

TITLE	Review of the Council's Anti-Fraud Policies
FOR CONSIDERATION BY	Audit Committee on 9 December 2014
WARD	None Specific
DIRECTOR	Andrew Moulton, Head of Governance and Improvement Services

OUTCOME

This report outlines the Council's key policies to support its Anti-Fraud and Anti-Corruption culture.

RECOMMENDATION

The Audit Committee is asked to:

- 1) agree the proposed amendments to the Anti Fraud and Anti Corruption Policy, the Whistleblowing Policy, Anti Bribery Policy and Anti Money Laundering Policy and recommend these for approval to Council, via the Constitution Review Working Group;
- 2) agree the proposed amendments to the Prosecutions and Sanctions Policy to include additional sanctions to be available and recommend these for approval to Council, via the Constitution Review Working Group;

SUPPORTING INFORMATION

The Council's Constitution provides for the Audit Committee to agree all of the Council's Anti-Fraud and Anti-Corruption policies prior to their adoption being recommended to Council via the Constitution Review Working Group. This review takes place annually and is an important element of good governance.

A summary of the changes for each policy is detailed below

1. Anti-Fraud and Anti-Corruption Strategy

- Minor amendments to reflect structural changes.
- Removal of references to Housing Benefit and Council Tax Benefit investigations following the removal of these investigations to the Single Fraud Investigation Service.

2. Whistleblowing Policy

- Minor amendments to reflect structural changes and review to ensure the policy in line with latest good practice.

3. Anti-Money Laundering Policy

- Minor amendments to reflect structural changes.

4. Prosecution and Sanction Policy

- Removal of references to Housing and Council Tax Benefit fraud and removal of the Administrative Penalty sanction under s.115 of the Social Security Administration Act 1992 following the removal of these

investigations to the Single Fraud Investigation Service.

- Update to ensure policy is at the appropriate level.

5. Anti-Bribery Policy

- Minor amendments to reflect structural changes.

Analysis of Issues

See above

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	N/A	N/A	N/A
Next Financial Year (Year 2)	N/A	N/A	N/A
Following Financial Year (Year 3)	N/A	N/A	N/A

Reasons for considering the report in Part 2

N/A

List of Background Papers

None.

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CHAPTER 9.6 - ANTI-BRIBERY POLICY

9.6.1 Policy Statement: Anti-Bribery

Bribery is a criminal offence. We do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we, accept bribes or improper inducements.

9.6.1.1

To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

9.6.1.2

We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance towards bribery. We aim to maintain anti-bribery compliance "business as usual", rather than as a one-off exercise.

9.6.2 Objective of this policy

This policy provides a coherent and consistent framework to enable Wokingham Borough Council employees 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.

We require that all personnel including those permanently employed, temporary agency staff and contractors:

- a) act honestly and with integrity at all times and to safeguard the Council's resources for which they are responsible; and
- b) 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.

9.6.3 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.

9.6.3.1

Within the Council, the responsibility to control the risk of bribery occurring resides at all levels, in every service.

9.6.3.2

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

9.6.4 Commitment

Wokingham Borough Council commits to:

- a) setting out a clear anti-bribery policy and keeping it up to date;
- b) making all employees aware of their responsibilities to adhere strictly to this policy at all times;
- c) training all employees so that they can recognise and avoid the use of bribery by themselves and others;
- d) 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;
- e) rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution;
- f) taking firm and vigorous action against any individual(s) involved in bribery;
- g) provide information to all employees to report breaches and suspected breaches of this policy;
- h) include appropriate clauses in contracts to prevent bribery.

9.6.5 The Bribery Act

The Council defines bribery as 'an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage'.

9.6.5.1

There are four key offences under the Act:

- a) bribery of another person (section 1);
- b) accepting a bribe (section 2);
- c) bribing a foreign official (section 6); and
- d) failing to prevent bribery (section 7).

9.6.5.2

The Bribery Act 2010 (http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1) 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.

9.6.5.3

The guidance states that a “commercial organisation” is any body formed in the United Kingdom and “...it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made.” Therefore, we are a “commercial organisation”.

9.6.6 Adequate procedures

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine proportionate procedures in the recommended areas of six principals. These principles are not prescriptive. They are intended to be flexible and outcome focussed, allowing for the different circumstances of organisations. Small organisations will, for example, face different challenges to those faced by large multi-national enterprises. The detail of how organisations apply these principles will vary, but the outcome should always be robust and effective anti-bribery procedures.

9.6.7 Proportionate procedures

An organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

9.6.8 Top level commitment

The Chief Executive, Directors and Members are committed to preventing bribery by persons associated with it. Bribery is never acceptable.

9.6.9 Risk Assessment

The Council will assess the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage.

9.6.10 Due diligence

The Council applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

9.6.11 Communication (including training)

The Council seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

9.6.12 Monitoring and review

The Council monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary. Wokingham Borough Council is committed to proportional implementation of these principles.

9.6.13 Penalties

An individual guilty of an offence under sections 1, 2 or 6 is liable:

- a) on conviction in a magistrates court, to imprisonment for a maximum term of 12 months (six months in Northern Ireland), or to a fine not exceeding £5,000, or to both;
- b) on conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both.

Organisations are liable for these fines and if guilty of an offence under section 7 are liable to an unlimited fine.

9.6.14 Bribery is not tolerated

It is unacceptable to:

- a) 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;
- b) 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;
- c) 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;
- d) 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 us in return;
- e) retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy;
- f) engage in activity in breach of this policy.

9.6.15 Facilitation payments

Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions. Facilitation payments are not tolerated and are illegal.

9.6.16 Gifts and hospitality

The Council's Gifts and hospitality policy is included in the Code of Conduct - Employees must ensure:

- a) when acting in an official capacity they must not give the impression that their conduct both inside and outside work with any person or organisation is influenced by the receipt of gifts, rewards and hospitality or any other such consideration;
- b) they think about the circumstances in which offers are made and are aware that they may be regarded as owing a favour in return;
- c) they have permission from their line managers before accepting such offers and are aware that the offers may have to be returned or refused;

- d) that when gifts or hospitality have to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the Council; and
- e) all offers whether or not accepted must be recorded in the Gifts and Hospitality register.

9.6.16.1

How an employee should react to an offer depends on the type of offer, the relationship between the parties involved and the circumstances in which the gift or hospitality is offered:

- a) employees must not be seen to be acting in their own personal interests and need to be careful that their behaviour cannot be misinterpreted;
- b) when receiving authorised gifts/hospitality, employees should be particularly sensitive as to its timing in relation to decisions which the Council may be taking affecting those providing the hospitality;
- c) an offer of a bribe or commission made by contractors, their agents or by a member of the public must be reported to the line manager and the Head of Governance and Improvement Services. Hospitality from contractors should also be avoided where employees/team are singled out for example Christmas lunch etc, this may be perceived as preferential treatment; and
- d) employees must not accept significant personal gifts from the contractors and outside suppliers, although the Council may wish to allow employees to keep insignificant items of token value such as pens, diaries, etc not exceeding the value of £25. The most common form of gift is the offer of wine and chocolates etc. In general these are shared out among colleagues and provided the offers are reasonable, for example a single bottle of wine, they may be accepted. It is important that all offers are recorded in the Gifts/Hospitality Register including those that are offered and not accepted. Directors should remind their staff of the process to be followed with regards to gifts and hospitality.

9.6.16.2

No one working for, employed by, or providing services on behalf of the Council is to make, or encourage another to make any personal gain out of its activities in any way. Any person becoming aware of a personal gain being made at the expense of the Council, contractors or the public should follow the Whistleblowing procedures on the Council's intranet (Grapevine).

9.6.16.3

Employees may only accept offers of hospitality if there is a genuine need to impart information or represent the Council in the community. Offers to attend purely social or sporting functions may only be accepted when these are part of the life of the community or where the authority should be seen to be represented. All hospitality must be properly authorised and recorded in the Gifts/Hospitality Register.

9.6.16.4

Employees may accept hospitality when attending relevant conferences and courses where it is clear the hospitality is corporate rather than personal, where consent is given in advance and where it is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc. are required, employees must ensure that their service meets the cost of such visits to avoid putting at risk the integrity of subsequent purchasing decisions.

9.6.16.5

The acceptance of gifts and hospitality may be a subject of criticism placing the Council in a position that it has to defend such action. Consequently, it is essential that all offers and details of gifts and hospitality be recorded in the Gifts & Hospitality Register which will be held by the Director or nominated Manager.

9.6.17 Public contracts and failure to prevent bribery

Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. There are no plans to amend the 2006 Regulations for this to include the crime of failure to prevent bribery. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. This organisation has the discretion to exclude organisations convicted of this offence.

9.6.18 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:

- a) ensure that you read, understand and comply with this policy; and
- b) raise concerns as soon as possible if you 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 dismissal for gross misconduct.

9.6.19 Raising a concern

The Council is committed to ensuring that we all have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff to know how they can raise concerns. We all have a responsibility to help detect, prevent and report instances of bribery. If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

9.6.19.1

There are multiple channels to help you raise concerns – these are explained in the Whistleblowing policy. Staff who refuse to accept or offer a bribe, or those who raise concerns or report wrongdoing can understandably be worried about the repercussions. We aim 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.

9.6.19.2

We are 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, please contact Catherine Hickman, Service Manager – Shared Internal Audit Service.

9.6.20 Other relevant WBC policies

Anti-Fraud and Anti-Corruption policy, Anti-Money Laundering policy, Whistleblowing policy, Code of Conduct and Finance, Procurement and Contract Regulations.

CHAPTER 9.4 – CORPORATE ANTI-FRAUD AND ANTI-CORRUPTION POLICY

9.4.1 Introduction

Wokingham Borough Council (WBC) aims to deliver high quality services and provide value for money by being fully accountable, honest and open in everything that it does.

Fraud and corruption undermine these aims by diverting resources from legitimate activities, damaging public confidence in the Council and adversely affecting staff morale.

To achieve its strategic priorities, the Council seeks to ensure that measures are taken to prevent, detect and investigate fraudulent or corrupt acts. The aim of this policy is to reduce losses from fraud and corruption to an absolute minimum.

The Council has a zero tolerance policy regarding fraud and corruption. It has adopted the following approach.

“In administering its responsibilities the Council is opposed to fraud and corruption whether it is attempted on or from within the Council and is committed to preventing, deterring, detecting and investigating fraud and corruption.”

This policy is particularly relevant to:

- a) elected Members;
- b) employees;
- c) contractors;
- d) consultants;
- e) suppliers;
- f) service users;
- g) customers (including the public); and
- h) partner organisations.

9.4.2 Defining Fraud

The Council defines “fraud” as an intentional distortion of financial statements or other records by persons internal or external to the organisation which is carried out to conceal the misappropriation of assets or otherwise for financial gain. This may involve, but is not limited to:

- a) falsification or alteration of accounting records or other documents;
- b) misappropriation of assets or theft;
- c) suppression or omission of the effects of transactions from accounting records of other documents;

- d) recording transactions which have no substance; and
- e) wilful misrepresentation of transactions or of the Council's state of affairs.

9.4.2.1

Furthermore, the Fraud Act 2006 has defined fraud in law for the first time, defining it in three classes:

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

9.4.3 Defining Corruption

The Council defines Corruption as the offering, giving, soliciting or accepting of any inducement or reward which would influence the actions taken by the Council, its Members or Officers. Areas where corrupt practices may occur include, but are not limited to:

- a) tendering and awarding of contracts;
- b) pecuniary interests of Members and Officers;
- c) the award of permissions, planning consents and licenses; and
- d) the disposal of assets.

9.4.4 Framework for Prevention and Detection

It is a management responsibility to maintain the internal control system and to ensure that the Council's resources are properly applied in the manner and on the activities intended. This includes responsibility for the prevention and detection of fraud and other illegal acts.

9.4.5 Key Principles and Culture

The Council will not tolerate fraud and corruption in the administration of its responsibilities whether from inside or outside of the authority. The Council is committed to creating a culture of opposition to fraud and corruption. The Council is determined that the authority meets the expectations of the Committee on Standards of Public Life and is committed to the ten general principles which govern standards of conduct in local government, namely:

- a) selflessness;
- b) honesty and integrity;
- c) objectivity;
- d) accountability;
- e) openness;
- f) personal judgement;

- g) respect for others;
- h) duty to uphold the law;
- i) stewardship; and
- j) leadership.

9.4.5.1

The Council expects Members (elected and co-opted) and employees (including agency staff, consultants and contractors) to lead by example in ensuring effective opposition to fraud and corruption. This includes ensuring adherence to legislation, local rules and regulations, National and Local Codes of Conduct and that all procedures and practices are beyond reproach.

9.4.6 Raising Concerns

Employees at all levels should be alert to the possibility of fraud and corruption. They are expected, and positively encouraged to raise any concerns relating to fraud and corruption which they become aware of. These can be raised in any way that the employee prefers, including with their line manager, through a Director, with the Shared Internal Audit and Investigations Service or through the Council's Whistleblowing Policy. Whichever route is chosen, the employee can be assured that concerns raised in good faith will be fully investigated and, wherever possible, those raising concerns will be dealt with in confidence.

When management receive concerns from employees or others regarding potential fraud or corruption, they should immediately contact the Head of Governance and Improvement Services (and Monitoring Officer) with details of the concerns. The Head of Governance and Improvement Services will make preliminary enquiries and in consultation with the Section 151 will determine whether there are grounds for an investigation.

Councillors, service users, suppliers, partner organisations and members of the public are encouraged to report any concerns. These concerns about fraud and corruption should be reported either directly to the Head of Governance and Improvement Services or via the Council's Whistleblowing Policy.

If employees feel that they are unable to use internal routes then they can contact the Audit Commission:

Audit Commission

1 Vincent Square, London SW1P 2PN

Telephone: 020 7828 1212 Email: enquiries@audit-commission.gov.uk

Although the Council encourages its staff to report concerns acting in good faith, any maliciously motivated and unfounded allegations may be dealt with through the Council's disciplinary code.

9.4.7 Corporate Governance

The main corporate policies and procedures which formulate the Council's framework for minimising risk and the prevention of fraud and corruption include:

- a) Anti-Fraud and Anti-Corruption Policy;
- b) Internal Audit Charter;
- c) Contract and Procurement Regulations;
- d) Corporate Fraud and Corruption Response Plan;
- e) Financial Regulations;
- f) Human Resources Policy and Guidance for Discipline;
- g) Human Resources Policy for Conduct and Personal Behaviour;
- h) Human Resources Policy for Recruitment and Retention;
- i) Member's Code of Conduct;
- j) Money Laundering Policy;
- k) Officer's Code of Conduct;
- l) Prosecution and Sanction Policy;
- m) Risk Management Strategy;
- n) Scheme of Delegation;
- o) Whistleblowing Policy; and
- p) Anti-Bribery Policy

9.4.8 Corporate Responsibility

Service Heads must ensure that all employees in their service are familiar with the corporate policies and procedures listed at 9.4.7, in addition to any other relevant rules and regulations specific to their service. Failure to adhere to these policies and procedures could result in the instigation of disciplinary procedures.

9.4.9 Recruitment

The Council recognises that one of the most important issues relating to the prevention of fraud and corruption is the effective recruitment of staff and therefore takes pre-employment screening seriously.

Employee recruitment is required to be in accordance with procedures laid down by the Head of Support Services. As part of these procedures, particular reference is made to:

- a) verifying the identity of the applicant;
- b) obtaining satisfactory references prior to appointment;
- c) verifying the applicant is able to legitimately work in the UK;
- d) verifying and retaining copies of certificates for stated qualifications; and
- e) undertaking Criminal Record Bureau checks where appropriate.

These practices apply to all permanent appointments including those where employees have entered the organisation as an agency worker or consultant in the first instance.

9.4.10 System of Internal Control

The risk of fraud and corruption can be minimised by good financial management, sound internal control systems, effective management supervision, and by raising public, member and employee awareness of fraud.

9.4.10.1

Internal control is the whole system of controls, financial and otherwise, established to provide reasonable assurance of:

- a) proper aims and objectives;
- b) efficient and effective operations;
- c) reliable management information and reporting;
- d) legitimate expenditure;
- e) compliance with laws and regulations;
- f) performance management; and
- g) security of assets and income.

9.4.10.2

Weaknesses in the design and operation of administrative and financial internal control systems may increase the risk of fraud. Systems should contain efficient, effective, and well documented internal controls that cover the following:

- a) adequate segregation of duties;
- b) proper authorisation and approval procedures;
- c) adequate physical security over assets; and
- d) reliable monitoring and reporting arrangements.

9.4.10.3

It is management's responsibility to install adequate internal controls and rectify weaknesses if they occur. To help management discharge this responsibility systems maybe subject to review by both Internal and External Audit. Auditors are responsible for reporting to management on significant weaknesses in the control environment, including deficiencies in the operation of internal controls and highlighting exposure to the risk of fraud. Audit recommendations are promptly followed up to ensure issues highlighted are appropriately actioned.

Management should instigate occasional deterrent compliance checks on the operation of internal controls within their service and are encouraged to seek advice from the Shared Internal Audit and Investigations Service on what checks should be carried out. This work should be used to inform the Annual Governance Statement.

9.4.11 Risk Management

Major fraud risks relating to services should be included within local Risk Registers and subject to regular review to ensure that appropriate controls are in place to mitigate those risks.

9.4.12 Role of Statutory Officers

The Council has a statutory responsibility, under Section 151 of the Local Government Act 1972, to ensure the proper administration of its financial affairs and also to nominate one of its Officers to take responsibility for those affairs. The Council's nominated Section 151 Officer is the Director Finance and Resources.

9.4.12.1

The Council's Monitoring Officer (Head of Governance and Improvement Services) is responsible under Section 5 of the Local Government and Housing Act 1989 to guard against, inter alia, illegality, impropriety and maladministration in the Council's affairs.

9.4.13 Effective Action

Responsibility for investigating suspected fraud and corruption against the Council rests with the Shared Internal Audit and Investigations Service. This is to ensure that the investigation is performed only by properly trained officers in accordance with the appropriate legislation:

- a) Corruption Act 1906
- b) Criminal Procedures and Investigations Act (CPIA) 1996;
- c) Data Protection Act 1998;
- d) Fraud Act 2006;
- e) Freedom of Information Act 2000;
- f) Human Rights Act 1998;
- g) Local Government Finance Act 1992;
- h) Police and Criminal Evidence Act (PACE) 1984;

- i) Proceeds of Crime Act 2002; and
- j) Regulation of Investigatory Powers Act (RIPA) 2000;
- l) The Council Tax (Administration and Enforcement) Regulations 1992.

9.4.14 Procedure

All referrals will initially be risk assessed and material instances of fraud or irregularity in the Council will be referred to the Shared Internal Audit and Investigations Service.

The Shared Internal Audit and Investigations Service will ensure the following objectives are met:

- a) investigations are undertaken fairly, objectively and in accordance with relevant laws and regulations, so as to avoid jeopardising the outcome on legal and procedural technicalities;
- b) to protect the evidence;
- c) to prove or disprove the original suspicions of fraud;
- d) if proven, to support the findings by producing effective evidence;
- e) to present evidence in an appropriate format accepted by the Crown Prosecution Service or the appropriate disciplining service;
- f) to apply appropriate sanctions and redress against those individuals and organisations that seek to defraud; and
- g) adherence to the Corporate Fraud and Corruption Response Plan will ensure that relevant personnel are informed of suspected fraud.

9.4.15 Completion

Once an investigation is completed the Shared Internal Audit and Investigations Service may have responsibilities in relation to:

- a) recommending improvements to systems;
- b) attendance at disciplinary hearings and tribunals;
- c) attendance at Court as a witness; and
- d) reporting to the Audit Committee.

Conclusions will be based on fact allowing management to take forward any required disciplinary and / or criminal proceedings as they determine appropriate.

9.4.16 Disciplinary

The Council has in place disciplinary procedures which must be followed whenever staff are suspected of committing a fraudulent or corrupt act.

The disciplinary procedures are set out in the Disciplinary Policy and Guidance. The Chief Executive has overall responsibility for ensuring that the disciplinary procedure is managed effectively. Line managers, under the overall direction of Heads of Service are responsible for day to day management and ensuring compliance with the Disciplinary Policy and Guidance.

9.4.17 Reporting and Publicity

Incidents of fraud and corruption are reported through the following mechanisms:

- a) Corporate Leadership Team;
- b) Audit Committee; and
- c) External Auditors (currently Ernst and Young).

Where evidence of fraud and corruption is found, appropriate sanctions will be sought in line with the Council's Prosecution and Sanctions Policy. The details of any proven act of fraud or corruption, including action taken by the Council will be publicised to employees, Members and the public. This is aimed at deterring further attempts of fraud or corruption by demonstrating the seriousness with which the Council views such cases. In agreement with the Section 151 Officer, Monitoring Officer, the Council will report criminal activity to the Police at the appropriate stage.

9.4.18 Benefit Investigations

The Investigations Team within the Shared Internal Audit and Investigations Service is also responsible for undertaking investigations within the Council Tax Reductions Scheme. This involves:

- a) investigating suspected fraud by false statement and/or failure to declare changes in circumstances or other method. ;
- b) making random checks on claimants; and
- c) maximising recovery of overpaid benefit.

Where evidence of fraud and corruption is found, appropriate sanctions will be sought in line with the Council's Prosecution and Sanctions Policy. Successful prosecutions will be publicised to help deter further fraud.

9.4.19 Working with Others

Arrangements are in place and continue to develop and encourage the exchange of information between the Council and other agencies on national and local fraud and corruption activity. This includes participation in the National Fraud Initiative which matches data across a wide range of public service organisations in order to detect fraud or erroneous payments.

9.4.20 Money Laundering

Money laundering is the process of moving illegally generated funds through a cycle of transformation in order to create the end appearance of legitimately earned funds.

The Proceeds of Crime Act 2002 details the three principal money laundering offences as:

- a) assisting another to retain the benefit of crime;
- b) acquisition, possession or use of criminal proceeds; and
- c) concealing or transferring proceeds to avoid prosecution.

In addition there are related offences for failing to report where a person has knowledge, suspicion or reasonable grounds for knowledge or suspicion that money laundering has taken place, as well as for tipping off a person that a disclosure has taken place.

Council Officers and Members who suspect money laundering activities should report their concern to the Council's nominated Money Laundering Reporting Officer (MLRO), the Section 151 Officer (Director Finance and Resources). Further details are contained in the Anti-Money Laundering Policy.

9.4.21 Conclusion and Review

The Council has in place a clear framework of systems and procedures to deter and investigate fraud and corruption. It will ensure that these arrangements are fair and are monitored and updated to keep pace with future developments in preventative, deterrent and detection techniques regarding fraudulent or corrupt activity.

To this end, the Council maintains a continuous review of these arrangements through, in particular the Audit Committee, the Section 151 Officer (Director Finance and Resources), Shared Internal Audit and Investigations Service, External Audit, the Monitoring Officer (Head of Governance and Improvement Services) and the Standards Committee.

CHAPTER 9.7 - ANTI-MONEY LAUNDERING POLICY

9.7.1 Introduction

Money laundering legislation requires local authorities to establish internal procedures to prevent the use of their services for money laundering. Money laundering legislation in the UK is primarily governed by the following legislation:

- a) the Terrorism Act 2000;
- b) the Anti-Terrorist Crime & Security Act 2001;
- c) the Proceeds of Crime Act 2002;
- d) serious Organised Crime and Police Act 2005; and
- e) the Money Laundering Regulations 2007.

9.7.2 Scope of the Policy

This Policy applies to all employees and contractors of the Council. The Policy sets out the procedures that must be followed to enable the Council to comply with its legal obligations.

9.7.2.1

Staff should report any suspicions to the appointed Money Laundering Reporting Officer (MLRO) (see section 5.0) and it is for the MLRO to consider if the circumstances warrant the completion of a 'suspicious activity report' (SAR), which is sent to the National Crime Agency.

Failure by a member of staff to comply with the procedures set out in this Policy may lead to disciplinary action being taken against them in accordance with the Council's Disciplinary procedures.

9.7.3 What is Money Laundering?

The legislation is not limited to major organised crimes, but covers proceeds of all crimes, however small. The primary money laundering offences and thus prohibited acts under the legislation are:

- a) concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327 of the 2002 Act); or
- b) entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (section 328 of the 2002 Act); or
- c) acquiring, using or possessing criminal property (section 329 of the 2002 Act); or
- d) becoming concerned in an arrangement facilitating concealment, removal from the jurisdiction, transfer to nominees or any other retention or control of terrorist property (section 18 of the Terrorist Act 2000); or
- e) failing to disclose suspected money laundering.

9.7.3.1

The defence to these offences is to make an 'authorised disclosure' to an approved person. Approved persons are Customs Officers, Police Officers and the Council's Money Laundering Reporting Officer (MLRO) (see 9.7.6. below).

9.7.4 Suspicious Activity

Some indications of suspicious activity are:

- a) any unusually large cash payment;
- b) any overpayment or duplicate payment in cash where the refund is requested by cheque; or
- c) if a 'third party' is involved in any transaction (e.g. someone paying cash to settle someone else's bill.)

9.7.4.1

The Council should be alert to large amounts of "Cash" accepted as a payment, which would normally arouse suspicion.

9.7.4.2

Officers involved in Treasury Management and cashiering activities are the most likely to encounter attempts to launder money but all staff should be alert to the possibilities.

9.7.4.3

All organisations and each individual is required by law to try to prevent and to report any attempts to 'launder' money (i.e. to use the proceeds of crime in apparently legitimate business transactions).

9.7.4.4

Potentially any member of staff could be caught by the money laundering provisions if they suspect money laundering and either become involved with it in some way and/or do nothing about it.

9.7.5 The Council's Obligations

Organisations conducting "relevant business" must:

- a) appoint a Money Laundering Reporting Officer ("MLRO") to receive disclosures from employees of money laundering activity (their own or anyone else's);
- b) implement a procedure to enable the reporting of suspicions of money laundering;
- c) maintain client identification procedures in certain circumstances; and
- d) maintain record keeping procedures.

9.7.6 The Money Laundering Reporting Officer (MLRO)

If you have any suspicions, you must contact the Money Laundering Reporting Officer. The Council's nominated MLRO is the Section 151 Officer (Director of Finance and Resources), (Email Graham.Ebers@wokingham.gov.uk or telephone 0118 974 6557).

9.7.7 Disclosure Procedure

Reporting to the Money Laundering Reporting Officer: Where you know or suspect that money laundering activity is taking/has taken place, or become concerned that your involvement in a matter may amount to a prohibited act under the legislation, you must disclose this as soon as practicable to the MLRO. The disclosure should be within "hours" of the information coming to your attention, not weeks or months later. Should you not do so, you may be liable to prosecution.

9.7.7.1

Once you have reported the matter to the MLRO you must follow any directions they may give you. You must NOT make any further enquiries into the matter yourself.

9.7.7.2

Similarly, at no time and under no circumstances should you voice any suspicions to the person(s) whom you suspect of money laundering, without the specific consent of the MLRO; otherwise you may commit a criminal offence of "tipping off". Do not, therefore, make any reference on a client file to a report having been made to the MLRO – should the client exercise their right to see the file, then such a note will obviously tip them off to the report having been made and may render you liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

9.7.7.3

On receipt of the disclosure the Money Laundering Reporting Officer will:

- a) consider the report and make such further enquiries as are necessary to form a view on whether a person is engaged in money laundering;
- b) consider all other relevant information in making this judgement;
- c) ensure that nothing is done which could alert the person or business concerned that a report and an investigation could ensue;
- d) make a report to National Crime Agency, if appropriate, making full notes of the reasons for doing so;
- e) co-operate with any enquiries made by the proper authorities; and
- f) maintain all records of disclosures and reports for at least five years.

9.7.8 Client Identification Procedure

Each unit of the Council conducting relevant business where a business relationship is to be established and an account is to be opened or a one-off transaction or series of linked transactions amounting to 15,000 Euros (approximately £10,000) or more must maintain procedures which:

- a) require satisfactory evidence of the identity of both internal and external clients at the outset of the matter;
- b) require that if satisfactory evidence of identity is not obtained at the outset of the matter then the business relationship or one off transaction(s) cannot precede any further;
- c) recognise the greater potential for money laundering when the client is not present; and
- d) require that where a client appears to act for another that reasonable measures are taken to establish the identity of that person.

Staff involved in Treasury Management should ensure that all dealings are carried out in accordance with the Treasury Management Strategy and Treasury Management Policies which ensure that transactions are only undertaken with approved counterparties.

9.7.9 Record Keeping Procedures

Each unit of the Council conducting relevant business must maintain records for at least five years of:

- a) client identification evidence obtained; and
- b) details of all relevant business transactions carried out for clients

The precise nature of the records is not prescribed by law however they must be capable of providing an audit trail.

9.7.10 Further Information and Advice

For any further information or guidance, please contact the Money Laundering Reporting Officer:

Graham Ebers
0118 974 6557 or
email Graham.Ebers@wokingham.gov.uk

CHAPTER 9.8 - PROSECUTION AND SANCTION POLICY

9.8.1 Introduction

Wokingham Borough Council will prosecute any person who commits a criminal offence against the systems, processes and functions of the Council and/or assaults or threatens any member or employee of the Council, if there is sufficient evidence and if, in the opinion of the council, it is in the public interest to do so.

9.8.1.1

When deciding if it is in the public interest, all officers authorised to decide whether to prosecute on behalf of the Council will be guided by the Code for Crown Prosecutors. Whenever it is appropriate, the Council will consider offering other sanctions as an alternative to prosecution.

9.8.1.2

The Council will consider each case on its own merits before deciding whether or not to prosecute. If it is the case that the Council has suffered a material/financial loss, it may take separate action to stop further payments/ recover money, irrespective of whether it decides to take criminal proceedings, and where steps to prevent further losses or recover losses already incurred are not available or desirable in the course of any criminal proceedings.

9.8.2 Alternatives to Prosecution - Cautions

In the issuing of Cautions the council will be guided by the relevant statutory Guidance, currently the Ministry of Justice – Simple Caution for Adult Offender guidance.

9.8.3 Alternatives to Prosecution - Statutory Sanctions

The Council may consider a Statutory Sanction, whether a monetary penalty or otherwise, as an alternative to prosecution for an offence where the imposition or offer of such a sanction for the specified offence or offences is prescribed by law.

9.8.4 Code for Crown Prosecutors – The Evidential Test

When making a decision on whether to prosecute, the Council will first consider whether there is sufficient evidence:

- a) is there sufficient evidence of the commission of an offence to provide a realistic prospect of conviction? And
- b) is the evidence reliable and able to be used in court?

9.8.5 Code for Crown Prosecutors – The Public Interest Test

Once the Evidential Test has been satisfied, the Council will then consider whether the Public Interest Test is satisfied. The Public Interest Test will be assessed following the guidance in the “Code for Crown Prosecutors” to ensure that any prosecution is in the public interest.

9.8.6 Other Sanctions or Penalties

Where a person engages in conduct which is not criminal, but is otherwise prohibited by legal statute or regulation applicable to the functions of the Council, or fails in their legal obligation to the Council, the Council may consider the imposition or offer of a sanction or monetary penalty where to impose a monetary penalty or sanction for the given circumstances is prescribed by law.

CHAPTER 9.5 – WHISTLEBLOWING POLICY AND GUIDANCE

9.5.1 Introduction

The Council is committed to delivering high quality services to its customers and expects high standards from its employees and contractors. In order to maintain those high standards a culture of openness and accountability is vitally important. The aims of this policy are:

- a) to encourage you to raise concerns about malpractice within the organisation without fear of reprisal;
- b) to reassure you that your concerns will be taken seriously; and
- c) to provide information about how to raise your concerns and explain how the council will respond.

This policy applies to all Council employees, former employees, agency staff and contractors engaged by the Council.

9.5.2 What is Whistleblowing?

In practical terms, whistleblowing occurs when a concern is raised about danger or illegality that affects others, e.g. clients, members of the public or the Council itself. As the person “blowing the whistle” you would not usually be directly affected by the danger or illegality. Consequently you would rarely have a personal interest in the outcome of any investigation into your concerns. This is different from a complaint or grievance. If you make a complaint or lodge a grievance, you are saying that you personally have been poorly treated. This poor treatment could involve a breach of your individual employment rights or bullying and you are entitled to seek redress for yourself. A qualifying disclosure means any disclosure of information that, in the reasonable belief of the worker is made in the public interest. As a result of this employees will generally be precluded from being able to “blow the whistle” about breaches of his or her employment contract. Although an employee making such a complaint can still use the Council’s grievance policy.

Examples of whistleblowing concerns are:

- a) fraud in, on or by the Council;
- b) offering, taking or soliciting bribes;
- c) unauthorised use of public funds;
- d) financial maladministration;
- e) the physical, emotional or sexual abuse of clients;
- f) failure to comply with legal obligations;
- g) endangering of an individual’s health and safety;
- h) damage to the environment;
- i) a criminal offence;
- j) failure to follow financial and contract procedure rules;
- k) showing undue favour to a contractor or a job applicant;
- l) misreporting performance data; or
- m) neglect of people in care.

This Policy does not replace the Council's complaints or grievance procedures.

9.5.3 Who should I contact?

Having considered this Policy, an employee of the Council, or any other person covered by the Act, who has serious concerns about any aspect of the Council's work, should in the first instance inform one of the following methods:

a) Inform Line Manager

In many cases, raising concerns with the immediate line manager is the most appropriate route for an employee. The line manager should inform the Head of Governance and Improvement Services of the disclosure and an appropriate course of action will be agreed. If this is not a suitable option (for example because the issue may implicate the manager or if the concern has been raised but remains unaddressed) the concern should be raised using one of the other methods.

b) Dedicated Whistleblowing Communication Channels

Business Improvement has established a dedicated 24 hour answer phone hotline for receiving disclosures.

Hot line number - 0118 974 6550;

Email:- confidential.whistleblowing@wokingham.gov.uk;

By Post - Confidential Whistleblowing, Investigations Team, Shute End, Wokingham, RG40 1BN;

In person at Shute End by asking for Investigations Team at reception.

c) Head of Governance and Improvement Services

The Investigations Team can offer confidential independent advice on the use of the Whistleblowing Policy. If you suspect an employee, a member of the public or contractor (in their business dealings with the Council) of fraud or corruption you must contact The Investigations Team who will discuss your concerns with you in complete confidence. If you are in receipt of any allegation involving possible corruption, fraud or malpractice you should notify the Head of Governance and Improvement Services immediately on 07747 777298.

d) Director Children's Services

If you wish to raise a concern involving vulnerable children, you can contact the Director of Children's Services on 0118 974 6055 to seek guidance on how to proceed.

e) Director Health and Wellbeing

If you wish to raise a concern involving vulnerable adults, you should contact the Director of Health and Wellbeing on 0118 974 6762 to seek guidance on how to proceed.

9.5.3.1

Advice and guidance on how matters of concern may be pursued can be obtained from: the Monitoring Officer (Head of Governance and Improvement Services).

9.5.4 Legal Protection

The Public Interest Disclosure Act (PIDA) 1998 – sets out a framework of protection against victimisation or dismissal for workers who blow the whistle (“disclosure”) on criminal behaviour and other specified forms of malpractice.

9.5.4.1

It applies to making a ‘protected’ disclosure in respect of specific types of malpractice, which are:

- a) that a criminal offence has been committed, is being committed or is likely to be committed;
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- d) that the health or safety of any individual has been, is being or is likely to be endangered;
- e) that the environment has been, is being or is likely to be damaged; or
- f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

9.5.4.2

The Act covers internal disclosures to the Wokingham Borough Council as the employer, disclosures to prescribed ‘persons’ such as regulatory bodies (e.g. for health and safety issues, the Health and Safety Executive), and wider disclosures, for example to the police and the media.

9.5.5 Raising Concerns outside the Council

In certain circumstances it may be appropriate to raise concerns outside the Council to the appropriate ‘prescribed regulator’. This should only be done where any disclosure of information that is made in the public interest and where you believe the information is true, i.e. more than just suspicion. You are advised to discuss your concerns with a legal advisor, trade union or Public Concern at Work before reporting them outside the Council. Examples of prescribed regulators are set out below:

- a) Audit Commission;
- b) Information Commissioner;
- c) Environment Agency;

- d) Health and Safety Executive;
- e) Commissioner of the Inland Revenue;
- f) Ofsted;
- g) General Social Care Council;
- h) Care Quality Commission;
- i) The Commission for Social Care Inspection; and
- j) National Care Standards Commission.

9.5.5.1

As a last resort you may choose to raise your concern outside the Council to someone other than a prescribed regulator, e.g. to the police or your MP. You should only do this if, in addition to the conditions above, they meet one of three preconditions. Provided the disclosure is reasonable in all the circumstances and is not made for personal gain, the preconditions are that you:

- a) reasonably believed that you would be victimised if you raised the matter internally within the Council; or
- b) reasonably believed that the matter would be 'covered up' and there is no prescribed regulator; or
- c) have already raised the matter internally or with a prescribed regulator.

9.5.5.2

It should be noted that wider disclosures (i.e. to the media) can only be protected where there is a justifiable cause for going wider and where the particular disclosure is reasonable. The Council therefore encourages concerns to be raised initially using one of the methods described in 9.5.3.

9.5.6 Making a Protected Disclosure

This policy is intended to allow the internal investigation and resolution of any concerns raised. In accordance with the PIDA 1998, to make a 'protected' disclosure the whistleblower has to meet certain conditions:

- a) A qualifying disclosure means any disclosure of information that, in the reasonable belief of the worker is made in the public interest. Therefore, while the employer can seek a declaration from the whistleblower that he or she is not knowingly making false allegations, disciplinary action is likely to be appropriate only where there is clear evidence that the reporting worker has misused the whistleblowing policy.
- b) Disclosure to a regulatory body will be protected where, in addition, the whistleblower honestly and reasonably believes that the information they provide and any allegation contained in it are substantially true.
- c) Disclosure to other external bodies will be protected if, in addition, making it is in all respects reasonable. 'In all respects reasonable' means, in effect

- i) the disclosure is not made for personal gain;
- ii) the whistleblower reasonably believed that they would be victimised if they raised the matter internally;
- iii) there is no relevant regulatory body;
- iv) the whistleblower reasonably believed that evidence was likely to be concealed or destroyed;
- v) the concern has already been raised with the employer and/or relevant regulatory body; and
- vi) the concern is of an 'exceptionally serious' nature – which in a local government setting could include, say, the alleged abuse of children or vulnerable adults in an authority's care.

9.5.6.1

This may be done orally or in writing. If you are writing, remember to give details of how you can be contacted. Anonymous disclosures present difficulties for effective investigation. Your identity will be kept strictly confidential if you so request, unless disclosure is required by law. However the Council recognises that despite the dual safeguards of confidentiality and legal protection from recrimination that individuals may still feel unable to reveal their identity. In these situations individuals can report their concerns anonymously, but should be aware that these concerns carry less weight with the investigation teams and the disclosure may not be sufficiently detailed to provide a successful investigation.

9.5.6.2

Allegations that are malicious, or allegations made for personal gain, may result in action against the person making them. If an allegation is made in the public interest, but is not confirmed by an investigation, no action will be taken against the person who raised the concern.

9.5.6.3

It is preferable that a whistleblowing concern be raised as soon as there is reasonable suspicion. Employees are not expected to investigate the matter themselves or prove that their concern is well-founded.

9.5.6.4

Anyone who has made a protected disclosure will not suffer any detriment as a result of raising their concern unless it is later proved that they knew they were providing false information. In addition, whistleblowers are protected from suffering a detriment, bullying or harassment from another worker.

Examples of detriment includes (but is not limited to):

- a) failure to promote;

- b) denial of training;
- c) closer monitoring;
- d) ostracism;
- e) blocking access to resources;
- f) unrequested re-assignment or re-location;
- g) demotion;
- h) suspension;
- i) disciplinary sanction;
- j) bullying or harassment;
- k) victimisation;
- l) dismissal;
- m) failure to provide an appropriate reference; or
- n) failing to investigate a subsequent concern.

9.5.7 How will the Council respond?

The action taken by the Council will depend on the nature of the concern. The matters raised may:

- a) be investigated internally;
- b) be referred to the Police;
- c) be referred to the external auditors (Ernst and Young);
- d) form the subject of an independent inquiry; or
- e) be considered a service issue and referred to the service to respond by any combination of the above.

9.5.7.1

In all cases, where a concern is raised, the contacted officer shall notify the Monitoring Officer (Head of Governance and Improvement Services) and the Section 151 Officer (Director Finance and Resources). These officers will assess the nature of the concern to decide the appropriate response. Some concerns may be resolved by agreed action without the need for investigation. Any investigation will be overseen by the Head of Governance and Improvement Services

9.5.7.2

Feedback on the outcome of the concern will be given to the person raising the concern. This feedback may be limited due to legal obligations of confidentiality (i.e. if disciplinary action is taken against a Council employee). The person raising a concern should normally be told:

- a) how and by whom a concern will be handled;

- b) an estimate of how long an investigation will take;
- c) the outcome of the investigation (where appropriate);
- d) that if they believe they are suffering detriment as a result of raising the concern that they should report it;
- e) that he or she is entitled to independent advice.

9.5.8 What if I am dissatisfied with the Council's response?

This policy is intended to provide you with an avenue to raise concerns within the Council. However, if at the end of the process an employee of the Council, or any other person covered by the Act, is not satisfied with how a disclosure has been dealt with and wishes to pursue matters by means of a wider disclosure, the following points of contact are available to you:

- a) your local Member (if you live in the area of the borough);
- b) Audit Commission;
- c) relevant professional bodies or regulatory organisations;
- d) relevant inspection body;
- e) your solicitor; or
- f) the Police.

9.5.8.1

If you do decide to take the matter outside of the Council, you need to ensure that you do not disclose confidential information and that you are 'protected' in accordance with the PIDA 1998 (refer to 9.5.5).

9.5.9 Further information and advice

Independent advice on 'whistleblowing' can also be obtained from:

Public Concern at Work Suite 306, 16 Baldwins Gardens, London EC1N 7RJ

Helpline: 020 7404 6609 Email: helpline@pcaw.co.uk

Audit Commission

1 Vincent Square, London SW1P 2PN

Telephone: 020 7828 1212 Email: enquiries@audit-commission.gov.uk

Professional Body or Trade Union

If you are a member of a professional body or trade union they should be able to advise you on Whistleblowing.