



## Part 10

Updated December 2011

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# **MELTON BOROUGH COUNCIL**

## **Whistleblowing Policy**

**2012-2015**

Approved at Council: to be confirmed

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## 1. Introduction

Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect employees, and others that we deal with, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis.

The Whistleblowing Policy makes it clear that you can do so without fear of victimisation, subsequent discrimination or disadvantage. This Policy is intended to encourage and enable employees to raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside.

The Policy applies to all employees and those contractors working for the Council on Council premises, for example, agency staff, builders or drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises.

These procedures are in addition to the Council's complaints procedures and other statutory reporting procedures applying to some departments. You are responsible for making service users aware of the existence of these procedures.

The Policy has been discussed with the relevant trade unions and has their support.

## 2. Aims and Scope of the Policy

The Policy aims to:

- encourage you to feel confident in raising serious concerns and to question and act upon concerns about malpractice;
- provide avenues for you to raise those concerns and receive feedback on any action taken;
- ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied;
- Reassure you that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in good faith.

There are existing procedures in place to enable you to lodge a grievance relating to your own employment. The Whistleblowing Policy is intended to cover major concerns that fall outside the scope of other procedures. These include:

- conduct which is an offence or a breach of law;
- disclosures related to miscarriages of justice;
- health and safety risks, including risks to the public as well as other employees;
- damage to the environment;
- the unauthorised use of public funds;
- possible fraud and corruption;
- sexual or physical abuse of clients or other employees,
- other unethical conduct, or
- deliberate concealment of any of the above

Thus, any serious concerns that you have about any aspect of service provision or the conduct of employees or members of the Council or others acting on behalf of the Council can be reported under the Whistleblowing Policy. This may be about something that:

- makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Council subscribes to; or

- is against the Council's Financial Procedure Rules and policies; or
- falls below established standards of practice; or
- amounts to improper conduct.

### **3. Safeguards**

The Council is committed to good practice and high standards and wants to be supportive of employees. It is safe and acceptable for employees or contractors to speak up if they have a whistleblowing concern.

The Council recognises that the decision to report a concern can be a difficult one to make. If what you are saying is true, you should have nothing to fear because you will be doing your duty to your employer and those for whom you are providing a service.

The Council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith.

Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you.

### **4. Confidentiality**

All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. At the appropriate time, however, you may need to come forward as a witness.

### **5. Anonymous Allegations**

This Policy encourages you to put your name to your allegation whenever possible.

Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.

In exercising this discretion the factors to be taken into account would include:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

### **6. Untrue Allegations**

If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against you.

### **7. How to Raise a Concern**

As a first step, you should normally raise concerns with your immediate manager or their superior. This depends, however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if you believe that management is involved, you should approach the Chief Executive or the Strategic Director as the Council's Monitoring Officer or the Head of the Welland Internal Audit Consortium. The Audit Commission has also set up a confidential hotline for Council employees to provide them with guidance where employees suspect fraud or corruption. The telephone contacts for these senior officers and the Audit Commission are given below.

Concerns may be raised verbally or in writing. Employees who wish to make a written report are invited to use the following format:

- the background and history of the concern (giving relevant dates);
- the reason why you are particularly concerned about the situation

The earlier you express the concern the easier it is to take action.

Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.

Advice and guidance on how to pursue matters of concern may be obtained from:

- the Chief Executive – Lynn Aisbett - Ext 536
- the Monitoring Officer – Christine Marshall - Ext 532
- the Head of Welland Internal Audit Consortium - Direct Line 07796 940015
- the Audit Commission hotline –0845 052 2646

You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns. You might also consider contacting Public Concern at Work, an independent whistleblowing charity that offers free, confidential advice to people concerned about crime, danger or wrongdoing at work.

<b>Public Concern at Work – Contact Details</b>	
<b>Telephone</b>	020 7404 6609
<b>Email</b>	UK enquiries: <a href="mailto:whistle@pcaw.co.uk">whistle@pcaw.co.uk</a> UK helpline: <a href="mailto:helpline@pcaw.co.uk">helpline@pcaw.co.uk</a> UK services: <a href="mailto:services@pcaw.co.uk">services@pcaw.co.uk</a>
<b>Website</b>	<a href="http://www.pcaw.co.uk">www.pcaw.co.uk</a>

You may invite your trade union representative or a friend to be present during any meetings or interviews in connection with the concerns you have raised.

## **8. How the Council will respond**

The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.

Where appropriate, the matters raised may:

- be investigated by management, internal audit, or through the disciplinary process;
- be referred to the police;
- be referred to the external auditor;
- form the subject of an independent inquiry.

In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example discrimination issues) will normally be referred for consideration under those procedures.

Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.

Within ten working days of a concern being raised, the person with whom you have raised the issue will write to you:

- acknowledging that the concern has been received;
- indicating how we propose to deal with the matter;
- giving an estimate of how long it will take to provide a final response;
- telling you whether any initial enquiries have been made;
- supplying you with information on staff support mechanisms, and
- telling you whether further investigations will take place and if not, why not.

The amount of contact between the Officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from you.

Where any meeting is arranged, off-site if you so wish, you can be accompanied by a union or professional association representative or a friend.

The Council will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Council will arrange for you to receive advice about the procedure.

The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform you of the outcome of any investigation.

## **9. The Responsible Officer**

The Monitoring Officer has overall responsibility for the maintenance and operation of the Policy. She/He maintains a record of concerns raised and the outcomes (but in a form which does not endanger your confidentiality) and will report as necessary to the Council.

## **10. How the Matter can be taken further**

The Policy is intended to provide you with an avenue within the Council to raise concerns. The Council hopes you will be satisfied with any action taken. If you are not, and if you feel it is right to take the matter outside the Council, the following are possible contact points:

- the external auditor;
- your trade union;
- your local Citizen Advice Bureau;
- relevant professional bodies or regulatory organisations;
- the police

If you do take the matter outside the Council, you should ensure that you do not disclose confidential information.

## **12. Maintaining the Policy**

The Policy will be reviewed by the Overview, Scrutiny and Audit Committee on an annual basis to ensure that it continues to describe, fully and accurately, the reporting options available to you. The review should take place every three years with management updating inconsequential changes under delegated authority

The Council will give all employees the opportunity to discuss whistleblowing arrangements at staff meetings on an annual basis.

# **MELTON BOROUGH COUNCIL**

## **CORPORATE COUNTER FRAUD STRATEGY**

**2012-2015**

**Approved at Council on: to be confirmed**

# A strategy for dealing with theft, fraud and corruption

## 1. INTRODUCTION

The Council has a duty to protect the public money that it controls from loss due to dishonesty. It also has a duty to provide assurance to the people of Melton; to its employees; and to other stakeholders that it is taking this responsibility seriously.

The adoption of a formal strategy provides an opportunity to communicate, to everyone involved with the Council, our absolute determination to deal with dishonesty, whether involving Councillors, employees, contractors or customers. It sets out the steps that the Council is taking to maintain and improve its defences against dishonesty, as well as targets against which we can measure our performance. It also shows how the Council is making use of the support available from its providers of internal audit services – the Welland Internal Audit Consortium – to assure the effectiveness of its arrangements.

It demonstrates that the Council is committed to openness, honesty and integrity in all its dealings.

## 2. ELEMENTS OF THE STRATEGY

The Strategy is made up of the following elements:

- prevention;
- detection;
- investigation;
- retribution and restitution; and
- use of deterrents.

Running through the various elements is a clear theme of individual responsibility. Councillors and employees must be responsible for their own conduct: each of them has a part to play in maintaining the high standards set by the Council. This document has been drafted to show how we are addressing each element of the Strategy and to highlight and set targets for the completion of those things that are still to be done.

Any strategy must be subjected to regular testing to ensure that it is delivering the required outcomes. The Council's arrangements for dealing with the risks of theft, fraud and corruption are evaluated annually by our external auditors. In addition, the Strategy contains improvement targets against which progress can be assessed on a regular basis: progress reports will be contained in each year's Annual Report of Internal Audit produced by the Head of Consortium.

### **2.1 PREVENTION. The Council will take all reasonable and appropriate steps to make theft, fraud or corruption difficult. This will be done through:**

#### **Investment in appropriate technology**

The Council has installed modern IT systems to support the delivery of key financial systems. Those systems provide for effective internal controls to ensure the accuracy and legitimacy of financial transactions. The various systems have been implemented in a way that supports the proper separation of duties; ensures compliance with prescribed processes; and provides a reliable audit trail that identifies the employee responsible for initiating – and the manager responsible for authorising – any particular transaction.

The Council's IT arrangements are designed to ensure the secure use of systems for their approved purposes. The **IT STRATEGY** and policies have been developed to regulate areas of risk including:

- Unauthorised access to and use of Council equipment and systems.
- Disclosure of confidential information; and.



- Importing of unapproved data and programs.

The management of these risk areas has the effect of reducing the Council's vulnerability to fraud and corruption.

## **Clear rules and instructions that identify the responsibility of individuals**

Procedural Rules, and in particular Financial/Contract Procedural Rules (FPR/CPR) provide the basis for the effective management of the Council's affairs and the foundations upon which effective systems of control can be developed. It is therefore critical that they be subject to regular and rigorous scrutiny to ensure that their effectiveness is not eroded by changes in legislation, structures, policy or other causes. FPRs and CPRs were reviewed and revised in July 2011 and the Head of Central Services is responsible for ensuring that they remain current, reflecting fully and appropriately the Council's management structure and relevant policies.

### **Action Point 1: Maintaining Current Procedural Rules**

The Head of Central Services will confirm, as part of the Annual Governance Statement, that **either** Financial and Contractual Procedural Rules have been reviewed during the reporting year and are fully fit for purpose, **or**, that necessary amendments are being drafted.

By drafting Instructions prescribing the way in which systems – and particularly financial systems - are to be operated, the Council's management both reduces the likelihood of error in transactions and makes it more likely that attempts to get round system controls will be noticed and challenged. It is the responsibility of the relevant Heads of Service to ensure that Instructions are drafted which set out the way that users of the Council's financial systems must input and authorise transactions; that those Instructions are made available to all relevant employees; and that the Instructions remain current. The Head of Central Services shall determine whether Instructions are necessary to ensure the proper operation of any other systems and, if so, shall instruct the relevant Head of Service accordingly.

### **Action Point 2: Drafting Financial Instructions**

The Head of Central Services will gain assurance from Senior officers, as part of the Annual Governance Statement, that adequate financial system arrangements are in place.

The Council recognises it faces special challenges in ensuring the financial integrity of the Benefits System, whilst maintaining a quality service for law abiding applicants and landlords. It has therefore adopted a detailed **BENEFIT FRAUD SECURITY STRATEGY** for the Benefits Service, which is complementary to the overall policy framework set out in this document.

## **Clear statements of principal**

The Council has made it clear through the adoption of the Strategy itself and the supporting Anti-Bribery Policy that it is not prepared to tolerate any form of dishonest or improper behaviour by Members, employees, contractors or suppliers.

## **Good employee selection procedures**

The Council seeks to employ honest and competent employees to reduce the likelihood of loss whether from mistakes or misconduct. Good employee selection procedures, consistently applied, reduce the Council's risk and for that reason they are a requirement of our insurers.

A Recruitment Procedure has been adopted by the Council and corporate recruitment procedures have been developed in support of that policy. The operation of some of these procedures has been devolved to departmental managers and it is important to ensure on going and effective compliance with approved policies and procedures.

### **Action Point 3: Monitoring Recruitment Procedures**

The Head of Communications will put in place arrangements to monitor compliance with the Council's recruitment procedures and to subject the procedures themselves to periodic review to ensure that they remain effective and comply fully with statutory and other requirements. As part of the Annual Governance Statement, she will **either** confirm that procedures are fit for purpose and are complied with **or** that appropriate remedial action is in hand.

## **Codes of Conduct for Members and Employees**

The Council has adopted Codes of Conduct for Members and Employees to underline its commitment to the highest standards of probity.

The National Model Code of Conduct for Members was issued by the Secretary of State under the provisions of the Local Government Act 2000 and represents a national standard of good practice. A Code of Conduct for Members based on the national model forms part of the Constitution adopted by the Council in April 2007: the Constitution also contains a Code of Conduct for Employees although the Government has still to deliver the promised model code for employees. The Council has also adopted a Protocol for Members and Officers dealing with Planning Matters and a Protocol for Member Officer Relations.

The Council established the Standards Committee to guide its work in meeting the requirements of the new ethical framework contained in the Local Government Act 2000. The role of the Committee is to promote and maintain high standards of conduct within the Council and for promoting compliance with the Code of Conduct. The Monitoring Officer has specific responsibilities to monitor the use being made of the Registers and take action as necessary to ensure that Members are fully aware of their responsibilities for full and prompt disclosures; to oversee ethical issues; and to provide advice and guidance to Members on the Code of Conduct. In November 2011 the Localism Act provided for the abolition of the Standards Board for England and for the development of local arrangements to address issues of Member conduct.

### **Action Point 4: Maintaining the Capacity to Promote Proper Standards**

In light of recent changes to the "Standards Board Regime", the Monitoring Officer will monitor guidance from the Government and other relevant bodies to determine what needs to be done to put in place appropriate arrangements for the Council

Members and employees are required by their Codes of Conduct to register certain interests and gifts and hospitality offered/accepted. A Register of Members Interests and a Register of Gifts and Hospitality for use by both Members and employees is maintained by the Monitoring Officer: Employees are required to notify their line managers of any personal interests that might impact on the proper discharge of their duties. Members are also required to declare any personal and prejudicial interests which they may have in matters under consideration at Committee and other meetings and these declarations are recorded in the minutes.

### **Action Point 5: Monitoring the Registers**

The Strategic Director – Monitoring Officer will monitor the use made by Members and employees of the available Registers and take appropriate action to promote compliance with the requirement for full and timely disclosure. As part of the Annual Governance Statements he/she will **either** confirm that Members and employees are making appropriate use of the Registers and that no material failures of disclosure have been identified **or** summarise instances of non-compliance and outline steps taken to reduce the likelihood of reoccurrences.

## **Training and support**

The risk of loss or damage to the Council's reputation due to mistake or dishonesty is reduced if all employees are both trained in the technical requirements of their jobs and clearly instructed as to the standards of honesty that the Council requires of its Councillors, employees, contractors and customers.

The Council's corporate induction processes provide the opportunity to ensure that all new employees receive a clear and consistent message about standards of acceptable behaviour.

### **Action Point 6: Using the Induction Process to Communicate Standards of Acceptable Behaviour.**

The Head of Communications will ensure that the corporate induction process provides clear and consistent guidance to each new employee on the standards of behaviour they are required to maintain. That guidance will include:

- What the Code of Conduct requires of employees;
- The operation of the Whistleblowing Policy; and
- The requirements of the Counter-Fraud Strategy

The Council, like all other local authorities, has accepted that the Nolan Principles of Public Life define acceptable standards of behaviour (See Appendix A). The Council's managers will deliver regular briefings to their teams in which they will make clear that those Standards must be followed. Briefings will also remind employees of their duties – as set out in the Code of Conduct – and of the Council's Whistleblowing arrangements.

The Council will take action to ensure that all employees understand and accept the standards of behaviour expected of them. The HR function has established that the Council's existing employee surveys are ill suited to capture this type of data: alternative means of obtaining the necessary assurance will be developed.

### **Action Point 8: Confirming Employees' Acceptance of the Council's Standards**

The Head of Communications will investigate means of obtaining reliable assurance that all employees understand and accept the standards of behaviour expected of them.

The Council's Appraisals and Development Scheme is designed to ensure that all employees have the skills necessary to do their jobs properly. In particular the Scheme supports the Council's normal induction arrangements to ensure that any employee who is required to operate the Council's financial systems has been trained up to an appropriate level of competence.

## 2.2 DETECTION.

**The Council's processes and procedures will be designed to make mistakes or deliberate misconduct easy to detect. Procedures will be drafted so that employees are clear about their responsibilities to be alert to possible error or misconduct.**

### Internal Control

The Council's key financial processes have been designed to incorporate internal checks and are documented to show who should do what and how. Internal check means that the work of one employee serves as a check on the accuracy and legitimacy of the work of his/her fellow. If employees know how each process should be carried out, non-standard behaviour should be easily detected. Financial and management controls are subject to regular review by internal audit and any weaknesses or scope for improvement are reported to the relevant managers.

#### **Action Point 9: Maintaining effective internal controls**

The Head of Consortium will deliver Annual Audit Plans giving assurance that the Council's internal control framework is appropriate to manage the risks of error, fraud or corruption to which it is exposed. Audit reports issued to service managers and the Section 151 Officer will include recommendations as to necessary improvements in the internal control framework.

The Head of Consortium's Annual Report on Internal Audit will address specifically the adequacy of the Council's arrangements to manage the risks of fraud or corruption. This report will be subject to consideration by the Overview, Scrutiny and Audit Committee on the first meeting of the Committee in each municipal year.

### Whistleblowing Arrangements

The Council has made it clear, through the adoption of a Whistleblowing Policy, that each employee has an individual responsibility to report any concerns about acts of impropriety - including any and all types of dishonest behaviour. The Whistleblowing Policy is subject to regular review and was last updated in 2011.

The Council recognises that there are special problems to be addressed in respect of Benefits fraud. It has therefore set in place arrangements consistent with the best practice guidance provided by the Government; the Local Government Association and other agencies: this has involved the establishment of a Fraud Hotline which is promoted through a range of channels, including the information provided with the annual rent increase notification.

The Council also recognises that members of the public may have or obtain information that raises legitimate concerns about other aspects of the Council's activities. There is a need to ensure an appropriate level of public awareness about the Fraud Hotline and other methods by which they can bring such concerns to the Council's attention.

#### **Action Point 10: Establishing public channels for "Whistleblowing"**

The Head of Communications will investigate the scope to provide and promote a range of convenient channels for members of the public to report concerns about suspected misconduct involving the Council's employees, Members or contractors and other service providers.

**2.3 INVESTIGATION. Any evidence of misconduct will be investigated thoroughly. In the event that evidence suggesting criminal misconduct is found, the Council will notify the police and will give vigorous support for any criminal investigation.**

Directors and Heads of Service must report all instances of potential fraud or corruption immediately to the S151 Officer. This duty applies even where the amount of money involved may appear to be relatively trivial, as an apparently minor matter can turn out to be much more significant after investigation. The Council has developed an Anti-Fraud & Corruption Response Plan which provides a framework for investigating and dealing with potential cases of fraud or corruption. The Plan forms Appendix B to the Strategy.

The Council has two internal agencies with capacity for investigating cases of suspected fraud or financial misconduct. The Benefits Investigation Officer carries out both reactive and proactive investigations of suspected benefit fraud. The Welland Internal Audit Consortium is the agency usually charged with the investigation of any other category of suspected fraud or financial misconduct. All other misconduct (i.e. not involving fraud or financial matters) will be dealt with in accordance with the Council's Dismissal and Disciplinary Procedure.

The incidence of criminal misconduct not related to benefit fraud is low; however the Consortium has established a clear framework for liaising with the police and the effectiveness of those arrangements has been tested and demonstrated.

**Action Point 11: Maintaining Lines of Communication with Local Police**

The Head of Consortium will identify an appropriate first point of contact within Leicestershire Constabulary to whom any cases of suspected criminal misconduct will be reported and with whom the Consortium will liaise with in investigating such cases.

**2.4 RETRIBUTION & RESTITUTION. In the event that misconduct is proved, the Council will take appropriate disciplinary and/or legal action. Where a prosecution results, the Council will seek restitution.**

The Council's Local Terms and Conditions specify the action that is appropriate for different categories of misconduct by employees. The Council is consistent in its application of its disciplinary arrangements.

**Action Point 12: Introduction of a Corporate Prosecution Policy**

Head of Communications, in liaison with the Head of Welland Internal Audit Consortium, will devise a Corporate Prosecution Policy which covers at least:

- the reporting to the Police of any case of misconduct by employees, contractors, clients or customers amounting to a criminal offence;
- the arrangements for the Council to pass all evidence to the Police without delay and to support and co-operate with any subsequent Police investigation
- the requirement in all such cases for the Council to press for a prosecution as a matter of public policy; and
- Where the Council would seek to recover any losses from in the event that a successful prosecution results.

Good practice requires each local authority to adopt a formal "Fraud Response Plan" making clear the responsibility of specific post holders in the event of a reported fraud. The Council has responded to this new requirement and its Plan has been adopted as an appendix to the Counter-Fraud Strategy.

**2.5 DETERRENCE. The Council will publicise the fact that its arrangements make it likely that dishonest behaviour will be detected quickly and that it will take appropriate legal and/or disciplinary action to punish offenders and to recover from them any losses that they have caused.**

The Council attempts, with some success, to have all successful prosecutions for benefit fraud reported by the local press. The Head of Communications assists in our attempts to place stories with the local media to ensure that local people are aware of the Council's successes in investigating fraud. The Council's own free paper "Melton Mail" provides a further channel of communication with local people and promoting the whistleblowing arrangements available to them if they have concerns about or evidence of dishonesty.

**Action Point 13: Pursuit of Publicity**

The Head of Communications will seek to place articles both in the local media and in the Melton Mail to:

- publicise the Council's commitment to act against dishonesty;
- highlight successes in prosecuting fraudsters; and
- promote the Council's Whistleblowing arrangements

Application forms for benefits, grants and other services contain warnings, expressed in "Plain English" of the action that will be taken against people making false or incomplete statements. The greatest risks of client dishonesty are judged to relate to applications for benefits; for grants; and for Council accommodation: it is therefore appropriate to keep under annual review the warnings included in the applications for these services

**Action Point 14: Review of anti-fraud warnings**

The Head of Communities and Neighbourhoods will ensure that the warnings contained in application forms for benefits; grants and Council accommodation are reviewed annually to ensure that they comply with best practice guidance

**2.6 THE AUDIT PROCESS. The Council's arrangements for dealing with theft, fraud and corruption will be subject to review as part of the annual programme of section 151 work.**

The Council's audit planning framework provides for the annual review of the controls within the key financial systems designed to address the risks of fraud or corruption. The framework also provides for the stratification of the Annual Audit Plan so that elements of the Council's corporate counter-fraud framework are subject to annual review. The assessment of the level of risk associated with different elements of the counter-fraud framework is the responsibility of the Head of Central Services as Section 151 Officer: the Head of Consortium will provide the objective evidence to support that assessment.

The frequency with which operations are subject to audit is determined by an assessment of risk. The most accurate assessment of risk is obtained through the informed involvement of strategic management in the process of developing the Council's Strategic Audit Plan and in the engagement of service managers in the development of the Terms of Reference for individual audit assignments.

**Action Point 15: Providing assurance that fraud and corruption risks are being managed.**

As part of the annual audit planning process the Head of Consortium will provide the Head of Central Services with sufficient evidence to support an assessment of the risks associated with different elements of the counter-fraud framework. The Head of Central Services assessment will be reported to the Audit Committee as part of the process of obtaining Member endorsement of the Annual Audit Plan.

### 3. CONCLUSIONS

It is important to the Council's role of community leadership that it demonstrates the highest standards of behaviour in its conduct of public business and in the use of public money. The adoption of a strategy to deal with the risks of theft, fraud and corruption is part of an on going process of living up to those standards. Of equal importance will be the way in which the Council monitors its performance against the strategy and searches continuously for ways in which it can improve standards.

#### **Action Point 16: Annual Reporting**

The Head of Consortium will report annually to the Overview, Scrutiny and Audit Committee on the effectiveness of the Strategy, the completion of Action Points for the enhancement of the Strategy; the impact of such improvement activities; and on any opportunity for further improvements identified in the course of internal audit activity or by other means. As part of the Annual Governance Statement, the Head of Consortium will provide an assessment of the impact of the Strategy in the reporting year.

The Head of Consortium will report to the Committee's first meeting in 2012/13 and annually thereafter.

## Appendix A

### Seven Principles of Public Life as Formulated by the Nolan Committee (The Committee on Standards in Public Life)

1. Selflessness

Holders of public office should take decisions solely in terms of public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

2. Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

3. Objectivity

In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards or benefits, holders of public office should make choices on merit.

4. Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

5. Openness

Holders of public office should be as open as possible about all decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

6. Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

7. Leadership

Holders of public office should promote and support these principles by leadership and example.



## Appendix B



### ANTI FRAUD AND CORRUPTION RESPONSE PLAN

January 2012

## MELTON BOROUGH COUNCIL

### ANTI FRAUD AND CORRUPTION RESPONSE PLAN

1. **FRAUD** is defined as the **intentional distortion of financial statements or other records** by persons internal or external to MELTON BOROUGH COUNCIL which is carried out to conceal the misappropriation of assets or otherwise for gain.
2. **CORRUPTION** is defined as the **wrongful offering, giving, soliciting or acceptance of an inducement or reward** which may influence the action of any person.

The lead officer responsible for the response plan is the Head of Central Services.

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## FRAUD AND CORRUPTION - RESPONSE PLAN

### 1. INTRODUCTION

In meeting its objective to provide quality and best value in its functions and services the Council has adopted a Fraud and Corruption Response Plan. This document details roles and responsibilities and the process to be followed in the event of a reported suspicion of fraud or corruption.

### 2. ROLES AND RESPONSIBILITIES

Responsibility for investigating fraud or corruption has been delegated to Head of Central Services in consultation with the Chief Executive. The Head of Central Services (HCS) in consultation with the Chief Executive and the Monitoring Officer is responsible for informing third parties such as external audit or the police when appropriate. The HCS shall inform and consult the Chief Executive in all cases of potential fraud.

Where an incident involves a Member of the Council, the HCS shall immediately inform the Chief Executive.

Where a member of staff is to be interviewed or disciplined the Investigating Officer shall consult and take advice from HR

HR shall advise those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures, as requested.

The Investigating Officer will be either a senior officer of Melton Borough Council or an employee of Welland Internal Audit Consortium appointed by the HCS to undertake an investigation.

In order to comply with RIPA (the Regulation of Investigatory Powers Act 2000) consideration must be given to the Authority's 'Policy and Procedures for Authorisation of Covert Surveillance' before any investigation involving direct surveillance is undertaken.

### 4. THE RESPONSE PLAN

#### 4.1 INTRODUCTION

The flowcharts in sections 4.2 describe Melton Borough Council's intended response to a reported suspicion of fraud or corruption. The flowcharts are intended to provide procedures that allow for evidence gathering and collation in a manner that will facilitate informed initial decisions, while ensuring that evidence gathered will be admissible in any future criminal or civil actions.

**Each situation is different; therefore the guidance in the flowcharts will need to be considered carefully in relation to the actual circumstances of each case before action is taken.**

Further details on the processes in the flowchart are provided in section 4.3 (Commentary on Flowchart Items).

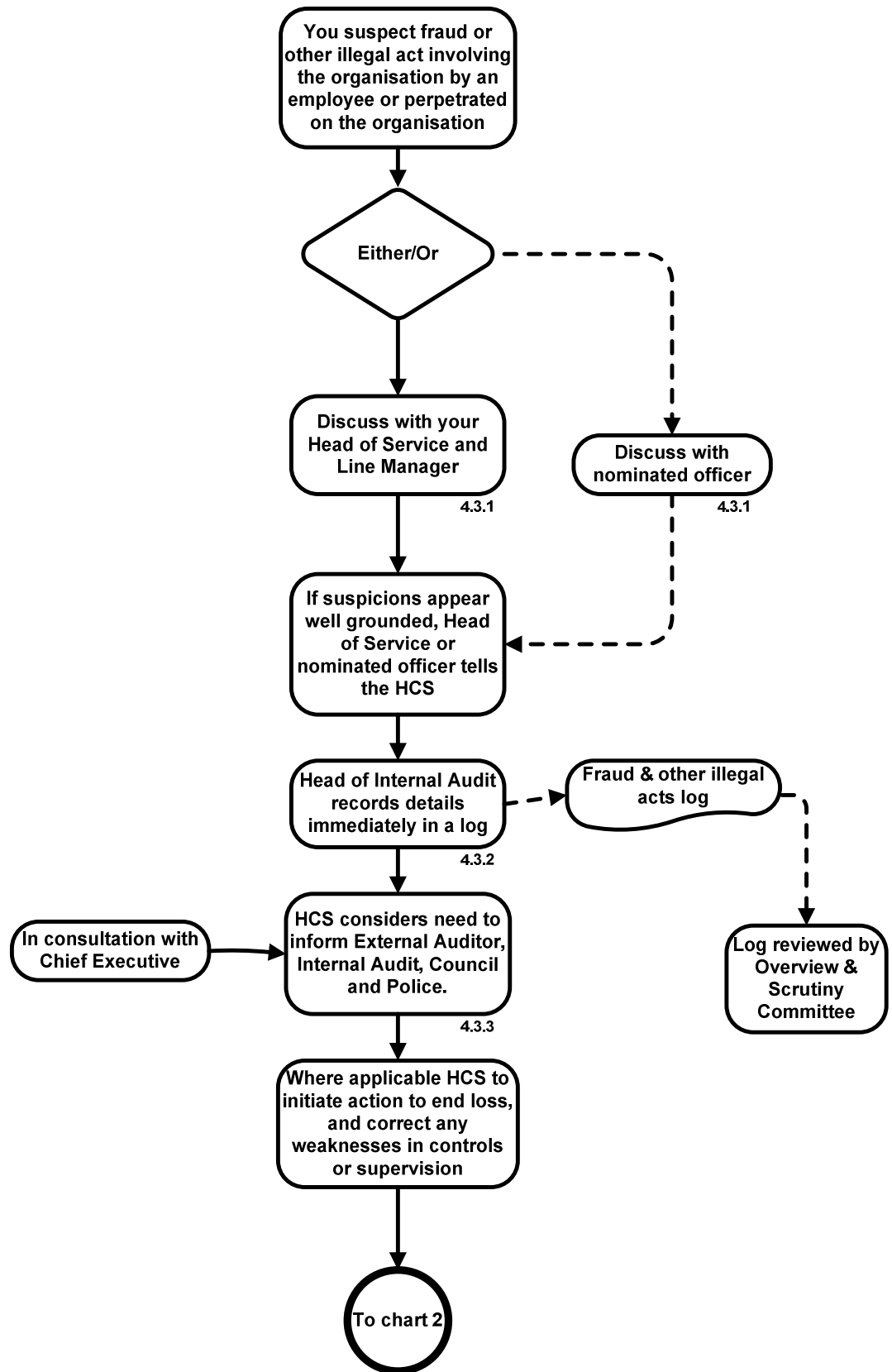
It should be noted that under no circumstances should a member of staff speak or write to representatives of the press, TV, radio or to another third party about a suspected fraud or corruption without the express authority of the Chief Executive. Care needs to be taken to ensure that nothing is done that could give rise to an action for slander or libel.

In some cases, e.g. if a major diversion of funds is suspected, speed of response will be crucial to avoid financial loss.

4.2 FLOWCHARTS

CHART 1

REPORTING FRAUD



**CHART 2**  
**MANAGING THE INVESTIGATION**

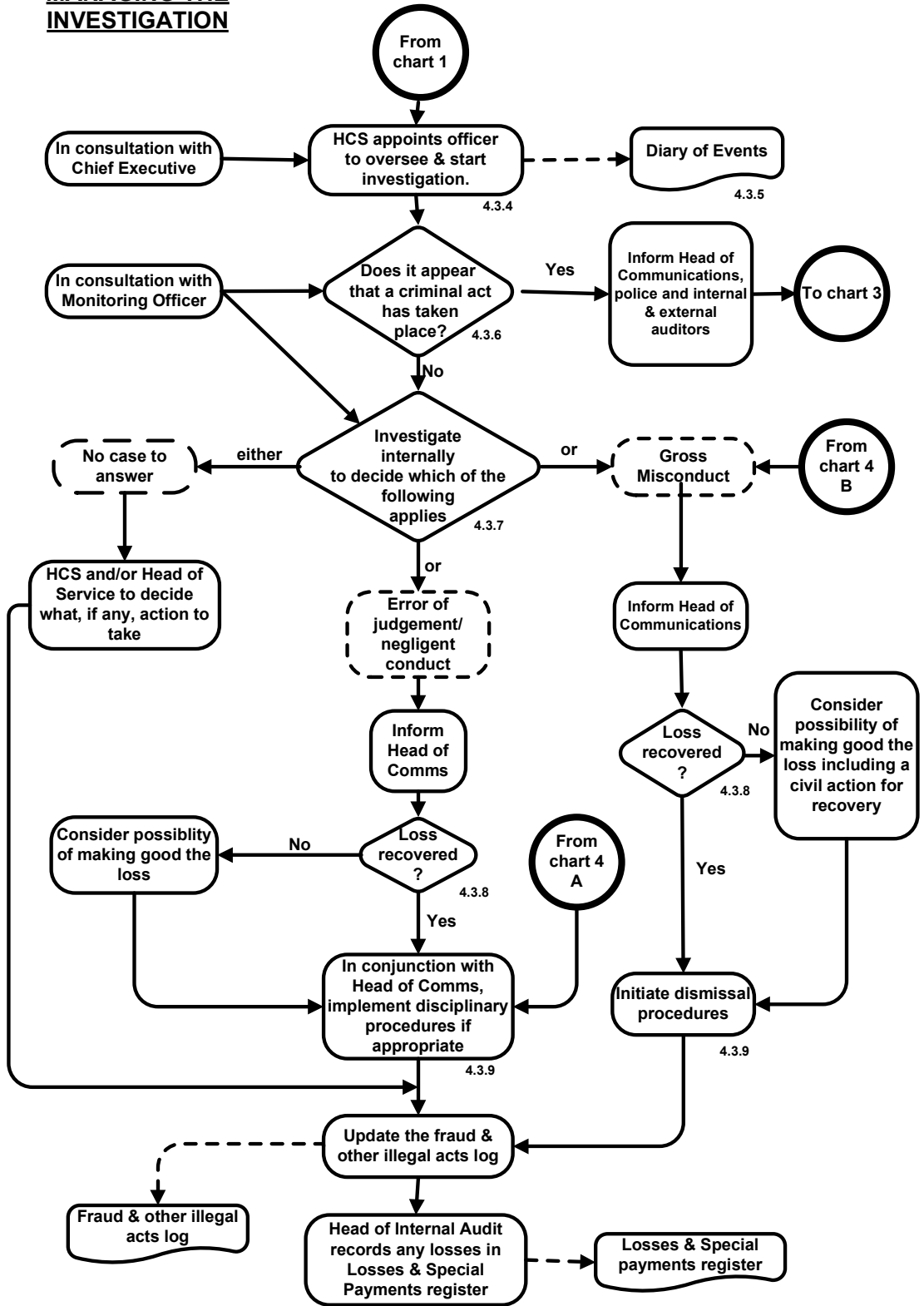


CHART 3

GATHERING EVIDENCE

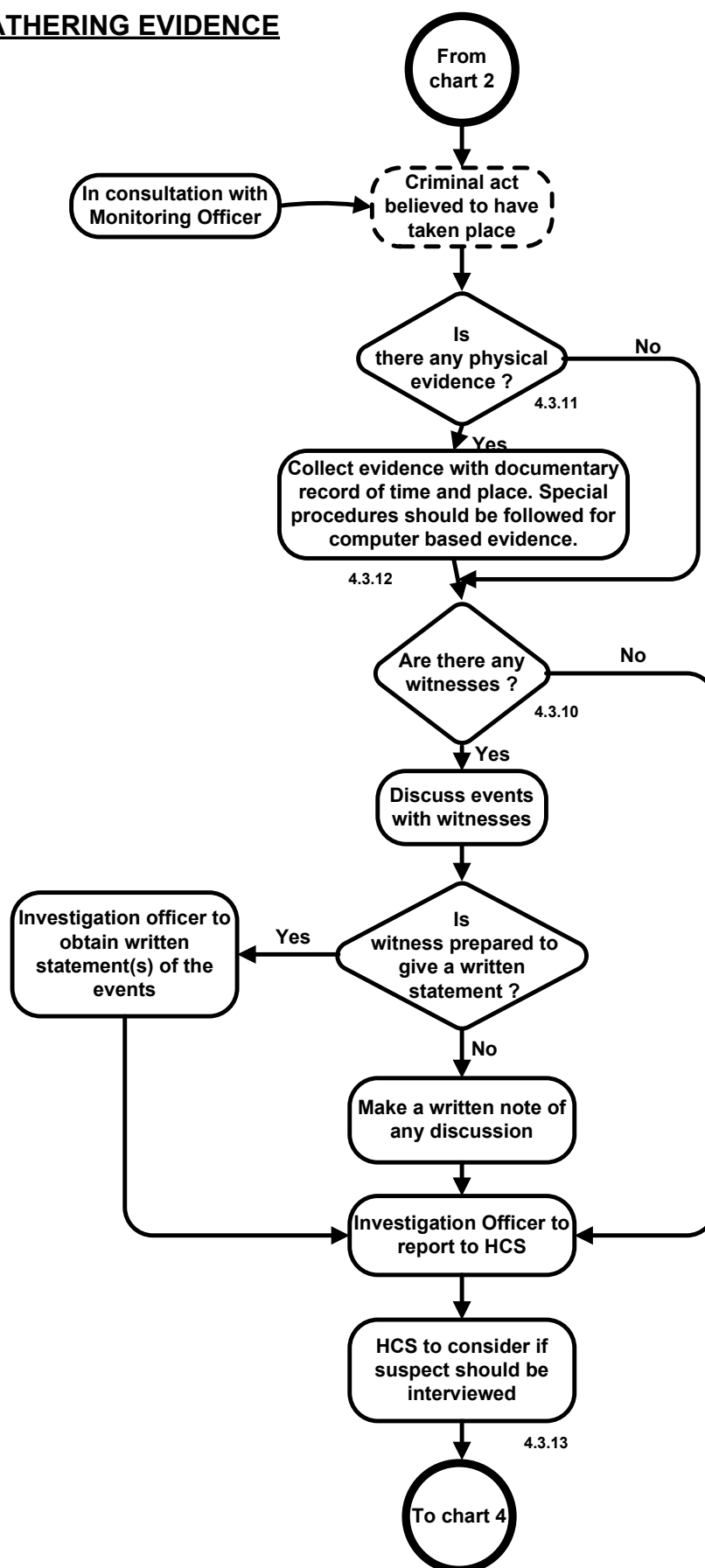
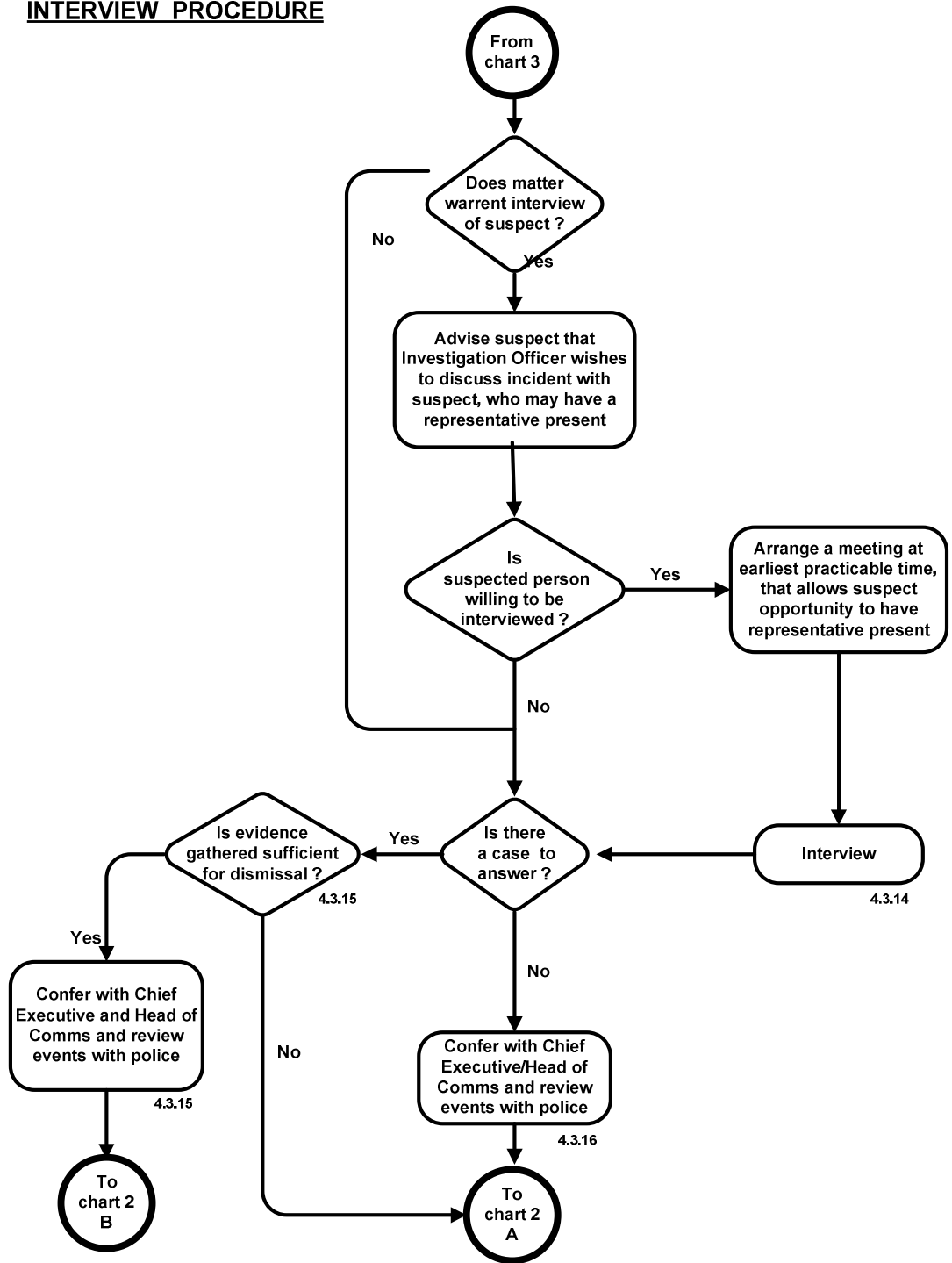




CHART 4

INTERVIEW PROCEDURE



### 4.3 Commentary on Flowchart Items

Further explanation of many items is also given elsewhere in this document.

#### CHART 1 - REPORTING FRAUD OR CORRUPTION

##### 4.3.1 Nominated Officers

If an employee suspects his/her Section Manager or Director, the employee should report the suspicions to someone more senior, or directly to the Head of Central Services (HcS) or discuss the matter with the Chief Executive or another Director.

If the suspicion involves a Director the matter should be reported to the Chief Executive.

If the suspicion involves a Member of the Council, the matter should be reported to the Corporate Directors or the Chief Executive.

If the suspicion involves an outside organisation the employee should report the matter to their Section Manager or directly to the HCS or discuss the matter with the Chief Executive.

Time may be of the utmost importance to prevent further loss to Melton Borough Council.

##### 4.3.2 Internal Audit records details immediately in a log

The log will contain details of all reported suspicions, including those dismissed as minor or otherwise not investigated. It will also contain details of actions taken and conclusions reached. A summary report with no specific details will be reviewed by the Overview, Scrutiny and Audit Committee at least once a year, which will report any significant matters to the Council.

##### 4.3.3 Head of Central Services considers need to inform the Council, Welland Internal Audit Consortium External Audit, police

The Head of Central Services shall inform and consult the Chief Executive at the first opportunity in all cases. The Lead Auditor should normally be informed immediately in all cases.

Good practice on special payments and losses states that if a body suspects arson or theft of significant amounts, it should at once inform the police and the external auditors. The meaning of significant is what any reasonable person would deem to be significant in the circumstances. The HCS will decide what is significant after taking advice if necessary. Where fraud or corruption is suspected the circumstances of the case will dictate when the police are called in and the external auditors informed.

If a criminal act is suspected, particularly fraud or corruption it is essential that there is the earliest possible consultation with the police. In any event the police should be contacted before any overt action is taken which may alert suspects and precipitate the destruction or removal of evidence. **This includes taking action to stop a loss or tighten controls.**

## **CHART 2 - MANAGING THE INVESTIGATION**

### **4.3.4 Head of Central Services to appoint an Officer to oversee investigation. Start investigation**

The circumstances of each case will dictate who will be involved and when but might involve the internal auditors. The following is intended to be general guidance to assist management in deciding the best course of action.

### **4.3.5 Diary of Events**

The Officer overseeing the investigation (referred to hereafter as the Investigating Officer) should initiate a Diary of Events to record the progress of the investigation.

### **4.3.6 Does it appear that a criminal act has taken place?**

In some cases of course this question may be asked more than once during an investigation. The answer to the question obviously determines if there is to be a fraud investigation (or other criminal investigation). In practice the Monitoring Officer should be consulted for advice as to a criminal act has taken place. If a criminal event is believed to have occurred the police, external audit and the Council should now be informed if this has not already been done.

Section 6 gives further details of the common offences relevant to fraud.

### **4.3.7 Investigate internally**

If it appears a criminal act has not taken place the next step should probably be an internal investigation to determine the facts; what, if any, disciplinary action is needed; what can be done to recover a loss; and what may need to be done to improve internal controls to prevent the event happening again.

Broadly, where no criminal act has taken place, the event could have three outcomes. The most serious would be where it is decided there was gross misconduct, this could involve dishonesty but not with a criminal intent. The outcome is likely to be dismissal if a member of staff is involved. Less serious would be if it was decided that there was negligence or an error of judgement that caused the event. This is unlikely to lead to dismissal but might involve disciplinary procedures. (The chart here shows a link with Chart 4 where as a result of an investigation of suspected criminal activity it was considered there was sufficient evidence of gross misconduct to justify dismissal). Finally it may be concluded there is no case for an individual to answer.

In each case the Investigating Officer should consider what can be done to recover any loss and whether anything should be done to improve control to prevent the event happening again.

### **4.3.8 Recovering a loss**

Where recovering a loss is likely to require a civil action it will probably be necessary to seek legal advice. Where external legal advisors are used the Investigating Officer must ensure there is co-ordination between the various parties involved.

If the loss may be covered by insurance the Investigating Officer should inform the Officer responsible for insurance matters with Financial Services.

#### **4.3.9 Disciplinary/Dismissal Procedures**

The disciplinary procedures of Melton Borough Council have to be followed in any disciplinary action taken by Melton Borough Council towards an employee (including dismissal). This may involve the Investigating Officer recommending a disciplinary hearing to consider the facts, the results of the investigation (a formal report) and take appropriate action against the employee.

#### **CHART 3 - GATHERING EVIDENCE**

**NB.** THE CHART CANNOT COVER ALL THE COMPLEXITIES OF GATHERING EVIDENCE. EACH CASE MUST BE TREATED ACCORDING TO THE CIRCUMSTANCES TAKING PROFESSIONAL ADVICE IF NECESSARY and LIASING WITH THE TRADES UNION Section 6.3 gives further brief guidance on gathering evidence.

#### **4.3.10 Witnesses**

If a witness to the event is prepared to give a written statement, it is best practice for an experienced member of staff, preferably from HR, to take a chronological record using the witness's own words. (The witness must be happy to sign the document as a true record, but the involvement of an independent person usually helps to keep the statement to relevant facts).

#### **4.3.11 Physical evidence**

Upon taking control of any physical evidence, it is very important that a record is made of the time and place it is taken. If evidence consists of several items, for example many documents, each one should be tagged with a reference number corresponding to the written record.

#### **4.3.12 Procedure for securing computer based evidence**

If you suspect that computers may contain information pertinent to an enquiry then you should institute the following procedures.

**DO NOT TURN ON OR ATTEMPT TO INTERROGATE A SUSPECT COMPUTER. THIS COULD DESTROY EVIDENCE.**

Identify all computers and storage media that may contain evidence including:

- the suspect's desktop and/or laptop computer
- the suspect's secretary's computer
- the suspect's electronic organiser or palmtop computer
- the server
- backup media
- voicemail systems
- mobile phones
- floppy disks
- home computers
- third party computers (e.g. senders and recipients of –mails or files)

Quarantine the above computers and media

- do not permit anyone to use the relevant computers
- disconnect the relevant computers from the network
- restrict remote access

- consider the need for court orders to preserve and secure the evidence on third party computers and storage media

Create or arrange for evidentially sound copies of the relevant computers and storage media.

Once evidentially sound copies of the computers and associated storage media have been made, the computers can go back into circulation.

#### **4.3.13 Head of Central Services to consider if suspect should be interviewed**

The Head of Central Services will consider the report (written or verbal) of the Investigating Officer and consider if the suspect should be interviewed. In this consideration he/she must consult with the Chief Executive, the Monitoring Officer, the HR and the police. If a crime is suspected, it is recommended that the police are consulted before any interview with the suspect takes place (see section 7).

#### **CHART 4 - INTERVIEW PROCEDURE**

#### **4.3.14 Interview**

The requirements of the Police and Criminal Evidence Act (PACE) must be considered before any interview with a suspect is performed, since compliance with PACE determines whether evidence is admissible in criminal proceedings (see Sections 6 & 7). Consideration must also be given to the Human Rights Act and the Regulation of Investigatory Powers Act (RIPA). If in doubt about the requirement of these Acts it is important to take specialist advice.

#### **4.3.15 Is evidence gathered sufficient for dismissal?**

Under UK employment legislation dismissal must be for a 'fair' reason. The manner of dismissal must also be reasonable. It is therefore important that no employee should be dismissed without close consultation with HR. HR should also be consulted about the provision of references for employees who have been dismissed or who have resigned following suspicions of a fraud.

#### **4.3.16 Review events with police**

Whether or not the evidence gathered is thought sufficient for dismissal or prosecution, if there is evidence of fraud or another criminal offence, the police should be consulted at this stage if they are not already involved.

### **4.4 INSURANCE**

The possibility of recovering a loss through insurance should not be overlooked. There may be time limits for making a claim and in certain cases claims may be invalidated if legal action has not been taken. Where an investigation is on going and the loss may take time to quantify an intention to make a claim should be lodged at the earliest opportunity in order to ensure the insurers are aware of the claim. Evidence gathering should be as swiftly as possible without compromising the quality and accuracy of the investigation.

### **4.5 MORE DETAILED INVESTIGATION**

The flowchart covers the basics of reporting fraud or corruption, initial evidence

gathering, interviewing, liaising with the Police and management action. It will be necessary to decide whether further investigation is required, and if so, by what means it should be undertaken. The remainder of this chapter discusses some of the considerations in cases of fraud and corruption, with special regard to the often conflicting objectives of maximising control and minimizing cost.

Points of good practice for any investigation include:

1. Having an established line of communication with the local police or fraud squad.
2. Identifying an Officer responsible for the investigation. The Officer should be independent of the area under investigation.
3. Defining the objectives of the investigation.
4. Defining the scope and timing of investigation and likely outputs.
5. Seeking advice where necessary from such sources as police, internal and external audit, and legal advisors.
6. Agreeing resources required for investigation.
7. Defining responsibilities.
8. Budgeting and monitoring resources used (costs and time).
9. Monitoring progress and informing relevant officers as required.
10. Considering lessons to be learned e.g. How control can be improved.
11. Drawing up an action plan based on lessons learned.
12. Keeping proper records including a diary of events.

#### **4.6 INVOLVING THE POLICE**

Some Managers may mistakenly be reluctant to involve the police in the belief that:

- they are only interested if the alleged criminal offence is greater than a specific value; or that the police are not interested because of potentially complex issues involved that render little chance of a successful prosecution; or
- Melton Borough Council prefers to deal with the incident themselves, keeping it quiet while implementing dismissal and pursuing recovering through civil action; or
- that the police want hard evidence before they will pursue investigations, but when it is provided they advise that the rules of evidence have not been complied with; or
- the disciplinary process has to wait behind a police prosecution.

Protracted internal investigations often unnecessarily delay involving the police, thereby diminishing the value of co-operation with the police.

However, properly organised investigations, conducted by individuals with an inside working knowledge, will be of great assistance to any subsequent police inquiry, and management should therefore not be discouraged from liaising with police as soon as the issues involved are identified.

The decision to involve the police will include the following considerations:

1. Melton Borough Council's Financial Procedural Rules.

2. Good Practice Guidance.
3. Whether the investigation requires further resources to conclude.
4. Whether any required surveillance is beyond the powers of the Council (RIPA).
5. The means to recover losses through civil actions.
6. Prosecution of the perpetrator(s) through criminal action.
7. Disciplinary action and dismissal of the perpetrator(s) (through formal disciplinary procedures).
8. Procedures for the preservation of evidence.
9. Management of public relations.
10. Potential seriousness of the malpractice.
11. Whether the malpractice is fraud or corruption.
12. Apparent complexity of the case.
13. Whether the malpractice is thought to be continuing.
14. Involvement of individuals or organisations outside Melton Borough Council.
15. Need to display deterrent action.

\*It should be noted that Audit Commission guidance states that the police and external auditors should be contacted immediately fraud or corruption is **suspected**.

The police will often be able to advise on how to draft a statement to the staff or the press.

## 5. INVESTIGATION RESOURCE OPTIONS

After completion of initial fact finding in accordance with procedures given in the flow charts, the following options for resourcing an investigation are available to Melton Borough Council. These options are not mutually exclusive. In complex cases a number of different parties will need to be involved.

Some internal auditors have considerable experience in fraud investigations. In many cases internal audit will be the most suitable resource to manage and co-ordinate an investigation from the point of view of cost, experience and effectiveness.

Action	Advantages	Disadvantages
No action required  <i>(Not usually a possible option)</i>	No incremental cost	Fails to allay suspicions, deter or recover lost Melton Borough Council assets  Clear message to staff that "they can get away with it"  Possible adverse publicity if suspicion eventually becomes public
Use spare capacity within Melton Borough Council to investigate	No incremental cost  Entirely controlled by Melton Borough Council	Lack of independence  Lack of knowledge of PACE / evidence gathering/ Human Rights/RIPA

		<p>Little or no investigative experience</p> <p>May delay involving the police until it is too late</p>
Use Internal Audit to investigate	<p>Sometimes good knowledge of investigations, PACE and evidence gathering</p> <p>Familiar with Melton Borough Council</p> <p>Can be controlled by Melton Borough Council</p>	<p>Cost</p> <p>Sometimes little knowledge of evidence gathering processes or PACE/Human Rights/RIPA.</p>
Use Human Resource staff to assist in staff matters	<p>Familiar with Melton Borough Council</p> <p>Can be controlled by Melton Borough Council</p> <p>Good knowledge of Melton Borough Council procedures relating to employment and of relevant employment law</p>	

Action	Advantages	Disadvantages
Use external audit to investigate	<p>Independent</p> <p>Some knowledge of PACE etc.</p> <p>Familiar with Melton Borough Council</p>	<p>Cost</p> <p>Further from the control of Melton Borough Council</p> <p>Possibly limited knowledge of evidence gathering processes and insufficient investigative expertise</p>
Use an external specialist consultancy to investigate e.g. forensic specialists or lawyers	<p>Independent</p> <p>Knowledgeable on the rules of evidence and evidence gathering processes, together with investigative expertise.</p> <p>Can be controlled by Melton Borough Council</p> <p>Can advise on dealing with the media</p>	<p>Cost</p> <p>Lack of existing knowledge of Melton Borough Council</p>
Call the police	No incremental cost	Potentially little control over the investigation



	Independent	
	Good knowledge of PACE etc.	Goal tends to be gathering evidence for conviction, which may be different from Melton Borough Council's objective
	Access to large resources	
	Powers extend beyond the confines of Melton Borough Council	Greater possibility of publicity, which may or may not be adverse
	Can assist with dealing with the media	Possible lack of sensitivity to TEC requirements
		Difficult to revoke

## 6. THE LAW AND ITS REMEDIES

**6.1** Criminal law provides for a range of sanctions where theft, fraud or corruption is proven. Civil law provides opportunities to recover proven losses. Advice will be sought from the Council's Legal Officers, on a case by case basis on the appropriate legal options available to the Council.

### 6.2 EVIDENCE

For the purposes of criminal proceedings, the admissibility of evidence is governed by the Police and Criminal Evidence Act (PACE). For non-criminal (i.e. civil or disciplinary) proceedings, PACE does not apply, but should nevertheless be regarded as best practice. Interview procedure is covered in the next section.

The collection of evidence must be co-ordinated if several parties are involved in an investigation e.g. Internal audit, police and solicitors. Evidence gathering requires skill and experience and professional guidance should be sought where necessary. There is a considerable amount of case law concerning the admissibility of evidence.

Documentary evidence should be properly recorded, it will need to be numbered and include accurate descriptions of when and where it was obtained and by and from whom. In criminal actions evidence on or obtained from electronic media needs a document confirming its accuracy.

## 7. INTERVIEWS

### 7.1 GENERAL

Managers should refer to the Dismissal & Disciplinary Procedure and consult with HR in the first instance, prior to interviewing any suspected employee. Detailed below are some general guidelines

An interview under caution should not be considered unless the police have been informed. This depends on who is doing the interview and what the purpose is.

In the first instance this may be a Manager whose purpose is to find out the facts. This interview should not be under caution, even if crime is suspected. The Manager has the right to ask an employee to account for his/her actions in respect

of that employment. If a Manager starts the interview with a caution, he/she is telling the suspect that he/she does not have to answer legitimate management questions. This may have an adverse effect on the disciplinary power to dismiss for failing to give an explanation. For this reason it is important to involve HR before interviewing a suspect.

It could be a potential gross misconduct/dismissal offence if the employee refuses to answer questions about his/her actions as an employee. If the employee knowing the criminal law refuses to answer on the grounds that he/she might incriminate himself/herself, that is his/her right, and if he/she asks that questions he/she should be told so.

For an inference to be drawn from an employee's failure or refusal to answer a question about one of these matters or to answer it satisfactorily, the interviewing officer must first tell the employee in ordinary language.

- a) What offence is being investigated.
- b) What fact the suspect is being asked to account for,
- c) That there is the belief that this fact may be due to the suspect taking part in the commission of the offence in question.
- d) That a court may draw a proper inference if the suspect fails or refuses to account for the fact about which they are being questioned.
- e) That a record is being made of the interview and that it may be given in evidence if the suspect is brought to trial.

The above points are also good practice in the case of a disciplinary hearing.

Internal auditors should not normally administer a caution. External auditors have no such powers.

It is not always possible to foresee the outcome of any interview and therefore it may be prudent to take informal police advice first.

A person whom there are grounds to suspect of an offence must be cautioned before any questions about it (or further questions if it is his/her answers to previous questions which provide the grounds for suspicion) are put to the individual regarding their involvement or suspected involvement in that offence if their answers or silence (i.e. failure or refusal to answer a question or to answer satisfactorily) may be given in evidence to a court in a prosecution.

As such if during fact finding questioning of a suspect they were to admit an offence or being party to an offence, then the interviewing officer should not question further without administering a caution.

If the question of an interview under caution arises then by that stage the police **must** have been informed and given the option to be involved. PACE is essentially a matter for police officers and other designated investigators (Section 67 PACE).

All interviews must be conducted fairly. In particular comments such as 'if you do not tell me the truth you will get the sack' will render any evidence obtained inadmissible under Section 78 PACE.

Interviews conducted by Managers, internal or external auditors may be admissible in a criminal trial at the discretion of the trial Judge Section 78 PACE. The question of fairness will always be a crucial point. Having said that, current criminal case law is moving towards absolute exclusion of such interviews in a criminal process. This should not deter management from carrying out an internal interview to find out

what happened. It is the right of the organisation to do so.

HR should be advised of interviews taking place and consulted, particularly for interviews of witnesses, if advice is required on the procedure to be followed.

It should be noted that investigations carried out prior to an individual being charged are open to discovery by that individual's defence.

## 7.2 INTERVIEW PROCEDURE (Under Caution)

Where an interview takes place under caution the following is a summary of the procedure to be followed. This procedure should not however be regarded as authoritative and interviewers should ensure they understand the requirements of PACE fully before initiating an interview.

It is important that the suspected individual is advised of the reason for requesting the interview, and told that anything he/she says may be used as evidence against him/her. This verbal statement must be given as follows:

'You do not have to say anything. But it may harm your defence if you do not mention when questioned something that you later rely on in court. Anything you do say may be given in evidence'.

It is also critical that the suspect(s) be told that he/she is not under arrest, and may leave the interview at any time.

There should be a second person with the interviewer, ideally from HR, who will make a contemporaneous record of all that is said by the questioner and suspect. The suspect must be advised he/she has a right to legal representation. In addition, if the suspected person has a representative present, this person may also wish to make a written record. *A tape recorder may be used for recording the interview provided this is done overtly.*

Once the interview is over, the suspected person should be given an opportunity to read the written record and be asked to initial any crossings out or alteration as well as sign the bottom of each page in acknowledgement of its accuracy. (If they are unable to read, their representative, or in his/her absence the writer, should read the record back). Should the suspect decline to sign the record, a note to that effect should be made at the conclusion of writing (on the last page), signed by the writer.

All persons present in the interview should be listed at the header to the record, and all should sign to acknowledge the accuracy of what was said.

## 7.3 CIPFA GUIDANCE FOR INTERVIEWING

These guidance notes on interviewing are reproduced from the CIPFA publication The Investigation of fraud in the public sector.

Interviews can be of two types:

- to seek more information
- interviewing suspects.

Potential suspects should normally be interviewed towards the end of the investigation. Thorough preparation must always be done for interviews; questions to be asked should be predetermined and written, but auditors must always be alert when to ask supplementary questions. Leading questions should not be asked.

The PACE Act 1984 requires that a caution be issued to a person where there are grounds to suspect that they may have committed an offence before any questions

about the offence are put. The auditor should not be in a position at the start of any suspect interview where it would be required to issue a caution at the outset; if the suspicion for this was strong enough to be necessary the case should normally be referred to the police. If there is a doubt on whether a caution should be issued, it should be remembered that, without a caution, the case will not be admissible in court.

Before conducting an interview, the auditor should consider:

- the information needed; questions should, preferably, be prepared in advance of interview
- arrange the time and place of the interview - preferably during normal working hours, but away from the interviewee's normal place of work
- who will be present - all interested parties should be represented, and preferably two auditors; the interviewee should be given the opportunity to be accompanied.

At the interview itself:

- one auditor should ask questions - and another person should take notes
- it is vitally important to ensure that nothing is done that can be construed as duress by the interviewee
- it is useful normally to begin by asking the interviewee to outline their understanding of their duties and responsibilities of the matter under review
- ask supplementary questions where necessary
- if at any time the auditor forms the opinion that they have reasonable grounds for believing that the interviewee has committed an offence, the caution should be administered
- the auditor's notes should be agreed, signed and dated by all present at the interview.

After the interview the following need to be considered:

- suspension
- informing the police
- informing the external auditor
- insurance
- need for review of systems.

### The External Auditor's Role

The duties and responsibilities of the external auditors in relation to fraud and corruption will vary by type of organisation. In the public sector they are often set out in codes of practice, for example:

- the Audit Commission's Code of Audit Practice for Local Authorities and the National Health Service in England and Wales
- the Department for Education's External Audit Code for the Grant-Maintained Schools Sector
- the audit codes of practice for the higher education sector, issued by the Higher Education Funding Councils for England, Wales and Scotland, and
- the Code of Audit Practice for Registered Housing Associations.

# **MELTON BOROUGH COUNCIL**

## **Anti-Bribery Policy**

**2012-2015**

Approved at Council: To be confirmed

## **1. POLICY STATEMENT – ANTI-BRIBERY**

1.1 Bribery is a criminal offence. The Council does not, and will not, pay bribes or offer improper inducements to anyone for any purpose. Nor does it, or will it, accept bribes or improper inducements.

1.2 To use a third party to channel bribes to others is a criminal offence. The Council does not, and will not, engage indirectly in or otherwise encourage bribery.

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

## **2. BRIBERY**

2.1 A bribe is a financial or other advantage that is offered or requested with the intention of inducing or rewarding the improper performance of a relevant function or activity, or with knowledge or belief that the acceptance of such an advantage would constitute the improper performance of such a function or activity.

2.2 A relevant function or activity is:

- any function of a public nature
- any activity connected with a business
- any activity performed in the course of a person's employment
- any activity performed by or on behalf of a body of persons, where it meets one or more of the following conditions:
  - a person performing it is expected to perform it in good faith
  - is expected to perform it impartially
  - or is in a position of trust by virtue of performing it.

2.3 It is unacceptable to:

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



### **3. OBJECTIVE OF THIS POLICY**

3.1 This policy provides a coherent and consistent framework to enable the Council's employees and those dealing with the Council to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees to identify and effectively report a potential breach

3.2 The Council requires that all employees, including those permanently employed, temporary agency staff and contractors to:

- Act honestly and with integrity at all times and to safeguard the Council's resources for which they are responsible
- Comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates

### **4. SCOPE OF THIS POLICY**

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

4.2 Within the Council, the responsibility to control the risk of bribery occurring resides at all levels

4.3 This policy covers all employees, including all levels and grades, those permanently employed, temporary agency employees, contractors, Members, volunteers and consultants

### **5. THE COUNCIL'S COMMITMENT TO ACTION**

5.1 The Council commits to:

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

### **6. FACILITATION PAYMENTS**

6.1 Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions

6.2 Facilitation payments are not tolerated and are illegal.

### **7. GIFTS AND HOSPITALITY**

7.1 The Council's policy on gifts and hospitality is set out in the Council's staff handbook. It is the responsibility of the Head of Communications to ensure that the handbook provides clear, unambiguous and accurate guidance to employees. This policy is not meant to change the requirements of the Council's policy on gifts and hospitality as set out in the Staff Handbook

7.2 Any questions on issues around the offer of gifts or hospitality should be referred in the first instance to the Line Manager. If the Line Manager cannot address those concerns reference is to be made to HR.

## **8. PUBLIC CONTRACTS AND FAILURE TO PREVENT BRIBERY**

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

## **9. STAFF RESPONSIBILITIES**

9.1 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 employees are required to avoid activity that breaches this policy

9.2 You must:

- Ensure that you read, understand and comply with this policy
- Raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred, or may occur in the future

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

## **10. RAISING A CONCERN**

10.1 All individuals bound by this Policy have a responsibility to help detect, prevent and report instances of bribery.

10.2 The Council is committed to ensuring that there is a safe, reliable, and confidential way of reporting any suspicious activity and there are multiple channels by which concerns can be raised. Such processes to be followed are outlined in the Whistleblowing Policy.

## The Bribery Act

There are four key offences under the Act:

- bribery of another person (section 1)
- accepting a bribe (section 2)
- bribing a foreign official (section 6)
- **failing to prevent bribery (section 7)**

The Bribery Act 2010 ([http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100023\\_en\\_1](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1)) makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2). Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business. There is also a corporate offence under Section 7 of failure by a commercial organisation (The Council is a commercial organisation under the Act) to prevent bribery. 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.

## Penalties

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

- On conviction in a magistrates court, to imprisonment for a maximum term of 12 months, or to a fine not exceeding £5,000, or to both
- On conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both

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

Bribery is a serious offence against the Council and employees will face disciplinary action if there is evidence that they have been involved in this activity, which could result in summary dismissal for gross misconduct. Disciplinary action will be taken in addition to, or instead of, criminal proceedings, depending on the circumstances of each individual case.

## Adequate procedures

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

## **THE SIX PRINCIPLES**

### **Proportionate procedures**

The procedures to prevent bribery by persons should be proportionate to the bribery risks faced and to the nature, scale and complexity of the Council's activities. They should also be clear, practical, accessible, effectively implemented and enforced.

### **Top level commitment**

Strategic Management are committed to preventing bribery by persons associated with the Council. The Council fosters a culture within the organisation in which bribery is never acceptable.

### **Risk Assessment**

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

### **Due diligence**

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

### **Communication (including training)**

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

### **Monitoring and review**

The Council monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

**MELTON BOROUGH COUNCIL IS COMMITTEED TO PROPORTIONAL IMPLEMENTATION OF THESE PRINCIPLES.**