

**LONDON BOROUGH OF MERTON**

**ANTI-FRAUD AND CORRUPTION  
STRATEGY**

July 2018



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## 1. INTRODUCTION

- 1.1 The Council is committed to the prevention, detection and investigation of all forms of fraud and corruption. The Council's Members and employees are expected to uphold the highest possible standard of conduct in public life in accordance with the Nolan principles.
- 1.2. The Council also expects that all individuals and organisations associated or collaborating with the Council will act with integrity and without intent to commit fraud or corruption and that such persons and bodies will use the resources given to them for the purposes intended.
- 1.3. Within the Council's Strategic Theme Corporate Capacity the ambition is to "systems for ensuring sound financial management and high standards of governance". This strategy is therefore designed to reduce losses to fraud and corruption to an absolute minimum.
- 1.4. Fraud and corruption are rare and not tolerated by the honest majority. Nevertheless, as part of its strategic risk management process, the Council has to ensure that there is robust framework in place to mitigate the risk of fraud and corruption. Therefore, the Council's aim is to:
  - Maintain its stance of providing a strong deterrent
  - Prevent fraud and corruption by designing and reformulating policies and systems
  - Provide fraud awareness training
  - Undertake proactive fraud work for example data matching
  - Continue to undertake the detection and investigation of fraud and corruption including aiming to apply sanctions and recovery procedures where it is identified.
- 1.5. This Anti-fraud and Corruption Strategy sets out roles and responsibilities and the means by which the Council will combat fraud and corruption.
- 1.6. In carrying out its functions and responsibilities, Merton has always adopted a culture of openness and fairness and has expected that Members and employees at all levels will adopt the highest standards of propriety and accountability. This has been achieved by leading by example and by an understanding of and adherence to rules, procedures and agreed practices. These standards have also been expected from organisations that have dealings with the authority (e.g. suppliers/contractors).

- 1.7. The Council is currently in a strong position due to the controls that have already been put in place, i.e. standing orders, financial regulations and the Members' and officer's Code of Conduct, but must not be complacent.
- 1.8. The authority must demonstrate clearly that it is firmly committed to dealing with fraud and corruption and will deal equally with perpetrators from inside (Members and employees) and outside the authority. In addition, there will be no distinction made in investigation and action between cases that generate financial benefits and those that do not.
- 1.9. This strategy document embodies a series of measures designed to frustrate an attempted fraudulent or corrupt act and the steps to be taken if such an act occurs. For ease of understanding, it is separated into five areas:
  - Culture
  - Prevention
  - Deterrence
  - Detection and investigation
  - Awareness and Training
- 1.10 The authority is also aware of the high degree of external scrutiny of its affairs by a variety of bodies such as external audit, the Local Government Ombudsman, the Information Commissioner, the Chief Surveillance Commissioner and HM Revenue and Customs. These bodies are important in highlighting any areas where improvements can be made.
- 1.11 For the purposes of this strategy, fraud is as defined in the Fraud Act 2006. The Act provides for a general offence of fraud and three ways of committing it by false representation, by failing to disclose information and by abuse of position. Corruption is defined as the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person.

## **2 CULTURE**

- 2.1. The culture of the authority has always been one of openness and the core values of fairness and trust support this. The authority's culture has always supported opposition to fraud and corruption and Members have always supported an anti-fraud culture.
- 2.2. The prevention/detection of fraud/corruption and the protection of the public purse is everyone's responsibility.
- 2.3. The authority's Members play an important role in creating and maintaining this culture and have their own "Members Code of Conduct". The Code contains provisions which would be breached by corrupt or fraudulent actions by councillors. These include:

- act solely in terms of the public interest not do so in order to gain financial or other material benefits for themselves, their family, or their friends
- not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties
- in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit
- accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office
- be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands
- a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest
- promote and support these principles by leadership and example

2.4 Councillors are positively encouraged to raise concerns regarding fraud and corruption, immaterial of seniority, rank or status, in the knowledge that such concerns will, wherever possible, be treated in confidence. Under the Code of Conduct they are bound to report conduct which they reasonably believe to constitute a breach of the code by another Member.

2.5 Officers are expected to conduct themselves beyond reproach. They are required to follow the councils Financial Procedures and the officers 'Code of Conduct'. The Code requires employees to report their suspicions or knowledge of fraud or corruption to their line manager. Where they are unable to do this they should report it the Head of Internal Audit.

2.6 Members and Officers are expected to set an example by their own behaviour, which should be in accordance with Nolan's Seven Principles of Public Life:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

2.7. Concerns must be raised when Members, the public or employees

reasonably believe that one or more of the following has occurred is in the process of occurring or is likely to occur:

- a criminal offence
- a failure to comply with a statutory or legal obligation
- improper unauthorised use of public or other funds
- a miscarriage of justice
- maladministration, misconduct or malpractice
- endangering of an individual's health and safety
- damage to the environment
- deliberate concealment of any of the above

- 2.8. The Head of Audit will ensure that any allegations received in any way, including by anonymous letters or telephone calls, will be taken seriously and investigated in an appropriate manner, subject to the requirements of the Human Rights Act 1998 Police and Criminal Evidence Act 1984, Regulation of Investigatory Powers Act 2000 and other appropriate legislation.
- 2.9 Merton will deal firmly but fairly and consistently with those who defraud the authority, or who are corrupt, or where there has been financial malpractice. There is, of course, a need to ensure that any investigation process is not misused and, therefore, any abuse (such as employees raising malicious allegations) may be dealt with as a disciplinary matter.
- 2.10 When fraud or corruption has occurred because of a breakdown in the authority's systems or procedures, departmental directors will ensure that appropriate improvements in systems of control are implemented to prevent a reoccurrence.
- 2.11 To promote the Councils culture of anti-fraud and corruption, fraud awareness training is provided, there are publicity campaigns and the council publishes newspaper articles in relation to fraud cases.

## **2.2 Bribery Act**

- 2.2.1 Prior to entering into any business arrangements, the Council will ensure that they have taken all reasonable steps to identify any potential areas of risk relating to bribery or corruption.

There are four key offences under the Act:

- bribery of another person (section 1)
- accepting a bribe (section 2)
- bribing a foreign official (section 6)
- failing to prevent bribery (section 7)

- 2.2.2 The Bribery Act 2010 makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2). Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of

business. There is also a corporate offence under Section 7 of failure by a commercial organisation to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation. An organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent bribery by or of persons associated with the organisation

- 2.2.3 Bribery is a criminal offence. The Council does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor will the Council accept bribes or improper inducements.
- 2.2.4 To use a third party as a conduit to channel bribes to others is a criminal offence. The Council does not, and will not, engage indirectly in or otherwise encourage bribery.
- 2.2.5 The Council is committed to the prevention, deterrence and detection of bribery. The Council has a zero-tolerance towards bribery.

### **3 PREVENTION**

#### **The Corporate Framework**

- 3.1 The corporate framework, which underpins the operation of the Council, has a number of facets that exist to protect the Council against losses from fraud. These include:-
- An established Standards and General Purposes Committee and an adopted code of conduct for members
  - Members formally signing a declaration accepting the terms of the code of conduct
  - The constitution, financial regulations, standing orders and the scheme of delegation
  - Constitution arrangements which are disseminated to the public, partners, members and staff.
  - The Code of Corporate Governance
  - Internal control reviews by Internal Audit
  - An Anti-fraud and Corruption Strategy, Anti Money Laundering Policy and Whistleblowing Policy
  - Data Protection procedures
  - Complaints and FOI procedures
  - fraud investigations and proactive fraud checks by the South West London Fraud Partnership
  - Participation in National Fraud Initiative
  - The promotion of awareness of anti fraud and corruption issues reinforced by training and publicity.
  - Code of Conduct- Disciplinary procedures
  - Recruitment procedures
- 3.2 Our strategy to reduce fraud is based on prevention, detection, investigation and remedy within an over-riding anti fraud culture. We will promote this culture across all our service areas and within the

community as a whole.

- 3.3 We will seek to promote an anti-fraud culture within our community by publishing articles on the impact of fraud on the community. We will also seek to assist our partners and our community to understand and reduce fraud threats through publicity and general campaigns.

### **Roles and Responsibilities**



Role	Responsibility
<u>Everyone</u>	<ul style="list-style-type: none"> <li>• Read and understand this framework and apply its principles consistently and fairly in the conduct of your duties</li> <li>• Act in a manner which sets an example to the community and to other staff</li> <li>• Be alert to the red flags that may indicate fraud</li> <li>• Report genuine suspicions of fraud, corruption or other financial irregularities to the South West London Audit Partnership (SWLAP) and South West London Fraud Partnership (SWLFP)</li> <li>• Declare interests on an annual basis and as they arise.</li> <li>• Declare Gifts and Hospitality over £25.00</li> <li>• Comply with the Employee Code of Conduct and financial governance arrangements (e.g. Contract Standing Orders and Financial Regulations)</li> </ul>
<u>All Members</u>	<ul style="list-style-type: none"> <li>• Comply with the Member Code of Conduct, other locally adopted protocols for behaviour, and other aspects of the Council's constitution concerning financial governance</li> </ul>
Leader of the Council	<ul style="list-style-type: none"> <li>• Acts as the Council's member lead for counter fraud &amp; corruption to promote the policy, strategy and framework internally and externally</li> </ul>
Standards and General Purposes Committee	<ul style="list-style-type: none"> <li>• Endorses the anti fraud and corruption strategy and whistleblowing policy</li> <li>• Monitors implementation of the strategy and policy primarily through the work of the Internal Audit and Fraud Partnership. In particular: <ul style="list-style-type: none"> <li>– ensures that the overall level and nature of the investment made in counter fraud work is adequate and effective and provides for a professional, integrated and proactive approach</li> <li>– Receives updates on fraud work undertaken, fraud risks and reports on significant frauds identified. Committee will review and monitor management action taken to redress control issues identified as a result of significant frauds.</li> </ul> </li> </ul>
Departmental Management Teams	<ul style="list-style-type: none"> <li>• Assess the exposure to fraud risks in Departments activities annually</li> <li>• Consider any new or increased exposures to fraud &amp; corruption in Departments activities</li> <li>• Escalate serious concerns as appropriate</li> <li>• Ensure that the action taken to address fraud &amp; corruption risks in Departments activities is adequate and effective (whether aimed at prevention, deterrence or detection)</li> <li>• Periodically review declarations of interest and gifts and hospitality</li> <li>• Review reports of vendor spend over £50k on a quarterly basis.</li> </ul>
Service Management Teams	<ul style="list-style-type: none"> <li>• Assess the exposure to fraud risks in Service activities</li> <li>• Consider any new or increased exposures to fraud &amp; corruption in Service activities</li> <li>• Escalate serious concerns as appropriate</li> <li>• Ensure that the action taken to address fraud &amp; corruption</li> </ul>

Role	Responsibility
	risks in Service activities is adequate and effective (whether aimed at prevention, deterrence or detection)
Programme/ Project Teams	<ul style="list-style-type: none"> <li>• Assess the exposure to fraud risks in Programme/ Project activities</li> <li>• Consider any new or increased exposures to fraud &amp; corruption in Programme/ Project activities</li> <li>• Escalate serious concerns as appropriate</li> <li>• Ensure that the action taken to address fraud risks in Programme/ Project activities is adequate and effective (whether aimed at prevention, deterrence or detection)</li> </ul>
<u>All Chief Officers</u>	<ul style="list-style-type: none"> <li>• Set the tone for the Council's stance on counter fraud &amp; corruption</li> </ul>
Chief Executive	<ul style="list-style-type: none"> <li>• Acts as the Council's Head of Paid Service to promote a strong anti fraud &amp; corruption culture</li> </ul>
Director of Finance and Corporate Services	<ul style="list-style-type: none"> <li>• Acts as the Council's Section 151 Officer with regard to probity and propriety</li> <li>• Receives reports on significant frauds and fraud risks identified and ensures that appropriate action is taken to redress these</li> <li>• Acts as the Council's officer lead for counter fraud &amp; corruption to promote and implement the policy and strategy internally and externally</li> </ul>
Directors	<ul style="list-style-type: none"> <li>• Lead the Department's activities to counter fraud &amp; corruption</li> <li>• Reviews Declarations of Interest and gifts and hospitality within their Departments.</li> </ul>
Heads of Service	<ul style="list-style-type: none"> <li>• Lead the Service's activities to counter fraud &amp; corruption</li> </ul>
Programme and Project Managers	<ul style="list-style-type: none"> <li>• Lead the Programme/ Project's activities to counter fraud &amp; corruption</li> </ul>
Partnership leads	<ul style="list-style-type: none"> <li>• Assess the Council's exposure to fraud and corruption risks from Partnership activities</li> <li>• Consider any new or increased Council exposures to fraud &amp; corruption from Partnership activities</li> <li>• Escalate serious concerns as appropriate</li> <li>• Ensure that the action taken to address the Council's fraud &amp; corruption risks from Partnership activities is adequate and effective (whether aimed at prevention, deterrence or detection)</li> </ul>
<u>All Managers</u>	<ul style="list-style-type: none"> <li>• Take responsibility to counter fraud &amp; corruption in activities for which they are responsible</li> <li>• Escalate serious concerns as appropriate</li> <li>• Work with others to ensure appropriate investigation of concerns (e.g. Internal Audit and Fraud Partnerships, Human Resources, Legal Partnership)</li> <li>• Have a duty to protect their service areas from losses due to fraud and irregularity and are responsible for implementing robust and proper internal controls. This includes being familiar with fraud risks in their service area and ensuring that sound controls are in place to mitigate</li> </ul>

Role	Responsibility
	<p>those risks to acceptable levels</p> <ul style="list-style-type: none"> <li>• Ensure that declarations of interest have been made for all staff for which they have management responsibility.</li> <li>• Ensure any allegations made to them by staff are dealt with in accordance with this strategy and the Council's Whistleblowing Policy.</li> </ul>
<p>Internal Audit and Fraud partnership (SWLAP/SWL FP_</p>	<ul style="list-style-type: none"> <li>• Ensures policies, strategies and procedures are adequate and effective</li> <li>• Provides guidance and support in fraud &amp; corruption risk assessments and in appropriate risk management action</li> <li>• Ensures co-ordinated action is taken to counter fraud &amp; corruption, working with others as appropriate (e.g. Human Resources, Legal partnership, members, directors, managers and other external agencies where necessary)</li> <li>• Leads on investigations, sanctions, redress and lessons learned/ remedies</li> <li>• Provides an objective opinion on anti fraud &amp; corruption policies and procedures and their effectiveness in practice</li> <li>• Undertakes checks on controls and procedures as part of its internal audit work</li> <li>• Ensures control and other weaknesses revealed from events are addressed</li> <li>• Involvement in new system design or advice on changes to systems and processes to identify and eliminate fraud risks and gaps in control.</li> <li>• Providing regular reports to Standards &amp; General Purposes Committee on fraud work undertaken</li> <li>• Undertakes a programme of proactive fraud work based on the Council's assessment of its key fraud risks.</li> <li>• Participation in National Anti-Fraud initiatives (NFI) and other data matching exercises.</li> </ul>
<p>Democratic Services</p>	<ul style="list-style-type: none"> <li>• Supports member policies and procedures in adequately addressing counter fraud &amp; corruption matters, (e.g. training and development, member code of conduct, investigation procedures)</li> <li>• Advises the Council on the adoption of a Code of Conduct for Councillors and its effective implementation, including member training and advice</li> </ul>
<p>Human Resources</p>	<ul style="list-style-type: none"> <li>• Ensures employee policies and procedures adequately address counter fraud &amp; corruption matters, working with the Internal Audit and fraud partnership as appropriate (e.g. organisational culture initiatives, training and development, employee code of conduct, whistleblowing procedure, disciplinary procedures, employee surveys)</li> <li>• Arranges and ensures proprietary checking for employees</li> <li>• Ensures investigatory and disciplinary action against an employee is undertaken in accordance with the Council's employee and disciplinary procedures</li> </ul>
<p>South London Legal Partnership (Sllp)</p>	<ul style="list-style-type: none"> <li>• Ensures actions are lawful through the role of the Monitoring Officer – establishing and monitoring compliance with policies, procedures and frameworks, e.g. Regulation of Investigatory Powers Act 2000 (RIPA), Whistleblowing Policy</li> </ul>

Role	Responsibility
	<ul style="list-style-type: none"> <li>• Advises on evidence prior to submission to police or disciplinary/ regulatory procedures</li> <li>• Authorises and conducts legal proceedings on behalf of the Council, subject to any necessary authorisations</li> </ul>
<b>Contractors and partners</b>	<ul style="list-style-type: none"> <li>• Declare probity concerns (e.g. at pre-qualification stage)</li> <li>• Maintain strong counter fraud &amp; corruption principles and measures (covering, for example, recruitment, proprietary checking of employees and sub-contractors, own whistleblowing procedures and/or use of the Council's procedures, gifts and hospitality rules and registers, and compliance with the Council's Contract Standing Orders and Financial Regulations)</li> <li>• Certify an understanding that collusion and inducements lead to disqualification</li> <li>• Provide required evidence of application of principles and procedures</li> <li>• Provide appropriate access to premises, records and personnel to Council staff and auditors</li> <li>• Cover the Council's losses from fraud perpetrated by employees of the contractor or people acting on the contractor's behalf</li> </ul>
<b>External Audit</b>	<ul style="list-style-type: none"> <li>• Assesses the adequacy and appropriateness of the Council's financial systems and the integrity of public funds.</li> <li>• Undertakes specific reviews where appropriate to test the adequacy of the Council's arrangements for preventing and detecting fraud and corruption</li> <li>• External Audit are informed of any significant cases of fraud or corruption which may have a material impact on the Authority's accounts.</li> </ul>
<b>Monitoring Officer</b>	<ul style="list-style-type: none"> <li>• Advises the Council on the adoption of a Code of Conduct for Councillors and its effective implementation, including member training and advice</li> <li>• Determines appropriate action on complaints about Member conduct</li> <li>• Promotes and maintains high standards of conduct amongst elected, co-opted and advisory members (including the declaration and registration of interests)</li> </ul>
<b>Members' Standards and General Purposes Committee</b>	<ul style="list-style-type: none"> <li>• Considers where matters need to proceed to a local hearing in cases where an investigation determines that there may have been a breach of the Code of conduct and a Member refuses to comply with a Monitoring Officer resolution.</li> </ul>

#### 4. DETERRENCE

- 4.1. This policy encompasses the public, Members and employees. It is designed to clarify the authority's action in specific cases and to deter others from committing offences against the authority. However, it also recognises that it may not always be in the public interest to refer cases for criminal proceedings.

- 4.2 Theft, fraud and corruption are serious offences against the authority and any public funds and employees will face disciplinary action if there is evidence that they have been involved in these activities. Disciplinary action will be taken in addition to criminal proceedings, depending on the circumstances of each individual case, but in a consistent manner.
- 4.3 Members will face appropriate action under this strategy if they are found to have been involved in theft, fraud or corruption against the authority or any public funds. Action will be taken in addition to, or instead of, criminal proceedings, depending on the circumstances of each individual case, but in a consistent manner and may be referred to the police, the Standards Committee or appropriate group leader, as appropriate.
- 4.4 The Authority's Communications team will optimise the publicity opportunities associated with anti-fraud and corruption activity within the authority. The Communications Unit will also try to ensure that the results of any action taken, including prosecutions, are reported in the media.
- 4.5. In all cases where it is economic to pursue and where financial loss to the authority has occurred, the authority will seek to recover any losses and advertise this fact.
- 4.6. All anti-fraud and corruption activities, including the update of this strategy, will be publicised in order to make the employees and the public aware of the authority's commitment to taking action on fraud and corruption when it occurs
- 4.7 Regular reports will be made to Committee about countering fraud and corruption activities.

## **5. DETECTION AND INVESTIGATION**

- 5.1. The Internal Audit Partnership plays an important role in the detection of fraud and corruption. Included in their plans are reviews of system financial controls and specific fraud and corruption tests, spot checks and unannounced visits. Anti-fraud tests are built into nearly all audit reviews.
- 5.2. In addition to Internal Audit service, there are numerous systems controls in place to deter fraud and corruption, but it is often the vigilance of employees and members of the public that aids detection.
- 5.3. In some cases, frauds are discovered by chance or 'tip-off' and arrangements are in place to enable such information to be properly dealt with, in accordance with the requirements of the Human Rights Act 1998.
- 5.4 All suspected irregularities are required to be reported (verbally or in writing) either by the person with whom the initial concern was raised or by the originator, as per the authority's confidential Whistleblowing policy. This is essential to the strategy, and:

- ensures the consistent treatment of information regarding fraud and corruption
  - facilitates a proper and thorough investigation by an experienced team, in accordance with the requirements of the Human Rights Act 1998.
- 5.5. The SWLFP utilises all methods available to investigate fraud. This includes data matching, open source research, surveillance, intelligence led investigation and information provided from Internal Audit.
- 5.6 This process will apply to all the following areas:
- a) fraud/corruption by Members
  - b) internal fraud/corruption
  - c) other fraud/corruption by authority employees
  - d) fraud by contractors' employees
  - e) external fraud (the public)
- 5.7 Any decision to prosecute as a result of the outcome of any investigation will not be made without the authority of the Head of Internal Audit
- 5.8 Depending on the nature of the investigation, the Head of Internal Audit will liaise with the director concerned.
- 5.9 Despite the intention to prosecute offenders, there are associated costs in bringing a case to court which can be substantial and must be borne by the Council and the Council Taxpayers. By adopting this policy the Council commits itself to give serious thought to the costs involved, before proceeding with any prosecutions.
- 5.10 Merton's disciplinary procedures will be used to facilitate a thorough investigation of any allegations of improper behaviour by employees. However, investigations are not part of the disciplinary procedure.

## **6. AWARENESS AND TRAINING**

- 6.1 Merton recognises that the continuing success of this strategy and its general credibility will depend in part on the effectiveness of programmed training in making members and employees of the Council aware of the risk of fraud.
- 6.2 Merton will seek to learn from all its experiences of countering fraud & corruption, and from best practice and the experiences of others. We aim to remedy any weaknesses and identified exposure to fraud.
- 6.3 The SWLAP/SWLFP produce reports for corporate fraud investigations which identify any gaps in control or instances of non compliance with procedure, systems and processes. These reports make recommendations to management which addressed these gaps and seek to reduce future exposure to the risk of fraud. For significant frauds, reports are made to the Standards and General Purposes

Committee to include lessons learnt and agreed actions are monitored to ensure they are implemented.

## Prosecution Policy

- 1 The Council will invoke the highest level of sanction by applying appropriate criminal, civil, including disciplinary/ regulatory, sanctions in all cases where the evidence suggests that fraud, corruption, financial irregularities or malpractice have been committed. In cases of proven fraud, the Council will seek to prosecute.
2. 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.
- 3 The Council seeks the strongest possible sanction against any individual or organisation that defrauds, or seeks to defraud, the public purse. Our use of sanctions applies equally to any fraud against us or against funds for which we are responsible.
- .4 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.
- 5 Where the Council takes action, the decision to refer cases for prosecution is taken by the Head of Internal Audit
- 6 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 onto consider the Public Interest test where he/she believes that the Evidential Test is satisfied.
- 7 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.



- 8 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.
- 9 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.
- 10 Our sanctions policy with regard to the most common types of fraud & corruption is set out below:
- housing fraud
  - other fraud
  - staff fraud & corruption
  - Member fraud & corruption.

#### Housing Fraud

- 11 In all cases of fraudulent housing or homeless applications, where a tenancy has been obtained, the Council will work with the housing provider to seek repossession of the property and recovery of any financial losses. The Council's view is that one property lost to fraud is one less property available to use for genuine applicants.
- 12 Frauds committed by housing and homeless applicants are also considered for criminal prosecution.
- 13 The factors that affect our decision to prosecute are based on the evidential and the public interest tests in line with the Code for Crown Prosecutors.
- 14 Where properties have been sublet or are abandoned the Council always seeks repossession of the property and recovery of any financial losses. Under the new Prevention of Social Housing Fraud Act 2013, the Council will seek to prosecute in appropriate cases and can now be granted unlawful profit orders (UPO's). An "unlawful profit order" is an order requiring the offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct constituting the offence. These can be granted by both the criminal court and the civil courts and can be done without having to prosecute.

### Other Fraud

- 15 In all other cases of fraud, for example council tax reduction, 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, 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.
- 16 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.
- 17 Prosecutions are undertaken for a number of reasons by service areas outside of the South West London Audit Partnership and South West London Fraud Partnership e.g. Trading Standards, Environmental Health, who have their own procedures for deciding on appropriate sanctions and redress.

### Employee Fraud

- 18 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.
- 19 Where a financial loss has been identified we always seek to recover this loss either through the civil or criminal process.
- 20 Where appropriate under this policy we refer cases to the relevant prosecuting authority for criminal prosecution.

### Member Fraud

- 21 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 and General Purposes Committee are responsible for dealing with any serious breaches of the Code of Conduct.
- 22 Where a financial loss has been identified we always seek to recover this loss either through the civil or criminal process.
- 23 Where appropriate we refer cases to the relevant prosecuting authority for criminal prosecution.

### Prosecution – General

- 24 A decision to prosecute as a result of the outcome of any investigation

will not be made without the authority of the Head of Internal Audit.

- 25 Each case deemed suitable for submission for prosecution will be subject to a full review by the Head of Internal Audit (as appropriate in each case) the relevant Director, Legal Services, the Police or other relevant prosecution Authority.
- 26 Despite the intention to prosecute offenders, there are associated costs in bringing a case to court which can be substantial and must be borne by the Council and the Council Taxpayers. By adopting this policy the Council commits itself to give serious thought to the costs involved, before proceeding with any prosecutions.
- 27 The cost of prosecution (where not progressed through the Police and via them the CPS) will be borne by the Department concerned.
28. In normal circumstances, once the decision to prosecute has been made and approved, the prosecution process will proceed uninterrupted. However, it is acknowledged that occasionally external forces will have an adverse affect and it may be that the CPS, DWP or Legal Services chooses to discontinue action, or there may be some other reason why criminal prosecution cannot or should not continue.
29. In these circumstances, consideration will be given as to whether it is appropriate to suspend proceedings and if so whether to undertake civil proceedings as an alternative (with due consideration to the implicit costs).
30. Further considerations may also be made to the most appropriate body to prosecute cases. Benefits fraud cases are now the responsibility of the DWP in investigate and prosecute.
31. Larger scale fraud may be referred to the Police and offered to the CPS for prosecution depending on the level of resource and skills required to bring about a successful prosecution.

#### Parallel Sanctions

- 32 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).
- 33 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).
- 34 Although conducted separately, the Head of Internal Audit will liaise both with Human Resources and any officer tasked with conducting the

disciplinary investigation.

- 35 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.
- 35 Sanctions relating to disciplinary investigations are covered in the employee Code of Conduct can range in scope up to and including summary dismissal for proven Gross Misconduct.

## **REDRESS**

- 36 The recovery of money and resources wrongfully taken from us is a key part of our integrated strategy. Loss recovery is a key driver aimed at reducing losses from fraud & corruption and reducing exposure to the risks of fraud & corruption. As such, we actively seek to recover our losses.
37. Whilst the Council has insurance cover for losses from fraud, corruption or other such acts, these are subject to excesses and specific limits. We therefore do not rely on insurance as a preferred method of loss recovery.
38. We have a range of options available to us for recovering losses and, since the Proceeds of Crime Act 2002, these have increased. The options we consider include:
- instigating recovery of property, removing from the Housing Register, cancelling temporary accommodation, disallowing from Right to Buy, suing for loss of rent and/or portable discount
  - charges on property
  - third party debt orders ('Garnishee' – where payment can be obtained from a third party whom owes or holds money for the debtor, e.g. where a bank is ordered to pay the credit balance in a debtor's bank account to the creditor in satisfaction of a judgement or court order)
  - attachment of earnings
  - freezing injunctions
  - pursuing debts via legal proceedings
  - confiscation orders to secure the 'benefit' from a person involved in criminal activity, e.g. where a person has fraudulently obtained funding for social care which they have used to pay a mortgage on a property, the amount by which the property has increased in value may be confiscated as distinct from simply the amount of overpaid funding
  - compensation
  - restitution orders

- use of the National Crime Agency (NCA) for the most serious crimes.
39. Wherever the Council takes proceedings, criminal or civil, in respect of fraud, corruption or other financial irregularity/ malpractice it will seek to recover all its costs in doing so.

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