

**SECTION 9  
ETHICS AND CORPORATE GOVERNANCE**

Ref	Contents	Page No.
	<b>Chapter 9.4 – Anti Fraud and Corruption Strategy</b>	
<a href="#">9.4.1</a>	Introduction	34
<a href="#">9.4.2</a>	Defining Fraud	34
<a href="#">9.4.3</a>	Defining Corruption	35
<a href="#">9.4.4</a>	Framework for Prevention and Detection	35
<a href="#">9.4.5</a>	Key Principles and Culture	35
<a href="#">9.4.6</a>	Raising Concerns	36
<a href="#">9.4.7</a>	Corporate Governance	37
<a href="#">9.4.8</a>	Corporate Responsibility	37
<a href="#">9.4.9</a>	Recruitment	37
<a href="#">9.4.10</a>	System of Internal Control	38
<a href="#">9.4.11</a>	Risk Management	39
<a href="#">9.4.12</a>	Role of Statutory Officers	39
<a href="#">9.4.13</a>	Effective Action	39
<a href="#">9.4.14</a>	Procedure	40
<a href="#">9.4.15</a>	Completion	40
<a href="#">9.4.16</a>	Disciplinary	40
<a href="#">9.4.17</a>	Reporting and Publicity	40
<a href="#">9.4.18</a>	Council Tax Investigations	41
<a href="#">9.4.19</a>	Working with Others	41
<a href="#">9.4.20</a>	Money Laundering	41
<a href="#">9.4.21</a>	Conclusion and Review	42
	<b>Chapter 9.5 Whistleblowing Policy and Guidance</b>	
<a href="#">9.5.1</a>	Introduction	43
<a href="#">9.5.2</a>	What is Whistleblowing	43
<a href="#">9.5.3</a>	Who Should I Contact	44
<a href="#">9.5.4</a>	Legal Protection	45
<a href="#">9.5.5</a>	Raising Concerns Outside the Council	45
<a href="#">9.5.6</a>	Making a Protected Disclosure	46

<a href="#">9.5.7</a>	How Will the Council Respond	<b>48</b>
<a href="#">9.5.8</a>	What if I am Dissatisfied with the Councils Response	<b>49</b>
<a href="#">9.5.9</a>	Further Information and Advice	<b>49</b>
	<b>Chapter 9.6 Anti Bribery Policy</b>	
<a href="#">9.6.1</a>	Policy Statement Anti Bribery	<b>51</b>
<a href="#">9.6.2</a>	Objective of this Policy	<b>51</b>
<a href="#">9.6.3</a>	Scope of this Policy	<b>51</b>
<a href="#">9.6.4</a>	Commitment	<b>52</b>
<a href="#">9.6.5</a>	The Bribery Act	<b>52</b>
<a href="#">9.6.6</a>	Adequate Procedures	<b>53</b>
<a href="#">9.6.7</a>	Proportionate Procedures	<b>53</b>
<a href="#">9.6.8</a>	Top Level Commitment	<b>53</b>
<a href="#">9.6.9</a>	Risk Assessment	<b>53</b>
<a href="#">9.6.10</a>	Due Diligence	<b>53</b>
<a href="#">9.6.11</a>	Communication (Including Training)	<b>53</b>
<a href="#">9.6.12</a>	Monitoring and Review	<b>53</b>
<a href="#">9.6.13</a>	Penalties	<b>53</b>
<a href="#">9.6.14</a>	Bribery is not Tolerated	<b>54</b>
<a href="#">9.6.15</a>	Facilitation Payments	<b>54</b>
<a href="#">9.6.16</a>	Gifts and Hospitality	<b>54</b>
<a href="#">9.6.17</a>	Public Contracts and Failure to Prevent Bribery	<b>56</b>
<a href="#">9.6.18</a>	Staff Responsibilities	<b>56</b>
<a href="#">9.6.19</a>	Raising a Concern	<b>56</b>
<a href="#">9.6.20</a>	Other Relevant WBC Policies	<b>57</b>
	<b>Chapter 9.7 Anti Money Laundering Policy</b>	
<a href="#">9.7.1</a>	Introduction	<b>58</b>
<a href="#">9.7.2</a>	Scope of the Policy	<b>58</b>
<a href="#">9.7.3</a>	What is Money Laundering	<b>58</b>
<a href="#">9.7.4</a>	Suspicious Activity	<b>59</b>
<a href="#">9.7.5</a>	The Councils Obligations	<b>59</b>
<a href="#">9.7.6</a>	The Money Laundering Reporting Officer (MLRO)	<b>60</b>

<a href="#">9.7.7</a>	Disclosure Procedure	<b>60</b>
<a href="#">9.7.8</a>	Client Identification Procedure	<b>60</b>
<a href="#">9.7.9</a>	Record Keeping Procedures	<b>61</b>
<a href="#">9.7.10</a>	Further Information and Advice	<b>61</b>
	<b>Chapter 9.8 Prosecution and Sanction Policy</b>	
<a href="#">9.8.1</a>	Introduction	<b>62</b>
<a href="#">9.8.2</a>	Alternatives to Prosecution - Cautions	<b>62</b>
<a href="#">9.8.3</a>	Alternatives to Prosecution - Statutory Sanctions	<b>62</b>
<a href="#">9.8.4</a>	Code for Crown Prosecutors - The Evidential Test	<b>62</b>
<a href="#">9.8.5</a>	Code for Crown Prosecutors - The Public Interest Test	<b>62</b>
<a href="#">9.8.6</a>	Other Sanctions or Penalties	<b>62</b>
	<b>Chapter 9.9 Acquisition of Communications Data and Use of Covert Surveillance and Covert Human Intelligence Sources Policy</b>	
<a href="#">9.9.1</a>	Introduction	<b>63</b>
<a href="#">9.9.2</a>	Policy	<b>63</b>
<a href="#">9.9.3</a>	Appointments	<b>64</b>
<a href="#">9.9.4</a>	Oversight and Reporting	<b>64</b>
<a href="#">9.9.5</a>	RIPA Procedures	<b>65</b>
<a href="#">9.9.6</a>	Training	<b>65</b>
<a href="#">9.9.7</a>	Exceptions, Notes and Complaints	<b>66</b>
<a href="#">9.9.8</a>	Adoption and Amendment of the Policy	<b>66</b>

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

### **9.4.1 Introduction**

Wokingham Borough Council (The Council) 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~~ requires 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~~ must be alert to the possibility of fraud and corruption. They are ~~required~~ 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 Audit and Investigation 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~~ must immediately contact the Assistant Director, Governance (and Monitoring Officer) with details of the concerns. The Assistant Director, Governance will make preliminary enquiries and in consultation with the Section 151 Officer 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 Assistant Director, Governance or via the [Council's Whistleblowing Policy](#).

If employees feel that they are unable to use internal routes then they can contact the council's external auditors, Ernst and Young:

#### **Ernst and Young**

Helen Thompson, Wessex House, 19 Threefield Lane, Southampton, SO14 3QB,

**Email** [hthompson2@uk.ey.com](mailto:hthompson2@uk.ey.com)

**Tel** 07974 007332

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) Financial Regulations;
- e) Human Resources Policy and Guidance for Discipline;
- f) Human Resources Policy for Conduct and Personal Behaviour;
- g) Human Resources Policy for Recruitment and Retention;
- h) Member's Code of Conduct;
- i) Money Laundering Policy;
- j) Officer's Code of Conduct;
- k) Prosecution and Sanction Policy;
- l) Risk Management Strategy;
- m) Scheme of Delegation;
- n) Whistleblowing Policy; and
- o) Anti-Bribery Policy

#### **9.4.8 Corporate Responsibility**

Assistant Directors must ensure that all employees in their service are familiar with the corporate policies and procedures listed in [Rule 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 Lead Specialist HR. 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 Disclosure Barring Service 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~~must 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 may be 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.

High risk audit concerns are promptly followed up to ensure issues highlighted are appropriately actioned.

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

#### **9.4.11 Risk Management**

Major fraud risks relating to services ~~should~~ must 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 Deputy Chief Executive and Director of Corporate Services

##### **9.4.12.1**

The Council's Monitoring Officer (Assistant Director, Governance) 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 Audit and Investigation Service. This is to ensure that the investigation is performed only by properly trained officers in accordance with the appropriate legislation ~~as appropriate:~~

- ~~a) — Bribery Act 2010~~
- ~~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 2012;~~
- ~~h) — Police and Criminal Evidence Act (PACE) 1984;~~
- ~~i) — Criminal Finances Act 2017;~~
- ~~j) — Regulation of Investigatory Powers Act (RIPA) 2000;~~
- ~~k) — The Council Tax (Administration and Enforcement) Regulations 1992.~~
- ~~l) — Investigatory Powers Act 2016~~

#### 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 Audit and Investigation Service.

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

- a) ~~investigations~~ 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 Evidence and unused material is secured and protected , in accordance with the law and best practice the evidence;~~
- c) All reasonable lines of enquiry are followed, to establish whether or not there is a case to answer. ~~to prove or disprove the original suspicions of fraud;~~
- d) Conclusions and recommendations for action are always based on (and, where appropriate, supported by) the evidence gathered during the investigation. ~~if proven, to support the findings by producing effective evidence;~~
- e) ~~to present evidence~~ The case is reported and prepared in an appropriate format, in line with the relevant procedures ; in the case of criminal process, this means the National File Standard. ~~accepted by the Crown Prosecution Service or the appropriate disciplining service~~ to present evidence in an appropriate format accepted by the Crown Prosecution Service or the appropriate disciplining service;
- f) ~~to apply a~~ Appropriate sanctions and redress is sought against those any and all individuals and organisations that seek to defraud the Council ~~to apply appropriate sanctions and redress against those individuals and organisations that seek to defraud.~~

#### 9.4.15 Completion

Once an investigation is completed the Shared Audit and Investigation 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 an Assistant Director 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 Case Disposal Policy ~~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 Council Tax Investigations~~**

~~The Investigations Team within the Shared Audit and Investigation 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 overpayments.~~

~~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.~~

#### **~~9.4.19-18 Working with Others~~**

~~The Council will put into place and continue to develop such arrangements, as it deems proportionate and necessary in order to facilitate the exchange of information between the Council and other agencies on national and local fraud and corruption activity.~~

~~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.

#### **~~9.4.20-19 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~~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~~must report their concern to the Council's nominated Money Laundering Reporting Officer (MLRO), the Section 151 Officer (Deputy Chief Executive and Director of Corporate Services).

The Council has adopted an Anti-Money Laundering Policy; all reports must be made in accordance with that policy.

(Further details are contained in Chapter 9.7 [Anti-Money Laundering Policy](#).)

#### **9.4.201 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 (Deputy Chief Executive and Director of Corporate Services), Shared Audit and Investigation Service, External Audit and the Monitoring Officer (Assistant Director, Governance).

## 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-must** I contact?

Having considered this Policy, an employee of the Council, or any other person covered by the Public Interest Disclosure Act (PIDA) 1998, who has serious concerns about any aspect of the Council's work, **should-must** 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-must** inform the Assistant Director, Governance 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-may** be raised using one of the other methods.

#### b) **Dedicated Whistleblowing Communication Channels**

The Shared Audit and Investigation Service have established a dedicated 24 hour answerphone hotline for receiving disclosures.

**Hot line number** - 0118 974 6550;

**Email**:- [confidential.whistleblowing@wokingham.gov.uk](mailto:confidential.whistleblowing@wokingham.gov.uk)

**By Post** - Confidential Whistleblowing, Shared Audit and Investigations Service, Shute End, Wokingham, RG40 1BN;

**In person** at Shute End by asking for Shared Audit and Investigations Service at reception.

#### c) **Shared Audit and Investigation Service and Assistant Director, Governance**

The Shared Audit and Investigation Service 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 can contact the Shared Audit and Investigation Service 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-must** notify the Assistant Director, Governance immediately on 07747 777298.

#### d) **Director Children's Services and Director Adult Services**

If you wish to raise a concern involving vulnerable children, you can contact the Director of Children's Services on 0118 974 6205 to seek guidance on how to proceed. If you wish to raise a concern involving vulnerable adults, you can contact the Director of Adult Services on 0118 974 6414 to seek guidance on how to proceed.

**e) Schools**

You ~~should~~must refer to the whistleblowing arrangements for the individual school. If it is not suitable for the school's Governing Body to deal with, the concern ~~should~~must be raised with the Director Children's Services (contact details shown in d)).

**9.5.3.1**

Advice and guidance on how matters of concern may be pursued can be obtained from: the Monitoring Officer (Assistant Director, Governance).

**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~~may 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) The Council's external auditors (Ernst and Young);
- 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 [Rule 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. (Those making reports should also note that by concealing their identity, it is harder for the Council to ensure that they are protected in accordance with the Act; this is simply because those responsible for putting the Act into effect within the Council will not know who they are.)

#### **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, if linked to the disclosure;
- 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 (Assistant Director, Governance) and the Section 151 Officer (Deputy Chief Executive and Director Corporate Services). 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 Assistant Director, Governance.

#### **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) the Chairman of the Council's Audit Committee
- b) your local Member (if you live in the area of the borough);
- c) the Council's external auditors (Ernst and Young);
- d) relevant professional bodies or regulatory organisations;
- e) relevant inspection body;
- f) your solicitor; or
- g) 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 ([Rule 9.5.5](#)). If you wish to raise a concern outside of the Council, you may raise it with an external body from the list of prescribed persons and bodies detailed in the 'Department for Business Innovation & Skills [Blowing the Whistle to a Prescribed Person](#) document

#### **9.5.9 Further Information and Advice**

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

**Public Concern at Work**

3rd Floor, Bank Chambers, 6 - 10 Borough High Street, London, SE1 9QQ

**Email:** [whistle@pcaw.org.uk](mailto:whistle@pcaw.org.uk)

**Tel** General enquiries: 020 3117 2520

**Tel** Whistleblowing Advice Line: 020 7404 6609

**Ernst and Young**

Helen Thompson

Wessex House

19 Threefield Lane,

Southampton, SO14 3QB,

**Email** [hthompson2@uk.ey.com](mailto:hthompson2@uk.ey.com)

**Tel** 07974 007332

**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..

## CHAPTER 9.6 - ANTI-BRIBERY POLICY

### 9.6.1 Policy Statement: Anti-Bribery

Bribery is a criminal offence. Wokingham Borough Council ('the Council') ~~We~~ does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor ~~do~~ es ~~it we-it~~ or will ~~we-it~~, 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~~ The Council does not, and will not, engage indirectly in or otherwise encourage bribery.

#### 9.6.1.2

~~We are~~ The Council is committed to the prevention, deterrence and detection of bribery. ~~We have~~ The Council has zero-tolerance towards bribery. The Council will embed anti-bribery compliance within its usual "business processes; the Council will NOT treat it as a one-off exercise. ~~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 ~~that enabling enable~~ compliance with the anti bribery rules. In conjunction with related policies and key documents it will also enable employees to identify and effectively report any actual or potential breaches of those rules-

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 the Council~~ will require the adoption of principles (and will seek to promote the adoption of formal policies) that are 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 contacts 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](#) 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 the Council is 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. All managers within the Council must ensure that appropriate risk assessments are carried out in relation to the work carried out by their staff.

### 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. All staff involved in managing commercial activities must ensure that appropriate due diligence is carried out before the council enters into a business relationship with another organisation.

### 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.~~

### ~~9.6.14-13 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.

### ~~9.6.15-14 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.~~

### ~~9.6.16-15 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~~ **must** be courteously but firmly informed of the procedures and standards operating within the Council; and
- e) all offers, regardless of value and whether or not accepted must be recorded in the Gifts and Hospitality register.

#### **9.6.15.1**

How an employee ~~should~~ **must** 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~~ **must** 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 Assistant Director, Governance. Hospitality from contractors ~~must~~ **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~~ **must** remind their staff of the process to be followed with regards to gifts and hospitality.

#### **9.6.15.2**

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~~ **must** follow the Whistleblowing procedures on the [Council's website](#).

#### **9.6.15.3**

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.

#### **9.6.15.4**

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.

#### **9.6.15.5**

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.

#### **9.6.17–16 Public Contracts and Failure to Prevent Bribery**

Under the Public Contracts Regulations 2015 (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. 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.

#### **9.6.18–17 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 they 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.

#### **9.6.19–18 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.

#### **9.6.1918.1**

There are multiple channels to help you raise concerns – these are explained in [Chapter 9.5 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-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. For the avoidance of doubt, any and all reports made in good faith will, therefore, be treated as Whistleblowing and gain the protection that entails.

#### **9.6.1918.2**

~~We are~~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, please contact Andrew Moulton, Assistant Director Governance.

#### **9.6.20–19 Other Relevant WBC Policies**

[Anti-Fraud and Anti-Corruption ~~policy~~Policy, Chapter9.4](#)

[Anti-Money Laundering ~~policy~~Policy, Chapter 9.7](#)

[Code of Conduct and Finance, Chapter 9.2](#)

[Whistleblowing ~~policy~~Policy, Chapter 9.5](#)

[Procurement and Contract Rules and Procedures \(Section 13\)](#)

## 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;
- e) the Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017; and
- f) Anti Money Laundering Act 2018

### 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 are instructed to 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. It may also render them liable to criminal action, if their actions have helped to facilitate money laundering or warned the potential money-launderer of the Council's suspicions.

### 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 Terrorism Act 2000); or
- e) failing to disclose suspected money laundering.

#### 9.7.3.1

The defence to these offences is to be able to show that the person has ~~make-made~~ an 'authorised disclosure' to an approved person. Approved persons are Customs Officers, Police Officers and the Council's MLRO ([Rule 9.7.6.](#)).

#### 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~~must 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~~must 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 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 MLRO. The Council's nominated MLRO is the Section 151 Officer (Deputy Chief Executive and Director of Corporate Services), Email [Graham.Ebers@wokingham.gov.uk](mailto:Graham.Ebers@wokingham.gov.uk) or Tel 0118 974 6557.

### 9.7.7 Disclosure Procedure

Reporting to the MLRO: 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. In order to gain the protection from prosecution of having made a disclosure The the disclosure must be made as soon as reasonably practicable and, in any case, must should be within "hours" of the information coming to your attention, not weeks or months later. Should you not de-somake a prompt disclosure, you may be liable to prosecution. Disclosure must always be made in writing on the AML1 form, which is available on the shared drive.

#### 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 may~~ 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 MLRO 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~~must 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 MLRO:

Graham Ebers

**Tel** 0118 974 6557 or

**Email** [Graham.Ebers@wokingham.gov.uk](mailto:Graham.Ebers@wokingham.gov.uk)

## CHAPTER 9.8 - ~~PROSECUTION AND SANCTION~~ CASE DISPOSAL POLICY

### 9.8.1 Introduction

Wokingham Borough Council (The 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.

#### 9.8.1.3

The Council authorises case disposal decisions to be made in accordance with the guidance in the Crown Prosecution Service guidance on charging responsibility, noting that for 'CPS' will be read 'Legal Services' and for 'police' will be read 'investigation managers', in so far as this is possible.

### 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 admissible evidence:

- a) ~~is~~Is there sufficient evidence of the commission of an offence to provide a realistic prospect of conviction? ~~And~~
- b) ~~is~~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 and/or monetary penalty where to impose a monetary penalty or sanction for the given circumstances is prescribed by law. The Council may also offer such sanctions and/or monetary penalties where a person undertakes criminal conduct but the council determine that a prosecution is not to be undertaken for any reason.

### **9.8.7 Investigation Costs**

In all cases where the Council is put to the cost of an investigation (and this may also include, but is not limited to, costs associated with civil and/or criminal proceedings and enforcement action), the Council will seek to recover those costs from the party whose conduct has caused those costs.

#### **9.8.7.1**

In cases where legislation allows the responsible party to be billed for costs, the Council will normally do this. In litigated cases, the Council will normally seek to recover all costs through the courts, as part of the relevant litigation. In other cases, the Council will always consider seeking the cost directly from any party whose actions have given rise to the costs, either by voluntary contribution or by taking legal action to recover the costs.

### **9.8.2 Criminal Proceedings**

The Council adopts the *National File Standard* as its approved method of file preparation in all cases to be heard in the criminal courts.

## **CHAPTER 9.9 – ACQUISITION OF COMMUNICATIONS DATA AND USE OF COVERT SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES POLICY** (Regulation of Investigatory Powers Act 2000)/ Investigatory Powers Act 2016)

### **9.9.1 Introduction**

Officers and employees of (and contractors working on behalf of) Wokingham Borough Council may, in the course of their investigatory, regulatory and enforcement duties, need to make observations of persons in a covert manner, to use a Covert Human Intelligence Source or to acquire Communications Data. These techniques may be needed whether the subject of the investigation is a member of the public, the owner of a business or a Council employee.

By its very nature, this sort of action is potentially intrusive and so it is extremely important that there is a very strict control on what is appropriate and that, where such action is needed, it is properly regulated in order to comply with Legislation and to protect the individual's rights of privacy.

Privacy is a right, but in any democratic society, it is not an absolute right. The right to a private and family life, as set out in the European Convention on Human Rights, must be balanced with the right of other citizens to live safely and freely, which is the most basic function that every citizen looks to the state to perform.

Drawing on the principles set out in the Regulation of Investigatory Powers Act 2000 (RIPA), the Investigatory Powers Act 2016 (IPA) and the Data Protection Act 2018~~1998~~ (DPA), ~~Drawing on the principles set out in the Regulation of Investigatory Powers Act 2000 and the Data Protection Act 1998,~~ this policy sets out the Council's approach to Covert Surveillance, the use of Covert Human Intelligence Sources and the acquisition of Communications Data.

The policy also sets out Members' oversight of this area, adopts a set of procedures and appoints appropriate officers to ensure that these areas are properly controlled and regulated.

### **9.9.2 Policy**

It is the policy of Wokingham Borough Council (the Council) that all Covert Surveillance, the use of Covert Human Intelligence Sources (informants) and the acquisition of Communications Data by those working for or on behalf of this Council (investigators) will be carried out in accordance with this policy and the associated procedure (the RIPA Procedure). Any member, officer or employee who deliberately or recklessly breaches this policy will normally be considered to have committed an act of gross misconduct and will be dealt with accordingly.

#### **9.9.2.1**

In so far as the Regulation of Investigatory Powers Act (RIPA) allows, Covert Surveillance and the use of Covert Human Intelligence Sources (informants) will always be subject to the RIPA application process. (This does NOT affect monitoring activities where the actions undertaken do not amount to covert surveillance.) Where officers wish to undertake covert surveillance or use informants but where RIPA is not available, a similar process of considering the proportionality and necessity of any such activities must be carried out before the activities are undertaken and approval gained from a RIPA authorising officer. Officers are instructed to consider when online investigations, where

actions go beyond the scope of open source enquiries, would meet the criteria for covert investigations and to obtain relevant authorisations in those cases.

#### **9.9.2.2**

When acquiring Communications Data officers are instructed to use the set out in the IPA and the associated Communications Data Code of Practice, unless they are doing so with the consent of the data subject. DPA requests and other powers may NOT be used to seek the disclosure of Communications Data. Communications data may only be obtained using RIPA powers for the applicable crime purpose (Note that the guidance in the statutory code of practice takes precedence over any contrary content of a public authority's internal advice or guidance.)

~~When acquiring Communications Data officers are instructed to use the RIPA process, as amended by the Investigatory Powers Act 2016, unless they are doing so with the consent of the data subject. Communications data may only be obtained using RIPA powers for the purposes of investigating a criminal offence.~~

#### **9.9.2.3**

The Council resolves to maintain membership of the National Anti-Fraud Network, so that the relevant sections of the IPA and the associated Communications Data Code of Practice may be complied with.

### **9.9.3 Appointments**

The Council appoints the Chief Executive as the Senior Authorising Officer (SAO) for RIPA purposes and as Senior Responsible Officer (SRO) for all purposes under RIPA and IPA.

#### **9.9.3.1**

The Council appoints the Assistant Director, Governance as the RIPA Monitoring Officer (RMO) to monitor the use of covert techniques within this Council (whether using the RIPA or non-RIPA processes) and reports to members on the activities the policy covers. They are also directed to ensure that appropriate training is made available to RIPA Authorising Officers (AOs) IPA Verifying Officers (VOs) and applicants when it is required.

#### **9.9.3.2**

The Council directs that only those appointed by this policy as AOs and VOs may authorise covert surveillance, the use of informants or the acquisition of communications data. In so far as is practical and possible, the council intends that the same officers should be nominated as both AOs and VOs.

#### **9.9.3.3.1**

The Council appoints Directors and Assistant Directors to meet the training criteria as AOs. ~~In addition, there are identified officers trained as AOs,~~ subject to a maximum number of six (including the SAO) at any given time. The Council instructs the RMO to maintain a list of all those currently authorised as part of the RIPA/IPA Procedures.

~~The Council directs the SAO to appoint such persons as he may from time to time see fit to be Single Points of Contact (SPOC) (or to make such other arrangements as he deems appropriate) for the purposes of acquiring communications data by the use of RIPA.~~

#### **9.9.3.2**

~~In order for the Council's RIPA authorisations to take effect, they must be approved by a Magistrate. The chief legal officer is instructed to authorise all those who may need to~~

~~apply to a Magistrate to appear for that purpose for the Council. The RMO is directed to maintain a list, as part of the RIPA Procedures, of all those so authorised.~~

#### **9.9.3.4**

~~In order for the Council's RIPA authorisations to take effect, they must be approved by a Magistrate. The chief legal officer is instructed to authorise all those who may need to apply to a Magistrate to appear for that purpose for the Council. The RMO is directed to maintain a list, as part of the RIPA Procedures, of all those so authorised.~~

#### **9.9.3.5**

~~The Council appoints Directors and Assistant Directors who meet the training criteria as VOs, subject to a maximum number of six at any given time. The Council instructs the RMO to maintain a list of all those currently authorised as part of the RIPA / IPA Procedures.~~

### **9.9.4 Oversight and Reporting**

The RMO shall report to elected Members on the use of RIPA regulated activity by officers of the Council every six months. Such a report shall be presented to the Members (or to such a sub-committee as the full council shall deem appropriate to constitute for oversight purposes) by the RMO and the SRO. The report must not contain any information that identifies specific persons or operations but must be clear about the nature of the operations carried out and the product obtained.

#### **9.9.4.1**

Alongside this report, the RMO and SRO will report details of 'Non-RIPA' surveillance undertaken or informants used in precisely the same fashion.

#### **9.9.4.12**

Elected Members shall have oversight of the Council's policy and shall review that policy annually should it be deemed by the RMO that significant changes have been made. At that review (or following any six-monthly report) elected Members shall make such amendments as they deem necessary to the Council's policy, and may give such directions as they deem necessary to the RMO and SRO in order to ensure that the Council's policy is followed.

#### **9.9.4.3**

Elected Members shall not interfere in individual authorisations. Their function is to, with reference to the reports, satisfy themselves that the Council's policy is robust and that it is being followed by all officers involved in this area. Although it is elected members who are accountable to the public for council actions, it is essential that there should be no possibility of political interference in law enforcement operations

### **9.9.5 RIPA/IPA Procedures**

The RMO is instructed to create a set of procedures that provide instruction and guidance for the use of surveillance and informants, and the acquisition of communications data. They are further instructed to maintain and update the RIPA/IPA Procedures, ensuring that they continue to be both lawful and examples of best practice.

#### **9.9.5.1**

The reference to 'maintain and update' in this section includes the duty to remove AOs/VOs from the list if they cease to be employed in a relevant role or if they no longer satisfy the requirements to be an AO/VO, and the right to add names to that list so long as

- a) they satisfy the policy and regulatory requirements and
- b) at no time does the number of AOs exceed six.

If a change is required, in the opinion of the RMO, in order to comply with this part, they are authorised to make that change without prior approval from any person.

The RMO must report any changes made under this section to Members when they undertake their annual oversight of the Policy, as set out above.

#### **9.9.5.2**

All managers are required to ensure that their staff understand that covert investigation techniques may only be used in accordance with this policy and the associated procedures.

### **9.9.6 Training**

In accordance with this Code of Practice, AOs/VOs must receive full training in the use of their powers. They must be assessed at the end of the training, to ensure competence, and must undertake refresher training at least every two years. Training will be arranged by the RMO. Designated AOs-officers who do not meet the required standard, or who exceed the training intervals, are prohibited from authorising applications until they have met the requirements of this paragraph. AOs and VOs must have an awareness of appropriate investigative techniques, Data Protection and Human Rights Legislation.

#### **9.9.6.1**

Those officers who actually carry out surveillance work must be adequately trained prior to any surveillance being undertaken. A corporate training programme ~~will be~~ has been developed to ensure that AOs, VOs and staff undertaking relevant investigations are fully aware of the legislative framework.

#### **9.9.6.2**

Senior management who have no direct involvement with covert investigation will undertake a briefing at least biannually, to ensure that they have a good understanding of the activities that might fall into the definition of covert investigation techniques.

### **9.9.7 Exceptions, Notes and Complaints**

CCTV cameras operated by this Council are not covered by this policy, unless they are used in a way that constitutes covert surveillance; only under those circumstances must the provisions of this policy and the RIPA Procedures be followed.

Interception of communications, if it is done as part of normal business practice, does NOT fall into the definition of acquisition of communications data. (This includes, but is not limited to opening of post for distribution, logging of telephone calls, for the purpose of cost allocation, reimbursement, benchmarking, etc.; logging E Mails and internet access for the purpose of private reimbursement.)

#### **9.9.7.1**

If any person wishes to make a complaint about anything to which this policy applies is invited to use the Council's Complaints Procedure. Any complaint received will be treated as serious and investigated in line with this Council's policy on complaints. Regardless of this, the detail of an operation, or indeed its existence, must never be admitted to as part

of a complaint. This does not mean it will not be investigated, just that the result of any investigation would be entirely confidential and not disclosed to the complainant.

#### **9.9.8 Adoption and Amendment of the Policy**

This version of the Policy was agreed prior to its adoption being recommended to Council via the Constitution Review Group on ~~7 February 2018~~ 17 September 2020 after which it came into immediate effect. It replaces all previous policies on these subjects