

PERTH AND KINROSS COUNCIL**Strategic Policy and Resources Committee****11 February 2015****COUNTER-FRAUD AND CORRUPTION STRATEGY****Report by the Head of Legal Services and Head of Finance****PURPOSE OF REPORT**

This report presents an updated strategy for managing the threat to the Council from fraud, corruption and other illegal acts.

1. BACKGROUND

- 1.1 In October 2014, the Chartered Institute of Public Finance & Accountancy (CIPFA) released a Code of Practice on Managing the Risk of Fraud and Corruption. Supporting guidance was subsequently published in December 2014. These documents place responsibility for embedding effective standards for countering fraud and corruption on the leaders of organisations in order to support sound governance and demonstrate effective financial stewardship. In order to fulfil the requirements of the Code of Practice, a Counter-Fraud and Corruption Strategy, along with associated policies, should be in place.
- 1.2 The Bribery Act 2010 requires organisations to put in place arrangements to demonstrate compliance with the Act.
- 1.3 In light of the new CIPFA Code of Practice and the Act, a review of all the Council's Counter Fraud and Corruption arrangements has been carried out and the attached Counter-Fraud and Corruption Strategy (Appendix A) has been developed.
- 1.4 The review revealed that existing Council policies fell into three categories: those which are in place and sufficient for purpose, those which are in place but in need of review and those which were not in place. Adequate policies and procedures are in place in relation to gifts and hospitality, conflict of interest, employee and Councillor codes of conduct and information security.
- 1.5 The review identified that new policies were required in respect of money laundering and bribery, given the legislative developments in these areas.
- 1.6 The review highlighted that, whilst policies or procedures were in place for the management of fraud and corruption, these arrangements were not wholly aligned and easily understood and as such would benefit from review. In addition, although there was a "Procedure for Employees to Report Concerns", there was not an equivalent policy for this (usually referred to as whistle-blowing).

2. PROPOSALS

- 2.1 In order to comply with the CIPFA Code of Practice, the Council is required to have a formally documented Counter-Fraud and Corruption Strategy which outlines the Council's approach to managing the risks of fraud, corruption and other illegal acts. The attached Strategy (Appendix A) achieves this.
- 2.2 Legislation places responsibilities on the Council to have in place policies designed to minimise the threat of money laundering and bribery and to deal with these if they should occur. The attached Anti-Bribery Policy and Anti-Money Laundering Policy address these issues (Appendices B and C respectively).
- 2.3 A Whistle-Blowing Policy has been written to accompany the existing "Procedure for Employees to Report Concerns" and is attached (Appendix D).
- 2.4 The Strategy will be followed by a separate exercise to ensure that all requirements of the Strategy and associated policies are in place, including guidance notes and training.

3. CONCLUSION AND RECOMMENDATIONS

- 3.1 This Report provides a summary of the review carried out with respect to arrangements for the management of counter-fraud and corruption activity within the Council and also puts forward the additional and amended policies in order to complete the policy framework necessary for addressing fraud and corruption.
- 3.2 There also requires to be a further exercise to ensure all the actions and recommendations in the policies are being carried out.
- 3.3 It is recommended that:
 - (i) the Committee approves the Counter-Fraud and Corruption Strategy as attached (Appendix A)
 - (ii) the Committee approves the Anti-Bribery Policy as attached (Appendix B)
 - (iii) the Committee approves the Anti-Money Laundering Policy as attached (Appendix C)
 - (iv) the Committee approves the Whistle-Blowing Policy as attached (Appendix D)
 - (v) the Committee instructs the Chief Internal Auditor to submit a further Report to the Audit Committee within six months which will set out how the Strategy and related policies are being implemented.

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ANNEX

1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	None
Strategic Plan	None
Resource Implications	
Financial	None
Workforce	None
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	Yes
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	Yes
Risk	Yes
Consultation	
Internal	Yes
External	None
Communication	
Communications Plan	Yes

1. Assessments

1.1 Equality Impact Assessment

- 1.1.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.
- 1.1.2 The information contained within this report has been considered under the Corporate Equalities Impact Assessment process (EqIA) and has been assessed as **not relevant** for the purposes of EqIA.

1.2 Risk

- 1.2.1 The strategy will mitigate the risks to the Council of fraud and corruption.

2. Consultation

2.1 Internal

- 2.1.1 The Chief Executive has been consulted in the preparation of this report.

3. COMMUNICATIONS PLAN

It is a critical part of the Counter Fraud and Corruption Strategy that Council Members, employees and contractors are made aware of it. Appropriate guidance and training will be made available to achieve this.

4. BACKGROUND PAPERS

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

5. APPENDICES

Appendix A – Counter-Fraud and Corruption Strategy

Appendix B – Anti-Bribery Policy

Appendix C – Anti-Money Laundering Policy

Appendix D – Whistle-Blowing Policy

Appendix A

PERTH & KINROSS COUNCIL

COUNTER-FRAUD AND CORRUPTION STRATEGY

1.0 INTRODUCTION

- 1.1 It is the responsibility of Perth & Kinross Council (“the Council”) to ensure that the risks associated with fraud and corruption are managed effectively across all parts of the organisation. The Council acknowledges the threat of fraud and corruption along with the harm that can be caused by them and the potential savings from managing the risks. It is therefore important for the Council to have a culture which is alert to the threat of fraud and corruption and which is supported by appropriate policies, procedures and guidelines.
- 1.2 This Counter-Fraud and Corruption Strategy (“Strategy”) and its associated policies demonstrate clearly that the Council is committed to preventing fraud and corruption and dealing with perpetrators from inside (Members and employees) and outside the Council. For the avoidance of doubt, fraud includes non-financial gains as well as financial gains.
- 1.3 The Council attaches the highest importance to the proper conduct of all its business. The Council expects that its Members, employees and contractors will behave with honesty and with integrity in all their actions in public service.
- 1.4 The Strategy sets out the arrangements put in place by the Council to ensure that these standards are adhered to. It also describes the action that will be taken where there are grounds to believe that fraudulent or corrupt behaviour may have taken place.
- 1.5 The Strategy applies in any case where fraud or corruption by Council Members, employees, contractors or involving the public in relation to Council activities is believed to have taken place at any time.
- 1.6 The Strategy embodies a series of measures designed to frustrate any attempted fraudulent or corrupt act and the steps to be taken if such an act occurs. For ease of understanding, it is separated into five areas:
 - Culture
 - Prevention
 - Deterrence
 - Detection and Investigation
 - Awareness and Training
- 1.7 The Strategy is supported by a number of key policies and associated procedures, namely:
 - Anti-Bribery Policy
 - Anti-Money Laundering Policy
 - Whistle-Blowing Policy

Gifts and Hospitality Policy
Members' Register of Interests
Conflict of Interest Procedure
Employees' Code of Conduct
Councillors' Code of Conduct
Information Security Policy Statement

2. DEFINITIONS

- 2.1 There is no single definition of 'fraud' in Scots Law. For the purpose of defining fraud in this context, fraud is the use of deception with the intention of obtaining personal gain, avoiding an obligation or causing loss to another party. Fraud can be used to describe a wide variety of dishonest behaviour, such as forgery, false representation and the concealment of material facts.
- 2.2 For the purpose of the Strategy, corruption is defined as the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person.
- 2.3 The Strategy is also intended to cover all financial irregularities and criminal acts which may affect the Council, including theft of property, false accounting, obtaining by deception and computer crime.
- 2.4 In addition, the Strategy covers the failure to disclose an interest in order to obtain a financial or other gain.

3. CULTURE

- 3.1 The prevention and detection of fraud and corruption and the protection of the public purse are everyone's responsibility.
- 3.2 The Strategy positively encourages Members and employees to raise concerns regarding fraud and corruption, immaterial of seniority, rank or status and in the knowledge that such concerns will be treated in confidence.
- 3.3 Concerns must be raised when Members or employees reasonably believe that one or more of the following has occurred, is in the process of occurring or is likely to occur:
 - a criminal offence;
 - a failure to comply with a statutory or legal obligation;
 - improper or unauthorised use of public or other funds;
 - a miscarriage of justice;
 - maladministration, misconduct or malpractice;
 - endangering of an individual's health and safety;
 - damage to the environment;
 - deliberate concealment of any of the above.

- 3.4 The Council will ensure that any allegations received in any way, including by anonymous letters or phone calls, will be taken seriously and investigated in an appropriate manner.
- 3.5 The Council will deal firmly with those who commit fraud, or who are corrupt, or who are responsible for financial malpractice. There is, of course, a need to ensure that any investigation process is not misused and, therefore, any such misuse (such as employees raising malicious allegations) may be dealt with as a disciplinary matter.
- 3.6 When fraud and/or corruption have occurred because of a breakdown in the Council's systems or procedures, Executive Directors, in consultation with the Chief Internal Auditor, will ensure that appropriate improvements in the systems of internal control are implemented to prevent any recurrence.

4. PREVENTION

4.1 Members' Roles and Responsibilities

- 4.1.1 As elected representatives, all Members have a duty to members of the public to contribute towards protecting the Council from fraud and corruption.
- 4.1.2 This is undertaken through the implementation of this Strategy and compliance with the Councillors' Code of Conduct and relevant legislation.
- 4.1.3 On taking up office, Members make a declaration of acceptance of office stating that they have read, understood and will comply with the Councillors' Code of Conduct. The Head of Legal Services and Head of Democratic Services advise Members of legislative or procedural requirements.

4.2 Employees - The Role of Managers

- 4.2.1 Managers at all levels are responsible for the communication and implementation of this Strategy in their work areas. They are also responsible for ensuring that their staff are aware of the contents of the Employee's Code of Conduct and to ensure its requirements are being met in their everyday business activities.
- 4.2.2 Managers are expected to strive to create an environment in which their staff are able to approach them with any concerns they may have about suspected irregularities.
- 4.2.3 Special arrangements will apply where employees are responsible for cash handling or are in charge of financial systems and systems that generate payments, for example payroll. Managers must ensure that relevant training is provided for employees and that internal controls are operating effectively.
- 4.2.4 Managers should take effective steps at the recruitment stage to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts.

4.2.5 The Council has a formal recruitment procedure, which contains appropriate safeguards on matters such as written references and verifying qualifications held. As with other public bodies, Protection of Vulnerable Groups checks are undertaken on employees working with vulnerable groups. Further checks may be introduced in areas where an increased risk of potential fraud and corruption has been identified.

4.3 Employees - Responsibilities of all Employees

4.3.1 Each employee is required to be aware of their responsibilities and to adhere to the Employees' Code of Conduct and other relevant professional codes of conduct and Council policies (e.g. health and safety, information security). It is the responsibility of all employees to make themselves aware of the relevant rules.

4.3.2 Employees are responsible for ensuring that they follow the instructions given to them by management, particularly in relation to the safekeeping of the assets of the Council. These will be included in induction training and procedure manuals.

4.3.3 Employees are expected always to be aware of the possibility that fraud and corruption may exist in the workplace and should share their concerns with management. Concerns should be raised, in the first instance, directly with the employee's line manager or, where the line manager is implicated, the responsible Head of Service. If for any reason employees feel unable to speak to their manager, the Council's Whistle-Blowing Policy provides details of who to contact.

4.3.4 The offering of money or other incentives to persuade somebody to do something, especially something dishonest or illegal is known as bribery. Such behaviour is illegal under the Bribery Act 2010 and all employees are to be aware of the Council's Anti-Bribery Policy.

4.3.5 Bribery can also be apparent in the offering of gifts and hospitality, and the Council has established a Gifts and Hospitality Policy on the recording and receiving of these. Employees could be liable to prosecution in respect of receiving entertainment or hospitality which is given with the intention of subverting the recipient's duties of good faith, impartiality or trust which are owed to their employer.

4.3.6 Money laundering is generally understood to mean the conversion of the proceeds of crime in order to create the end appearance of legitimately earned funds. Any Member or employee could potentially 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. The Anti-Money Laundering Policy sets out how any concerns should be raised.

4.4 Conflicts of Interest

4.4.1 Both Members and employees must ensure that they avoid situations where there is a potential for a conflict of interest. Such situations can arise, for

example, with procurement of goods and services, tendering, planning and land issues. Effective role separation will ensure decisions made are seen to be based upon impartial advice and avoid questions about improper disclosure of confidential information.

- 4.4.2 Where there is a risk that there could be a perceived conflict of interest, it is the responsibility of the employee to refer to the Council's Conflict of Interest Procedure and to seek guidance, if necessary, from their line manager or Head of Service. It is the responsibility of the Member to refer to the Councillors' Code of Conduct for guidance and if necessary seek advice from appropriate officers.

4.5 Other Guidance

- 4.5.1 Services may develop their own service-specific procedures consistent with this Strategy to prevent and detect fraud and corruption arising from the particular circumstances of that Service. Audit reports may also recommend improvements in controls to reduce the opportunities for employees to behave inappropriately and to minimise losses to the Council as a result of fraud and corruption. Managers and employees must make themselves aware of these various sources of guidance and incorporate them into their working practices.

4.6 Role of Internal Audit

- 4.6.1 It is the role of Internal Audit to ensure that systems and procedures are in place to prevent fraud and corruption.
- 4.6.2 Internal Audit will investigate cases of suspected irregularity and deal with enquiries from other public sector bodies through the National Anti-Fraud Network and National Fraud Initiative. Internal Audit will liaise with management to recommend changes in procedures and improvements in control to prevent losses to the Council.
- 4.6.3 Where losses to the Council exceed £5,000, it is the responsibility of the Chief Internal Auditor to report the details to the Council's External Auditor.

4.7 The Role of the Council's External Auditor

- 4.7.1 Independent external audit is an essential safeguard in the stewardship of public money. The External Auditor has a responsibility to review the Council's arrangements to prevent and detect fraud and corruption and to limit the opportunity for corrupt practices. The Code of Audit Practice gives full details of the role of external auditors.

4.8 Co-operation with Others

- 4.8.1 Internal Audit will keep under review procedures and arrangements to develop and encourage the exchange of information on national and local fraud and corruption activity in relation to local authorities with external agencies such as:

Police Scotland
The Council's External Auditor
Audit Scotland, in general and through the National Fraud Initiative
National Anti-Fraud Network

5. DETERRENCE

- 5.1 The Strategy sets out the ways in which the Council seeks to deter its Members, employees and contractors from engaging in fraud and corruption.
- 5.2 Fraud and corruption and other illegal acts as described in paragraph 2.3 are serious offences against the Council and employees will face disciplinary action if there is evidence that they have been involved in these activities.
- 5.3 Any acts or suspected acts of fraud or corruption by Members may result in reference to the Standards Commission as a contravention of the Councillors' Code of Conduct or may result in investigation by Police depending on the specific circumstances of the case.
- 5.4 Managers are responsible for immediately notifying the Chief Internal Auditor of any circumstances suggesting the possibility of an irregularity which may affect the Council's assets or interests. The Chief Internal Auditor will consult with others before any decision is taken to refer a matter for prosecution. This is described in paragraph 6.3 below.

6. DETECTION AND INVESTIGATION

- 6.1 Internal Audit will include in its annual plan reviews of internal controls within key financial systems and processes. Spot checks and unannounced visits may also occur.
- 6.2 The Chief Internal Auditor will carry out investigations into suspected instances of fraud and corruption which are proportionate to the allegations being made.
- 6.3 Any decision to refer a matter to the Police, the Council's External Auditors or any other external agency such as the Standards Commission will be taken by the Chief Executive and the Head of Legal Services in consultation with the relevant Executive Director and the Chief Internal Auditor. If either or both the Chief Executive and/or Head of Legal Services are implicated, the remaining officers will make the decision. The Council will normally wish the Police to be made aware of, and investigate independently, offenders where financial impropriety is discovered.
- 6.4 Following on from the investigation undertaken at 6.2 above, the Council's disciplinary procedures will be used to facilitate a thorough investigation of any allegations.

7. AWARENESS AND TRAINING

- 7.1 The Council recognises that the continuing success of this Strategy will depend on the awareness and good practice of Members and employees throughout the Council.
- 7.2 Training, briefing sessions and guidance in relation to the prevention of fraud and corruption will be made available for Members and employees. Appropriate officers will also be available to answer questions related to the prevention of fraud and corruption.
- 7.3 The Council's intranet site, eric, contains all policies relating to the Counter-Fraud and Corruption Strategy. In addition, these policies will be accessible through the Council's website to ensure that the public and contractors can access the necessary information.

8. CONCLUSION

- 8.1 The Council is committed to ensuring that its business is conducted free from fraud and corruption.
- 8.2 This Strategy puts in place a network of systems and procedures to assist it in dealing with fraud and corruption when it occurs. The Council is determined that these arrangements will keep pace with any future developments in techniques to both prevent and detect fraudulent or corrupt activity that may affect its operation.
- 8.3 Preventing fraud and corruption can only be done with the help of Council Members and employees and it is essential for everyone to understand their responsibilities in accordance with this Strategy.

PERTH & KINROSS COUNCIL

ANTI-BRIBERY POLICY

1.0 INTRODUCTION

- 1.1 The Council is committed to the prevention, deterrence and detection of bribery.
- 1.2 Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage. It is a criminal offence. The Council will not tolerate the acceptance nor the payment of bribes or improper inducements in the conduct of its business. To use a third party to channel bribes to others is also a criminal offence. The Council does not, and will not, engage indirectly in or otherwise encourage bribery.
- 1.3 This Policy applies to all Members and employees, including agency staff, as well as contractors working for the Council.
- 1.4 This Policy provides a coherent and consistent framework to enable Members and employees to initiate the appropriate action in respect of potential bribes or improper inducements in the conduct of its business.
- 1.5 The Council requires that all Members, employees and contractors:
 - act honestly and with integrity at all times to safeguard the Council's resources for which they are responsible; and
 - comply with the laws and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities.

2.0 SCOPE OF THE POLICY

- 2.1 This Policy applies to all of the Council's activities and the Council will also seek to encourage its partners and suppliers to adopt policies consistent with the principles set out in this Policy.
- 2.2 It is the responsibility of Members and employees to minimise the risk of bribery occurring within the Council.
- 2.3 This Policy aims to:
 - set out the Council's values and principles regarding bribery or attempted bribery involving its employees and elected Members;

- set out the legislation for the prevention of bribery and its relevance to the work of the Council; and

- provide avenues for concerns to be raised.

- 2.4 There are existing procedures in place to enable staff to raise a grievance relating to their own employment with the Council. This Policy is intended to cover concerns that fall outside the scope of other procedures and which involve an issue in the public interest involving bribery; although the Council reserves the right to determine which procedure is appropriate.
- 2.5 The Council considers the following to fall under the scope of this Policy:
- accepting payment from a third party which is offered with the expectation that it will obtain a business advantage for them;
 - accepting a gift or hospitality from a third party which is offered or provided with an expectation that a business advantage will be provided by the Council in return;
 - reacting against or threatening a person who has refused to commit a bribery offence or who has raised concerns under this Policy; and
 - giving, promising to give, or offering a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or rewarding a business advantage already given.

3.0 THE BRIBERY ACT 2010

- 3.1 There are four key offences under the Bribery Act 2010 (“the Act”):

- offering, promising or giving a bribe to another person (section 1);
- requesting, agreeing to receive, or accepting a bribe (section 2);
- bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business (section 6); and
- failing to prevent bribery (section 7 – see paragraphs 3.2 and 3.3 below).

These offences may attract the penalty of 10 years imprisonment and / or an unlimited fine.

- 3.2 Section 7 of the Act creates a corporate offence 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. A “commercial

organisation" is any body formed in the United Kingdom whether or not it pursues primarily charitable or educational aims or purely public functions. For the purposes of the Act, the Council is a commercial organisation.

- 3.3 This is a "strict liability" offence, which means that there is no need to prove negligence or management complicity. 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. This Policy and its associated procedures are intended to ensure that we have in place the necessary procedures to act as such a defence.

4.0 SIX PRINCIPLES FOR BRIBERY PREVENTION

- 4.1 Guidance on the Bribery Act 2010 sets out six principles which should be followed in the prevention of bribery. These are as follows:

- Risk assessment;
- Top level commitment;
- Due diligence;
- Policies and procedures;
- Implementation; and
- Monitoring and review

4.1.1 Risk Assessment

The nature and extent of the Council's exposure to potential external and internal risks of bribery on its behalf by persons associated with it is periodically assessed. This includes financial risks but also other risks such as reputational damage.

4.1.2 Senior Commitment

The Chief Executive and Executive Directors are committed to preventing bribery by persons associated with the Council. It is their duty to foster a culture within the organisation in which bribery is never acceptable. This approach is endorsed by elected Members through the approval of the Anti-Bribery Policy.

4.1.3 Due Diligence

The Council takes 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.

4.1.4 Policies and Procedures

The periodic review of the Anti-Bribery Policy, associated procedures and a review of case law surrounding bribery will ensure that the policy and procedures in place are adequate and proportionate to the risks and activities of the Council.

4.1.5 Implementation

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.

4.1.6 Monitoring and Review

Procedures designed to prevent bribery are monitored and reviewed and improvements are made where necessary.

5.0 THE COUNCIL'S COMMITMENT TO ACT

5.1 The Council demonstrates its commitment to upholding the principles of the prevention, deterrence and detection of bribery by committing to the following actions:

- Setting out a clear Anti-Bribery Policy and keeping it up to date;
- Making all employees aware of their responsibilities to adhere strictly to this Policy at all times;
- Training all employees so that they can recognise and avoid the use of bribery by themselves and others;
- Encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately;
- Providing briefing sessions for Members on anti-bribery legislation and their responsibilities under the Councillors' Code of Conduct;
- Rigorously investigating instances of alleged bribery and assisting Police and other appropriate authorities in any resultant prosecution;
- Taking firm and vigorous action against any individual(s) involved in bribery;
- Providing information to all employees to report breaches and suspected breaches of this Policy;

- Including appropriate clauses in contracts to prevent bribery.

6.0 RAISING A CONCERN

- 6.1 The Council is committed to ensuring that all Members and employees have a safe, reliable, and confidential way of reporting any suspicious activity. It is essential that all Members and employees know how they can raise concerns.
- 6.2 All Members and employees have a responsibility to help detect, prevent and report instances of bribery. If Members or employees have a concern regarding a suspected instance of bribery or corruption, they are encouraged to report this in accordance with the Procedure for Employees to Report Concerns.
- 6.3 Concerns can be anonymous. In the event that an incident of bribery, corruption, or wrongdoing is reported, the Council will act as soon as possible to evaluate the situation. The Council has clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind.

7.0 RESPONSIBILITIES

- 7.1 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 the Anti-Bribery Policy.
- 7.2 It is the responsibility of the Chief Executive to ensure that arrangements are in place to communicate this Policy appropriately to those individuals to whom it may apply.
- 7.3 It is the responsibility of individuals to ensure that they have read, understood and comply with the Anti-Bribery Policy and to raise concerns as soon as possible if they believe or suspect that a conflict with the Anti-Bribery Policy has occurred, or may occur in the future.
- 7.4 As well as the possibility of civil and criminal prosecution, staff who breach this Policy will face disciplinary action, which could result in dismissal for gross misconduct.

8.0 ADVICE

- 8.1 For further advice on this Policy, please contact either the Head of Legal Services or the Chief Internal Auditor.

February 2015

PERTH & KINROSS COUNCIL
ANTI-MONEY LAUNDERING POLICY

1.0 INTRODUCTION

- 1.1. The Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007 place obligations on the Council and its employees to establish internal procedures to prevent the use of their services for money laundering.

2.0 SCOPE OF THE POLICY

- 2.1 The Anti-Money Laundering Policy (“Policy”) applies to all employees of the Council and aims to maintain the high standards of conduct which currently exist within the Council by preventing criminal activity through money laundering. The Policy sets out the procedures which must be followed (for example the reporting of suspicions of money laundering activity) to enable the Council to comply with its legal obligations.
- 2.2 Further guidance on the prevention of money laundering will be provided to supplement this Policy.
- 2.3 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. Any disciplinary action will be dealt with in accordance with the Council's Achieving and Maintaining Standards Procedure.

3.0 WHAT IS MONEY LAUNDERING?

- 3.1 Money laundering is the term used for a number of offences involving the proceeds of crime or terrorism funds. The following constitute the act of money laundering:
 - concealing, disguising, converting or transferring criminal property or removing it from the UK (section 327 of the 2002 Act); or
 - 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); or
 - acquiring, using or possessing criminal property (section 329).

These are the primary money laundering offences, and are therefore prohibited acts under the legislation. There are also two secondary offences: failure to disclose any of the three primary offences and tipping off. Tipping off is where someone informs a person or people who are, or who are suspected of being,

involved in money laundering, in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation.

- 3.2 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. The Guidance Notes give practical examples. This Policy sets out how any concerns should be raised.
- 3.3 Whilst the risk to the Council of contravening the legislation is low, it is extremely important that all employees are familiar with their legal responsibilities. Serious criminal sanctions may be imposed for breaches of the legislation. The key requirement on employees is to promptly report any suspected money laundering activity to the Money Laundering Reporting Officer.

4.0 WHAT ARE THE OBLIGATIONS ON THE COUNCIL?

- 4.1 Organisations conducting “relevant business” must:
 - appoint a Money Laundering Reporting Officer (“MLRO”) to receive disclosures from employees of money laundering activity (their own or anyone else’s);
 - implement a procedure to enable the reporting of suspicions of money laundering;
 - maintain client identification procedures in certain circumstances; and
 - maintain record keeping procedures.
- 4.2 Not all of the Council’s business is “relevant” for the purposes of the legislation: it is mainly accountancy and audit services and the financial, company and property transactions undertaken by Legal Services. However, the safest way to ensure compliance with the law is to apply them to all areas of work undertaken by the Council. Therefore, all staff are required to comply with the reporting procedure set out in section 6 below.
- 4.3 The following sections of this Policy provide further detail about the requirements listed in paragraph 4.1.

5.0 THE MONEY LAUNDERING REPORTING OFFICER

- 5.1 The officer nominated to receive disclosures about money laundering activity within the Council is the Chief Internal Auditor, Jackie Clark.

6.0 DISCLOSURE PROCEDURE

Cash Payments

- 6.1 No payment to the Council will be accepted in cash (including notes, coins or travellers' cheques in any currency) if it exceeds £5,000.

Reporting to the Money Laundering Reporting Officer

- 6.2 Where it is suspected that money laundering activity is taking/has taken place, or an employee becomes concerned that their involvement in a matter may amount to a prohibited act under the legislation, this must be disclosed as soon as practicable to the MLRO. Where an employee delays unnecessarily in reporting concerns, they may be guilty of an offence under the 2002 Act and liable to prosecution.
- 6.3 Once the matter is reported to the MLRO, employees must follow any directions they may give. The employee must not make any further enquiries into the matter themselves: any necessary investigation will be undertaken by the National Crime Agency (NCA). All members of staff will be required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation.
- 6.4 Similarly, at no time and under no circumstances should the employee voice any suspicions to the person(s) suspected of money laundering, even if the NCA has given consent to a particular transaction proceeding, without the specific consent of the MLRO; otherwise a criminal offence of "tipping off" may be committed.
- 6.5 No reference should be made 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 tip them off to the report having been made and may render an employee liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

Consideration of the disclosure by the Money Laundering Reporting Officer

- 6.6 Upon receipt of a disclosure report, the MLRO must note the date of receipt on their section of the report and acknowledge receipt of it. The MLRO should also advise the employee of the timescale within which they expect to respond.
- 6.7 The MLRO will consider the report and any other available internal information they think relevant e.g.
- reviewing other transaction patterns and volumes;
 - the length of any business relationship involved;
 - the numbers of any one-off transactions and linked one-off transactions;

- any identification evidence held;

and undertake such other reasonable inquiries they think appropriate in order to ensure that all available information is taken into account in deciding whether a report to the NCA is required (such enquiries being made in such a way as to avoid any appearance of tipping off those involved). The MLRO may also need to discuss the report with the employee.

- 6.8 Once the MLRO has evaluated the disclosure report and any other relevant information, they must make a timely determination as to whether:
- there is actual or suspected money laundering taking place; or
 - there are reasonable grounds to know or suspect that is the case; and
 - whether they need to seek consent from the NCA for a particular transaction to proceed.
- 6.9 Where the MLRO does so conclude, then they must disclose the matter as soon as practicable to the NCA on their standard report form and in the prescribed manner, unless there is a reasonable justification for non-disclosure to the NCA (for example, a lawyer can claim legal professional privilege for not disclosing the information).
- 6.9.1 Where the MLRO suspects money laundering but has a reasonable justification for non-disclosure, then they must note the report accordingly; the MLRO can then immediately give their consent for any ongoing or imminent transactions to proceed.
- 6.9.2 In cases where legal professional privilege may apply, the MLRO must liaise with the legal adviser to decide whether there is a reasonable justification for not reporting the matter to the NCA.
- 6.9.3 Where consent is required from the NCA for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until the NCA has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from the NCA.
- 6.10 Where the MLRO concludes that there are no reasonable grounds to suspect money laundering then they shall mark the report accordingly and give their consent for any ongoing or imminent transaction(s) to proceed.
- 6.11 All disclosure reports referred to the MLRO and reports made by them to the NCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.

6.12 The MLRO commits a criminal offence if they know or suspect, or have reasonable grounds to do so through a disclosure being made to them, that another person is engaged in money laundering and they do not disclose this as soon as practicable to the NCA.

7.0 CUSTOMER DUE DILIGENCE

7.1 Where the Council is carrying out certain ‘regulated activities’ then extra care needs to be taken to check the identity of the customer or client – this is known as carrying out Customer Due Diligence.

7.2 Customer due diligence means:

- identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source;
- where there is a beneficial owner¹ who is not the customer, identifying the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity. This means that the relevant person will then be satisfied that he knows who the beneficial owner is; and
- obtaining information on the purpose and intended nature of the business relationship.

7.3 The 2007 Regulations regarding customer due diligence are detailed and complex, but there are some simple questions that will help decide if it is necessary:

- Is the service a regulated activity (see 7.4)?
- Is the Council charging for the service i.e. is it ‘by way of business’?
- Is the service being provided to a customer other than a UK public authority?

If the answer to any of these questions is “no” then there is no need to carry out customer due diligence.

If the answer to all these questions is “yes” then customer due diligence must be carried out before any business is undertaken for that client. If there is uncertainty whether customer due diligence is required then the MLRO should be contacted for advice.

7.4 Regulated activity is defined as the provision ‘by way of business’ of: advice about tax affairs; accounting services; treasury management, investment or other

¹ A beneficial owner means a person who stands behind the customer and is likely to benefit from the transaction

financial services; audit services; legal services; estate agency; services involving the formation, operation or arrangement of a company or trust; or dealing in goods wherever a transaction involves a cash payment of £15,000 or more.

- 7.5 Where customer due diligence is required then evidence of identity must be sought, for example:
- checking with the customer's website to confirm their business address;
 - conducting an on-line search via Companies House to confirm the nature and business of the customer and confirm the identities of any directors;
 - seeking evidence from the key contact of their personal identity, for example their passport, and position within the organisation.
- 7.6 The requirement for customer due diligence applies immediately for new customers and should be applied on a risk sensitive basis for existing customers. Ongoing customer due diligence must also be carried out during the life of a business relationship but should be proportionate to the risk of money laundering and terrorist funding, based on the officer's knowledge of the customer and a regular scrutiny of the transactions involved.
- 7.7 If, at any time, it is suspected that a client or customer for whom the Council is currently carrying out, or is planning to carry out, a regulated activity is involved with money laundering or terrorist financing or has lied about their identity then this must be reported to the MLRO.
- 7.8 In certain circumstances enhanced customer due diligence must be carried out for example where:
- The customer has not been physically present for identification;
 - The customer is a politically exposed person;
 - There is a beneficial owner who is not the customer – a beneficial owner is any individual who holds more than 25% of the shares, voting rights or interest in a company, partnership or trust.
- 7.9 Enhanced customer due diligence could include any additional documentation, data or information that will confirm the customer's identity and / or the source of the funds to be used in the business relationship / transaction. If it is believed that enhanced customer due diligence is required then the MLRO should be consulted prior to carrying it out.

8.0 RECORD KEEPING PROCEDURES

- 8.1 Each unit of the Council conducting relevant business must maintain records of:
- client identification evidence obtained; and
 - details of all relevant business transactions carried out for clients.
- for at least five years. This is so that they may be used as evidence in any subsequent investigation by the authorities into money laundering.
- 8.2 The precise nature of the records is not prescribed by law, however, they must be capable of providing an audit trail during any subsequent investigation, for example distinguishing the client and the relevant transaction and recording in what form any funds were received or paid. In practice, the business units of the Council will be routinely making records of work carried out for clients in the course of normal business and these should suffice in this regard.
- 8.3 An electronic copy of every customer due diligence record must be sent to the MLRO to meet the requirements of the Regulations and in case of inspection by the relevant supervising body.

9.0 CONCLUSION

- 9.1 The legislative requirements concerning anti-money laundering procedures are lengthy and complex. This Policy has been written so as to enable the Council to meet the legal requirements in a way which is proportionate to the very low risk to the Council of contravening the legislation.
- 9.2 Any concerns whatsoever regarding any transactions should be reported to the MLRO.

10.0 ADVICE

- 10.1 For further advice on this Policy, please contact either the Head of Legal Services or the Chief Internal Auditor.

February 2015

Appendix D

PERTH & KINROSS COUNCIL WHISTLE-BLOWING POLICY

1.0 INTRODUCTION

- 1.1 The Public Interest Disclosure Act 1998 introduced certain rights and safeguards for those who disclose information to a third party about alleged wrongdoing in defined circumstances. The Act provides protection against dismissal or any detrimental action to individuals who disclose certain types of information to a named person in specific circumstances.
- 1.2 The Council is committed to the principles underlying the Act and to make sure that the arrangements in place within the Council are working effectively.
- 1.3 Employees, contracted workers or Members of the Council are often the first to realise that there could be something seriously wrong with the way the Council is operating. This Policy sets out the principles that enable them to raise concerns about a danger, risk, malpractice or wrongdoing that affects others, without the fear of adverse consequences.
- 1.4 This Policy applies to all Council Members and employees, as well as contractors and suppliers.
- 1.5 The Council is committed to the highest standards of openness, probity and accountability. In line with that commitment, employees, contracted workers and Members who have legitimate concerns about any aspect of the Council's work are encouraged to come forward and voice those concerns through accessible channels within the Council. This Policy makes it clear that such disclosures can be made without fear of victimisation, subsequent discrimination or disadvantage.
- 1.6 It is recognised that the option to maintain confidentiality is vital to encouraging employees, Members or contracted workers to make a disclosure, and the Council will always seek to protect the anonymity of those that come forward. This Policy provides a means for them to raise a concern under the Public Interest Disclosure Act 1998, which provides a certain level of legal protection when legitimate concerns are raised in the public interest.

2.0 SCOPE OF THE POLICY

- 2.1 This Policy aims to:
 - provide avenues for informants to raise concerns within the Council and receive feedback on any action taken;

- provide reassurance that informants will be protected from reprisals or victimisation for whistle-blowing in the public interest; and
 - allow informants to take the matter further if they are dissatisfied with the Council's response.
- 2.2 There are existing procedures in place to enable staff to raise a grievance relating to their own employment with the Council. This Whistle-Blowing Policy is intended to cover concerns that fall outside the scope of other procedures and which involve an issue in the public interest. The Council reserves the right to determine which procedure is appropriate in each case.
- 3.0 WHAT IS 'WHISTLE-BLOWING'?**
- 3.1 When someone 'blows the whistle' they tell their employer, a regulator (i.e., Audit Scotland, Accounts Commission, Auditor General for Scotland), the Police or another person or organisation about wrongdoing, as described in 3.3 below, that they are aware of through their work. Such informing is known as making a disclosure.
- 3.2 A disclosure made under this Policy must relate to something which involves an issue in the public interest and which the informant has a reasonable belief to be true. These are 'qualifying disclosures'. For these disclosures to be protected by the law, they should be made to the correct person and in the correct way.
- 3.3 Six categories of disclosure are qualifying disclosures under this Policy. The information disclosed must, in the informant's reasonable belief, tend to show that one of the following has occurred or is likely to occur:
- a criminal offence
 - breach of a legal obligation
 - a miscarriage of justice
 - danger to the health and safety of an individual
 - damage to the environment
 - the deliberate concealment of information regarding any of the above categories.
- 3.4 For the purposes of this Policy, the 'prescribed person' within the Council is either the line manager, Head of Service, Executive Director, Monitoring Officer (Head of Legal Services) or Chief Internal Auditor. Once these avenues have

been explored, and if a concern remains, an external ‘prescribed person’ is detailed at 3.6

3.5 This Policy does not apply if the concern is regarding the following, as there are other separate arrangements in place:

- the safeguarding of children and young people;
- the safeguarding of vulnerable adults; and
- suspected benefit fraud.

3.6 If you are not satisfied, and feel it is right to take the matter further, the following are possible contact points:

- Public Concern at Work
- Audit Scotland
- Elected Member
- Relevant professional bodies or regulatory organisations
- The Health & Safety Executive
- Scottish Environment Protection Agency
- Information Commissioner
- a Solicitor
- the Police

4.0 THE COUNCIL’S OBLIGATIONS

- 4.1 The Council is committed to the principles underlying the Act and to make sure that the arrangements in place within the Council are working effectively.
- 4.2 Arrangements will be put in place to publicise the Policy and its associated procedures and to arrange appropriate training for employees.
- 4.3 The effectiveness of the arrangements will be periodically reviewed and the outcome of the review will be included within the Year End Report of the Chief Internal Auditor.

5.0 CONCLUSION

- 5.1 The Council is committed to the highest standards of openness, probity and accountability. In line with that commitment, this Policy encourages Council employees, workers and Members, who have legitimate concerns about any aspect of the Council's work, to come forward and voice those concerns.

6.0 ADVICE

- 6.1 For further advice on this Policy, please contact either the Head of Legal Services or the Chief Internal Auditor.

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