

# HARLOW DISTRICT COUNCIL ANTI-FRAUD AND CORRUPTION STRATEGY

## 1. Purpose of the strategy

Theft, fraud, corruption and bribery are criminal offences. Harlow Council is committed to the highest standards of integrity, and will not tolerate them in any form. The Council's principle is zero tolerance towards offences and offenders.

The purpose of this Anti-Fraud and Corruption Strategy is to support the Council's 2016-19 Corporate Plan by protecting the public purse as every pound lost through fraud cannot be spent on services. In particular, this Strategy:

- Sets out the aims and long term vision of the Council's Anti-Fraud and Corruption framework
- Outlines the Council's approach to Anti-Fraud and Corruption
- Outlines the expected outcomes along with how the Council intends to achieve and monitor these

## 2. Key Objectives

The key objectives of the Council's Anti-Fraud and Corruption framework are to:

- protect the Council's resources and assets, ensuring they are used as intended;
- maintain a culture where fraud or corruption is not tolerated; and
- ensure staff and Members demonstrate the highest standards of honesty and integrity at all times.

This strategy also supports the national 2016-19 Fighting Fraud and Corruption Locally Strategy which advocates turning strategy into action by Councils considering their counter fraud response and performance against each of the six 'C' themes:

- **Culture** – creating a culture in which beating fraud and corruption is part of daily business
- **Capability** - ensuring a range of anti-fraud measures deployed is appropriate to the range of fraud risks
- **Capacity** – deploying the right level of resources to deal with the level of fraud risk
- **Competence** – having the right skills and standards
- **Communications** – raising awareness, deterring fraudsters, sharing information and celebrating successes
- **Collaboration** – working together across internal and external boundaries, with colleagues, with other local authorities, and with other agencies, sharing resources, skills and learning, good practice, innovation and information.

### 3. Definitions

In law, **fraud** is deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. The purpose of fraud may be monetary gain or other benefits, such as obtaining a home or a job with the Council by way of false statement

Corruption is a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit. Corruption may include many activities including bribery.

### 4. Strategic response

The principles of the Council's anti-fraud and corruption strategy are **acknowledge, prevent and pursue**.

Acknowledge	Prevent	Pursue
Acknowledge and understanding fraud risks	Preventing and detecting more fraud	Being stronger in punishing fraud/recovering losses
Assessing and understanding fraud risks  Committing support and resources to tackling fraud  Maintaining a robust anti-fraud response	Making better use of information and technology  Enhancing fraud controls and processes  Developing a more effective anti-fraud culture	Prioritising fraud recovery and the use of civil sanctions  Developing capability and capacity to punish fraudsters  Collaborating with law enforcement
Some specific examples for Harlow District Council		
<ul style="list-style-type: none"> <li>• Risk management process</li> <li>• Fraud proofing policy and processes</li> <li>• Fraud awareness</li> </ul>	<ul style="list-style-type: none"> <li>• Whistleblowing policy</li> <li>• Strong internal control culture</li> <li>• Staff and supplier vetting</li> <li>• Participation in the National Fraud Initiative and the pan-Essex council tax matching campaign</li> <li>• Staff and Member Code of Conduct and Declarations of Interest</li> <li>• Information security and IT policies</li> </ul>	<ul style="list-style-type: none"> <li>• Fraud response plan</li> <li>• Appointment of housing fraud officer</li> <li>• Enforcement powers and application of sanctions</li> <li>• Collaboration with other authority fraud teams</li> </ul>

## 5. Key Fraud Risks

It is important that the Council recognises and actively manages its risks relating to fraud and corruption, using its Risk Management Strategy and Toolkit in helping to achieve this. Fraud and corruption risks are routinely considered as part of the Council's strategic risk management arrangements using both pro-active and reactive components.

The key fraud risk areas for councils have been identified in the 2016-19 Local Government Counter Fraud and Corruption Strategy and those relevant to Harlow District Council are listed below:

- *Tenancy*: Fraudulent applications for housing or succession of tenancy, subletting of the property and Right To Buy fraud
- *Procurement*: Tendering issues, split contracts, double invoicing
- *Payroll*: False employees, overtime claims, expenses
- *Council Tax*: Discounts and exemptions, council tax support
- *Grants*: Work not carried out, funds diverted, ineligibility not declared
- *Internal Fraud*: Diverting council monies to a personal account, accepting bribes, stealing cash, misallocating social housing for personal gain, working elsewhere while claiming to be off sick, wrongfully claiming benefit while working, abuse of position such as misuse of assets/resources
- *Identity Fraud*: False identity/fictitious persons applying for services/payments
- *Business Rates*: Fraudulent applications for exemptions and reliefs, unlisted properties
- *Money Laundering*: Exposure to suspect transactions
- *Insurance Fraud*: False claims including slips and trips
- *Disabled Facility Grants*: Fraudulent applications for adaptations to homes aimed at the disabled
- *No Resource to Public Funds*: Fraudulent claim of eligibility
- *Local Enterprise Partnerships*: Voluntary partnership between local authorities and business, procurement fraud and grant fraud
- *Cyber Dependent Crime and Cyber Enabled Fraud*: Enables a range of fraud types resulting in for example diversion of funds, creation of false applications for services and payments

## 6. Approach

The prevention and detection of fraud and corruption and the protection of the public purse is everyone's responsibility. The key components in achieving this are:

### *Proactive*

- Strengthening the anti-fraud culture to increase resilience to fraud

- Preventing fraud through the implementation of appropriate and robust internal controls and cyber security measures
- Increasing fraud awareness of Council officers and Members
- Deterring fraud attempts by publicising the actions the organisation takes against fraudsters

*Reactive*

- Detecting fraud through data and intelligence analysis
- Implementing effective whistleblowing arrangements
- Investigating fraud referrals
- Applying sanctions, both civil and criminal
- Seeking redress, including the recovery of assets and money

The table below lists the suggested approach expected outcomes against each of the three principles of the Council's Anti-Fraud and Corruption Strategy, which will be supported by a rolling action plan.

<b>Principle</b>	<b>Approach</b>	<b>Expected Outcome</b>
Acknowledging and understanding fraud risks	<p>Strengthen the risk management process to assess current and future fraud and corruption risks</p> <p>Need for cultural change and increase in fraud and corruption awareness both internally and outside of the Council</p> <p>Annual fraud report through central collection of fraud data</p> <p>Improved sharing of fraud threats, information and intelligence both internally and externally</p>	<p>Increased reporting of cases</p> <p>Increased awareness of anti-fraud process and procedures throughout the organisation</p>
Preventing and detecting more fraud	<p>Fraud proofing of policy and processes</p> <p>Better use of data and technology to prevent and detect fraud</p> <p>Assessment of the Council's internal controls framework to ensure it remains robust</p>	<p>Increased levels of anti-fraud awareness</p> <p>When fraud or corruption has occurred because of a breakdown in the Council's systems or procedures, the Section 151 Officer will ensure that appropriate improvements in systems</p>

	Supporting anti-fraud policies and procedures including whistleblowing and money laundering	of control are implemented to prevent a recurrence.  Any significant control issues are reported in the Annual Governance Statement along with actions taken to address the issue.
Be stronger in punishing fraud/ recovering losses	Capacity and capability to investigate and prosecute fraud  Consistent and effective response for dealing with fraud cases	Successful use of sanctions and/or prosecution  Recovery of fraud losses increased

## 7. Responsibility for implementing this strategy

Responsibility	Role
Chief Executive	Ultimately responsible for preventing and detecting theft, fraud and corruption and promoting an anti-fraud culture.
Members	As elected representatives, all members of the Council have a duty to the public to maintain the highest standards of conduct and ethics, and to ensure the Council is open and transparent in all the decisions it makes. Members are required to adhere to the Council's constitution, which incorporates a Member Code of Conduct.
Audit and Standards Committee	Monitoring Council policies on whistle blowing, for contraventions of financial and other procedures or fraud-related situations, Anti-Fraud and Corruption Strategy and complaints.  Promoting and maintaining high standards of conduct by Councillors and co-opted persons of Committees. Monitoring the operation of the Code of Conduct.
Corporate Governance Group, led by the Section 151 Officer and Monitoring Officer	Developing, reviewing and maintaining an anti-fraud and corruption framework.
Corporate Management Team/Heads of Service	Ensuring all staff follow this strategy and any related policies and procedures, supported by the Council's Internal Audit and Human Resources functions.
Section 151 Officer	Has a statutory responsibility under the Local Government Act 1972 for the proper administration of

	the Council's financial affairs. Where irregularities, fraud or corruption are suspected the S151 Officer should be informed. On being informed of an alleged irregularity, fraud or corruption the S151 Officer will determine the arrangements for investigating the matter in line with the Council's Fraud Response Plan.
Monitoring Officer	Under the Local Government Act 1972 has the specific duty to ensure that the Council, its Officers, and its Elected Councillors, maintain the highest standards of conduct in all they do. They also advise the Council on the legality of their decisions.
Directors and managers (all levels)	Responsible for preventing and detecting fraud and ensuring they operate effective mechanisms in their area of control to: <ul style="list-style-type: none"> <li>• Prevent theft, fraud and corruption thereby safeguarding the Council's assets and interests</li> <li>• Promote employee awareness</li> <li>• Assess the risk of fraud and take appropriate action</li> <li>• Take prompt action in line with the Fraud Response Plan where they suspect or are alerted to possible theft, fraud or corruption</li> </ul>
All staff	All staff have a responsibility to prevent, detect and report on fraud or suspected fraud
Partners and Contractors	Required to comply with the Council's policies and procedures when undertaking work for and jointly with the Council
External Audit	Under the International Standard on Auditing 240, when conducting an audit External Audit are responsible for obtaining reasonable assurance that the financial statements taken as a whole are free from material misstatement, whether caused by fraud or error.
Internal Audit	Providing assurance on the effectiveness of systems and procedures to prevent and detect fraud and corruption (by undertaking audits). Supporting managers in minimising fraud and corruption related risk and are alert in all their work to risks and exposures that could allow fraud and corruption to take place.

## 8. Supporting policies, procedures and processes

The Council has a range of policies, procedures and processes in place to formalise arrangements for the prevention, detection and investigation of fraud. These include:

- Anti-Fraud and Corruption Strategy (this document)

- Whistleblowing Policy (located on the Council's Infonet )
- Anti-Bribery Policy Statement (Appendix 1 of this document)
- Fraud Response Plan (Appendix 2 of this document)
- Prevention of Money Laundering procedures (located on the Council's Infonet)
- Anti-Money Laundering Policy and Procedure (Appendix 3 of this document)
- Employee and Member Codes of Conduct (located on the Council's Infonet and published as part of the Constitution)
- Financial Regulations (located on the Council's intranet and published as part of the Constitution)
- Contract Standing Orders (located on the Council's Infonet and published as part of the Constitution)

## **9. Policy reporting, review and monitoring performance**

This policy can only be varied with the collective agreement of the Chief Executive, the Section 151 Officer and the Monitoring Officer.

The Head of Finance, as Section 151 Officer, will develop a rolling anti-fraud action plan to support the strategy, in conjunction with the Head of Internal Audit and senior managers.

It will be the responsibility of the Corporate Management Team (CMT), via the Corporate Governance Group, to ensure there are adequate resources to support the action plan.

The Audit and Standards Committee will receive regular fraud updates from the Section 151 Officer to assist in their oversight of the Council's anti-fraud and corruption strategy and arrangements.

The expected outcomes from this strategy are detailed in the table in section 6 (Approach). Reporting on performance will be made to the CMT and the Audit and Standards Committee on an annual basis.

## **ANTI-BRIBERY POLICY STATEMENT**

Bribery is a criminal offence. Harlow District Council does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor does it or will it, accept bribes or improper inducements. To use a third party as a conduit to channel bribes to others is also a criminal offence.

Harlow District Council is committed to the prevention, deterrence and detection of bribery and has zero tolerance towards bribery. The Council aims to maintain anti-bribery compliance "business as usual", rather than as a one-off exercise.

### **Bribery**

Bribery is defined as an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage. It is unacceptable to:

- give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given
- give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure
- accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them
- accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by the Council in return
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy
- engage in activity in breach of this policy.

### **Objective of this policy**

This policy provides a coherent and consistent framework to enable Officers to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees to identify and effectively report a potential breach. The Council requires that all staff, including those permanently employed, temporary agency staff and contractors:

- act honestly and with integrity at all times and to safeguard the Council's resources for which they are responsible
- comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities.



## **Scope of this policy**

This policy applies to all of the Council's activities. For partners, joint ventures and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

Within the Council, the responsibility to control the risk of bribery occurring resides at all levels of the Council. It does not rest solely within assurance functions, but in all service areas.

This policy covers all staff, including all levels and grades, those permanently employed, temporary agency staff, contractors, agents, Members (including independent members), volunteers and consultants.

## **The Council's commitment to action**

The Council commits to:

- Setting out a clear anti-bribery policy and keeping it up to date
- Making all employees aware of their responsibilities to adhere strictly to this policy at all times
- Training all employees so that they can recognise and avoid the use of bribery by themselves and others
- Encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately
- Rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution
- Taking firm and vigorous action against any individual(s) involved in bribery
- Provide information to all employees to report breaches and suspected breaches of this policy
- Include appropriate clauses in contracts to prevent bribery.

## **Gifts and hospitality**

This policy is not meant to change the requirements of the Council's gifts and hospitality policy (included in the Officer Code of Conduct). This makes it clear that sample tokens of modest value bearing the name or insignia of the organisation giving them (for example, pens, diaries or calendars) whether given personally, or received in the post, may be retained unless they could be regarded as an inducement or reward. You should refuse the offer or invitation (or return the gift) unless your Head of Service has advised you that it may be accepted or retained.

## **Staff responsibilities**

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or under its control. All staff are required to avoid activity that breaches this policy. Staff must:

- ensure that they read, understand and comply with this policy
- raise concerns as soon as possible as they believe or suspect that a conflict with this policy has occurred, or may occur in the future.

As well as the possibility of civil and criminal prosecution, staff that breach this policy will face disciplinary action, which could result in summary dismissal for gross misconduct.

## **Raising a concern**

This Council is committed to ensuring that all of its officers have a safe, reliable, and confidential way of reporting any suspicious activity. Officers have a responsibility to help detect, prevent and report instances of bribery. If an officer has a concern regarding a suspected instance of bribery or corruption, they should report it.

There are multiple channels to help staff raise concerns and should refer to the Whistleblowing Policy and determine their favoured course of action. Staff who do not have access to the intranet should contact the Internal Audit Manager or their Head of Service. Concerns can be anonymous.

In the event that an incident of bribery, corruption, or wrongdoing is reported, the Council will act as soon as possible to evaluate the situation. The Council has a clearly defined Whistleblowing Policy and Fraud Response Plan which set out procedures for investigating fraud, misconduct and noncompliance issues. This is easier and quicker if concerns raised are not anonymous.

Staff who refuse to accept a bribe, or those who raise concerns or report wrongdoing can understandably be worried about the repercussions. The Council aims to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if they turn out to be mistaken.

The Council is committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith. If you have any questions about these procedures they can be directed to the Internal Audit Manager or the Council's Monitoring Officer.

## **Bribery Act 2010**

Under the Bribery Act 2010 there are four core bribery offences:

1. offering, promising or giving a bribe
2. requesting, agreeing to receive or accepting a bribe
3. bribing a foreign public official; and
4. a corporate offence of failing to prevent bribery.

A local authority, such as Harlow District Council, could be liable to prosecution if an employee, agent, or subsidiary bribes another person, intending to obtain an advantage for the local authority.

For individuals, the penalties for committing a crime under the Act are a maximum of 10 years' imprisonment, along with an unlimited fine, and the potential for the confiscation of property under the Proceeds of Crime Act 2002.

## **HARLOW COUNCIL FRAUD RESPONSE PLAN**

### **1. Introduction**

- 1.1 The Fraud Response Plan defines the way that Harlow Council applies its various policies and procedures to suspected theft, fraud, corruption and bribery.
- 1.2 It fits in with various other documents, including the anti-fraud strategy and the whistleblowing procedure. The procedures for dealing with suspected money laundering are different from other problems – see the Anti-Money Laundering policy and procedure for the necessary actions.
- 1.3 Different rules apply to Benefits Fraud.
- 1.4 The aim of this Plan is to provide a toolkit for dealing with problems, and rapid access to expert advice. This fraud response plan guides managers on how to react to suspicions of fraud, theft, corruption and bribery.
- 1.5 Additionally, it gives an outline on how investigations will be progressed, the manager's role and the role of the Investigating Officer.

### **2. Purpose of the Fraud Response Plan**

- 2.1 The Fraud Response Plan is designed to ensure timely and effective action in the event of suspected fraud to:
  - Minimise fraud by taking prompt action
  - Prevent further losses where fraud has occurred
  - Maximise recovery of losses
  - Ensure the accuracy and integrity of evidence for successful disciplinary and court action
  - Identify lessons to be learned to improve fraud management
  - Maximise positive publicity when frauds are discovered and dealt with effectively
  - Deter others from fraud that they may be contemplating

In addition to obvious frauds involving theft of assets or the misappropriation of funds, the following are examples of the types of activity that may be regarded as fraud. The list is merely indicative and not exhaustive:

- Manipulation or misreporting of financial information.
- Misuse of the organisation's assets, including cash, stock and other assets
- Deception (e.g. misrepresentation of qualifications to obtain employment)
- Offering or accepting bribes or inducements from third parties
- Conspiracy to breach laws or regulations
- Fraudulent completion of official documents (e.g. VAT receipts)
- Time recording fraud

- Theft of intellectual property (e.g. unauthorised use of a brand name/logo, theft of customer data or product design)

### **3. The Manager's role in dealing with suspected fraud**

#### ***First response***

Where managers suspect a fraud has taken place the first **course of action must be to contact the Head of Finance (as Section 151 Officer) and Internal Audit** who will in turn ensure the Monitoring Officer and the Chief Executive are informed.

The only exception to this is where the matter is clearly related to the benefits system. In such cases, refer the matter direct to the Department of Works and Pensions (DWP), details of which can be found on the Council's web site.

The Head of Finance will retain overall responsibility and control for any investigation but will delegate responsibility for leading the investigation to an Investigating Officer ensuring they are independent of the service area under investigation and appropriately experienced and trained. Internal Audit will provide advice and guidance to the Investigating Officer if they are not appointed as such. **Investigations of suspected fraud should only be undertaken by officers authorised by the Head of Finance.**

There may be circumstances where it is appropriate for local managers to undertake some preliminary exploration to check on the validity of an allegation or irregularity to establish whether there is a case to be investigated. Where this occurs, advice should be sought from the Head of Finance or Internal Audit as such activity may alert the fraudster, resulting in the destruction of evidence or compromising the collection of further evidence.

Human Resources will be consulted should action need to be taken against an individual staff member, such as suspension to protect evidence. Therefore, the Head of Finance will inform Human Resources at the earliest opportunity, and if appropriate agree a way forward.

Where initial investigations point to the likelihood of a criminal act having taken place, the Head of Finance or Monitoring Officer will inform the Police. Crime numbers should be obtained and provided to Internal Audit/Insurance for reporting purposes.

#### ***Initial Enquires***

Speed is of the essence, therefore the Investigating Officer should make discreet initial enquires to determine if there actually appears to be an irregularity. During this initial enquiry the Investigating Officer should:

- Determine the facts and factors that gave rise to the suspicion
- Examine the factors to determine whether a genuine mistake has been made or whether an irregularity has occurred
- Document their findings, ensuring access is restricted i.e. not held in an 'open area' of the network

- Secure any relevant documentation/records if this can be done without alerting the perpetrator

The Investigating Officer should not formally interview staff at this stage.

#### **4. Formal Investigation**

The Head of Finance will instigate a formal investigation, in consultation with Internal Audit and the relevant Head of Service, to be undertaken by the appointed Investigating Officer. In the absence of the Head of Finance, their responsibilities are transferred to the Monitoring Officer or Chief Executive.

Consideration will be given by the Head of Finance whether to involve other agencies such as Police, HM Revenue & Customs, Cabinet Office (the successor body for the Audit Commission), the Department for Work and Pensions, the National Anti-Fraud Network, the National Crime Agency, External Audit and other councils.

The Head of Finance, in consultation with Human Resources, will consider whether it is necessary to suspend one or more employees to protect evidence, colleagues or assets in line with disciplinary procedures.

#### **5. Conducting the Investigation**

The exact format of an investigation is fluid but some general principles will apply to all investigations:

- Investigate and report back to the Head of Finance promptly. If the investigation extends more than two or three days then the Head of Finance or Internal Audit should be given periodic updates.
- Comply with legislation on interviewing (Police and Criminal Evidence Act, PACE) and surveillance (Regulation of Investigatory Powers Act, RIPA). However, it is not normally necessary, even when there may be a criminal offence, to conduct interviews under PACE rules. The police can re-interview witnesses and suspects later on in the process.
- Record all evidence received, ensuring that it is sound and adequately supported (see further guidance below).
- Keep written records of all fact-finding meetings.
- Email correspondence about the investigation should be discreet and use an agreed 'case name' rather than real names or locations.
- All sensitive attachments should be password protected (or, preferably, not emailed).
- Hold evidence securely, with appropriate restriction to access (both manual and electronic documentation)
- Maintain confidentiality and discretion throughout, and share information on a "need to know" basis. In particular, be mindful that senior officers may need to hear disciplinary cases, and therefore should not know details of cases.

- Where appropriate, contact other enforcement agencies e.g. Police, HM Revenue & Customs. This should be always enacted via Internal Audit as they may have established lines of communication and referral protocols.
- Investigators must not accept any offer of repayment of money or resignation at any stage, as this could prejudice the investigation. Any such offers should be recorded in the interview notes, and passed on to the Head of Finance for consideration (in conjunction with the HR Manager).

The Council has the right to suspend any employee involved pending the outcome of an investigation. Suspension does not imply guilt but suspension can prevent the removal or destruction of vital evidence. When suspects are not suspended, supervision will usually need to be increased. Always seek advice from Human Resources on suspensions and any subsequent disciplinary action.

The Internal Audit Manager will report losses to the Council's Insurance Team at the earliest stage.

Some organisations always delay internal disciplinary procedures pending police action on criminal offences, and dismiss employees after a court case. Explicitly, Harlow Council will pursue disciplinary matters at once, in order to remove perpetrators from the payroll as rapidly as is possible using proper process.

## **6. Actions Following the Completion of an Investigation**

Upon completion of an investigation, the Investigating Officer will report findings in an appropriate format (usually written) to the Head of Finance. The final report will also be issued to the Chief Executive and the Monitoring Officer, and if appropriate to the relevant Head of Service, HR Manager and members of the Audit and Standards Committee.

In all cases the Council's insurers should be informed of actual losses as soon as these have been firmly established.

The Head of Service must remedy control weaknesses identified during the course of the investigation. Internal Audit will provide advice and support on effective controls.

Internal Audit will record of all investigations and final outcomes in the theft, fraud, corruption and bribery register, including crime numbers. This information informs future prevention strategies, and is used in reporting fraud and corruption at the Council.

The Communications Team should be informed (it is useful to have a protocol regarding publicity of frauds) so that publicity can be properly managed.

Whenever fraud has been proved, the Council will make every effort to recover the losses. The method used will vary depending on the type of loss and the regulations and powers available. All means of recovery including recovery under social security legislation, attachments to earning, civil court proceedings and criminal court compensation will be used as appropriate to the offence.

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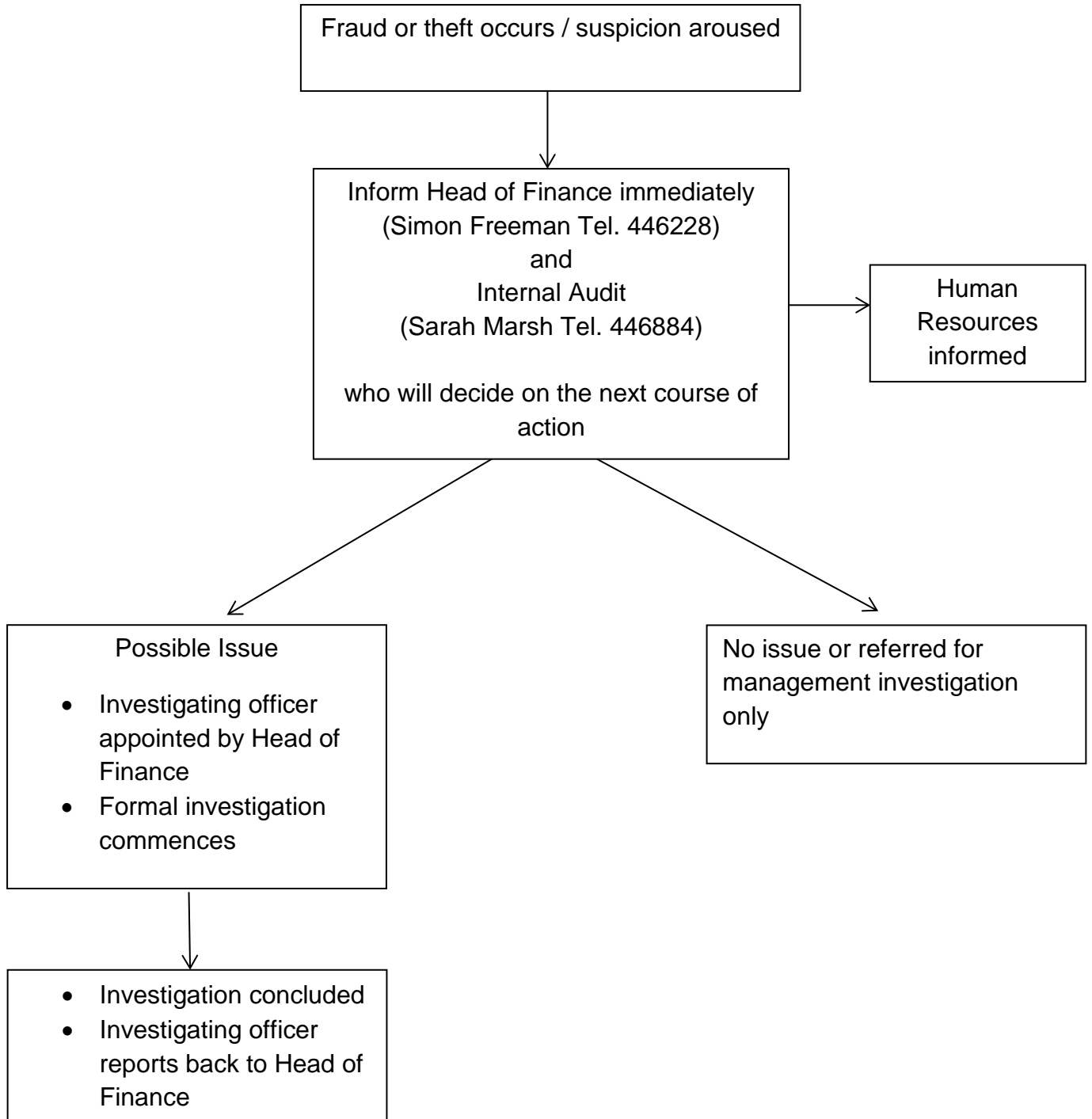
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**Alternative Contacts**

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- Monitoring Officer, Brian Keane 01279 44 6037 [brian.keane@harlow.gov.uk](mailto:brian.keane@harlow.gov.uk)
- Chief Executive, Malcolm Morley 01279 44 6000  
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## Outline of Fraud Response Process



## **Harlow Council Anti-Money Laundering Policy and Procedure**

### **1. Introduction**

The Council is committed to the prevention of money laundering and to working with the appropriate authorities to apprehend those who commit offences under the anti-money laundering regulations.

These procedures are to be followed by all staff and Members to ensure compliance with the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007.

Money Laundering is defined under the Proceeds of Crime Act (POCA) 2002, and involves possession, or in any way dealing with, or concealing the proceeds of any crime. It also involves similar activities defined by the Terrorism Act 2000, relating to the retention or control of property likely to be used for the purposes of terrorism, or resulting from acts of terrorism.

Any person involved in a known, or suspected, money-laundering activity in the UK risks a criminal conviction carrying a jail term of up to fourteen years. The offences apply to everyone, in both personal and professional capacities. Such acts are not offences if the person makes an 'authorised disclosure' to a police constable, customs officer or an officer nominated as the Money Laundering Reporting Officer (MLRO) by their employer.

This policy sets out the procedure to minimise the risk that Harlow Council services will be used in money laundering, and to protect employees from the risk of prosecution if they become aware of money laundering activity in their work.

### **2. Policy**

The Council's policy is that all members and employees will comply with the legal requirements, and with their spirit. Failure to do so will put the individual at risk of disciplinary action.

The Council will apply the provisions of the legislation in a proportionate way, matching its actions and requirements to the seriousness of potential offences. This will be done in a way that is entirely consistent with the Council's general policy on theft, fraud, corruption and bribery, which is that it will not tolerate these behaviours. It is also consistent with related policies and procedures, such as the whistleblowing procedure and the fraud response plan.

This Policy applies to all members and employees of the Council to:

- prevent the organisation and its staff being exposed to money laundering;
- identify areas where it may occur; and
- comply with all legal and regulatory requirements.

This policy and procedure document gives an overview including what to do about suspicions of money laundering.

### 3. What is money laundering?

There are **three principal offences** – concealing, arranging and acquisition/use/possession.

**Concealing** is where someone knows or suspects a case of money laundering, but conceals or disguises its existence (section 327 of the Proceeds of Crime Act 2002).

**Arranging** is where someone involves himself or herself in an arrangement to assist in money laundering (section 328).

**Acquisition, Use and Possession** is where someone seeks to benefit from money laundering by acquiring, using or possessing the property concerned (section 329).

There are also **three ‘third party’ offences** under POCA – tipping off, failure to disclose and prejudicing an investigation.

Tipping off is where someone informs a person or people who are, or are suspected of being, involved in money laundering, in such a way as to reduce the likelihood of their being investigated, or prejudicing an investigation. Failure to disclose is self-explanatory – not reporting suspicious activity. These are described in more detail in Sections 8 and 9.

It is unlikely that a member of staff would commit any of the three principal offences, but failure to disclose a suspicion and ‘tipping off’ are serious offences in themselves, and there are only very limited grounds in law for not reporting a suspicion.

The **primary money laundering offences** are punishable by up to 14 years imprisonment with up to five years for **third party offences**.

Although ‘money laundering’ generally means the activities of organised crime (for which the legislation and regulations were first introduced), it technically covers any suspicion that someone is benefiting financially from dishonest activities.

‘Criminal property’ is defined very widely. It includes not only the proceeds of crime committed by somebody else, but also possession of the proceeds of an individual’s own crime – for example, retaining money from non-payment of income tax. It does not matter how small the amount of money involved. It also includes the proceeds of crimes that take place abroad. However, the main concern is with organised criminal activity.

### 4. Legal framework

There is no statutory requirement on the Council to adopt a Money Laundering Policy or appoint a Money Laundering Reporting Officer but Harlow Council follows good practice by having these in place. The requirement (on the organisation and on individuals) is to disclose suspicions that may arise during the course of normal business.

## **5. The Council's obligations**

Harlow Council will ensure that staff who are most likely to be exposed to, or suspicious of, money laundering have guidance on the law and, where necessary, suitable training.

The Council has procedures for reporting suspicious transactions and if necessary, making an appropriate report to the National Crime Agency (NCA).

The Council has made arrangements to deter and prevent money laundering. There are formal procedures for evidencing the identity of parties with whom the Council interacts 'by way of business' for services that could be deemed to be 'relevant'. See Sections 10 and 11 below.

Employees do not need detailed knowledge of the criminal offences. However, the employees most likely to encounter money laundering must be aware of the procedures, and of their personal responsibilities.

## **ANTI MONEY LAUNDERING PROCEDURE**

### **6. Examples of how the Council may become involved in money laundering**

This procedure provides sufficient detail for most staff, and gives guidance to those most likely to encounter attempts at money laundering information on what they must do. The following list gives examples of how the Council may become involved in money laundering although it is not exhaustive:

- Accepting large cash amounts – this Council has set a limit of £10,000. This can be a single transaction, or a group of related transactions. However, it is important to be vigilant when receiving any cash payments over £1,000.
- The request of a large refund.
- Property investments or purchases.

Indicators which may suggest Money Laundering activities include:

- Payments to the Council of large amounts, although report any suspicious cash transactions to the Money Laundering Reporting Officer (MLRO).
- Cash overpayments made by a customer resulting in a large refund request being made.
- Cash transactions made that are significantly outside of normal expectations.
- Involvement of third parties when dealing with the Council and cash payments, without logical reason.
- Customers/contractors or suppliers who are unwilling to provide, without reasonable excuse, proof of identity, or information on the sources of the funds.

### **7. Disclosure procedure**

Harlow Council has nominated the following officers to manage anti-money laundering measures within the organisation:

Money Laundering Reporting Officer (MLRO)	Head of Finance: 01279-446228
Deputy MLRO	Head of Governance: 01279-446037

You should report all known or suspected money laundering activities, or concern that your involvement in a matter may amount to a prohibited act, to the MLRO as soon as possible. Failure to do so could lead to prosecution. This can be done either verbally or completing the 'Report to Money Laundering Reporting Officer' form available on the Infonet

Once you have reported a matter to the MLRO, you must not make any further enquiries without instruction from the MLRO. You **must** co-operate with the MLRO and other authorities during any subsequent investigation.

Where the MLRO concludes a disclosure is necessary, he will do this in the prescribed manner, as soon as possible, by submitting a Suspicious Activity Report (SAR) via the SAR online system.

Where consent is required from NCA for a transaction to proceed, then the transaction in question **must not** go ahead until NCA has given consent, or there is deemed consent because NCA has not given instructions inside the legal timescale.

Where the MLRO concludes that there are no reasonable grounds to suspect money laundering they must record this on the report, and give consent in writing for transactions to proceed.

The MLRO commits a criminal offence if he knows or suspects money laundering is taking place and does not subsequently report it to NCA. They must act on all reports from members and employees, and positively decide whether or not to report. All records must be kept for five years.

## 8. "Tipping off" and "Failure to Disclose" Offences

It is an offence to indicate to the subject of a money laundering report that a report has been made. If, knowing a disclosure has been made, you say or do anything which is likely to prejudice any investigation that might be conducted, you are guilty of tipping-off.

Therefore, where you suspect money laundering and report it to the MLRO, be very careful what you say to others afterwards. For example, a lawyer who reports his suspicions of a money laundering offence may commit a tipping off offence if he then tells the client. However, preliminary enquiries of a client to obtain more information (e.g. confirm their identity, clarify the source of funds) will not amount to tipping off, unless you know or suspect that a report has been made.

Even if **you** have not reported the matter to the MLRO, but you know or suspect that **someone else** has made such a disclosure and you mention it to someone else, this could amount to a tipping off offence.

You must not, therefore, make any reference on a file to a report having been made to the MLRO because, should the client/customer exercise their right to see the file under the Data Protection or Freedom Of Information Acts, such a note will obviously “tip them off” and may render you liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

Likewise it is an offence if someone fails to disclose i.e. they have knowledge or suspicion either as an employee or by the MLRO.

## **9. “Prejudicing an investigation” offence**

If you know or suspect that an appropriate officer is, or is about to be, conducting a money laundering investigation and you make a disclosure to a third party that is likely to prejudice the investigation, you are committing an offence. Falsifying, destroying, disposing of, concealing any document which is relevant to the investigation or allowing this to happen is also an offence.

Any person found guilty of tipping off, failing to disclose or prejudicing an investigation is liable to imprisonment (maximum 5 years), an unlimited fine, or both.

However, defences are available for such offences, for example:

- Where you did not know or suspect that the disclosure was likely to be prejudicial; or
- Where you are a professional legal adviser and the disclosure was:
  - to a client (or his representative) in connection with the giving of legal advice;
  - to any person in connection with legal proceedings (existing or contemplated);

but **not** where the information was given with the intention of furthering a criminal purpose.

## **10. Specific requirements for “relevant business”**

The following activities could be deemed to be ‘relevant’:

- Provision ‘by way of business’ of legal services which involves participation in a financial or real property transaction
- Provision ‘by way of business’ of services which involve the formation, operation or management of a company or trust
- Dealing in goods of any description ‘by way of business’ whenever a transaction involves accepting a total cash payment of £10,000 or more.
- Dealing in and managing investments ‘by way of business’.

## **11. Client identification procedure**

Where the Council is carrying out business that could be deemed to be ‘relevant’ and:

- forms an ongoing business relationship with a client; or
- undertakes a one-off transaction involving payment by or to the client of £10,000 or more; or
- undertakes a series of linked one-off transactions involving total payment by or to the client(s) of £10,000 or more; or
- it is known or suspected that a one-off transaction (or a series of them) involves money laundering;

then you must follow the Client Identification Procedure below before undertaking any business.

Satisfactory evidence of identity establishes that the client is who they claim to be. This applies to existing clients if evidence is not already on file, as well as new ones. In all cases, you must retain the evidence for at least five years from the end of the business relationship or transaction(s).

Where satisfactory evidence of identity is not available the business arrangement or one off transaction should not proceed.

Where the client is acting or appears to be acting for someone else, you must also take reasonable steps to establish the identity of that other person.

The law states that particular care must be taken when the client is not physically present when being identified.

**Client Identification Procedure:** For all clients there must be a signed, written instructions on their organisation's headed paper at the outset of the business relationship. Additional evidence should also be in place, for example:

- check the organisation's website to confirm the identity of personnel, its business address and any other details;
- meet the client at their business address;
- confirm that the organisation is included in the telephone directory;
- ask the key contact officer to provide evidence of personal identity and position within the organisation, for example:
  - passport, photo ID card, driving licence;
  - signed, written confirmation from an appropriate senior person in their organisation confirming that they work for the organisation and are empowered to conduct this type of transaction.

## 12. Record keeping

Each unit of the Council conducting relevant business must maintain records of:

- client identification evidence obtained; and

- details of all relevant business transactions carried out for clients

for at least five years. This is so that they may be used as evidence in any subsequent investigation into money laundering by the relevant authorities.

The precise nature of the records is not prescribed by law, however, they must provide a sound management trail during any subsequent investigation. (For example, distinguishing the client and the relevant transaction and recording in what form any funds were received or paid.) In practice, Council sections will routinely keep records of work carried out for clients in the course of normal business and these will usually be sufficient.

### **13. Conclusion**

It is relatively unlikely that Harlow Council will encounter money laundering. However, we need to be aware of the issues, and ready to deal with any suspicious circumstances promptly and properly.

**Simon Freeman**  
**Section 151 Officer**