

## **GWYNEDD COUNCIL**

COMMITTEE	<b>AUDIT COMMITTEE</b>
DATE	<b>29 JUNE 2009</b>
TITLE	<b>GWYNEDD COUNCIL'S ANTI-FRAUD AND ANTI-CORRUPTION STRATEGY AND FRAUD AND CORRUPTION RESPONSE PLAN</b>
PURPOSE OF REPORT	<b>TO PRESENT ANTI-FRAUD AND ANTI-CORRUPTION STRATEGY AND FRAUD AND CORRUPTION RESPONSE PLAN TO THE AUDIT COMMITTEE FOR APPROVAL</b>
AUTHOR	<b>DEWI MORGAN, SENIOR MANAGER AUDIT AND RISK</b>
ACTION	<b>TO ADOPT THE STRATEGY AND PLAN AND DECLARE SUPPORT FOR THEIR CONTENTS</b>

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### **I. INTRODUCTION**

- I.1 Like any other public organisation that deals with a substantial amount of money, Gwynedd Council is not immune from being subject to attempts to defraud or to influence officers and / or members in a corrupt manner. This can be undertaken or attempted by individuals from outside the Council, by staff, by members or by a combination of these conspiring with each other.
- I.2 The Council's Anti-Fraud and Anti-Corruption Strategy and Fraud and Corruption Response Plan have now been in place for a number of years, and it is now time to review the documents in order to reflect legislative changes as well as amendments to Council policies and working practices.
- I.3 Such a Strategy forms a key part of the authority's governance framework, and its adoption, its promotion and its implementation are essential steps in gaining the confidence of the public with regards to protecting taxpayers' money. It reflects the Council's determination to protect itself from fraud and corruption and its intention is to ensure high standards of public accountability.
- I.4 To this end, the Anti-Fraud and Anti-Corruption Strategy, and the Fraud and Corruption Response Plan, have been re-written in order to reflect the latest requirements from the perspective of legislative and professional requirements.
- I.5 These documents reflect the determination of the Council to protect itself from fraudulent and corrupt practices and its commitment to ensure high standards of public accountability.

## **2. ANTI-FRAUD AND ANTI-CORRUPTION STRATEGY**

2.1 The purpose of the Anti-Fraud and Anti-Corruption Strategy is to provide an overview of the Council's policy towards fraud and corruption and those who perpetrate, or seek to perpetrate, fraud and corruption against Gwynedd Council and the taxpayer. It is designed to achieve the following:

- Explain what the Council means by fraud and corruption;
- Set out the standards that the Council expects from its Elected Members and employees;
- Encourage fraud prevention;
- Promote fraud detection;
- Show how the Council will investigate fraud and corruption;
- Promote fraud awareness.

## **3. FRAUD AND CORRUPTION RESPONSE PLAN**

3.1 The Fraud and Corruption Response Plan is to be read in conjunction with the Strategy, and sets out what staff and/or managers should do when they suspect that fraud or corruption is occurring, and the practical steps that the Council shall follow to deal with the matter. The document sets out what the following should do when discovering or suspecting fraud or corruption:

- Staff
- Managers
- Auditors

3.2 The plan has been developed to give due attention and consideration to a number of other policies and working practices within the Council in order to ensure consistency, including:

- The local conditions of service
- Disclosure Policy ("Whistleblowing")
- Disciplinary Policy
- Financial Procedure Rules
- Internal Audit Terms of Reference

3.3 The Response Plan explains how the Council will act in order to investigate allegations of fraud or corruption, including how this connects with the Authority's Disciplinary Policy.

3.4 The plan also outlines how the Council will act and the options which must be considered, when sufficient evidence has been collected to support the allegation of fraud or corruption, including internal discipline and/or criminal or civil prosecution, or a combination of these.

## **4. RECOMMENDATIONS**

4.1 The Audit Committee is asked to approve the Anti-Fraud and Anti-Corruption Strategy and the Fraud and Corruption Response Plan, and formally adopt them.

4.2 The Audit Committee is asked to express support to the documents and to support Council Members and officers in their implementation.

**GWYNEDD COUNCIL**  
**ANTI-FRAUD AND ANTI-CORRUPTION STRATEGY**

**1. INTRODUCTION**

In carrying out its functions and responsibilities, the Council has always adopted a culture of openness and fairness. The Council expects that Elected Members, employees, consultants, suppliers, contractors and other partner organisations will adopt the highest standards of propriety and accountability.

The Council is therefore firmly committed to dealing with fraud and corruption and will deal equally with perpetrators from inside and outside the Council. Wherever fraud of any description is uncovered it will be investigated and appropriate prosecution, disciplinary and recovery action will be taken.

An important part of this approach is maintaining an Anti-fraud and Anti-Corruption Strategy, which the Council will use to advise and guide Elected Members and staff on its approach to the serious issues of fraud and corruption.

**2. PURPOSE**

This document provides an overview of the Council's policy in this matter and is to read in conjunction with the Fraud and Corruption Response Plan which provides more detailed guidance on how to deal with fraud and corruption. It is designed to achieve the following:

- Explain what the Council means by fraud and corruption;
- Set out the standards that the Council expects from its Elected Members and employees;
- Encourage fraud prevention;
- Promote fraud detection;
- Show how the Council will investigate fraud and corruption;
- Promote fraud awareness.

### 3. DEFINITIONS

#### Fraud

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

- **Fraud by false representation** – where an individual dishonestly and knowingly makes a representation that is untrue or misleading.
- **Fraud by wrongfully failing to disclose information** – where an individual wrongfully and dishonestly fails to disclose information to another person when they have a legal duty to disclose it, or where the information is of a kind that they are trusted to disclose it, or they would be reasonably expected to disclose it.
- **Fraud by abuse of position** – where an individual who has been given a position in which they are expected to safeguard another person's financial interests dishonestly and secretly abuses that position of trust without the other person's knowledge.

Common types of fraud to which the Council could fall victim would include (the lists are not exhaustive):

#### **Fraud by false representation:**

- false or exaggerated travel claims or overtime claims,
- invoices presented for services not received,
- having alternative employment when "signed off" work by a GP,
- recording incorrect hours on the flexible hours scheme.

#### **Fraud by wrongfully failing to disclose information**

- Failure to disclose a relevant or unspent criminal conviction on an application form for a job,
- Contractors failing to disclose Health and Safety prosecutions on tender documents,
- Understating the value of Council assets before disposal to family, friends or one's self.

#### **Fraud by abuse of position**

- It can be argued that most fraud concerning Council money falls into this category since Council members and employees are entrusted with the care of public money, and their position within the organisation has facilitated the offence (see "Internal Fraud" below). Particular offences under this section would include theft from home care clients by their carers, or fraudulently awarding contracts to friends and / or family members.

In all of the above, the Fraud Act outlines two basic requirements which must be met before any of the above can be charged: the defendant's conduct must be dishonest and his/her intention must be to make a gain or cause a loss (or the risk of a loss) to another. Therefore, in terms of the behaviour that is pertinent to this strategy:

- No loss or gains need to materialise – an intent to make a gain or cause a loss will be construed as an act of fraud
- A gain does not have to be for the person committing the act of fraud – it could be for another
- "Gain" and "loss" are as defined by Section 5 of the Fraud Act – it could be money or other property (whether real or personal, tangible or intangible), it could be permanent or temporary and:
  - a "gain" includes a gain by keeping what one has, as well as gain by getting what one does not have, and a "loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has.

### **Internal and External Fraud**

In this strategy, "Internal Fraud" is defined as fraud perpetrated by the Council's own employees or members, with an intention of causing a loss to Gwynedd Council, and where the fraud has been perpetrated or facilitated as a result of an individual's or group of individuals' position within the organisation. "External fraud" is defined as fraud committed by individuals from outside the organisation, or from outside an employee's normal area of work, with a view to causing a loss to the Council.

In most cases, any fraudulent act would be easily identifiable as "internal" or "external" fraud, but in some cases the situation may be more ambiguous since an employee or member of the Council can commit external fraud as well as internal fraud against the authority. For example, a Council employee making a claim for a means-tested grant but deliberately withholding certain information that would affect the amounts of grant paid would be viewed as an "external fraud". However, should a member of staff who plays a part in the process of administering the grant take advantage of their employment to fraudulently divert grant monies to themselves, this would be seen as an "internal fraud".

### **Benefit Fraud**

Gwynedd Council's strategy for dealing with benefit fraud will differ from its approach to dealing with other kinds of fraud committed against the Council. In this strategy, "Benefit Fraud" is defined as obtaining Housing Benefit or Council Tax Benefit by deception, fraud regarding other related benefits and associated frauds committed against the Council. All cases of Benefit Fraud, whether committed by council employees or members or the general public, will be treated as "external fraud".

Other than in exceptional circumstances, Benefit Fraud will be investigated pursuant to, and as defined by, the Social Security Administration Act 1992 as amended by subsequent legislation, rather than the Fraud Act 2006. Benefit Fraud is defined by Sections 111 and 112 of the Social Security Administration Act - Section 111A deals with dishonest representation in order to receive benefits etc., whilst Section 112 deals with false representation in order to obtain benefits etc.

Benefit Fraud will be investigated by the Benefit Fraud Investigation Section, which is part of the Council's Audit and Risk Management Unit.

Gwynedd Council's detailed Benefit Fraud Strategy is included in a separate document.

## **Corruption**

Corruption is defined as “the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person”.

Legislation relating to corruption includes the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916. Section 2 of the 1916 Act introduced the presumption of corruption, which shifted the burden of proof in bribery cases to the defence. This legislation remains fundamentally unchanged today, and this means that a defendant has to prove on the balance of probabilities that a gift or advantage was not an inducement or reward for another’s gain.

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

#### **4. CULTURE**

The Council is determined that the culture and tone of the organisation is one of honesty and opposition to fraud and corruption. There is an expectation and requirement that individuals and organisations associated in whatever way with the Council will act with integrity and that elected members and employees at all levels will lead by example.

##### **Various Codes of Conduct**

"The Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001" sets out an approach to work that is both honest and fair. Employees must act in line with the code at all times which includes:

- General Principles;
- Accountability;
- Political Neutrality;
- Relations with Members, the Public and Other Employees;
- Equality;
- Stewardship;
- Personal Interests;
- Whistleblowing;
- Treatment of Information;
- Appointment of Staff;
- Investigations by Monitoring Officers.

The Council has also a Code of Conduct for Members that sets out the following principles:

- Selflessness
- Honesty
- Integrity and Propriety
- Duty to Uphold the Law
- Stewardship
- Objectivity in Decision-making
- Equality and Respect
- Openness
- Accountability
- Leadership

together with the duty to disclose and register interests.

All Elected Members and staff are required to declare any offers of gifts or hospitality which are in any way related to the performance of their duties in relation to the Council in accordance with the Code of Conduct regarding Gifts and Hospitality which has been adopted by the Council.

## **Whistleblowing Policy**

Employees have an important role to play in dealing with fraud and corruption and the Council will encourage staff to warn and provide information if they suspect a case of fraud or corruption. Staff can do this in the knowledge that such concerns will be treated in confidence and properly investigated. Reporting procedures are outlined in the Council's Whistleblowing Policy. This scheme gives staff a safe and reliable method for reporting honestly any concerns regarding illegal, fraudulent or corrupt behaviour, financial malpractice, endangering the public or the environment, abuse of clients, etc. Whilst the areas covered by the Council's Whistleblowing Policy will be far wider than fraud (essentially an economic crime) and corruption, the encouragement to report such behaviour is an essential part of this policy.

Members and the general public are also encouraged to report concerns of fraudulent or corrupt behaviour by contacting the Senior Manager (Audit and Risk) via the Council's website or occasional publicity drives.

## **Systems of Internal Controls**

In order to safeguard public funds, it is essential that employees comply with internal controls and systems that have been put in place by management to prevent fraud and corruption. When fraud or corruption has occurred due to weakness in the Council's systems and procedures, Heads of Service will ensure appropriate controls are implemented to prevent recurrence. In most cases, Internal Audit will review such controls as part of its overall assurance review, and should be given the support and co-operation of all managers and staff.

Managers have an additional responsibility for:

- Ensuring that staff for whom they are responsible are aware of the risk of fraud and corruption.
- Taking steps to prevent fraud and corruption through the use of appropriate internal controls and monitoring.
- Implementing agreed internal audit recommendations.
- Encouraging staff to report suspected fraud, corruption and abuse as directed in the Council's Whistleblowing Policy.

## **Co-operation with Investigators**

All elected members and employees are expected to provide investigators with all assistance requested, and will provide a statement to the Police should they be required to do so.



## **5. PREVENTION OF FRAUD AND CORRUPTION**

The Council seeks to prevent fraud and corruption by:

- Raising awareness of the risk of fraud and corruption;
- Making Members and employees aware of their roles and responsibilities;
- Working with other agencies and bodies.

All Members and employees should be aware of the possibility that fraud, corruption and theft may exist in the workplace and be able to share their concerns with the appropriate people.

It is essential that the policies and procedures for raising concerns are clearly set out and made available to Members, employees and the public. The Council must regularly review and update these policies and procedures.

Both Members and employees must ensure that they avoid situations where there is a potential for a conflict of interest. Examples of such situations would include:

- Externalisation of services;
- Internal tendering;
- Planning; and
- Land issues.

### **Internal Controls and Audit Assurance**

Managing the risk of fraud and corruption is the responsibility of management, who must make sure that suitable levels of internal check are included in working procedures, in particular financial procedures. It is essential (where practically possible) that duties are specified and segregated, so that individuals cannot carry out a complete transaction without input and/or verification by another appropriate officer.

The Senior Manager (Audit and Risk) is to be notified of all suspected or detected fraud, corruption or impropriety (see Section 6, "Detection and Investigation of Fraud and Corruption"), to inform his opinion on the internal control environment and Internal Audit's work programme as well as to allow him to ensure appropriate action is taken.

Internal auditors are alert in all their work to minimise risks and exposures that could allow fraud or corruption to occur. Internal auditors are also alert to any indications that fraud or corruption may have been occurring and will advise the appropriate officers accordingly. However, audit procedures alone, even when performed with due professional care, cannot guarantee that fraud or corruption will be detected.

### **Recruitment**

The Council must follow recruitment procedures when employing new staff or agency staff. This includes reviewing the previous employment records of potential staff with regard to their propriety and integrity. This applies to both temporary and permanent staff. This may be done by the use of references from previous employers and review of qualification.

## **Inter-agency Co-operation**

The Council is also committed to working and co-operating with other organisations to prevent organised fraud and corruption. Wherever possible, the Council will be prepared to develop and encourage the exchange of information (on national and local fraud and corruption activity) with other local authorities and external agencies, such as the Police, inter-authority audit officer groups, the Wales Audit Office and Government departments (including the Department of Work and Pensions).

Due care in protecting the integrity and confidentiality of data is particularly important when exchanging information. Internal Audit will control and help exchanges of information.

## 6. DETECTION AND INVESTIGATION OF FRAUD AND CORRUPTION

Under the Code of Conduct for Employees<sup>1</sup> and the Council's Financial Procedure Rules<sup>2</sup> employees must report any suspected cases of fraud or corruption to the Head of Finance or the Senior Manager (Audit and Risk), either directly or through their line manager. Reporting cases in this way is essential to the Anti-fraud and Anti-Corruption Strategy and makes sure that:

- Suspected cases of fraud and corruption are investigated properly;
- The Fraud and Corruption Response Plan is carried out properly;
- There is a standard process for dealing with all suspected cases of fraud and corruption;
- The public and the Council's interests are protected;
- Any possible sanction (criminal, civil, disciplinary or a combination of all three) is not compromised.

The 'CIPFA Code of Practice for Internal Audit in Local Government in the United Kingdom' states that, at the request of management, Internal Audit may go beyond the work needed to meet its assurance responsibilities and assist with the investigation of suspected fraud or corruption.

In order to maintain compliance with both the Internal Audit Code of Practice and the Council's Financial Procedure Rules, Gwynedd Council's strategy for investigating suspected fraud and corruption is that all cases are to be referred to Internal Audit for investigation. The Senior Manager (Audit and Risk) will work with management and other agencies to decide on the type and course of investigation. All investigations will be conducted pursuant to the attached Fraud and Corruption Response Plan.

The investigation will be undertaken in compliance with the Council's Disciplinary Policy and Procedure. Whereas the policy states that a formal investigation is not necessary for what the relevant line manager considers to be minor offences, no manager will view fraud, corruption or financial impropriety as a minor offence. Further, the Disciplinary Policy and Procedure also states that "how detailed the investigation is will be entirely dependent on the seriousness of the allegations". There will always be a presumption of formal action in cases of alleged fraud and corruption, and they will always be deemed as being sufficiently serious to warrant an official Internal Audit investigation.

The Disciplinary Policy and Procedure gives the following as examples of acts that constitute gross misconduct:

- Theft from the Council or any of the Council's clients.
- Serious fraud that would make the employee unsuitable to work with for the Council.
- Deliberate falsification of any records.
- A serious breach of confidence.

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<sup>1</sup> **Section 9:** In the event that a qualifying employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with this Code, the employee should report the matter, acting in accordance with the employee's rights under the Public Interest Disclosure Act 1998, and with the relevant authority's confidential reporting procedure, or any other procedure designed for this purpose.

<sup>2</sup> **Rule 12.9:** Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores or any arrangement to claim an inappropriate payment from the Council, or other property of the Council, the Head of Service or other officer making the discovery shall comply with the Council's Anti-fraud and Corruption Strategy and immediately notify the Head of Finance and/or Senior Manager (Audit and Risk), who shall take such steps as he/she considers necessary by way of investigation and report.

## **7. TRAINING**

The Council recognises that the continuing success of this Strategy and its general credibility will depend, in part, on the effectiveness of programmed training and responsiveness of employees throughout the organisation.

To facilitate this, the Council supports the concept of providing training for employees who are involved in, or managing, internal control systems, to ensure that their responsibilities and duties are regularly reviewed and reinforced. This training includes courses in 'Buying and Contracts' and 'Financial Procedures' contained within the Council's corporate training matrix.

The Council is also committed to training and developing employees who are involved in investigating fraud and corruption, and will provide suitable training.

## **8. CONCLUSION**

Gwynedd Council is committed to tackling fraud and corruption; its response will be effective, organised and based on the principles included in this document.

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

**GWYNEDD COUNCIL**  
**FRAUD AND CORRUPTION RESPONSE PLAN**

## **1. INTRODUCTION**

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

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

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

- prevent further loss,
- establish and secure evidence necessary for criminal and disciplinary action,
- notify the relevant authority, funding body and the Police,
- minimise and recover losses,
- take disciplinary action against those involved,
- review the reasons for the incident, the measures taken to prevent a recurrence and implement actions needed to strengthen procedures.

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

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

### **Definitions**

The definitions of "Fraud", "Internal and External Fraud", "Benefit Fraud" and "Corruption" are as found in the Anti-Fraud and Anti-Corruption Strategy

### **Benefit Fraud**

This Plan is not relevant to Benefit Fraud (as defined in the Anti-Fraud and Anti-Corruption Strategy), for which separate procedures exist.

## 2. REPORTING A SUSPECTED FRAUD

### Actions by Staff

Suspected fraud can be discovered in a number of ways. Examples are:

- A Council employee, by virtue of their post within the Council, becoming suspicious of time sheets, expenses claims, grant certificates, invoices etc presented for payment.
- A Council employee becoming suspicious of the activities of one or more of their colleagues.
- Irregularities discovered by an internal or external auditor during routine audit work.
- A Council member or employee being informed of an alleged fraud by external agencies or members of the public.

In all cases, it is important that staff feel able to report their concerns and that they are aware of the means by which they are able to do so. Suspicion of fraud will be treated seriously and will be reviewed and analysed in accordance with relevant legislation and the Anti-Fraud and Anti-Corruption Strategy.

All staff should be aware that the Staff Code of Conduct and the Financial Procedure Rules (both of which are part of Gwynedd Council's Constitution) between them place an obligation on all employees to report suspected cases of fraud, corruption and irregularities to the Head of Finance and/or the Senior Manager (Audit and Risk):

**Staff Code of Conduct, Section 9:** In the event that a qualifying employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with this Code, the employee should report the matter, acting in accordance with the employee's rights under the Public Interest Disclosure Act 1998, and with the relevant authority's confidential reporting procedure, or any other procedure designed for this purpose.

**Financial Procedure Rule 12.9:** Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores or any arrangement to claim an inappropriate payment from the Council, or other property of the Council, the Head of Service or other officer making the discovery shall comply with the Council's Anti-fraud and Corruption Strategy and immediately notify the Head of Finance and/or Senior Manager (Audit and Risk), who shall take such steps as he/she considers necessary by way of investigation and report.

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

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

Further guidance can be found in the Council's Whistleblowing Policy, which outlines the way in which any employee can report suspicions. However, the Whistleblowing Policy covers a far wider range of malpractice than fraud, corruption and financial irregularities. These other matters must be dealt with on their own merits and reported to the most appropriate place – usually to the relevant Senior Manager or Head of Service.

Any initial concerns and discussions that an employee may have will be treated sensitively and in complete confidence, and no-one should be afraid to raise them. There may be an

innocent explanation for whatever the employee is concerned about - if this proves to be the case, then no further action will be needed and at least the concerns will have been aired.

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

**If anyone becomes aware of a suspected fraud or irregularity, their concerns should be written down as soon as is practically possible. A note should be made of all relevant details, such as what was said in phone or other conversations, the date, the time and the names of anyone involved. The matter should be reported immediately either:**

- **to their own Line Manager, Head of Service or Strategic Director who will contact the Head of Finance and/or the Senior Manager (Audit and Risk), or**
- **direct to the Head of Finance or Senior Manager (Audit and Risk).**

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

Staff must not do any of the following:

- contact the suspected perpetrator in an effort to determine facts or demand restitution,
- discuss the case facts, suspicions, or allegations with anyone outside of Gwynedd Council (including the Press) unless specifically asked to do so by the Senior Manager (Audit and Risk),
- discuss the case with anyone within the Council other than their own Line Manager, Head of Service, Strategic Director, Head of Finance or Senior Manager (Audit and Risk),
- attempt to personally conduct investigations or interviews or question anyone, unless asked to do so by the Senior Manager (Audit and Risk) (acting in accordance with the Regulation of Investigator Powers Act (RIPA) in respect of Covert Human Intelligence Sources (CHIS)).

### **Action by Managers**

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

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

an individual to covertly obtain further information, as this may compromise evidence (thus preventing appropriate disciplinary or criminal action in due course).

### **Action by Auditors**

If the council's internal auditors discover what they suspect to be fraud, corruption or improper conduct during the course of an audit, they must secure all evidence and make detailed notes of all evidence collected. They should then report their suspicions immediately to their team leader, who must in turn inform the Senior Manager (Audit and Risk) at the earliest possible opportunity. The investigation process (section 4 below) will follow.

### **3. MALICIOUS ALLEGATIONS**

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

### **4. INVESTIGATION PROCESS**

Internal Audit is responsible for initiating and overseeing all fraud investigations. Internal Audit will comply with its Fraud Investigation Plan to ensure that all investigations conform to the same standard and in accordance with legislation.

Under the Council's Disciplinary Policy and Procedure (Part 7.3 of the Local Conditions of Work), all alleged breaches of the Council's rules and standards will require an investigation to be held as soon as possible, unless the relevant line manager is of the opinion that the alleged offence is minor. However, in accordance with the Anti-Fraud and Anti-Corruption Strategy, no manager should view allegations of fraud, corruption or financial irregularities as "minor offences", therefore an investigation will be held in all cases. The Disciplinary Policy and Procedure gives the following as examples of acts that constitute gross misconduct:

- theft from the Council or any of the Council's clients,
- serious fraud that would make the employee unsuitable for work with the Council,
- deliberate falsification of any records, or
- a serious breach of confidence.

Further, as outlined in the Strategy, a gain or loss does not have to materialise – an intent to defraud is sufficient to prompt an investigation.

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

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

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

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

Once the investigation has been completed, Internal Audit will prepare a written report which states the facts discovered by the investigation. The report will avoid speculation and no statement shall be made that cannot be supported by the facts.



## **5. PROCEEDINGS**

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

### **Disciplinary Action**

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

### **Criminal Action**

In accordance with the Council's Financial Procedure Rules where, on consideration of the Internal Audit investigation report, the Monitoring Officer is of opinion that there is a breach of the criminal law, at the discretion of the Head of Finance the matter shall be reported to the Police for further investigation.

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

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

### **Civil Action**

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

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

Where an employee is a member of Gwynedd Council's pension scheme, and is guilty of fraud, the Council may be able to recover the loss from the capital value of the individual's accrued benefits in the Scheme, which are then reduced as advised by the actuary.

If the individual will not make good the loss, consideration should be given to taking civil action to recover the loss, subject to legal advice received. Since the misappropriated funds are taxpayer's money, the civil recovery can be as important as a successful prosecution.

Civil remedies can be used even if a criminal case fails, or if criminal charges have not been pursued, due to the differing burden of proof.

As a last resort, if on the basis of legal advice a civil remedy action is not pursued, the Council's Fidelity Guarantee Insurance Policy may be enacted to recover losses. However, in cases where fraud has occurred following particularly poor management or supervision the full amount may not be recovered. In any event, the Insurance & Risk Management Section must be kept informed from an early stages in the investigation in order to ensure that the insurance claims are dealt with as effectively and efficiently as possible.

## **Parallel Sanctions**

There is no legal reason why the three types of proceedings listed above should not proceed at the same time, or at least overlap. The general approach of the courts is not to give automatic precedence to criminal proceedings. Other forms of proceedings should not be postponed until after the conclusion of the criminal hearing unless there is a real – not merely notional – danger that the disclosure of the defence in the civil action would, or might, lead to a potential miscarriage of justice (by, for example, enabling prosecution witnesses to prepare a fabrication of evidence). For case law, see *Jefferson v Bhetcha* [1979] 1 WLR 898, 904 and *R v BBC, ex p. Lavelle* [1983] 1 WLR 23, 39.

## **6. LEARNING FROM EXPERIENCE**

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