

## ISLE OF ANGLESEY COUNTY COUNCIL

<b>COMMITTEE:</b>	<b>COUNTY COUNCIL</b>
<b>DATE:</b>	<b>DECEMBER 2012</b>
<b>TITLE OF REPORT:</b>	<b>REVIEW OF FRAUD AND CORRUPTION POLICY</b>
<b>REPORT BY:</b>	<b>HEAD OF SERVICE - AUDIT</b>
<b>ACTION:</b>	<b>Recommendation to the Council to amend Constitution with the revised policy.</b>

### 1. INTRODUCTION

- 1.1 **Policy for Prevention of Fraud and Corruption** - The authority's Policy for Prevention of Fraud and Corruption was last reviewed in 2007 and is currently therefore in need of review and update. This report includes the draft revised policy for adoption by the Committee.
- 1.2 The Policy for Prevention of Fraud and Corruption is part of the Council's Constitution and currently is incorporated in section 5.6 of that document.
- 1.3 The Policy was presented to the Audit Committee on 25 September 2012 and to the Executive on 15 October 2012.
- 1.4 The Council is asked to adopt the revised policy and to amend the Constitution accordingly. A copy of the revised policy is attached as **Appendix A**.

Head of Service – Audit  
November 2012

## Appendix A

Version No.	Version 2: 2012
Date Adopted	September 2012
Adopting body	Executive
Next Review Date	September 2014
Author	Head of Service - Audit
Implementation Responsibility	Section 151 Officer
Target Audience	All Council employees, Members, Partners, Contractors, Agents and other stakeholders.

### 1. **COMMITMENT**

- 1.1 The Council expects the highest standards of propriety and accountability from Members, employees, consultants, suppliers, contractors and other partner organisations.
- 1.2 The Council is firmly committed to countering fraud and corruption in all its activities and in the wider community and will deal equally with perpetrators from inside and outside the Council. Wherever fraud is uncovered it will be investigated and appropriate prosecution, disciplinary and / or recovery action will be taken.
- 1.3 An important part of this approach is maintaining a Policy for Prevention of Fraud and Corruption which the Council will use to advise and guide Members and staff in issues of countering fraud and corruption.

### 2. **PURPOSE**

- 2.1 This document provides an overview of the Council's policy for the prevention of fraud and corruption. The Policy is designed to achieve the following:
  - Express the Council's zero tolerance of fraud and corruption;
  - Explain what the Council means by fraud and corruption;
  - Encourage fraud prevention;

- Promote fraud detection;
  - Show how the Council will investigate fraud and corruption;
  - Promote fraud awareness.
- 2.2 It is recognised that procedures which prevent and detect fraud also prevent and detect genuine mistakes. This policy is intended for the protection of the innocent as well as the countering of fraud and corruption.

### 3. **DEFINITIONS**

3.1 The following are the definitions that the Council will adopt when referring to the different offences covered by the term fraud and corruption.

#### 3.2 **Fraud**

Can be defined as "the intentional distortion of financial statements or other records by persons internal or external to the Authority which is carried out to conceal the misappropriation of assets or otherwise for gain".

3.3 The Fraud Act 2006, which came into force in January 2007, introduced a new general offence of fraud and three ways of committing it:

- **Fraud by false representation** – where an individual dishonestly and knowingly makes a representation that is untrue or misleading.
- **Fraud by wrongfully failing to disclose information** – where an individual wrongfully and dishonestly fails to disclose information to another person when they have a legal duty to disclose it, or where the information is of a kind that they are trusted to disclose it, or they would be reasonably expected to disclose it.
- **Fraud by abuse of position** – where an individual who has been given a position in which they are expected to safeguard, **or not to act against**, another person's financial interests dishonestly and secretly abuses that position of trust without the other person's knowledge.

3.4 For all of the three ways of committing fraud outlined above, the Fraud Act outlines two basic requirements which must be met before any of the above can be charged:

- the defendant's conduct must be dishonest and
- his / her intention must be to make a gain or cause a loss (or the risk of a loss) to another.

3.5 The Council will therefore, with regard to these offences, recognise that in any referral relating to fraud:

- No loss or gains need to materialise – an intent to make a gain or cause a loss will be construed as an act of fraud;

- A gain does not have to be for the person committing the act of fraud – it could be for another;
  - “Gain” and “loss” are as defined by Section 5 of the Fraud Act – it could be money or other property (whether real or personal, tangible or intangible), it could be permanent or temporary and: a “gain” includes a gain by keeping what one has, as well as gain by getting what one does not have, and a “loss” includes a loss by not getting what one might get, as well as a loss.
- 3.6 All referrals relating to fraud as defined above will be undertaken in the first instance by the Council’s Internal Audit Service.
- 3.7 **Internal and External Fraud**  
In this policy, “Internal Fraud” is defined as fraud perpetrated by the Council’s own employees or Members, with an intention of causing a loss to the Isle of Anglesey County Council, and where the fraud has been perpetrated or facilitated as a result of an individual’s or group of individuals’ position within the organisation. “External fraud” is defined as fraud committed by individuals from outside the organisation, or from outside an employee’s normal area of work, with a view to causing a loss to the Council.
- 3.8 **Benefit Fraud**  
Benefit Fraud can be defined as the ‘obtaining of Housing Benefit or Council Tax Benefit by deception, fraud regarding other related benefits and associated frauds committed against the Council.’ All cases of Benefit Fraud, whether committed by Council employees or Members or the general public, will be treated as “external fraud”.
- 3.9 The Council’s policy for dealing with Benefit Fraud will differ from its approach to dealing with other kinds of fraud committed against the Council. Other than in exceptional circumstances, Benefit Fraud will be investigated pursuant to, and as defined by, the Social Security Administration Act 1992 as amended by subsequent legislation, rather than the Fraud Act 2006. Benefit Fraud is defined by Sections 111 and 112 of the Social Security Administration Act - Section 111A deals with dishonest representation in order to receive benefits etc., whilst Section 112 deals with false representation in order to obtain benefits etc.
- 3.10 Benefit Fraud will be investigated by the Benefit Fraud Team, which is part of the Council’s Finance Service.
- 3.11 **Corruption**  
Corruption is defined as “the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person”.
- 3.12 Legislation relating to corruption **includes the Prevention of Corruption Act 1916 and the Bribery Act 2010**. Section 2 of the 1916 Act introduced the presumption of corruption, which shifted the burden of proof in bribery cases to the defence. This legislation remains fundamentally unchanged today, and

this means that a defendant has to prove on the balance of probabilities that a gift or advantage was not an inducement or reward for another's gain.

3.13 The Council will consider the presumption of corruption, pursuant to the 1916 Act, when undertaking investigations into allegations of corrupt practices.

### 3.14 **Related offences**

The following offences are also covered by this policy:

- **Theft:** - is defined by the Theft Act 1968 as being the dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it; and
- **Failure to disclose an interest:** whether or not financial benefit is involved.

### 3.15 **Bribery**

The Bribery Act 2010 provides definitions of the criminal offence of bribery and identifies four key offences:

3.16 • **Bribing another person** - A person commits an offense by offering, promising or giving a financial or other advantage to another person, directly or through an intermediary:

intending that advantage to induce a person to perform improperly a function or to reward a person for so doing (whether or not it is the same person to whom the advantage is offered); or

knowing or believing that accepting the advantage would itself be improper performance of a function.

3.17 • **Being bribed** - A person commits this offence by requesting, agreeing to receive or accepting a financial or other advantage, directly or through a third party, for his or her own or someone else's benefit:

that person intends that, as a consequence, there is improper performance of a function or

there is improper performance of a function (whether as a reward, in anticipation of or as a consequence of the request, agreement or acceptance). The request, agreement or acceptance itself may be the improper performance of a function.

3.18 • **Bribery of a Foreign Public Figure** – This offence will be committed if a person offers or gives a financial or other advantage to a foreign public official with the intention of influencing the foreign public official and obtaining or retaining business, where the foreign public official was neither permitted nor required by written law to be so influenced.

3.19 • **Failing to prevent Bribery** - A company is “strictly liable” for any bribe paid by a person performing services on its behalf, unless the organisation proves that adequate anti-bribery procedures were in place.

3.20 The maximum penalty for the offenses is 10 years' imprisonment and/or an unlimited fine. For the "failure to prevent" offense, the fine alone applies.

3.21 The Bribery Act 2010 replaces the fragmented and complex offences at common law and in the **Prevention of Corruption Act 1916**.

### 3.22 **Money Laundering**

The main legislation concerning money laundering is:

- Proceeds of Crime Act 2002;
- Money Laundering Regulations 2007;
- Terrorism Act 2000; and
- Anti-Terrorism, Crime and Security Act 2001.

### 3.23 **Definition of Money Laundering**

The Proceeds of Crime Act uses the term ‘money laundering’ to cover a number of offences involving the proceeds of crime and terrorism. In terms of the Act money laundering involves the following:

- concealing, disguising, converting, transferring or removing criminal property from England, Wales, Scotland, or Northern Ireland;
- being concerned in an arrangement, which you know or suspect facilitates the acquisition, retention, use or control of criminal property.

3.24 Money Laundering involves knowing or suspecting that someone they know, or know of, is benefiting financially from dishonest, criminal activities.

3.25 Criminal property has a wide definition which includes the proceeds of crime committed by somebody else, but also the proceeds of an individual's own crime. It does not matter how small the amount of money involved is.

### 3.26 **Money Laundering Offences**

There are three principal offences. These are:

- **Concealing** – where someone knows or suspects a case of money laundering, but conceals or disguises its existence;
- **Arranging** – where someone involves him/herself in an arrangement to assist in money laundering;
- **Acquisition/Use/Possession** – where someone seeks to benefit from money laundering by acquiring, using or possessing the property concerned.

3.27 Associated third party offences are;

- **Failure to disclose** one of the three principal, offences above;
- **Tipping off** – where someone informs a person or people who are, or are suspected of being, involved in money laundering, in such a way as to reduce the likelihood of their being investigated, or prejudicing an investigation.

3.28 **Anti Money Laundering Procedures** - The Council has a separate Money Laundering policy which sets out how the Council complies with the requirements of the Money Laundering Regulations 2007. In this respect the Council has nominated the Section 151 Officer as the officer to be responsible for anti money laundering measures. The authority's nominated Money Laundering Reporting Officer (MLRO) is the Head of Service – Audit or another member of the Internal Audit Team in the absence of this officer.

3.29 The Council has also set cash limits for the receipt of cash which are set out in the Anti Money Laundering policy document.

#### 4. **CULTURE**

4.1 All Council members and staff are subject to this policy. As provided in the relevant Codes of Practice, Members and Officers will lead by example to ensure that high standards of propriety and accountability are established and adhered to, and that personal conduct is above reproach at all times. Staff have a responsibility while going about their daily duties to be alert to the potential of fraud, to guard against it, and report any suspicions.

4.2 The Council also demands that all individuals and organisations which come into contact with the Council will act towards the Council at all times with the same integrity and without fraudulent or corrupt intent. Contractors working for the Council and bodies receiving funding from the Council are expected to maintain similar procedures to guard against fraud and corruption. Contract Procedure Rule 4.9.7.8 imposes specific anti-corruption requirements on all contracts.

4.3 The Council will ensure that staff and members are reminded of the need to be vigilant against theft, fraud and corruption and are provided with training relevant to their responsibilities to maintain awareness.

#### 5. **RESPONSIBILITIES**

5.1 The prevention of fraud and corruption is the responsibility of all Council Members and staff within their daily activities. However, specific responsibility for co-ordinating the prevention of fraud and corruption and responsibility for investigation are assigned by this policy as below.

5.2 The Section 151 Officer has responsibility for co-ordinating the Council's activities to counter fraud and corruption and, together with the Head of

Function Legal and Administration, will advise the Council, the Executive and the Council's Committees on policies, strategies and procedures to support this policy.

- 5.3 The Council's arrangements for investigating alleged fraud and corruption under this policy will make provision for an appropriate Officer such as Head of Service - Internal Audit to take charge of any individual investigation, but notwithstanding the procedures when investigating individual allegations, responsibility for co-ordinating the Council's activities to counter fraud and corruption will remain with the Section 151 Officer.
- 5.4 Managers are responsible for promoting this policy in their areas of work.
- 5.5 All elected members and employees are expected to provide investigators with all assistance, documents and access requested, and will provide written statements, including statements to the Police should they be required to do so.
- 5.6 The Executive monitors and implements the policies and the Audit Committee receives reports about activities related to countering fraud and corruption and their success.

## **6. MEASURES TO COUNTER FRAUD AND CORRUPTION**

### **6.1 Reducing opportunities**

For a fraud to take place requires an opportunity for the fraudster to obtain monies or other personal benefit from our systems. If we can reduce opportunities for fraud and corruption to occur we can reduce fraud and corruption. We can do this by ensuring that there is a robust and effective internal control framework in place and by ensuring that custody and administrative arrangements do not create an environment where theft or fraud and corruption can take place.

### **6.2 Internal Control System**

In order to safeguard public funds, it is essential that employees comply with internal controls and systems that have been put in place by management to prevent fraud and corruption. When fraud or corruption has occurred due to weakness in the Council's systems and procedures, Heads of Service will ensure appropriate controls are implemented to prevent recurrence.

6.3 In most cases, Internal Audit will review such controls as part of its overall assurance review, and should be given the support and co-operation of all managers and staff.

6.4 Managers have an additional responsibility for:

- Ensuring that staff for whom they are responsible are aware of the risk of fraud and corruption.



- Taking steps to prevent fraud and corruption through the use of appropriate internal controls and monitoring.
- Making sure that suitable levels of internal check are included in working procedures, in particular financial procedures. It is essential (where practically possible) that duties are specified and segregated, so that individuals cannot carry out a complete transaction without input and/or verification by another appropriate officer.
- Implementing agreed internal audit and other regulators recommendations.
- Encouraging staff to report suspected fraud, corruption and abuse as directed in the Council's Whistleblowing Policy.

#### 6.5 **Internal Audit**

The Head of Service – Audit is to be notified of all suspected or detected fraud, corruption or impropriety, to inform his opinion on the internal control environment and Internal Audit's work programme as well as to allow him to ensure appropriate action is taken.

6.6 Internal Auditors are alert in all their work to minimise risks and exposures that could allow fraud or corruption to occur. Internal Auditors are also alert to any indications that fraud or corruption may have been occurring and will advise the appropriate officers accordingly.

6.7 However, it is recognised that Audit procedures alone, even when performed with due professional care, cannot guarantee that fraud or corruption will be detected.

#### 6.8 **Prevention**

The Council seeks to prevent fraud and corruption by:

- Raising awareness of the risk of fraud and corruption;
- Making Members and employees aware of their roles and responsibilities;
- Ensuring that administrative systems, such as internal check and separation of duties, make it more difficult for theft or fraud to take place;
- Working with other agencies and bodies.

6.9 All Members and employees should be aware of the possibility that fraud, corruption and theft may exist in the workplace and be able to share their concerns with the appropriate people. Policies and procedures for raising concerns must be clearly set out and made available to Members, employees and the public.

- 6.10 The Council must follow appropriate recruitment procedures when employing new staff or agency staff. This includes reviewing the previous employment records of potential staff with regard to their propriety and integrity. This applies to both temporary and permanent staff. This may be done by the use of references from previous employers and review of qualification.
- 6.11 The Council is also committed to working and co-operating with other organisations to prevent organised fraud and corruption. Wherever possible, the Council will be prepared to develop and encourage the exchange of information (on national and local fraud and corruption activity) with other local authorities and external agencies, such as the Police, inter-authority audit officer groups, the Wales Audit Office and Government departments (including the Department of Work and Pensions).
- 6.12 Due care in protecting the integrity and confidentiality of data is particularly important when exchanging information.
- 6.13 **Deterrence**  
The Council will deter fraud and corruption by ensuring that potential perpetrators are made aware that the Council is vigilant in relation to fraud and corruption and will ensure that once identified appropriate action is taken. Such deterrent is reinforced when people are made aware that the details that they provide are validated and checked not just within the Council but between public bodies.
- 6.14 The Council will publicise all successful prosecutions to demonstrate that the Council does carry out prosecutions or other sanctions against offenders.
- 6.15 **Detection and Investigation**  
Financial Procedure Rules require the reporting of suspected irregularities. There will always be a presumption of formal action in cases of alleged fraud and corruption, and they will always be deemed as being sufficiently serious to warrant an official Internal Audit investigation.
- 6.16 The authority will maintain adequate resources to pursue prompt investigations in suspicion of theft, fraud or corruption and, if necessary, to report onwards to police or other prosecuting authorities.
- 6.17 **Prosecution and Recovery**  
The authority recognises that the public interest demands the prosecution of (or other sanctions against) perpetrators, notwithstanding any embarrassment caused to itself. Financial Procedure Rules (4.8.5.3.6) and approved prosecution policies lay down the standards to be followed. The authority aims always to recover stolen or defrauded assets or their value, by all means available.
- 6.18 A comprehensive policy, including prosecution and recovery, has been adopted for the Benefits Services. Procedures will be introduced for other areas where a need is identified.

- 6.19 The Council has adopted a Fraud Response Plan which provides guidance on the action to be taken when a fraud is suspected or discovered and covers areas such as: to whom the fraud will be reported, responsibilities for actions, who will investigate the incident and how employees under suspicion will be dealt with.

## **7. TRAINING**

- 7.1 The Council recognises that the continuing success of this Policy and its general credibility will depend, in part, on the effectiveness of programmed training and responsiveness of employees throughout the organisation.
- 7.2 Appropriate training will be available to all Members and staff who will be aware of, and adhere to, these procedures, and who will appreciate their overall effectiveness is to ensure high standards of propriety and to prevent an oppressive culture.
- 7.3 Managers, auditors and investigators will receive appropriate training and will follow formal operational procedures for investigating fraud and corruption and will comply with the Regulation of Investigatory Powers Act, Police and Criminal Evidence Act, Public Interest Disclosure Act, Human Rights Act, Data Protection Act and any other relevant legislation.

## **8. SUPPORTING POLICIES AND PROCEDURES**

- 8.1 The Council's Constitution includes the following key procedures, codes and protocols which support this policy:
- Financial Procedure Rules (including in particular 4.8.2.3 which requires financial control and internal check and 4.8.5.3 which establishes internal audit and requires the reporting of suspected irregularities);
  - Contract Procedure Rules;
  - Members' Code of Conduct and Principles of Conduct (including in particular at 5.1.3 the requirement to declare interests and to register gifts and hospitality);
  - Officers' Code of Conduct (including in particular at 5.2.8 the need to declare interests and to register gifts and hospitality);
  - Protocol for Member / Officer Relations;
  - Bullying and Harassment Policy; and
  - Whistleblowing Policy (which provides direct routes for reporting suspicions when normal reporting lines are unavailable); and
  - Complaints Procedure.

## **9. PARTICIPATION IN OTHER AGENCY INITIATIVES**

9.1 The Council will implement antifraud initiatives, in partnership where appropriate, including:-

- data matching;
- fraud hotlines;
- publicising antifraud and prosecution activity;
- National Fraud Initiative.

The Council will also participate in other appropriate related initiatives sponsored by the Wales Audit Office, Audit Commission, Department for Work and Pensions and other agencies.

## **10. POLICY REVIEW**

10.1 The Council shall continue to review its rules and procedures, therefore it is essential that this Policy is regularly reviewed to maintain its effectiveness and continued compliance with legislation.

10.2 The Section 151 Officer will make arrangements for the regular review of this policy and will make annual report to the Audit Committee on its operation.

## APPENDIX B

<b>Policy Name</b>	<b>FRAUD RESPONSE PLAN – DRAFT</b>
Version No.	Version 1: 2012
Date Adopted	September 2012
Adopting body	Executive
Next Review Date	September 2014
Author	Head of Service - Audit
Implementation Responsibility	Section 151 Officer
Target Audience	All Council employees, Members, Partners, Contractors, Agents and other stakeholders.

### 1. INTRODUCTION

The Council is committed to sound corporate governance and to protecting the public funds with which it has been entrusted. However, the determined perpetrator will sometimes find a way around systems and procedures. Minimising any losses to fraud is an essential part of ensuring that the Council's resources are used for the purposes they are intended. To this end, the Council's Policy for the Prevention of Fraud and Corruption has been developed and maintained.

All managers need to be aware of what is required in the event of being notified of a suspected fraud. This Fraud Response Plan should be read in conjunction with the Policy for the Prevention of Fraud and Corruption which sets out the process for staff who wish to notify any suspicions and notes how the Council's officers should respond. This Plan provides guidance on the action to be taken when a fraud is suspected or discovered and covers areas such as: to whom the fraud will be reported, responsibilities for actions, who will investigate the incident and how employees under suspicion will be dealt with.

It is vitally important that the Plan is followed by all concerned in order to ensure that the situation is handled professionally and to safeguard against the case being compromised. The use of the Plan may enable the Council to:

- prevent further loss,
- establish and secure evidence necessary for criminal and disciplinary action,
- notify the relevant authority, funding body and the Police,
- minimise and recover losses,

- take disciplinary action against those involved,
- review the reasons for the incident, the measures taken to prevent a recurrence and implement actions needed to strengthen procedures.

Further, this Plan aims to ensure that any investigation complies with the following Council policies and procedure:

- The Council's Staff Code of Conduct,
- The Council's Financial Procedure Rules,
- The Council's Whistleblowing Policy,
- The Council's Disciplinary Procedures.

### **Definitions**

The definitions of "Fraud", "Internal and External Fraud", "Benefit Fraud" and "Corruption" are as found in the Policy for the Prevention of Fraud and Corruption.

### **Benefit Fraud**

This Plan is not relevant to Benefit Fraud (as defined in the Policy for the Prevention of Fraud and Corruption), for which separate procedures exist.

## **2. REPORTING A SUSPECTED FRAUD**

### **Actions by Staff**

Suspected fraud can be discovered in a number of ways in all cases, it is important that staff feel able to report their concerns and that they are aware of the means by which they are able to do so. Suspicion of fraud will be treated seriously and will be reviewed and analysed in accordance with relevant legislation and the Policy for the Prevention of Fraud and Corruption.

All staff should be aware that the Officer's Code of Conduct and the Financial Procedure Rules (both of which are part of the Council's Constitution) between them place an obligation on all employees to report suspected cases of fraud, corruption and irregularities to the Section 151 Officer and/or the Head of Service – Audit.

**Officer's Code of Conduct, Section 5.2.9:** In the event that a qualifying employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with this Code, the employee should report the matter, acting in accordance with the employee's rights under the Public Interest Disclosure Act 1998, and with the relevant authority's confidential reporting procedure, or any other procedure designed for this purpose.

**Financial Procedure Rule 4.8.5.3.6:** Any matter which involves, or which might involve, irregularities concerning money, stores or any property of the Council or entrusted to it shall be reported forthwith to the Corporate Director - Finance or other officer identified in an approved

antifraud or prosecution policy, who shall take such steps as he or she considers necessary. Any matter where, following consultation with the Director of Legal Services, there is prima facie evidence of a breach of the criminal law by any person, shall, except where there is an appropriate approved prosecution policy, be reported jointly by the Corporate Director - Finance and the Director of Legal Services to the Police or appropriate prosecuting authority. Antifraud and prosecution policies shall be approved by the Executive on the advice of the Corporate Director - Finance and the Director of Legal Services.

However, the Council is fully aware that reporting these suspicions can be extremely stressful and traumatic (especially if the person under suspicion is the employee's line manager, or a colleague with whom they work on a daily basis, and/or with whom they share an office). As a result, a number of measures are in place in order to protect employees who report genuine concerns. In particular, the Public Interest Disclosure Act encourages people to raise concerns about malpractice in the workplace and helps ensure that organisations respond by:

- addressing the message rather than the messenger; and
- resisting the temptation to cover up serious malpractice.

Further guidance can be found in the Council's Whistleblowing Policy, which outlines the way in which any employee can report suspicions. However, the Whistleblowing Policy covers a far wider range of malpractice than fraud, corruption and financial irregularities.

These other matters must be dealt with on their own merits and reported to the most appropriate place – usually to the relevant Senior Manager or Head of Service.

Any initial concerns and discussions that an employee may have will be treated sensitively and in complete confidence, and no-one should be afraid to raise them. There may be an innocent explanation for whatever the employee is concerned about - if this proves to be the case, then no further action will be needed and at least the concerns will have been aired.

A member of staff may choose to report their concerns anonymously and such anonymity will be respected. It should be noted that, if the report suggests criminal activity, and the case is to be pursued by the Police, the identity of the person reporting the details will be needed at a later date if criminal proceedings are to be pursued effectively; identification is preferred and will assist the investigation.

If anyone becomes aware of a suspected fraud or irregularity, their concerns should be written down as soon as is practically possible. A note should be

made of all relevant details, such as what was said in phone or other conversations, the date, the time and the names of anyone involved.

The matter should be reported immediately either:

- to their own Line Manager, Head of Service, Head of Function or Director who will contact the Section 151 Officer and / or the Head of Service - Audit, or
- direct to the Section 151 Officer and / or the Head of Service – Audit.

When reporting their concerns, staff should arrange to hand over any notes they may have taken and any evidence gathered to the appropriate investigator. Confidentiality for all parties will be maintained in respect of reports made in good faith which cannot be substantiated following investigation. Staff must not do any of the following:

- contact the suspected perpetrator in an effort to determine facts or demand restitution,
- discuss the case facts, suspicions, or allegations with anyone outside of the Council (including the Press) unless specifically asked to do so by the Section 151 Officer or Head of Service – Audit,
- discuss the case with anyone within the Council other than their own Line Manager, Head of Service, Head of Function, Director, Section 151 Officer or Head of Service – Audit,
- attempt to personally conduct investigations, carry out surveillance or interview or question anyone.

### **Action by Managers**

If managers have reason to suspect fraud or corruption in their work area, they should do the following:

- Listen to the concerns of staff and treat every report received seriously and sensitively, making sure that all staff concerns are given a fair hearing. Managers should also reassure staff that they will not suffer because they have told them of their suspicions.
- Obtain as much information as possible from the member of staff, including any notes and any evidence they have that may support the allegation. Managers should not interfere with any evidence, and should make sure it is kept in a safe place.
- Report the matter immediately to the Section 151 Officer or Head of Service – Audit. They must not try to carry out an investigation themselves or ask an individual to covertly obtain further information,



as this may compromise evidence (thus preventing appropriate disciplinary or criminal action in due course).

### **Action by Auditors**

If the Council's internal auditors discover what they suspect to be fraud, corruption or improper conduct during the course of an audit, they must secure all evidence and make detailed notes of all evidence collected. They should then report their suspicions immediately to the Head of Service - Audit at the earliest possible opportunity. The investigation process (section 4 below) will follow.

### **3. MALICIOUS ALLEGATIONS**

If an allegation is made frivolously, maliciously or for personal gain, disciplinary action may be taken against the person making the allegation.

### **4. INVESTIGATION PROCESS**

Internal Audit is responsible for initiating and overseeing all fraud investigations. Internal Audit will ensure that all investigations conform to the same standard and in accordance with legislation. All alleged breaches of the Council's rules and standards will require an investigation to be held as soon as possible, unless the relevant line manager is of the opinion that the alleged offence is minor. However, in accordance with the Policy for the Prevention of Fraud and Corruption, no manager should view allegations of fraud, corruption or financial irregularities as minor offences.

The investigation procedure is not part of the disciplinary procedure; it is merely a process of gathering all of the facts related to the allegations, and this will be explicitly stated to any employee who is assisting the Council with such an investigation.

Investigation results will not be disclosed to, or discussed with, anyone other than those who have a legitimate need to know. This is important in order to avoid damaging the reputations of persons suspected but subsequently found innocent of wrongful conduct, and to protect the Council from potential civil liability.

In cases where an individual is suspected of fraud which a subsequent investigation does not substantiate, it is important that the potential damage to the individual's reputation is minimised. Whoever originally reported the suspected fraud or irregularity will be informed that the investigation has revealed no wrongdoing.

Any necessary investigative activity will be conducted without regard to any person's relationship to the Council, position or length of service.

Once the investigation has been completed, Internal Audit will prepare a written report which states the facts discovered by the investigation. The

report will avoid speculation and no statement shall be made that cannot be supported by the facts.

## **5. PROCEEDINGS**

Where evidence exists to support the allegation of fraud or corruption, consideration will be given to "triple-tracking" the enquiry. That is, whether the steps to be taken should be criminal, civil, disciplinary or a combination of all three.

### **Disciplinary Action**

Where evidence of fraud or corruption has been gathered, the Internal Audit report described above will always be used as a formal record of an investigation. Disciplinary procedures will be conducted by the relevant line manager, who will use the Internal Audit investigation report as major evidence; the investigating auditor(s) should be required to present the evidence at a disciplinary hearing. However, Internal Audit investigators will not form part of a disciplinary panel.

### **Criminal Action**

The Council's Financial Procedure Rules (4.8.5.3.6) state that the Director of Finance, following consultation with the Director of Legal Services, shall where there is prima facie evidence of a breach of the criminal law by any person, except where there is an appropriate approved prosecution policy, report the matter jointly with the Director of Legal Services to the Police or appropriate prosecuting authority.

If an employee is involved, disciplinary action shall be taken as a matter of urgency in accordance with the Council's Disciplinary Procedures whether or not the matter is referred to the Police.

If the police decide that a formal investigation is necessary, all staff are expected to cooperate fully with any subsequent requests or recommendations. All contact with the Police following their initial involvement will usually be via Internal Audit.

### **Civil Action**

Where the Council has suffered loss, restitution will be sought of any benefit or advantage obtained and the recovery of costs will be sought from individual(s) responsible for fraud.

As a first step the individual concerned will be asked to make good the loss. It may be appropriate to consider recovering the loss from any monies due to the individual on termination (if the perpetrator is an employee). The advice of the Section 151 Officer and Legal Services should be sought before attempting to make recovery.

If the individual will not make good the loss, consideration should be given to taking civil action to recover the loss, subject to legal advice received. Since

the misappropriated funds are taxpayer's money, the civil recovery can be as important as a successful prosecution. Civil remedies can be used even if a criminal case fails, or if criminal charges have not been pursued, due to the differing burden of proof.

As a last resort, if on the basis of legal advice a civil remedy action is not pursued, the Council's Fidelity Guarantee Insurance Policy may be enacted to recover losses. However, in cases where fraud has occurred following particularly poor management or supervision the full amount may not be recovered.

In any event, the Insurance & Risk Manager must be kept informed from an early stage in the investigation in order to ensure that the insurance claims are dealt with as effectively and efficiently as possible.

### **Parallel Sanctions**

There is no legal reason why the three types of proceedings listed above should not proceed at the same time, or at least overlap. The general approach of the courts is not to give automatic precedence to criminal proceedings. Other forms of proceedings should not be postponed until after the conclusion of the criminal hearing unless there is a real – not merely notional – danger that the disclosure of the defence in the civil action would, or might, lead to a potential miscarriage of justice (by, for example, enabling prosecution witnesses to prepare a fabrication of evidence).

## **6. LEARNING FROM EXPERIENCE**

Where a fraud has occurred, management must make any necessary changes to systems and procedures to ensure that similar frauds will not recur. Where appropriate, Internal Audit will include in their reporting where there has been a failure of supervision, or a breakdown / absence of control. Such reports will provide recommendations to avoid further occurrences, both in the specific area where the fraud occurred and, where appropriate, within the wider context of the Council's administration.

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## APPENDIX C

<b>Policy Name</b>	<b>DRAFT ANTI MONEY LAUNDERING POLICY &amp; GUIDANCE</b>
Version No.	Version 1: 2012
Date Adopted	September 2012
Adopting body	Executive
Next Review Date	September 2014
Author	Head of Service - Audit
Implementation Responsibility	Section 151 Officer
Target Audience	All Council employees - particularly those involved with land or property transactions, arranging loans or receiving cash.

### Purpose

The purpose of the Policy is to increase the awareness of staff concerning what money laundering means and the legal responsibilities that the related legislation imposes on **organisations and individuals**. The policy relates to all staff but on behalf of the Council.

The Council's policy is to do all that it can to prevent, wherever possible, the Council and its staff being exposed to money laundering by identifying all potential areas where it may occur and by complying with all legal and regulatory requirements especially in relation to the reporting of actual or suspected cases.

**It must be stressed however that it is the personal responsibility of every member of staff to be vigilant.**

### Main Legislation

The main legislation concerning money laundering is:

- Proceeds of Crime Act 2002;
- Money Laundering Regulations 2007;
- Terrorism Act 2000; and
- Anti-Terrorism, Crime and Security Act 2001.

## Definition of Money Laundering

The Proceeds of Crime Act uses the term 'money laundering' to cover a number of offences involving the proceeds of crime and terrorism. In terms of the Act money laundering involves the following:

1. concealing, disguising, converting, transferring or removing criminal property from England, Wales, Scotland, or Northern Ireland;
2. being concerned in an arrangement, which you know or suspect facilitates the acquisition, retention, use or control of criminal property.

Money laundering involves knowing or suspecting that someone they know, or know of, is benefiting financially from dishonest, criminal activities.

Criminal property has a wide definition which includes the proceeds of crime committed by somebody else, but also the proceeds of an individual's own crime. It does not matter how small the amount of money involved is.

## Money Laundering Offences

There are three principal offences. These are:

- i) **Concealing** – where someone knows or suspects a case of money laundering, but conceals or disguises its existence;
- ii) **Arranging** – where someone involves him/herself in an arrangement to assist in money laundering;
- iii) **Acquisition/Use/Possession** – where someone seeks to benefit from money laundering by acquiring, using or possessing the property concerned.

Associated third party offences are;

- i) **Failure to disclose** one of the three principal offences above;
- ii) **Tipping off** – where someone informs a person or people who are, or are suspected of being, involved in money laundering, in such a way as to reduce the likelihood of their being investigated, or prejudicing an investigation.

## Council Anti Money Laundering Procedures

### i) Nominated Officer

The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 (MLR) require that organisations appoint a 'nominated officer' responsible for the receipt of reports on suspicions of money (or other property) which involves the proceeds of any form of crime who is also responsible for reporting these suspicions to the Serious Organised Crime Agency (SOCA).

The Council has nominated the Section 151 Officer as the officer to be responsible for anti money laundering measures. The authority's nominated Money Laundering Reporting Officer (MLRO) is the Head of Service – Audit or another member of the Internal Audit Team in the absence of this officer.

#### ii) Limits on Cash Amounts Accepted

The Council will not accept any sum of 7 500 Euros (approx £5 000) in cash and any attempt to make such payment must be reported to the MLRO.

#### iii) Staff Training

The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 (MLR) require that organisations must ensure that relevant staff are trained in Anti-Money Laundering awareness and procedures.

The Council will provide updated Anti-Money Laundering training for cashiers, Finance staff and staff involved with property transactions or arranging loans.

#### iv) Anti- Money Laundering Reporting Procedures

The Council has devised procedures for reporting suspicious transactions and, if necessary, making an appropriate report to the Serious Organised Crime Agency (SOCA).

#### v) Record Keeping Procedures

The Council will maintain procedures for verifying and recording the identity of counterparties and reporting suspicions.

### **Reporting Suspected Cases of Money Laundering**

You should report any suspected cases of money laundering and any receipts of cash over the sum of £5 000 (7 500 Euros) to the Money Laundering Reporting Officer (MLRO) immediately by telephoning 01248 752611 or by emailing details to [JFXFI@anglesey.gov.uk](mailto:JFXFI@anglesey.gov.uk) . The Money Laundering Reporting Officer will consider the circumstances of each case and make a decision as to whether to report the case to the Serious Organised Crime Agency (SOCA).

### **Implications for Staff**

Whilst the consequences of staff committing an offence are considered unlikely the **failure to disclose** a suspicion of a case of money laundering is in itself a serious offence and staff are advised to report any such suspicion immediately.

The penalties for money laundering offences depend on their severity. Those tried at a Magistrates Court can attract fines of up to £5000 and / or up to six months in prison. Cases tried at Crown Court can attract unlimited fines and sentences from two to fourteen years.

### **Examples of Suspicious Activities**

People involved in crime or the handling of criminal property need ways to safeguard the proceeds of their activities. This includes the laundering of money obtained from such activities. Situations they may give rise to suspicion of money laundering include;

- Any transaction involving an unusually large amount of cash;
  - Making cash payments over and above the amount necessary to settle a transaction and therefore requiring a refund.
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