in them by virtue of their public office. The Council's Monitoring Officer and our Members' Standards Committee are responsible for dealing with any serious breaches of the Code of Conduct.

Where a financial loss has been identified we always seek to recover this loss either through the civil or criminal process.

Where appropriate we refer cases to the relevant prosecuting authority for criminal prosecution.

### **Prosecution**

In considering whether it is appropriate to prosecute for an offence it is generally accepted that there are two 'tests' to be applied – the evidential test and the public interest test. These are currently set out in the Code for Crown Prosecutors. The Prosecutor will consider both tests before approving a prosecution but will only go on to consider the Public Interest test where he/she believes that the Evidential Test is satisfied.

## Anti-Fraud and Anti-Corruption Strategy

To meet the **Evidential Test**, the Prosecutor must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' bearing in mind that the Prosecution is required to prove its case to the criminal standard of proof, i.e. 'beyond a reasonable doubt', or so as to be sure. The evidence must be acquired in a form which can be used by the court, be admissible and be reliable. If there is not sufficient evidence, the case cannot go ahead no matter how important the case or how strong the public interest is in favour of prosecution. Consideration must be given to how the defence case may affect the prosecution case. If necessary an advice file will be sent to the prosecutor for their opinion.

The **Public Interest Test** in each case will be considered where there is enough evidence to provide a realistic prospect of conviction. In serious cases a prosecution usually takes place unless there are sufficient public interest factors against prosecution. Public interest factors that affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Aggravating factors may increase the need to prosecute while mitigating factors may suggest that another course of action, such as offering a sanction, is more appropriate.

To ensure that a 'realistic prospect of conviction' exists, investigations are conducted in accordance with relevant legislation and in line with published Codes of Practice and Guidance on evidence gathering, interviewing and rules of disclosure. Evidence is independently examined and if the Public Interest test is satisfied, the case file is passed on to either the Council's Head of Legal Services, the DWP or the Crown Prosecution Service (CPS) via the police. All prosecutors will then consider the evidence to ensure that both tests are met.

Cases involving significant large (£10,000 or above) protracted or highly organised fraud should always be considered for prosecution.

Where the person is successfully prosecuted and belongs to a professional body the body will be notified of any action taken.

Every case will be considered on its own merit but where there is evidence that a crime has been committed, especially in the normal course of the employee's duties then the council will generally pursue prosecution.

The South West London Fraud Partnership will make a recommendation to the Head of Internal Audit who will consult with the relevant Chief Officer at the conclusion of the investigation. This recommendation will only be made if the conclusion is that prosecution is the appropriate course of action. The Chief Officer will consider the facts of the case and also have regard to the amount of loss to the council or details of goods or services lost or affected; service or staff impact details; any third party vulnerability; the status of the employee; mitigation and any other relevant factors.



The final decision to prosecute will be taken once the case papers have been examined by Legal Services or the police.

Cases may need to be referred to the Police for advice. Referrals to the Police will be authorised by the Head of Internal Audit.

### **Prosecution Considerations**

In making a decision, the following factors should be taken into account before recommending a case be considered for prosecution:

- **Has a sufficient level of dishonest intent been displayed?** This is done by looking at the number of misrepresentations made and the length of time that the individual failed to report a change in their circumstances.
- **Was the offence disclosed voluntarily?** - i.e. if the individual informed us that they had committed an offence and wished to repay any fraudulent overpayment.
- **Has the individual committed fraud in the past?**
- **Was the offence premeditated?** - i.e. was the claim clearly fraudulent from the outset, was conspiracy involved, were others involved in the deception and were forged documents used.
- **The balance between how much money has been obtained and the cost of bringing a case to court.** The cost of a lengthy prosecution action could negate taking the case to court.
- **The duration of the offence.** The longer period the offence has occurred over the more likely it would be that prosecution is appropriate.
- **How clear cut the evidence is.** We would look to see if it is a case of failing to report a change in circumstances or were false documents supplied in support of the offence.
- **The individual's wellbeing at the time of the offence.** If the claimant had health issues that may have caused or contributed to the offence.
- **Whether there was any failure in the way the Council Tax Reduction Schemes were administered.** This might not preclude us from prosecuting but we would try and put right what we feel might be weaknesses in our administration of the scheme.
- **Have there been prejudicial delays that might have occurred in bringing criminal proceedings that would prevent a fair hearing?** There are specific time limits to be adhered to when considering prosecution and we must work within these.

## Anti-Fraud and Anti-Corruption Strategy

- **The likely sentence that might be imposed.**
- **The likelihood of the individual re-offending.** At the conclusion of the Interview under Caution (IUC) it would be clear to an experienced investigator if true remorse was felt by the individual.

### **Parallel Sanctions**

The circumstances of an offence that involves or implicates a member of staff may dictate that both a criminal investigation and a disciplinary investigation be conducted simultaneously (or in parallel).

Due to conflicts between the legislation covering the gathering of evidence under employment law and under the Police and Criminal Evidence Act 1984 (PACE) it is preferable that the investigations are conducted independently and separately (although this does not necessarily imply that the same department cannot handle both investigations nor that information gathered cannot be shared between the two investigations).

Although conducted separately, the Head of Internal Audit will liaise both with Human Resources and any officer tasked with conducting the disciplinary investigation.

Criminal investigation and prosecution can take substantially longer to undertake and complete than disciplinary investigation, and consequently any disciplinary investigation (and potential sanction) should not be unnecessarily delayed pending the outcome of any criminal investigation. The fact of the criminal investigation by itself should not form the grounds of the disciplinary investigation.

Sanctions relating to disciplinary investigations are covered in the employee code of conduct and can range in scope up to and including summary dismissal for proven Gross Misconduct.

### **Redress**

Where the Council suffers a financial loss, we always seek recovery. Where an organisation is involved in the fraud, the Council also make referrals to the relevant governing body, e.g. Charities Commission, Registrar of Companies.

Redress can be defined as the recovery or attempted recovery of assets lost or defrauded. This would include any type of financial recompense for the fraud.

Where possible, the Council would expect to follow cases through to this point. Whilst the Council aims to progress to sanctions, it must also attempt to recover any loss. The recovery process is not part of the remit of the audit or investigations sections, but instruction and help will be given where possible to facilitate recovery.

## Types of Redress and Recovery

Case Type	Method of Redress/Recovery
Housing	Removal from Housing Register Cancellation of Temporary Accommodation
Benefits	Tracing of address for recovery of overpayment from Landlord or Tenant
Asylum Seekers	Tracing of address for recovery of overpayment from Landlord or Tenant
Internal and General	Charges on property Third Party (Garnishee) Attachment of earnings Freezing Injunctions Insurance Claims (fidelity guarantee) Pursuing debts via legal proceedings Confiscation orders Compensation Restitution Orders Use of the criminal assets recovery agency (in the future).

### Publicity

The SWLFP will report to members each year on the number of cases referred for prosecution and their outcome.

Having consideration to the appropriate council policies regarding publicity the Council will seek to publicise each case successfully prosecuted.

Publicity is an important tool in prevention of fraud as it highlights the work of the Council's anti-fraud efforts and can act as a deterrent.

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**LONDON BOROUGH OF MERTON****STANDARDS AND GENERAL PURPOSES COMMITTEE****DATE: 9<sup>TH</sup> SEPTEMBER 2019****REPORT OF: MONITORING OFFICER****SUBJECT: COMMITTEE ON STANDARDS IN PUBLIC LIFE ON  
LOCAL GOVERNMENT ETHICAL STANDARDS – BEST  
PRACTICE RECOMMENDATIONS****WARDS: ALL****1. Summary**

- 1.1 The Committee considered at its last meeting the ‘best practice’ recommendations to local authorities from the Committee on Standards in Public Life report on Local Government Ethical Standards, published on 30<sup>th</sup> January 2019.
- 1.2 The committee resolved to further consider 4 best practice recommendations for incorporation into Merton Council’s practices and procedures.

**2. Recommendation**

- 2.1 The Committee is recommended to:

Agree the best practice actions described in paragraphs 3.5 and 3.6, 4.3,5.2 and 6.3(b) below, to be recommended for adoption by Council.

**3. Best Practice Recommendations**

- 3.1 At its last meeting the Committee considered 15 best practice recommendations and considered an assessment of Merton Council’s current practice against these. It was agreed that Merton’s approach to ethical standards is largely compliant with the best practice recommendations, although further amendments were recommended to be fully compliant with all 15 best practice recommendations set out in the report on Local Government Ethical Standards
- 3.2 **Incorporate definitions on bullying and harassment with examples**

Recommendation - “Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a

definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.”

3.3 Merton Council has in place a member/officer protocol incorporated into its Code of Conduct for Councillors. The protocol provides:

3.4 “4.2 Bullying or harassment of officers, including sexual and racial, by members is unacceptable. Members should not use their position and knowledge of the Council to place undue pressure on officers to take a different course of action than they would otherwise have done.  
*(Workplace bullying is defined by Unison, the public sector union, as ‘offensive, intimidating, malicious, insulting or humiliating behaviour, abuse of power or authority which attempts to undermine an individual or group of employees and which may cause them to suffer stress.’ The Council has defined racial harassment as ‘offensive conduct of a racial nature, or conduct based on race, which is offensive to the recipient’. Sexual harassment has been defined as ‘unwanted conduct of a sexual nature, or conduct based on sex, which is offensive to the recipient.’)*

3.5 The following examples are given by ACAS

Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the ‘grey’ areas that cause most problems. It is good practice for employers to give examples of what is unacceptable behaviour in their organisation and this may include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying e mails that are critical about someone to others who do not need to know
- ridiculing or demeaning someone
- picking on them or setting them up to fail exclusion or victimisation unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances
- touching, standing too close, display of offensive materials, asking for sexual favours
- making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and
- constant criticism preventing individuals progressing by intentionally blocking promotion or training opportunities.

Bullying and harassment is not necessarily face to face, it may occur through written communications, visual images (for example pictures of a sexual nature or embarrassing photographs of colleagues), email, phone, and automatic supervision methods – such as computer recording of downtime from work, or recording of telephone conversations – if these are not universally applied to all workers.”

3.6 It is suggested these examples are appropriate and should be incorporated within the Council's Member/Officer protocol.

#### **4. Compliance with a formal Standards Investigation**

4.1 recommendation - "Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors"

4.2 The Council's procedure for the consideration of complaints provides that trivial or malicious allegations will not be investigated.

4.3 It is recommended that a provision be inserted into the Council's Member/Officer protocol at paragraph 3.3 (which sets out what officers can expect of member) a further bullet point:

"Compliance with any formal standards investigation"

#### **5. An annual review of the code of Conduct**

5.1 Recommendation - "Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities."

5.2 It is recommended the Committee introduce to its work programme an annual report on the effectiveness of the Code of Conduct at its September meeting as a yearly review. This review should incorporate an invitation to the public and local organisations to submit their views throughout the year.

#### **6. Separate Bodies**

6.1 Recommendation - "Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place."

6.2 The Council's annual governance statement has recently introduced a section which sets out the separate bodies the Council has established and describes the relationship with them. The Annual Governance Statement for 2019 approved by this Committee provides:

6.3 "A review was carried out by the Committee on Standards in Public Life on Local Government Ethical Standards in January 2019, which recommended areas of best practice. Best Practice 14: Councils should report on separate bodies they have set up or which they own as part of

their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan Principles of openness, and publish their board agendas and minutes and annual reports in an accessible place.

6.4 Merton council has 2 companies set up;

**6.5 CHAS 2013 Ltd (CHAS).** The company was incorporated on the 28th March 2013, to provide both desktop and onsite supplier/contract risk management assessment and services. There are 4 directors, the Director of Environment and Regeneration, the Assistant Director of Business Improvements, the Head of Legal Services and a managing director. The accounts are audited by EY and filed and published with Companies House. A note is also included in the Council's main accounts.

**6.6 Merantun Development Limited.** The company was incorporated on the 9<sup>th</sup> August 2017, to undertake new housing build for 77 residential units. There are 2 council officers listed as directors, the Assistant Director of Resources and the Assistant Director of Sustainable Communities. The recruitment of a managing director is in progress. The shareholders board (Merantun Development Limited subcommittee) has 3 councillors; the Leader of the council, Cabinet Member for Regeneration, Housing and Transport and the Deputy Leader and Cabinet Member for finance. The sub committee meets 3 or 4 times a year and minutes and agendas are published on the council's website. The accounts are audited by EY and are filed and published with Companies House."

It is considered that the adoption of the recommendation in the drafting of the Annual Governance Statement complies with the best practice recommendation.

When members considered this recommendation at its previous meeting members commented that there could also be consideration of the appropriate oversight of shared services arrangements within the Council. These arrangements have been established through collaboration agreements rather than the establishment of separate bodies and are therefore retained as in house departments of the Council with the usual mechanisms for oversight. The three shared service functions that members will be familiar with are:

- a) South West London Audit Partnership – a collaboration hosted by the London Boroughs of Wandsworth and Richmond formed of the audit and investigation teams of five London Boroughs including Merton. The service is governed through an officer Governance Board and reports to this Audit Committee.
- b) The South London Legal Partnership – The SLLP is hosted by Merton and delivers legal services to five London Boroughs. It is managed by a Governance Board at officer level and reports to the



Cabinet Member for Finance and Corporate Services. An annual report is considered by the Governance Board and reported to the partner Council's. If members consider wider member oversight within Merton would be beneficial it is suggested this could be provided with the annual report being presented to a scrutiny panel for members consideration and any recommendations.

- c) The Regulatory Services Partnership – A collaboration between the London Boroughs of Merton, Wandsworth and Richmond, hosted by Merton, and providing a range of regulatory services to the three boroughs including trading standards, food safety, noise and nuisance and licencing. The partnership is overseen at member level through the Joint Regulatory Services Committee.

## **7. Financial Implications**

None

## **8. Policy and Equality Implications**

The report seeks to ensure that the Council maintains high standards of service. There are no equality issues arising from this report.

## **9. Legal Considerations**

The Review by the Committee on Standards in public Life suggest changes to the current Standards framework contained in the Localism Act 2011. There are no specific legal implications from the report at this stage.

## **10. Background Papers**

None

## **11 Contacts**

Paul Evans, Monitoring Officer [paul.evans@merton.gov.uk](mailto:paul.evans@merton.gov.uk)

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**Committee:** Standards & General Purposes Committee

**Date:** 5 September 2019

Wards: All

**Subject:** Regulation of Investigatory Powers Act  
Authorisations

Lead officer: Paul Evans

Lead member: Councillor Mark Allison

Contact officer: paul.evans@merton.gov.uk

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**Recommendations:**

- A. That members note the purposes for which investigations have been authorised under the Regulation of Investigatory Powers Act (RIPA) 2000.
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**1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. To inform members about investigations authorised since March 2019 under RIPA.

**2 DETAILS**

- 2.1. The council has a number of statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them. These functions include investigating anti-social behaviour, fly tipping, noise nuisance control, planning (contraventions), benefit fraud, contraventions of trading standards, licensing and food safety legislation.
- 2.2. Whilst the majority of investigations are carried out openly, some investigations must be carried out using covert surveillance techniques or involve the acquisition of communications data. Communications data is information about the times of calls or internet use and the location and identity of the callers, but not the content of the calls or details of the websites viewed.
- 2.3. RIPA regulates the authorisation and monitoring of these investigations to safeguard the public from unwarranted intrusion of privacy.
- 2.4. With effect from 1 November 2012, the Protection of Freedoms Act 2012 requires local authorities to obtain the approval of a magistrate for the use of covert surveillance.
- 2.5. In line with the revised Code of Practice, reports detailing the use of RIPA are submitted to Standards and General Purposes Committee on a regular basis.
- 2.6. Since March 2019, there has been one request for directed surveillance of a business, which is due to take place in late August.
- 2.7. Since March 2019, there have been no requests for CCTV footage for RIPA investigations.

- 2.8. No RIPA authorisations have been rejected by the Magistrates Court.
- 2.9. Since March 2019, no applications have been made for the acquisition of communications data.

### **3 ALTERNATIVE OPTIONS**

- 3.1. The report is for information only.

### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. No consultation has been undertaken regarding this report.

### **5 TIMETABLE**

- 5.1. N/A.

### **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. None.

### **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. All investigation using covert surveillance techniques or involving the acquisition of communications data is in line with the Regulation of Investigatory Powers Act 2000.

### **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. RIPA was introduced to regulate existing surveillance and investigations in order that they meet the requirements of Article 8 of the Human Rights Act. Article 8 states:

1) Everyone has the right for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### **9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. RIPA investigations are authorised for the prevention or detection of crime or the prevention of disorder.

### **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1. None.

### **11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- 11.1. None.

### **12 BACKGROUND PAPERS**

- 12.1. None.

## Standards and General Purposes Committee Forward work plan 2019-2020

### November

- External Audit Annual Letter
- Internal Audit progress report on annual audit plan
- Annual Gifts and Hospitality report (members)
- Annual Gifts and Hospitality report (officers)
- Annual Complaints report
- Risk management
- Review of Polling Places
- Complaints against Members
- Temporary and Contract Staff update
- Work programme

### March 2020

- External Audit Certification of Claims report
- External Audit progress report
- External Audit Plans for Council and Pension Fund accounts
- Internal Audit Plan
- Internal Audit progress report
- Update on RIPA authorisations (March and September)
- Complaints against Members
- Work programme

### **Add as required:**

- Polling Places
- Constitutional amendments
- Review of members' interests
- Independent / co-opted members
- Reports on dispensations issued by Monitoring Officer
- Report on payment exceeding £1000 as a result of maladministration as directed by the LGO.

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