

CYNGOR GWYNEDD
FRAUD, BRIBERY AND CORRUPTION RESPONSE PLAN

1. INTRODUCTION

Cyngor Gwynedd 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, Anti-Bribery 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, Anti-Bribery 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, Anti-Bribery and Anti-Corruption Strategy

Benefit Fraud

This Plan is not relevant to Benefit Fraud (as defined in the Anti-Fraud, Anti-Bribery 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, Anti-Bribery 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 Audit Manager:

Staff Code of Conduct, Paragraph 20.8: 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 16.14.6: 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 Audit Manager, 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 Manager, Assistant Head or Head of Department.

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:

- **to their own Line Manager, Head of Department or Corporate Director who will contact the Head of Finance and/or the Audit Manager, or**
- **direct to the Head of Finance and/or the Audit Manager.**

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 Cyngor Gwynedd (including the Press) unless specifically asked to do so by the Audit Manager,
- discuss the case with anyone within the Council other than their own Line Manager, Head of Department, Corporate Director, Head of Finance and/ or the Audit Manager,
- attempt to personally conduct investigations or interviews or question anyone, unless asked to do so by the Audit Manager (acting in accordance with relevant legislation and codes of practice).

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 Audit Manager. 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 Audit Manager at the earliest possible opportunity. The investigation process (section 4 below) will follow.

3. MALICIOUS ALLEGATIONS

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

4. INVESTIGATION PROCESS

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

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, Anti-Bribery 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 Cyngor Gwynedd’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 (Criminal) 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 Service must be kept informed from an early stage in the investigation in order to ensure that the insurance claims are dealt with as effectively and efficiently as possible.

Parallel Sanctions

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