LOCAL DEMOCRACY AND BOUNDARY COMMISSION FOR WALES

FRAUD AND CORRUPTION POLICY

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Purpose

To act as a guide to Commission Members, staff and investigators in the event of possible fraud or other illegality.

Introduction

The Local Democracy and Boundary Commission for Wales ('the Commission') requires all staff, at all times to abide by the Civil Service Code and The Seven Principles of Public Life (Nolan Principles) of selflessness, integrity, objectivity, accountability, openess, honesty and leadership together with impartiality. This is the foundation of all that we do on a day to day basis and must be a fundamental principal of our work ethic. **This puts a duty upon us to report any wrongdoing**. Failure to do so may leave us open to inclusion in any wrongdoing, as regards disciplinary or criminal investigations. **The Commission has a zero tolerance in respect of fraud and corruption.**

In order to prevent fraud we need a basic knowledge of what it is; so we can identify it. Therefore some basic knowledge is required proportionate to your role, responsibilities and area that you work. This Policy should assist with that knowledge and could assist you identify such a suspicion or to avoid you unwittingly or otherwise becoming involved in an offence.

The National Fraud Authority leads the governments fight to combat fraud within the UK and describes fraud as:

> *'**Fraud is when trickery (false representation) is deliberately (intended) used to gain a dishonest advantage (or cause a loss), which is often financial (but not always), over another person'**.*

There are several definitions of fraud used by various bodies and agencies to explain what fraud is. When considering fraudulent offences, the main law enforcement agencies in the UK; are actually looking at a variety of offences under the 'fraud umbrella'. They will include:

- **Fraud** (Fraud Act 2006)
- **False accounting and theft** (Theft Act 1968).
- **Fraudulent Trading** (Companies Act 2006)
- **Bribery & Corruption** (The Bribery Act 2010).
- **Money laundering** (Proceeds of Crime Act 2002).
- **Computer misuse which incorporates any of the above** (Computer Misuse Act 1990)
- **Misconduct in public office** (Common Law).

A fuller explanation of these offences can be found at **Annex A**.

Fraud can be committed in a number of ways, but is simply the dishonest intention to gain or cause loss by:

- any false representation (the representation can be simply implied or untrue or misleading);
- any omission; and/or

- an abuse of position (this can be where a person occupies a position which they are expected to safeguard or not act against the financial interests of another; or an omission in such circumstances that they would have really expected to do).

There are two main categories of fraud as far as the Commission are concerned:

- Internal Fraud – This is fraud committed by an employee of the Commission.
- External Fraud – This is fraud committed by an outside party or parties, to abstract assets or monies from the Commission.

Responsibilities

The Commission is responsible for:

- carrying out vigorous and prompt investigations if fraud is suspected;
- taking appropriate legal and /or disciplinary actions against perpetrators of fraud;
- taking disciplinary action against managers where supervisory failures have contributed to the commission of an offence; and
- putting in place appropriate arrangements for creating a culture that limits the scope for fraud.

Management are responsible for:

- identifying the risks to which systems and procedures are exposed;
- developing and maintaining effective controls (such as procurement and finance controls) to prevent and detect fraud;
- ensuring that controls are being complied with; and
- reporting any potential or suspected fraud or irregularity immediately.

The responsibility for the prevention and detection of fraud rests primarily with managers.

Staff are responsible for:

- familiarising themselves with and complying with the Commission's policies, desk instructions and systems of internal control;
- acting with propriety in carrying out duties, protecting public funds and safeguarding assets;
- conducting themselves with selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
- reporting any potential or suspected fraud or irregularity immediately; and
- co-operating fully with whoever is conducting internal checks, reviews or fraud investigations.

The Audit and Committee is responsible for:

- monitoring the progress and outcome of fraud investigations;
- considering annual fraud reports from the Commission; and
- seeking assurance on the robustness of the Commission's Fraud Policy and procedures.

Internal Audit:

It is not the primary role of internal audit to detect fraud; and internal audit has no legal responsibility for fraud; but it is required to give independent assurance on the effectiveness of the processes put in place to manage the risk of fraud. The roles that internal audit should undertake include the following:

- Delivering opinion and recommendation to the Accounting Officer on the adequacy of arrangements for risk, control and governance; including those for managing the risk of fraud and corruption.
- Assisting in the deterrence and prevention of fraud by examining and evaluating the effectiveness of control commensurate with the extent of potential exposure or risk to that area of the Commission.
- During audit to ensure that management has reviewed its fraud and corruption risk exposures and recorded the actions taken to minimise these.
- Consider the potential for fraud in audit, (particularly procurement, grant management etc) identifying any indicators that fraud may have been committed or control weaknesses that may indicate a vulnerability to fraud.
- To report without delay to the Chair of the Commission or Chair of the Audit Committee any irregularity which gives rise to suspicion of fraud or corruption.
- When requested by the Commission, to complete a financial or other audit in a specific area where financial irregularity or fraud is suspected.

Reporting Suspected Fraud

We all have a duty to report, it is not an option to withhold information where we reasonably suspect fraud or corruption. Where fraud is suspected it should be reported to the Chief Executive immediately. Should an individual feel unable to report to the Chief Executive they have a right of access to and may report to the Chair of the Commission, Chair of the Audit Committee, any Member of the Commission or the Commission's Independent Audit Committee Member. Alternatively, you may refer through the Commission's whistle blowing policy (and the protection the Public Interest Disclosure Act 1998 provides) which will ensure your confidentiality as far as the law will allow. There is also an option to report through your Trade Union representative. Whatever option you use avoid delaying reporting.

Those informed of the suspected fraud will consult with other parties, including Welsh Government, as appropriate to consider the allegation and agree on the appropriate initial action from the information available at that stage.

Investigation

The Chief Executive, in consultation with the Chair of the Commission, will be responsible for agreeing an action plan for the investigation to be undertaken and identifying and appointing the investigating officers. It is for the investigator, in conjunction with the Chief Executive and Chair of the Commission, to determine the course which the investigation should take. Where the role of the Chief Executive or a Member is itself a matter of an investigation, then the procedure that will apply will be agreed by the Chair of the Commission and Chair of the Audit Committee (providing they are not the subject of the investigation).

Each case will need to be assessed on its merits as both a criminal investigation and disciplinary procedure can on occasions overlap and frustrate each other. There is a balance to be achieved with both procedures to avoid obstructing a criminal investigation or infringing upon the Commission's duty of care to its employees by delaying its procedures unnecessarily.

Although the Commission is not required to refer every criminal allegation to the police, this will normally be the action taken if fraud is suspected unless the circumstances do not merit it in the Commission's opinion. The police are also not in a position to accept every allegation of fraud. The Chief Executive and Chair of the Commission have the necessary experience to accurately assess when and if a case should be referred to the police or dealt with as an internal disciplinary matter.

Once a case has been referred to the police it does not mean that there will be a criminal prosecution. This will depend on the weight and standard of evidence that the police present to the Crown Prosecution Service (CPS). It will be the CPS who have the final say on whether charges are preferred or not. The CPS will represent the prosecution and all prosecution witnesses.

In taking action, the investigating officer should have regard to:

- the Commission's disciplinary procedures;
- the rights of any individuals concerned; and
- the need to obtain and preserve evidence.

A record of the investigation will be kept either in hard copy form or electronically or both with restricted access. When the investigation has concluded a formal report should be drawn up by the investigator and presented to the Audit Committee in the following format:

- **Introduction** – What prompted the investigation and any details that can assist in understanding?
- **Limitations** – the parameters of the investigation, what will and will not be considered and the rational for those decisions.
- **Investigative Findings and Recommendations** – This should state the major findings identified during the investigation and the recommended action.
- **Conclusion –** Brief account of what was achieved and overview of the position.

Asset recovery is a significant objective of any investigation and there are a number of options in attempting to achieve this. These options are considered in more detail at **Annex B**.

ANNEX A

TYPES OF FRAUD

False Accounting:

Any person who dishonestly, with a view to gain or cause loss to themselves or another destroys, defaces, conceals or falsifies any record for accounting purposes or in furnishing such information makes use of any record which they know may misleading or false.

Fraudulent Trading:

Fraudulent trading is where a company carries on a business with the intention of defrauding creditors or for any fraudulent purposes. This applies whether the company is trading, has ceased trading or is in the process of being wound up.

Bribery & Corruption:

The **Bribery Act 2010** simplifies the existing law on bribery and corruption. The Act became live on the 1st July 2011. The Act creates offences of:

- Section 1 – Active Bribery: The offering, promising or giving to another person, company, public body a bribe.
- Section 2 – Passive Bribery: The requesting, accepting or agreeing to receive or a financial or other advantage or reward for the improper performance of a relevant function.
- Section 6 – Bribery of a foreign public official: This is the commission of active bribery on a foreign public official. In order to obtain or retain a business advantage.
- Section 7 – A corporate offence of allowing bribery to occur: A relevant commercial organisation is guilty of an offence if a person associated with it bribes (s. 1 or 6 offence only) another intending to obtain or retain a business advantage.
- It also creates "strict liability" for the corporate offence; meaning that you could be unaware of one or more of the factors that made the act or omission criminal. The guilty mind does not have to be proven although reckless or knowledge may be required to prove an element of the offence.

Receiving or accepting a bribe is clearly illegal, but the new corporate offence (S. 7) creates a full defence if you have adequate precautions in place to prevent bribery & corruption; with particular emphasis on directors, managers and supervisors. In other words to do nothing would leave you vulnerable if a section 1 or 6 offence were committed by an employee or associated person.

The Secretary of State was required under Section 9 of the act to issue guidance on what is acceptable business practice and corporate hospitality. This has been done and the guidance can be found at:

http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm

The Commission already has measures in place to demonstrate that adequate precautions have been taken and will continue to develop further as circumstances change. The act presently lists the adequate procedures as:

- Proportionality.
- Top level commitment,
- Risk assessment,
- Due diligence,
- Communication,
- Monitor and review.

The guidance explains these six principles along with examples to help understand the legislation. The Commission is already committed to zero tolerance of fraud and corruption and there is a top level commitment from the Chief Executive down. In addition the Commission has been required to have Fraud & Corruption Risk Assessments in place from 1st July 2011. These need to be monitored and reviewed regularly so that they can be assessed corporately to identify the priority areas. The risks are owned by the business area and need action to manage, minimise or reduce the risk. Most departments submit the revised Fraud and Corruption Risk Assessment when a change or new risk is identified.

Due diligence needs to be proportionate to the risk but is essential in some of the higher risk areas of the organisation such as grants, procurement and third party organisations. Managers have the main responsibility of communicating the risk and awareness of fraud and corruption to their staff.

Prosecutions under the Bribery Act 2010 can only be by the consent of the Serious Fraud Office (SFO) or the Director of Public Prosecutions. This would tend to suggest that only the more serious breaches will be prosecuted as the SFO primarily only take on cases in excess of a £1 million. However previous legislation where DPP authorisation is required has in the past been handed down to local Heads of Regional Crown Prosecution Service's to authorise on behalf of the DPP. If this follows the same path it is likely that local police forces will also consider prosecuting Bribery.

Money Laundering:

Money laundering offences come under the Proceeds of Crime Act 2002 which is arguably one of the most powerful pieces of legislation on the statute books.

For ease of understanding this section refers to the three offences of money laundering solely under the Proceeds of Crime Act 2002. There are several reasons for this; all 3 money laundering offences carry a maximum sentence of 14 years and have additional powers for the police which include a variety of financial orders.

Three Money Laundering Offences:

- Section 327 Concealing: Concealing, disguising, converting, transferring or removing criminal property;
- Section 328 Arranging: Becoming concerned in an arrangement in which someone knowingly or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person; and
- Section 329 Possessing: Acquiring, using or possessing criminal property.

To simplify the three offences, **Money Laundering** is any transaction which seeks to conceal or disguise the proceeds of any illegal activity.

There are 3 stages involved in money laundering are:

1. Placement > moving the funds from direct association with the crime.
2. Layering > disguising the trail to foil pursuit.
3. Integration > making the money available to the criminal again with its occupational and geographic origins hidden from view.

Although the term money laundering is generally used when describing the activities of organised crime - for which the legislation and regulations were first and foremost introduced - to most people who are likely to come across it or be affected by it, it involves a suspicion that someone they know, or know of, is benefiting financially from dishonest activities.

‘Criminal property’ is defined very widely in the law relating to money laundering. It includes the proceeds not only of crime committed by somebody else, but also possession of the proceeds of an individual’s own crime - for example, the retention of monies from non-payment of income tax. It does not matter how small the amount of money involved is. It also includes the proceeds of crimes which take place abroad.

There are also 2 ‘third party’ offences – failure to disclose one of the 3 principal offences, and ‘tipping off’. Tipping off is 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.

All the money laundering offences can be committed by an organisation or by individuals working for it.

Computer Fraud:

Computer fraud (internal and external) is where information systems and technology have been used to manipulate programs or data dishonestly (for example, by altering, substituting or destroying records, or creating spurious records), or where the use of an IT system was a material factor in the perpetration of the fraud. Theft or fraudulent use of computer time and resources is included in this definition. All offences involving computer fraud are likely to fall under the Computer Misuse Act 1990

ANNEX B

ASSET RECOVERY: POLICE PROCEEDS OF CRIME ACT (POCA), CIVIL, VOLUNTARY,

In considering the options for asset recovery one needs to consider the risk, the amounts, and the moral issues at stake. Which is the correct option for the circumstances will need careful consideration. Occasionally it will be morally right to pursue a criminal prosecution, whether the case is successfully prosecuted or not.

To follow a civil recovery first when fraud is suspected; does not in law invalidate a criminal investigation but it will inevitably leave the police reluctant to pursue an investigation or if a significant crime, to consider the reasons for delay within the investigation. The longer you leave reporting the suspected fraud the more you increase the chance of a failed prosecution, through loss of evidence, witnesses moving on and abuse of process arguments. If the criminal case fails; a criminal confiscation case is not an option as it can only be after conviction.

You therefore need early engagement to decide on the appropriate preferred route. Appreciating there will be a suitable time and place for each option.

The options are:

- For the accused to voluntarily agree to refund the amount;
- The second is to pursue the loss through the civil process which will need to be considered with the Commission's Legal Advisor.
- The third and without doubt the more difficult, is recovery through the criminal process, which always involves obtaining a conviction in the first instance. The circumstances and specifics of what the person is convicted of will have a significant bearing; on whether, and what assets can be recovered.
- Compensation or straight forfeiture, ordered by the court after conviction is the simplest method; but often compensation orders fail to be cleared and policing their payment is difficult.
- The preferred method of recovery necessitates the police gaining agreement from the convicting court that they can open a confiscation investigation under the Proceeds of Crime Act 2002.

Once the confiscation investigation has been agreed; the police can go back 6 years looking at the offender's illegal gain. The offender in essence will have to prove everything earned during that period is legal and legitimate or the prosecution can draw the inference that it has been obtained illegally. The burden of proof for the police is not on the criminal basis, that they must prove it beyond all reasonable doubt but on the civil burden of proof, that is on the balance of probabilities. This is a much lower burden of proof.

In essence POCA permits the prosecution, 'assumptions' that all earnings by an individual are illegal earnings and subject of confiscation unless the subject can prove that they were legitimately obtained.