Title: Review of Key Anti-Fraud Policies & Strategies

Report of: GROUP MANAGER (INTERNAL AUDIT & CORPORATE ANTI-FRAUD)

Open For Discussion
Wards Affected: None Key Decision: No

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Accountable Divisional Director: Jonathan Bunt
Accountable Director: Jonathan Bunt

Summary:
In order to ensure proper arrangements to administer the Council’s financial affairs, the Council has adopted key policies to combat fraud and irregularity. To further strengthen their importance as part of robust governance, these policies were approved by Cabinet in January 2012 with a recommendation that they be reviewed annually and taken back to Cabinet if any significant changes occur. In the light of only minor revisions to the Policies after review, the Policies are presented to PAASC to note and comment upon.

Recommendation(s):
Members are asked to note the Council’s updated Anti-Fraud Policies

Reason(s)
This supports the delivery of the Members Policy House objective of achieving “a well run organisation”

1. Introduction

1.1. The Internal Audit & Anti-Fraud Group maintain a suite of anti-fraud policies to support the Council’s zero tolerance approach to fraud, thus maintaining proper arrangements for the Council’s finances.

1.2. To further strengthen their importance as part of robust governance, these policies were approved by Cabinet in January 2012. Cabinet agreed that the policies be reviewed annually but only significant changes need be reported back to Cabinet.

1.3. The Policies have been reviewed and this report sets out the latest versions, a summary of the purpose of the reports and a brief summary of minor changes made.

1.4. The policies apply to the Council, and as part of our strategy on raising fraud awareness will be promoted with others such as Elevate, contractors and schools.
2. Purpose of the Policies

2.1 A brief description of each policy is set out in the table below. The latest version of each policy is set out in the Appendices to this report.

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<th>Appendix</th>
<th>Policy</th>
<th>Brief Description</th>
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<td>1</td>
<td>Anti-Fraud &amp; Corruption Strategy &amp; Policy including Fraud Response Plan</td>
<td>Sets out the Council’s commitment to reducing opportunities for fraud and corruption across all council services and taking the strongest possible action against those who seek to defraud the Council. Includes guidance on what to do if an employee suspects fraud.</td>
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<td>2</td>
<td>Prosecution Policy</td>
<td>Sets out the Council’s approach to seeking redress/sanction against those who seek to defraud the Council, linking to the Disciplinary rules where the perpetrator is a member of staff</td>
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<td>3</td>
<td>Money Laundering Policy</td>
<td>Sets out the Council’s commitment to ensuring compliance with the requirements of the Proceeds of Crime Act 2002, the Money Laundering Regulations 2007 &amp; 2012 and Chartered Institute of Public Finance and Accountancy (CIPFA) guidance for Local Authorities on Money Laundering.</td>
</tr>
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<td>4</td>
<td>Whistleblowing Policy</td>
<td>In accordance with the Public Disclosure Act 1998, sets out how officers can raise serious or sensitive concerns about other members of staff, suppliers, or people who provide services without fear of harassment, victimisation or bullying as a result of them raising concerns.</td>
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<td>5</td>
<td>Regulation of Investigatory Powers Policy</td>
<td>Sets out rules and procedures for undertaking and gaining authorisation for covert surveillance in accordance with the RIPA Act 2000 (as amended by the Protection of Freedoms Act 2012) and Human Rights Act 1998</td>
</tr>
<tr>
<td>6</td>
<td>Bribery Act Policy</td>
<td>Sets out the Council’s commitment to the prevention, deterrence and detection of bribery and to raise awareness with relevant officers linking with the already in place Employee Code of Conduct and rules on accepting gifts and hospitality</td>
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3. Changes to the Policies

3.1 The following changes have been made to the policies:
- Responsibilities have been re-assigned arising from the departure of the Corporate Director of Finance & Resources;
- The Money Laundering policy has been reviewed in light of the Money Laundering Regulations 2012;
- The RIPA policy has been updated to reflect the new requirements of the Protection of Freedoms Act 2012.

4. Legal Implications
4.1 This report provides information to Members for noting and does not require decision. There are no further legal comments to add.

5. The following people were consulted in the preparation of this report:
   - Section 151 officer
   - Annette Cardy – Elevate (HB Fraud)

6. The following documents were used in the preparation of this report:
   - Cabinet Report 17 January 2012
Internal Audit

Fraud & Corruption Policy & Strategy
(Incorporating Housing Benefit Fraud)
January 2013

Date Last Reviewed: January 2013
Approved by: PAASC
Date Approved: 30 January 2013
Version Number: 1.1
Review Date: January 2014
Document Owner: Group Manager – Internal Audit & Anti-Fraud
Post Holder: David Greenfield
The Council’s commitment to the Fraud Corruption Policy

London Borough of Barking & Dagenham, “the Council” carries out its responsibilities and delivers high quality services to the local community. The immense variety of service provision places the Council at risk of loss from fraud and corruption perpetrated both internally and externally. The Council operates a zero tolerance policy to Fraud and Corruption and considers the Fraud and Corruption Policy and Strategy to be an integral part of our approach.

What are the aims and requirements of the Policy?

Where Fraud or Corruption is found to occur, in any form, it will be dealt with rigorously in a controlled manner in accordance with the principles in the Fraud and Corruption Policy and Strategy. It will be investigated fully and the Council will prosecute all offenders where appropriate including, Members, employees, contractors, agency staff, consultants, suppliers and partners.

Who is governed by this Policy?

The Fraud and Corruption Policy and Strategy applies to all staff including and not limited to temporary staff, sessional staff, consultants and contractors. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example, care homes and sheltered accommodation as well as anyone who seeks to commit fraud against the Council.

Executive Summary

The Fraud and Corruption Policy and Strategy makes clear the Council’s commitment to reducing opportunities for fraud and corruption and taking the strongest possible action against those who seek to defraud the Council. There will be no distinction made in investigation and action between cases that generate financial benefits and those that do not.
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Fraud & Corruption Policy

The council is responsible for the proper administration of its finances. This not only includes direct income and expenditure but also monies that is administered on behalf of the Government, our clients and for which the Council is the responsible accountable body. Anyone committing fraud, both inside and outside the organisation, attack all of these sources of income and expenditure and our valuable assets.

The Council aims to set high standards of service provision and is committed to upholding the reputation of the Authority and maintaining public confidence in its integrity and expects that Members (Elected councillors) and staff at all levels will adopt the highest standards of propriety and accountability and will lead by example.

The Authority also expects that individuals and organisations that come into contact with the Authority e.g. the public, suppliers and contractors, will act with integrity and without intent or actions involving fraud and corruption.

To achieve its aims and objectives the Council will therefore take a firm stance against any individual, group or organisation committing acts constituting theft, fraud, corruption, financial irregularity or malpractice or other form of wrongdoing, whether it is attempted against, from or within the Council.

In fulfilling its responsibilities to protect the public funds it administers against fraud and corruption the Authority recognises the responsibilities placed upon it by statute and will actively promote this Fraud and Corruption Policy and Strategy which is designed to:

- Promote standards of honest and fair conduct
- Encourage prevention of fraud and corruption
- Maintain strong systems of internal control
- Promote detection
- Pursue a zero-tolerance policy and bring to justice all persons who commit acts of fraud or corruption against the Council
- Recover any losses incurred by the Council

In addition to the following, specific matters in respect of Housing Benefits Fraud are set out in Appendix 1.

The Anti Fraud Culture and Deterrence

The culture of the organisation is one of honesty, openness and opposition to fraud and corruption. Members play a key role in maintaining and promoting this culture.
Specifically the Standards Committee is responsible for promoting high standards of conduct by Members, employees, its contractors and partners.

Members have a duty to ensure that Council assets are adequately safeguarded from fraud and abuse and to ensure that the Council’s powers, duties and responsibilities are exercised in an open fair and proper manner to the highest standards of probity.

The Members and employees are an important element in the Council’s stance on fraud and corruption and they are positively encouraged to raise any concerns that they may have on these issues where they are associated with a Council activity.

Members of the public are also able to report concerns to appropriate Council officers or relevant external agencies such as the Police, External Audit, and the Local Government Ombudsman.

The Public Interest Disclosure Act 1998 provides protection for those who voice genuine and legitimate concerns through the proper channels. In this connection the Council has adopted a Whistleblowing Policy to ensure a defined route to bring alleged instances of fraudulent, unlawful or otherwise improper conduct to the Council’s attention. As well as the Whistleblowing Officer, this can involve the Monitoring Officer, Fraud Teams, or the employee’s line manager or Divisional Director or, if more appropriate, an officer external to the individual’s department.

The underlying message is that this Council will not tolerate fraudulent and corrupt activity. A pound lost through fraud and corruption is a pound that is stolen from Barking and Dagenham residents and reduces the amount available to spend on delivering services to residents.

A proactive programme of work will be agreed and published each year, using a risk-based approach to prioritise areas inherently at risk from fraud, outcomes from which will be publicised as appropriate.

New employees will receive fraud and corruption awareness training as part of their induction programme. Fraud awareness programmes will be targeted at all staff in the form of presentations, workshops and newsletters.

Additionally, this strategy and policy will also be available to all employees, contractors and partners and link to associated policies and guidance, for example:

- Employee Code of Conduct
- Disciplinary Rules
- Whistleblowing Policy
- Bribery Policy
- Money Laundering Policy
- Fraud Prosecution Policy

Prevention – Managing the Risk of Fraud
Fraud, theft and corruption are costly in terms of financial loss and reputational risk. The risk of loss can be reduced through robust preventive measures. The Council has a number of key processes and procedures which can assist in the prevention of fraud and corruption that include:

- Internal Control systems
- Standing Orders & Financial Regulations
- Employee Code of Conduct
- Disciplinary Rules
- Members Code of Conduct

The Divisional Director of Finance has been delegated, through the Council’s Standing Orders and Financial Regulations powers to control and regulate the Council’s finances. These include the promotion of systems and practices to minimise the risk of fraud and corruption. An important part of the control framework is the maintenance of an effective internal and external audit of the Council’s finances that operate to the “best practice” standards defined in the Accounts and Audit Regulations (2011).

Managers

The effective eradication of fraud starts with managers. It is the responsibility of all Council managers to ensure that they manage the risk of fraud within their respective work areas.

Managers are expected to be fully conversant with fraud risks (internal and external) relevant to their service areas. Some services will be predominantly at risk of attack from external sources, for example, Council tax, Housing and Renovation grants.

When considering the risk of fraud, managers must take the following steps:

**Identify the risk areas**

Managers must establish which parts of the service are most vulnerable to fraud e.g. letting or managing contracts, handling cash, allocating or distributing grants, ordering equipment, paying invoices, validating documentary evidence in support of claims for benefits etc. Other risks include assessing declared staff interests and considering whether such interests conflict with the Council’s interests or would undermine public confidence in the Council.

**Allocate responsibility for the risk**

Managers must identify who has responsibility for managing each risk and ensure that the officer concerned has adequate training, support and expertise to manage the risk effectively.

**Identify the need for revised controls**

Managers must evaluate the adequacy of existing controls and establish what further controls or changes to existing controls are required to reduce or eliminate the risk of fraud. For this, managers should refer to audit reports, internal investigation...
findings, value for money review findings, External Audit reports or findings from other external inspections. This will help ensure that there is full compliance with the Regulatory Framework, Standing Orders, local procedures and any relevant legislation.

Implement the revised controls effectively

Managers must ensure that the revised controls are cost effective and that written procedures are updated informing staff and customers of any changes that affect them. Staff will need to be trained in the use of revised controls and procedures. Managers must also identify any continued weaknesses and adjust as necessary.

Evaluate the effectiveness of controls

After a reasonable period of time managers should assess the effectiveness of the controls and evaluate whether the risk of fraud has been eliminated or reduced.

For advice on managing risk, evaluating possible conflicts of interest, or the development or evaluation of controls contact the Internal Audit or Risk Management Sections.

Any system weaknesses identified as a result of Fraud Investigations will be reported to the relevant service manager as well as the Group Manager (Internal Audit & Anti Fraud) and addressed through an agreed action plan. The relevant Service Manager will be responsible for implementing the action plan. Internal Audit will have a monitoring role, addressing failures to implement recommendations to the relevant Divisional Director in addition to reporting major system failures, remedial action plans and instances of non-compliance to the Public Accounts & Audit Select Committee.

Contractors

It is expected that the Council’s contractors and partners will have adequate controls in place to minimise fraud. We will however, provide fraud awareness training to our community partners as deemed necessary to help them implement robust controls to protect the funds they administer.

Contractors and partners are also expected to have adequate recruitment procedures in place covering requirements under the Immigration and Nationality Act, Criminal Records Bureau checks and stringent vetting in relation to employment history and references. This expectation will form part of all contract terms and conditions.

Employees - Recruitment and Conduct

It is recognised the majority of staff are conscientious and hard working and whose conduct is beyond reproach. However, where it becomes evident fraud and corruption has taken place, action will be taken in accordance with the Council’s Disciplinary Rules. Fraud and corruption are specific instances of gross misconduct.
and will therefore be treated very seriously and likely to involve criminal or civil proceedings as appropriate.

The Council recognises that a key preventative measure is to take effective steps at the recruitment stage to establish, as far as possible, the previous record of potential employees, in terms of their propriety and integrity. Temporary and agency employees will be treated in the same way.

Staff recruitment is required, therefore, to be in accordance with the Council’s recruitment and selection policies and, in particular, written references regarding known honesty and integrity of potential employees must wherever practicable be obtained before employment offers are made. Criminal records will be checked and disclosed prior to appointment in accordance with the Council’s Safer People for Safer Services Policy

Employees of the Council are expected to follow the Employees’ Code of Conduct and any other Code related to their personal Professional Body.

Employees must comply with their statutory obligations regarding pecuniary interest in Contracts relating to the Council or fees and rewards other than proper remuneration. They are also required to declare any interests which they have that may conflict with the impartial performance of their duties.

Members (Elected Councillors)

Members are expected to conduct themselves in a way that is beyond reproach, above suspicion and fully accountable by acting in a manner that sets an example to the community they represent and employees who implement their policy objectives.

Malpractice of any sort will not be tolerated and where evidence indicates malpractice has occurred, a report will be made to the relevant Body.

Members are required to operate within:

- The Council Constitution
- National Code of Conduct
- Local Code of Conduct

These matters are specifically brought to the attention of Members and include the declaration and registration of potential areas of conflict between Members’ Council duties and responsibilities and any other areas of their personal or professional lives.

The Standards Committee will advise and train Members on matters relating to the Members' Code of Conduct. The Committee will monitor the operation of that Code.

Detection and Investigation

This section should be read in conjunction with the Fraud Response Plan (Appendix 2).
The array of preventative systems, particularly internal control systems within the Council, has been designed to provide indicators of any fraudulent activity, although generally they should be sufficient in themselves to deter fraud it is often the alertness of employees, Members and the public to indicators of fraud and corruption that enables detection to occur and the appropriate action to take place when there is evidence that fraud or corruption may be in progress.

Employees must report any suspected cases of fraud and corruption to the appropriate manager, or, if necessary, direct to the appropriate Fraud Investigation Team. The Fraud Response Plan appended to this policy provides guidance on what to do when an individual suspects fraud and corruption (other than benefit fraud) has or is taking place.

Reporting cases in this way is essential to the Fraud and Corruption Strategy and makes sure that:

- suspected cases of fraud and corruption are investigated properly
- there is a standard process for dealing with all suspected cases of fraud and corruption; and all connected persons and the Council’s interests are protected

The Fraud Investigation Teams are at the forefront of the Council’s fight against fraud and will examine all allegations of theft, fraud and financial malpractice, corruption and behaviour likely to adversely impact on the finances or integrity of the Council, its Members and employees. This extends to allegations against organisations funded by the Council or those with whom the council has a contract.

It is expected that the Council’s partners will provide full and unrestricted access to their financial records relating to the council finances and the co-operation of their staff with any investigation. In addition, personnel records of any person suspected of involvement in fraud against the council will also be made available to the Fraud Investigation Teams.

The Council will utilise the additional powers of Police to obtain evidence or recovery of funds or where the matter cannot be pursued in-house, for example, serious organised crime and money laundering.

Referral to the Police will be undertaken in consultation with the Divisional Director of Finance and in accordance with the Council’s Prosecution Policy. In cases involving Members, the Standards Committee would determine the issue of Police involvement.

Complaints of misconduct under the Members Code of Conduct will be dealt with in accordance with the Standards Committee’s Local Assessment arrangements.

Combining with Others
We will utilise all methods available to detect fraud. Arrangements are in place to actively participate in the Audit Commission’s National Fraud Initiative (NFI). We will also continue to develop and support initiatives that involve the exchange of information and systematic data matching between the Council and other agencies on national and local fraud and corruption activity in relation to Local Authorities.

These agencies include:-

- Police
- Department for Works and Pensions
- HMRC
- UK Border Agency
- Pensions Service
- JobCentre Plus
- Inland Revenue

**Sanction and Redress**

The strongest available sanctions will be applied to all who commit fraud against the Council, its clients or the public purse. This may include disciplinary action, prosecution and civil proceedings or a combination of all three.

This also applies to employees who defraud or steal from the Council’s clients. Disciplinary action will also be taken against staff found to have committed fraud against other Local Authorities, or any other agency administering public funds.

Contractors or partner organisations will be expected to take appropriate action against the individual(s) concerned. The ability to request removal of staff will be written into contract terms.

The decision to recommend any of all of the above sanctions will be made on a case by case basis, having regard to the Disciplinary Rules and Prosecution Policy in place at the time.

Sanctions imposed in relation to cases of fraud involving Members will be imposed by the Standards Committee in accordance with powers bestowed under the Standards Committee (England) Regulations 2008.

**Fraud and Corruption Strategy**

To create a culture and organisational framework - through a series of comprehensive and inter-related procedures and controls - which minimises the risk and impact of fraud or corrupt acts against the Council, whether internally or externally perpetrated.

Where fraud and corruption does occur, to fully investigate all cases and, where proven, take a zero tolerance approach through appropriate use of the full range of available sanctions and penalties.

The Strategy is based on the following principles of best practice:
• Culture & Deterrence
• Prevention & Risk Management
• Detection & Investigation
• Sanctions & Redress

Links to Corporate Objectives

The vision for the Borough is building a better life for all with the key aims of:

• Raising household incomes
• School and post-16 education
• Housing and estate renewal

The priority themes of the Council as shown in the “Policy House” are:

• Better together - We all want our borough to be a place we can be proud of
• Better homes - More people want to live in our borough
• Better health and well-being - With the Olympics on the horizon we want our Borough to be a healthier, fitter place
• Better future - We want a borough that believes in opportunity underpinned by the theme, ‘a well-run organisation’

This Policy and Strategy ensures resources are correctly applied in the provision of high quality services and initiatives that deliver these Corporate Objectives.

Resources

A Corporate Anti Fraud Team will be maintained, to investigate all issues of suspected fraud and irregularity other than housing benefit fraud and to promote the anti-fraud agenda of the Council through proactive and preventative activities.

A Housing Investigation Team will investigate allegations of abuse concerning council housing and seek to recover council properties, for example where it is determined the registered tenant is not in residence as defined by the tenancy agreement, with the aim of delivering housing units back to proper use, and prevent misuse of the Social Housing Stock.

The authority for Fraud Investigators to investigate is enshrined in the Council’s Constitution, Financial Rules.

Internal Audit will, within the context of the Divisional Director of Finance statutory powers, have authority for internal audit purposes to:

• Enter at all reasonable times in to any Council premises or onto Council land
• Have access to all records, documents and correspondence relating to operations or transactions of the Council
• Require and receive such explanations as are necessary concerning any matters under examination
• Require any employee of the Council to produce cash, stores or any other property of the Council in her/his custody

Sufficient Benefit Fraud Investigators will be appointed to undertake investigation of referrals of suspected fraud and Visiting Officers whose duties will be to visit benefit customers to check the details of their claim obtaining any necessary supporting documentation in accordance with the DWP Verification Framework.

Housing Benefit Fraud Investigators will be appointed as “Authorised Officers” who have the power of entry and inspection under section 110A of the Social Security Administration Act 1992. “Authorised Officers” must be right and proper persons and be issued with a certificate of appointment which will last for no more than one year at a time.

“Authorised Officers” will use their powers in connection with a claim for Housing Benefit and or Council Tax Benefit to enter business premises of landlords, agents or employers to inspect relevant documents and to interview persons found on the premises.

The “Authorised Officers” will also use their powers to write and request information from prescribed persons or businesses.

Any abuse of these powers will result in the “Authorised Officers” being subjected to disciplinary procedures.

Training

The Council will ensure that all Fraud Investigators are fully trained, appropriately qualified and are continually kept up to date with respective relevant legislative changes.

Publicity

Publicity will be used appropriately to discourage those who might seek to commit fraud both generally and in instances of specific outcomes from individual cases, to highlight the existence and work of the Anti-Fraud Teams and to promote the zero-tolerance approach.

All successful prosecutions for benefit fraud will be reported within internal and external media.

Fraud Hot Line

The Council has in place dedicated fraud and whistleblowing telephone hotlines and email addresses to enable members of the public to report concerns about possible fraudulent activity. All calls will be followed up by appropriate Fraud Investigators and all information supplied will be treated as private and confidential.

Case Management
Fraud Investigation Teams will maintain electronic records (e.g. case management system) to assist with the proper management, monitoring and recording of cases subject to investigation.

**Considerations for Anti-Fraud Officers**

When investigating fraud, Investigators and Visiting Officers will work to professional standards and in accordance with codes of practice as well as applying the Council's policies on equal opportunities and customer care. They will at all times apply appropriate procedures to maintain confidentiality. They are expected to comply with the Council's Code of Conduct specific to their activity.

Additionally, they will operate within the guidelines of:

<table>
<thead>
<tr>
<th>Act/Policy</th>
<th>Description</th>
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<tr>
<td>The Police and Criminal Evidence Act 1984,</td>
<td>In undertaking an investigation Council officers will observe the Police and Criminal Evidence Act Codes of Practice. The customer will be advised of their rights and evidence will be obtained and secured in accordance with the Act. These Codes of Practice will also be observed when taking statements.</td>
</tr>
<tr>
<td>The Human Rights Act 1998</td>
<td>Officers, when dealing with a suspected fraud, will comply with the requirements of the Human Rights Act.</td>
</tr>
<tr>
<td>Data Protection Act 1998</td>
<td>The Council will act in accordance with the current data protection legislation and any advice issued by the Information Commissioner. It is registered with the Commissioner that data may be used for the prevention of crime and the prosecution of offenders. It will use exemptions under the legislation to protect those organisations and individuals who may be asked to supply information to the Council in its investigation of fraud.</td>
</tr>
<tr>
<td>Whistleblowing Policy &amp; Public Interest Disclosure Act 1998</td>
<td>The Council has set out a policy of whistleblowing in accordance with the Public Interest Disclosure Act. In accordance with this policy Council employees and elected members are expected to inform the Council of any concerns about suspected malpractice by colleagues. The Council will follow the procedures set out in the policy when responding to such concerns.</td>
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**Definitions**

**What is theft?**
Under the section 1 of the Theft Act 1968 “A person is guilty of theft if: he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.”

Examples of theft include stealing any property belonging to the council or which has been entrusted to it (i.e. client funds); including cash, equipment, vehicles and data and can also include the stealing of property belonging to our staff or members whilst on council premises.

Under section 24A of the Theft Act 1968, a person is also guilty of theft where ‘they dishonestly retain a wrongful credit’. For example where they do not report and repay an overpayment of salary or advance.

**What is fraud?**

The Fraud Act 2006 introduced into statute the first legal definition of fraud.

For the purposes of this strategy, fraud is defined as the intentional distortion of records for gain; corruption as the offering or acceptance of inducements designed to influence official action; financial malpractice as theft of funds or assets from the Council or its clients and intentional, unauthorised breaches of financial regulations; and misuse of official position as employees or their friends, relatives or acquaintance benefiting inappropriately from exercise of duty.

Fraudulent acts may arise from:

**Systems Issues** - i.e. where a process /system exists which is prone to abuse by either employees or members of the public e.g. Housing Allocations.

**Financial Issues** - i.e. where individuals or companies have fraudulently obtained money from the Council. Examples include falsification of expense claims, theft of cash and alteration of records to conceal deficiencies, falsification of invoices for payment, failure to account for monies collected.

**Equipment Issues** - i.e. where Council equipment is used for personal reasons, for example personal use of council vehicles.

**Resource Issues** - i.e. where there is a misuse of resources for example theft of building materials or working in a private capacity during contracted hours or whilst sick.

**What is corruption?**

In contrast, corruption has been defined as the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person contrary to the proper conduct of their duties.

Examples of areas where corruption can occur include tendering and awarding of contracts, appointment and reward of external consultants, awarding permissions, planning consents and licenses.
Types of inducement include cash, “free” holidays, “free” professional services and advice, provision of goods or materials, “free” entertainment such as tickets to sporting events.

This area is covered in greater depth by the Bribery Act Policy.

Further Support, Tools & Guidance

The latest version of the Fraud & Corruption Policy & Strategy and all of our documents can be obtained from either contacting the Group Manager – Internal Audit directly or by visiting our intranet pages:

Anti Fraud Information

If you have any comments or feedback to do with this document, we would like to hear from you, so please get in touch and email us at the following address:

david.greenfield@lbld.gov.uk
1. STATEMENT OF INTENT

The Council is committed to providing Housing Benefit & Council Tax Benefit to its eligible residents promptly and accurately following the receipt of all necessary supporting information.

It will do all it can to ensure that customers receive the benefits to which they are entitled. It will encourage the take up of benefits by those people who are eligible.

The Council is also aware that some people will attempt to obtain benefit to which they have no entitlement or continue to receive benefit for which they are no longer eligible. It is therefore committed to a robust anti fraud stance in order to protect public funds and to ensure that benefits are delivered only to those who have entitlement to them.

When a fraud has occurred it will consider taking sanctions against the customer dependent upon their personal circumstances and the gravity of the case. Decisions will be taken in accordance with the Council's Prosecution Policy.

2. DUTIES AND CONSIDERATIONS OF BENEFIT OFFICERS

The Council is also committed to prevent benefit fraud by staff therefore all new staff employed in benefits and fraud administration will be rigorously vetted before being offered employment. Any issues that arise subsequently will be dealt with under disciplinary procedures.

The Council requires all officers involved in benefits and fraud administration to report:

- details of any property they are renting to tenants
- any claims for benefit in which they may have an interest

An interest is defined as a claim for benefit where the officer is

- the landlord or agent
- the customer or partner of the customer
- is a dependent or non dependant of the customer

If an officer involved in the administration of benefits or fraud has knowledge of a claim where the customer is a close family member as described by the Housing Benefit and Council Tax Benefit General Regulations, that officer must report the facts.

Interest in a benefit claim must be recorded in the Register of Employee Disclosures and Interests in accordance with agreed procedures. Officers will undertake regular checks on all properties recorded in this register to ensure that no benefit payment
has been made in relation to these properties without the prior knowledge of Managers.

Any officer found to be involved in any offence involving any claims for benefit from the Department for Work & Pensions or any local authority will be disciplined under the disciplinary procedures in addition to any prosecution that may occur.

Where any officer investigating a fraud is believed to have abused their powers an investigation will take place with a view to disciplinary action being taken.

Gifts and hospitality offered to employees as a consequence of their role as an employee must be reported to their line manager and recorded in the Register of Gifts and Hospitality in accordance with agreed procedures.

3. DUTIES AND CONSIDERATIONS OF ELECTED MEMBERS

The Council requires all elected members to report details of:

- any property they are renting to tenants
- any claims for benefit in which they may have an interest

An interest is defined as a claim for benefit where the member is:

- the landlord or agent
- the customer or partner of the customer
- is a dependant or non dependant of the customer

Interest in a benefit claim must be recorded in the Council's Register of Interests in accordance with agreed procedures. Officers will undertake regular checks on all properties recorded in this register to ensure that no benefit payment has been made in relation to these properties without the prior knowledge of Managers.

Gifts and hospitality offered to a member as a consequence of their role as an elected member must be recorded in the Register of Gifts and Hospitality in accordance with agreed procedures.

4. DATA MATCHING EXERCISES

The Council will use the Department for Work & Pensions Housing Benefit Matching Service (HBMS) which checks benefit claim data for duplication and inconsistencies with data held by other authorities, the Pensions Service and Jobcentre Plus.

The Council will participate in the National Fraud Initiative (NFI) administered by the Audit Commission which allows comparison of Housing Benefit data against other data sources to identify inconsistencies requiring further investigation.

The Council will also run data matching exercises against its own records but will consult with recognised trade unions prior to data matching payroll data of staff and members.
At all times the Council will act in accordance with its understanding of the law and guidance issued by the Information Commissioner, the Department for Work & Pensions and the Audit Commission.

5. VERIFICATION OF HOUSING BENEFIT & COUNCIL TAX BENEFIT CLAIMS

To discourage and prevent fraud from taking place the Council have adopted the Department for Work & Pensions Verification Framework.

The information on the Benefit claim form will be verified by Benefits staff with all supporting documentation photocopied by the relevant officer and endorsed with their name and signature before the original document is returned to the customer.

The DWP Customer Information System (CIS) which is a web enabled application that all Benefit Officers have access to will be used by designated officers to validate information concerning the payment of Income Support or Jobseekers Allowance by that agency.

If fraud is suspected further enquiries will be made which may include contacting third parties and interviewing under caution those suspected in accordance with the Police and Criminal Evidence Act.

Although all claims for benefit will come under close scrutiny the Council is committed to paying benefit accurately and speedily within recognised time scales. Advice and assistance will be given to customers when applying for benefit to maximise take up.

6. BENEFIT CLAIM FORM

The Council will ensure that its application form for Housing Benefit and Council Tax Benefit includes questions and instructions in plain language. The form will make clear to the customer that giving false information could result in the customer being prosecuted. It will also state that the Council may cross check information on the form with other Departments within the Council, other agencies, other Councils and the Rent Officer Service.

The Council will put in place systems which will help the customer to make their claim for benefit and remind them of the need to advise the Council promptly of any change in circumstances. This will include those customers whose ethnicity or disability presents particular difficulties.

The Housing Benefit & Council Tax Benefit claim form will be reviewed and amended regularly to ensure it remains helpful to customers when applying for benefit.

7. OVERPAID BENEFIT TO CUSTOMERS

If benefit has been obtained from the Council where there was no entitlement, for example due to a false claim or a failure to disclose a change in circumstances, the Council will consider the particulars of the individual case. If it is deemed that the customer could reasonably have known they were being overpaid benefit the Council will consider prosecution in accordance with the Prosecution policy.
Where appropriate the Council will consider applying either an administrative penalty equal to 30% of the overpayment or issuing a local authority caution as alternatives to prosecution.

If it is considered not to be in the public interest to apply a relevant sanction the Council will still seek to recover the overpaid benefit in accordance with the Council’s overpayment policy.

8. OVERPAID BENEFIT TO LANDLORDS

Payments of benefit are often made directly to landlords on behalf of customers. If a landlord falsifies a claim or assists a customer to falsify a claim they are guilty of an offence and will normally be prosecuted by the Council in accordance with the Prosecution policy.

Landlords who receive benefit directly are obliged to report any change in their tenant's circumstances. Failure to do so may result in more benefit being paid directly than is actually due.

The Council will make landlords aware of their duty to report a known change of circumstances and that failure to do so is an offence. If the Council believes that an offence has been committed it will consider prosecution and will recover any overpaid benefit either from future direct payments to the landlord or by civil recovery through the Courts.

The Council will expect its Fraud Investigators to use their powers of inspection to obtain information from landlords. These powers will be used reasonably and in compliance with the regulations.

9. "DO NOT REDIRECT MAIL"

The Council will use the "do not redirect mail" service provided by the Post Office to prevent benefit payments being redirected to other addresses.

10. PROACTIVE CAMPAIGNS

The Council will undertake at least two specific benefit fraud campaigns each year either alone or in partnership with another authority or organisation.
Appendix 2 Fraud Response Plan

The London Borough of Barking and Dagenham is committed to developing a culture of honesty and zero tolerance to fraud and corruption.

The purpose of this document is to demonstrate and set out the procedures to be followed where theft, fraud or corruption (other than Benefit Fraud) is suspected or detected. It is part of the Council’s overall fraud and corruption policy & strategy. It therefore applies to all Members (elected Councillors) and all personnel whether staff of the London Borough of Barking and Dagenham, consultants, agency staff or contractors.

It also provides a framework for responding that enables evidence to be gathered and collated in a way which facilitates an informed initial decision and ensures that any evidence gathered will have been lawfully obtained and will be admissible if the matter proceeds to criminal or civil action.

This document is not an investigation procedure for staff. If you suspect fraud it is vital that you follow the guidance in this plan and report your suspicions to the Corporate Anti-Fraud Team. Neither does this document provide guidance on fraud prevention. It is quite simply a brief guide on “what to do if you become aware of fraud” and tells you how the Council will respond to suspected or actual occurrences of fraud.

Roles & Responsibilities In Respect Of Fraud and Corruption

All staff and Elected Members have duties under the Council’s Corporate Governance arrangements to prevent and detect occurrences of fraud and have a responsibility to ensure compliance with relevant legislation in discharging these duties.

The Group Manager (Internal Audit & Anti-Fraud) will maintain a log of all reports, detail actions taken and conclusions reached and report periodically to Members of the Public Accounts & Audit Select Committee.

The Group Manager (Internal Audit & Anti-Fraud) will ensure a consistent approach to the conduct of any investigations into matters reported and that proper records of each investigation are kept from the outset, including accurate notes of when, where and from whom evidence was obtained, and by whom.

Where a member of staff is to be investigated, the relevant Chief Officer and Departmental Human Resources Officer will be informed. Normally, the member of staff’s line manager will also be informed unless this is deemed to be inappropriate given the circumstances of the case.

If a suspicion is reported to a manager, s/he must pass that suspicion on to the Corporate Anti-Fraud Team immediately. Any delay could compromise subsequent investigations.

What should staff do if they suspect fraud or corruption?
Employees are often the first to become aware that there is something seriously wrong within the Council. If you suspect or become aware of fraud or any other illegal act perpetrated by an employee, or other individual(s) against the Council, there are several avenues through which your concerns should be reported.

Initially your concerns should be brought to the attention of your line manager. Alternatively, the matter may be raised with the Corporate Anti-Fraud Team who can advise or discuss the matter informally.

You can also report concerns via the Fraud telephone Hotline and/or dedicated email address.

If you feel unable to express concerns openly and wish to report concerns in confidence, you may do so in accordance with the Council’s Whistleblowing Policy without having to worry about being victimised, discriminated against or disadvantaged in any way as a result.

When you become aware that there may be a problem you should:

- Make an immediate written note of your concerns, details of any telephone or conversations you have heard or documents you have seen, and note the date, time, and names of the people involved. These notes should be signed, timed and dated. Timeliness is important because the longer you delay writing up the notes, the greater the chances of recollections becoming distorted and the case being weakened

- Pass any documents that would normally come into your possession immediately to Corporate Anti-Fraud Team if this can be done without alerting suspicions; this should include any relevant emails

You should not:

- Ignore the concerns or be afraid of raising them. You will not suffer recriminations from your employer as a result of voicing a reasonably held suspicion

- Approach individuals yourself or convey your suspicions to other staff, except those authorised to deal with the matter. There may be an innocent explanation that resolves your concerns. If you have any doubts about who to consult, speak to the Corporate Anti-Fraud Team first

- Investigate the matter yourself. There are special rules relating to the gathering of evidence for use in criminal cases. Attempts to gather evidence by persons who are unfamiliar with these rules may jeopardise or undermine the case

- Discuss it with anyone else after you have reported your suspicions
What should a member of the public or a partner organisation do if they suspect fraud or corruption?

The Council encourages members of the public who suspect fraud and corruption to contact the Group Manager (Internal Audit & Anti-Fraud) in the first instance. Suspicions or identified instances of fraud, corruption or other wrongdoing against the Council can be reported via a confidential hotline number.

How will allegations of fraud and corruption be dealt with by the Council?

The Corporate Anti-Fraud Team operates independently of other Council services but will pool resources with other stakeholders such as the Internal Audit, Housing Investigation and Benefit Fraud Teams to provide a joined up approach to prevention, detection, investigation and prosecution of fraud and corruption within the council.

When allegations are received from staff or the public the Corporate Anti-Fraud Team will establish at an early stage the action to be taken by the Council; this may depend on the nature of the allegation. The matters raised may be investigated internally; however, allegations of wrongdoing involving a criminal act may shape the way the investigation is handled and by whom.

Within ten working days of a concern being received, the responsible officer will write to the complainant:

- Acknowledging that the concern has been received
- Indicating how they propose to deal with the matter
- Giving an estimate of how long it will take to provide a final response; and
- Informing whether or not any further investigations will take place

If it appears that a criminal act has occurred or where there is sufficient evidence of fraud or corruption, the Police will be involved in accordance with the Council’s Prosecution Policy. In most cases, referral to the police will be the normal course of action.

All staff must cooperate fully with police or any other form of external enquiry.

Where the police are unable to progress a criminal prosecution, e.g. because the burden of proof is insufficient to convince the Crown Prosecution Service to proceed, legal opinion will be sought as to the expediency of civil action particularly in relation to recovering losses.

If it appears not to be a criminal matter, an internal investigation will be undertaken to:

- Determine the facts
- Consider if the allegation should be dismissed or
- What action should be taken against any staff found culpable
- Consider what may be taken to recover any losses to the Council which could include civil action
• Identify whether the Council’s system controls or procedures need to be improved

If the outcome of an investigation is that action should be taken against an employee, the Corporate Anti-Fraud Team will advise the appropriate service manager and/or Divisional Director and liaise with the Human Resources section to determine whether disciplinary action is appropriate for:

• misconduct i.e. negligence or error of judgement
• gross misconduct, i.e. dishonesty

A fraud log will be completed detailing every action taken during the investigation, this will include the dates and times that each action undertaken was carried out.

How we gather and deal with evidence

The Corporate Anti-Fraud Team will normally manage investigations and will be responsible for gathering evidence and will seek to establish whether there is any physical evidence that fraud has occurred and collect such evidence, recording the time and place that the evidence was obtained.

Where there are reasonable grounds for suspicion, the police will be involved at an early stage however the Group Manager (Internal Audit & Anti-Fraud) may still undertake part or all of the investigation on behalf of the police. All employees MUST co-operate with the investigation process.

If appropriate, and in accordance with Human Resources policies and with their agreement, suspension of officers will be considered to ensure unfettered progress of investigations. It should be noted that suspension is a neutral act and in no way implies guilt of the officer.

Failure to co-operate will itself constitute a disciplinary offence.

It is important, from the outset, to ensure that evidence is not contaminated, lost or destroyed. Wherever possible original documents should be retained, secured and handled as little as possible. Under no circumstances should they be marked in any way. Computer data must also be secured and should not be viewed by anyone who is not appropriately trained.

All evidence will be obtained lawfully, properly recorded and retained securely in accordance with the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996.

The outcomes of internal investigations will be reported to the Public Accounts & Audit Select Committee.

Conducting interviews

Interviews will be conducted in a fair and proper manner and in accordance with the Council’s Disciplinary Rules.
As much documentary evidence as possible will be gathered before any interviews are conducted. If it is established there are any witnesses to the events the Corporate Anti-Fraud Team will seek to interview witnesses and obtain written statements. File notes of all actions and discussions will be maintained. The veracity of the information provided by witnesses and or other evidence documentary or otherwise will determine whether the employee should be interviewed.

Where there is a possibility of subsequent criminal action, the police will be consulted and interviews may be conducted under caution in compliance with the Police and Criminal Evidence Act 1984 which governs the admissibility of evidence in court proceedings.

**Closing the investigation**

The investigation will be concluded by deciding whether there is a case to answer and by making recommendations as to appropriate action in a written report to the relevant manager and Divisional Director as well as improvements to systems and procedures.

Management will seek advice from Human Resources to establish the correct procedure to progress the matter through the Council’s disciplinary framework.

For acts of dishonesty, false accounting, gross negligence, deception, or theft, employees can expect to be dismissed.

Employees found to have committed fraud against other organisations responsible for the administration of public funds will be considered to have brought this Council into disrepute and can expect to be dismissed.

All matters investigated will be dealt with in accordance with the Council's Human Resources Disciplinary Rules and Code of Conduct for Employees.
Internal Audit

The Fraud Prosecution Policy
(Incorporating Housing Benefit Fraud)
January 2013

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The Council's commitment to the Prosecution Policy

The London Borough of Barking & Dagenham is committed to the protection of public funds through its action against fraud and has adopted a zero tolerance approach to fraud and wrongdoing perpetrated against it. The Council will seek application of the strongest possible sanctions against those found to have perpetrated fraud against it.

What are the aims and requirements of the legislation?

The aim of this prosecution policy is to deter fraud against the Council including fraudulent benefit claims.

This policy sets out the range of sanctions that may be applied where fraud and wrongdoing is identified and the circumstances relevant to their application.

Who is governed by this Policy?

This policy applies to claimants of Housing or Council Tax benefit, council employees, contractors and members of the public found to have committed fraud and other wrongdoing against the Council.

Disciplinary action will also be taken against Council employees found to have made fraudulent benefit claims.

Executive Summary

The London Borough of Barking & Dagenham is committed to the protection of public funds through its action against fraud. Where a claimant of Housing Benefit or Council Tax benefit has been accused of committing a fraud against the Council and the Fraud Investigation Team have enough evidence to sustain prosecution the Council will employ any or all of three sanctions available to it.

Where other types of fraud and wrong doing are identified the Council will employ disciplinary action in (the case of Staff), civil action or criminal sanctions or a combination of all three in parallel.
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Fraud Prosecution Policy

The London Borough of Barking and Dagenham is committed to preventing fraud and corruption wherever possible. All allegations of fraud and corruption will be taken seriously.

Where fraud and corruption is found to occur, in any form, it will be dealt with rigorously in a controlled manner in accordance with the principles in the fraud and corruption strategy. It will be investigated fully and the London Borough of Barking and Dagenham will prosecute all offenders where appropriate including Members, employees, contractors and external partners, in accordance with this policy.

This procedure will be operated in conjunction with the London Borough of Barking and Dagenham’s disciplinary procedures and all employees will be subject to disciplinary action as well as any prosecution process.

Where there is clear evidence that a fraudulent or corrupt act has been committed, the following will be taken into account before a case is considered for prosecution.

- The seriousness of the case
- The level of evidence available
- The level of money or misappropriated assets involved
- Whether the public interest will be served

In assessing a case for prosecution, the following tests will be applied:

- **The Evidential Test**: To ensure sufficiency of evidence to provide a realistic prospect of conviction
- **The Public Interest Test**: To determine whether or not it would be in the public interest to proceed

A prosecution will usually be pursued unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. To pass the public interest test, Fraud Investigators will balance carefully and fairly the public interest criteria as detailed in ‘The Crown Prosecution Service’s Code for Crown Prosecutors 2010’ against the seriousness of the offence.

The public interest criterion includes:

- The likely sentence (if convicted)
- Whether the offence was committed as a result of genuine mistake or misunderstanding
- Any previous convictions and the conduct of the defendant

The Council will in most instances prosecute where the fraud perpetrated:

- was not a first offence
- was planned
• was undertaken by an officer in a position of authority or trust and he or she took advantage of this, or
• involved more than one person

The full tests the council will apply in considering a case for prosecution are set out in Appendix 1.

**General Fraud Sanctions & Redress**

Applicable sanctions differ between general fraud and benefit fraud in accordance with legislation, as follows.

With respect to a prima facie case of fraud, an appropriate combination of the following three sanctions may be applied.

- **Disciplinary Action** - Application of this sanction is normally internal disciplinary action but may involve a referral to the relevant professional organisation from which professional disciplinary action could ensue

- **Civil Action** – to recover money, interest and costs where it is cost effective and desirable for the purpose of deterrence, it may be decided that civil redress is the most appropriate course of action. In such instances the council’s legal services team will utilise civil law to recover any losses

- **Criminal Sanction** - fines, imprisonment, and compensation orders

Where it is decided that a criminal prosecution is to be pursued, the Group Manager (Internal Audit & Anti-Fraud) will be consulted and will brief the Divisional Director of Finance and Chief Executive as appropriate. However, the option to prosecute may also be determined by the police in some instances.

Managers should not notify the police directly, except in an emergency in order to prevent further loss, or where it is necessary for the police to examine an area before it is disturbed by staff or members of the public.

In instances where an investigation reveals either;

- numerous cases of fraudulent activity
- significant value, or
- breaches of the employee code of conduct and/or disciplinary rules

The option of pursuing a series of sanctions (parallel sanctions) may be chosen.

The individual or parallel sanctions that are to be applied will be the decision of the Corporate Anti-Fraud Team following consultation with the Group Manager (Internal Audit & Anti-Fraud).

In instances where parallel sanctions are applied, for example, internal disciplinary and criminal sanctions, the Corporate Anti-Fraud Team will carry out an investigation
with a view to criminal prosecution, whilst simultaneously conducting an internal investigation under the Disciplinary Procedure.

The Corporate Anti-Fraud team will provide sufficient evidence to Human Resources in order that an internal investigation and disciplinary hearing can be taken forward with respect to the evidence given. The advantage of this approach is that all appropriate action is taken at the earliest opportunity.

The Council believes fair and effective prosecution is essential in order to protect public funds and deter fraudulent activity.

Irrespective of the sanctions pursued for general fraud, the council will use all measures available to it to recover any money lost due to fraudulent activity.

In respect to criminal sanctions, this will be sought through the application for a Compensation Order to the Courts. This Order will not only outline the losses sustained by the council through fraud but also the investigation costs.

In respect of Internal Disciplinary, the council has a responsibility following the outcome of its investigation, to initiate an appropriate procedure aimed at recovering all monies identified as being lost or misappropriated through fraud.

The mechanism by which misappropriated monies are to be repaid will normally be established and agreed prior to any sanction being applied, and may be managed through utilisation of procedures such as deduction from salary or debtor invoicing.

Where the above mechanisms fails to recover any monies owed to the council, following advice from Legal Services, the Corporate Anti-Fraud Team will consider the option of civil redress.

Civil redress is available to the council in all instances where initial attempts to recover the loss, such as deduction from salary or debtor invoicing, have failed. In such instances, if considered appropriate, Legal Services will make an application either to the Small Claims or County Court - depending on the value to be recovered.

Other Redress - the council will also seek recovery of losses from pension entitlements where appropriate.

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**Housing Benefit Fraud Sanctions & Redress**

The Council has the power to impose three forms of sanction on those whom it believes have committed benefits offences. Prosecutions will be reserved for those cases which in the opinion of the Council are the most serious. These will be followed by Administrative Penalties and Local Authority Formal Cautions.

**Factors Influencing Sanctions for:**

- Closure of the case with No further Action
• A Formal Caution
• An Administrative Penalty
• Prosecution

Closure of the Case with No Further Action

The Authority would consider using its discretion to close the case with no further action being taken by an Investigation Officer, although any overpayment would still be recovered if the circumstances in which the fraud arose are relatively minor, e.g.

• to the best of the council’s knowledge the claimant has never previously offended and
• there was no planning involved in the process and
• there was no other person involved in the fraud and
• the overpayment is low

A Formal Caution

If the circumstances in which the fraud arose are more serious, e.g.

• it is known the claimant had previously offended, but no Formal Caution has been previously recorded or 14 months have elapsed since the last Formal Caution
• Mitigating factors determine the need to consider a Formal Caution Penalty
• there was little or no planning involved in the process
• there were no other persons involved in the fraud
• An admission has been made

the Authority would consider issuing a Formal Caution.

What a Formal Caution is

Unlike the administrative penalty, a caution can only be issued when a customer has admitted an offence. It cannot be issued if the customer refutes or denies the charge. The case should again be at prosecution standard if a caution is to be issued. If a caution is refused the Authority will refer to Prosecution Tests and decide upon suitability and cost effectiveness to prosecute.

To reflect the seriousness the Authority places on this course of action, a Caution will be administered by an Officer of no less seniority than a Senior Investigation Officer

An Administrative Penalty

If the circumstances in which the fraud arose are fairly serious, e.g.

• to the best of the Council’s knowledge the claimant had never previously offended
• the person had not previously been issued with a Formal Caution or Administrative penalty in the last 14 months
• Mitigating factors determine the need to consider an Administrative Penalty
• The Penalty amount does not usually exceed £3000 the Authority would normally consider issuing an Administrative Penalty.

**What an Administrative Penalty is**

Section 115A of the Social Security Administration Act 1992, as amended by Section 15 of the Social Security Fraud Act 1997, allows an Authority to apply a penalty equal to 30% of the total overpayment. The claimant has 28 days in which to change their decision. If a penalty is not accepted or is withdrawn, the Authority may consider prosecution. The Authority will refer to the prosecution tests and decide upon the suitability and cost effectiveness to prosecute. Consequently, all cases considered for penalties, must be at prosecution standard.

The offer of a penalty should happen at a special interview.

**NOTE:** Officers involved in the Interview under Caution, will not conduct the Administrative Penalty interview.

**Prosecution**

If the circumstances in which the fraud arose are very serious, e.g.

- it is known the claimant had previously offended or a Formal Caution/Administrative Penalty has been recorded in the last 14 months
- there was planning involved in the process
- there were other persons involved in the fraud
- the overpayment is of a high amount

the Authority would normally consider referring the case for prosecution.

It may still be appropriate to prosecute someone who has not been paid any benefit but where the attempt to defraud was so serious as to justify a prosecution.

**Publicity**

Anti-Fraud officers will seek to publicise cases identified for prosecution, with the aim to deter others and thereby to prevent further frauds. The final decision to publicise will rest with the Council’s Press and Publicity Section.

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**Further Support, Tools & Guidance**

The latest version of the Fraud Prosecution Policy and all of our documents can be obtained from either contacting the Group Manager – Internal Audit directly or by visiting our intranet pages:

**Anti Fraud Information**

If you have any comments or feedback to do with this document, we would like to hear from you, so please get in touch and email us at the following address:

[Email Address: david.greenfield@lbbd.gov.uk]
Appendix 1

Tests the council will apply in considering a case for prosecution: to be applied in considering a case for prosecution.

The Evidential Test

In deciding whether to refer a case for prosecution, the following tests will be considered:

- Is there sufficient evidence for a realistic prospect of a prosecution?
- Can the evidence be used in court?
- Could the evidence be excluded by the court e.g. because of the way it was gathered or the rule about hearsay?
- Is the evidence reliable?
- Is its reliability affected by such factors as the defendant’s age, intelligence or level of understanding?
- What explanation has the defendant given? Is the court likely to find it credible in the light of the evidence as a whole?
- Is the witness’s background likely to weaken the prosecution case? e.g. does the witness have any motive that may affect his or her attitude to the case?
- Are there any concerns over the accuracy or credibility of a witness?
- How clear is the evidence?
- Has there been any failure in investigation?
- Has there been any failure in benefit administration including delay?
- Is prosecution in the public interest?

The Public Interest test

In making a decision, the following factors should also be considered:

- Whether a conviction is likely to result in a significant sentence or a nominal penalty
- Whether the offence was committed as a result of genuine mistake or misunderstanding
- Cost effectiveness of taking the case to court
- Any abuse of position or privilege i.e. a member of staff or Councillor
- Whether the claimant is suffering from either significant mental or physical ill health
- Any social factors
- Any voluntary disclosure
- Any previous incidences of fraud
- The evidence shows that the defendant was a ringleader or an organiser of the offence
- There is evidence that the offence was premeditated i.e. the claim was false from inception
- There are grounds for believing that the offence is likely to be continued or repeated, e.g. by a history of recurring conduct
• The offence, although not serious in itself, is widespread in the area where it was committed
Internal Audit

Money Laundering Policy
January 2013

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The Council's commitment to the Money Laundering Policy

London Borough of Barking & Dagenham, “the Council” takes a zero tolerance approach to fraud and corruption and as such will be taking a proactive approach to the prevention, detection and reporting of suspected money laundering incidents.

What are the aims and requirements of the legislation?

The legislation has the aim to enable suspicious transactions to be recognised and reported to law enforcement agencies to deter and disrupt such practices.

Who is governed by this Policy?

The Money Laundering Policy applies to all staff including and not limited to temporary staff, sessional staff and contractors. A failure to comply could be damaging to the finances and reputation of the Council.

Executive Summary

This Money Laundering Policy sets out the Council’s commitment to ensuring compliance with the requirements of the Proceeds of Crime Act 2002, the Money Laundering Regulations 2007 & 2012 and Chartered Institute of Public Finance and Accountancy (CIPFA) guidance for Local Authorities on Money Laundering.
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Money Laundering Policy

Our policy is to do all we can to prevent wherever possible the Authority and its staff being exposed to money laundering, to identify the potential areas where it may occur, and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases. It is every member of staff’s responsibility to be vigilant.

**What is Money Laundering?**

Money Laundering is the term used for a number of offences involving the proceeds of crime. It is the process by which the identity of “dirty” money (i.e. the proceeds of crime and the ownership of those proceeds) is changed so that the proceeds appear to originate from legitimate “clean” sources.

Some areas of the Council’s activities are thought to be particularly vulnerable to attempts to launder money. It can simply involve receiving payment for goods or services with “dirty” money – usually cash. For the purposes of the new legislation it now includes possessing, or in any way dealing with, or concealing, the proceeds of any crime.

**What is the legal definition?**

Money Laundering is defined as:

- concealing, disguising, converting, transferring or removing criminal property from England, Wales, Scotland or Northern Ireland

- being involved in an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property

- acquiring, using or possessing criminal property

- when a person knows or suspects that money laundering activity is taking place (or has taken place), or becomes concerned that their involvement in a matter may amount to a prohibited act under the legislation, they must disclose this as soon as practicable or risk prosecution

**What is the legislation?**

The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 & 2012 places specific obligations on persons who are involved in “relevant business”. Offence under the Proceeds of Crime Act and Money Laundering Regulations can attract penalties of unlimited fines and up to 14 years imprisonment.
How can suspicious activity be identified?

Employees dealing with transactions which involve income for goods and services (or other income), particularly where large refunds may be made or large amounts of cash are received, will need to consider issues such as:

For new customers:

- is checking their identity proving difficult?
- is the individual reluctant to provide details?
- is there a genuine reason for using the services provided?
- is the customer attempting to introduce intermediaries to either protect their identity or hide their involvement?
- is the customer requesting a large cash transaction?
- is the source of the cash known and reasonable?

For regular and established customers:

- is the transaction reasonable in the context of the service provider’s normal business?
- is the size or frequency of the transaction consistent with the normal activities of the customer?
- has the pattern of the transaction changed since the business relationship was established?

What are the areas at risk of Money Laundering?

Some areas of the Council’s activities are thought to be particularly vulnerable to attempts to launder money. Where a need is identified by the risk assessment, advice will be provided to line managers to enable them to provide more targeted training. This may be provided using in-house resources, or through courses and seminars run by external agencies.

Possible examples relating to the Council include:

- Conveyancing, including Housing Right-to-Buy transactions
- Housing Benefit fraud
- Payments in excess of £10,000 e.g. business rates, business rents, hall hire etc.
- Refunds of large overpayments to accounts e.g. as above, plus: Council Tax, hire fees etc.
- Suspiciously low tenders
Generally, for the types of transactions the Council is involved with which are at risk in relation to Money Laundering, for example the sale of a capital asset, the risk is mitigated because these transactions will be with large, well known companies who will be represented by their solicitors who have their own professional duties regarding the Money Laundering Regulations. Conversely, where we have similar transactions with un-represented individuals or bodies this is an area of greater risk and our response will need to reflect this.

**Reporting of Money Laundering concerns**

The Council has nominated the Divisional Director of Finance as the main point of contact for money laundering issues and to act as the nominated Money Laundering Reporting Officer. Staff should report any suspicions to the Divisional Director of Finance immediately as they arise.

Suspicions may be reported informally by telephone or email and the responsible officer will seek to establish the facts of the case and determine whether a formal referral to the National Criminal Intelligence Service (NCIS) is appropriate.

The Money Laundering Reporting Officer, or their delegated officer, will consult with staff as appropriate in order to investigate the matter.

**Further Support, Tools, Training & Guidance**

The latest version of the Money Laundering Policy and all of our documents can be obtained from either contacting the Group Manager – Internal Audit directly or by visiting our intranet pages:

**Anti Fraud Information**

If you have any comments or feedback to do with this document, we would like to hear from you, so please get in touch and email us at the following address:

[Email Address: david.greenfield@lbld.gov.uk]
Internal Audit

Whistleblowing Policy

January 2013

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## The Council’s commitment to the Whistleblowing Policy

The Council wishes to encourage and enable employees to raise serious concerns of fraud or irregularity within the Council rather than overlooking a problem or ‘blowing the whistle ‘outside.

## What are the aims and requirements of the legislation?

This policy has been put in place to make sure that if you want to come forward and raise any concern of fraud or irregularity within the remit of this policy, you can do so with confidence and without having to worry about being victimised, discriminated against or disadvantaged in any way as a result.

## Who is governed by this Policy?

The Whistleblowing policy applies to all staff including and not limited to temporary staff, sessional staff and contractors. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example, care homes and sheltered accommodation.

## Executive Summary

This Whistleblowing Policy sets out the Council’s commitment to ensuring compliance with the requirements of the Public Interest Disclosure Act 1998.
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Whistleblowing Policy

Our policy is to promote a culture of openness and a shared sense of integrity throughout the Council by inviting employees to act responsibly in order to uphold the reputation of the Council and maintain public confidence.

What is Whistleblowing?

Whistleblowing encourages and enables employees to raise fraud or irregularity concerns within the Council rather than overlooking a problem or “blowing the whistle’ outside.

Members of staff may be the first to spot anything that is seriously wrong within the Council. However, they might not say anything because they think this would be disloyal, or they might be worried that their suspicions are not justified. They may also be worried that they or someone else may be victimised.

That is why we have produced this Whistleblowing policy to help staff, including agency workers and contractors to contact us with their concerns.

We are committed to being open, honest and accountable. For this reason concerns/disclosures of malpractice and impropriety are taken very seriously. We want you to be able to raise any serious concerns you have.

We expect our employees and other organisations working for or with the Council to bring to our attention any issues of concern, malpractice or other wrongdoing in accordance with the Employee Code of Conduct.

This policy has been put in place to make sure that if you want to come forward and raise any concern, you can do so with confidence and without having to worry about being victimised, discriminated against or disadvantaged in any way as a result.

Who is covered by this Policy?

All staff (including those designated as casual, temporary, agency, authorised volunteers or work experience), and those contractors working for the Council on Council premises, for example, agency staff, builders, drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example, care homes and sheltered accommodation.

What types of action are covered by the Policy?

The policy is intended to deal with serious or sensitive concerns about wrongdoings such as the following:
- Misuse of Council funds
- Other fraud or corruption
- Bribery
- Clients, children or students, particularly children and adults in our care, being mistreated
- Improper or unauthorised use of Council money
- An unlawful act
- Any danger to health and safety
- The environment being damaged (for example, by pollution)
- A person abusing their position for any unauthorised use or for personal gain
- A person deliberately not keeping to a Council policy, an official code of practice or any law or regulation
- A person failing to meet appropriate professional standards
- A person being discriminated against because of their race, colour, religion, ethnic or national origin, disability, age, sex, sexuality, class or home life
- Other wrongdoing including instances where attempts have been made to conceal or cover up wrongdoing

Your concern may be about members of staff, people who work directly for the Council, suppliers, or people who provide services to the public for us.

**What is not covered by the Policy?**

You cannot use this policy to deal with serious or sensitive matters that are covered by other procedures, for example:

- Staff complaints about their employment. These complaints are dealt with through our Grievance or Bullying and Harassment Policies and Procedures
- Customers’ complaints about our services. These complaints are dealt with through our Corporate Complaints Procedure
- Allegations against councillors. Such allegations should be sent in writing to: The Monitoring Officer, London Borough of Barking and Dagenham, Civic Centre, Dagenham, Essex, RM10 7BN. Write "Private and Confidential" on your envelope. A complaint form and other information is available online at [http://www.lbld.gov.uk/CouncilandDemocracy/Complaints/Pages/ComplaintsMembers.aspx](http://www.lbld.gov.uk/CouncilandDemocracy/Complaints/Pages/ComplaintsMembers.aspx)
- Also, you cannot use this policy to raise issues that have already been settled through other procedures, for example, matters previously resolved under the Council’s Disciplinary Rules procedure

**Protecting you**

If your allegation is true, you have nothing to fear. But we understand that deciding to blow the whistle is not easy.
If you raise a concern which you believe is true, we will take appropriate action under the Public Interest Disclosure Act 1998 to protect you from any harassment, victimisation or bullying.

We will do our best to protect your identity and keep your concerns confidential if this is what you want.

There may be occasions when you will need to provide statements of evidence in order for us to conclude the investigation. In this case we will not reveal your name or position without your permission or unless we have to do so by law, for example, if the evidence is required in Court then your anonymity may be subject to the decision of the Courts.

If you work for the Council, you should also know that any allegation you make will not influence, or be influenced by, any unrelated disciplinary action against you or any redundancy procedures that may affect you.

**Anonymous allegations**

Because we will protect you (as explained previously), we encourage you to give your name when you make an allegation. Concerns raised anonymously tend to be far less effective and if, for example, we do not have enough information, we may not be able to investigate the matter at all.

If you feel that you cannot give your name, our Whistleblowing Officer will decide whether or not to consider the matter. This will depend on:

- the seriousness of the matter
- whether your concern is credible; and
- whether we can carry out an investigation based on the information you have provided

**Untrue Allegations**

If you make an allegation which you believe is true, but it is not confirmed by our investigation, we will not take any action against you.

However, if the investigatory process finds you have made an allegation which you know is untrue; we will take appropriate disciplinary or legal action against you.

**How to raise a concern**

If you work for the Council you should first raise your concern with your immediate supervisor, manager or group manager (but obviously this will depend on the seriousness and sensitivity of the matter, and who is suspected of the wrongdoing).
If you are not comfortable reporting the matter to your direct line manager or group manager because it is too serious or sensitive, or because the line manager is involved, you may also raise concerns with your Divisional or Corporate Director.

Concerns that involve financial malpractice should always be raised with the Corporate Anti Fraud Team.

If you prefer, or you do not work for the Council, you can contact the Whistleblowing Officer and Corporate Anti Fraud Team direct in any of the following ways:

- By phoning the Whistleblowing line on 020 8227 2541. You can leave a confidential voice-mail message 24 hours a day.

- By writing to the Whistleblowing Officer, Head of Legal & Democratic Services, London Borough of Barking and Dagenham, Civic Centre, Dagenham, Essex. RM10 7BN. Write 'Private and Confidential' on your envelope.

- By sending an e-mail to: whistle-blowing@lbbd.gov.uk. To maintain confidentiality you are advised not to copy other people into your message to the whistleblowing mailbox.

If you are putting your concerns in writing it is best to give the Whistleblowing Officer as much information as possible - including any relevant names, dates, places and so on. A form is available on the intranet to help you provide information that will be helpful in following up your concerns.

You should also provide:

- The reason why you are concerned about a situation
- Background information
- What you personally witnessed or extent to which you have experienced the problem

If possible you should provide documentary evidence.

The earlier you raise a concern, the easier it will be to take effective action.

Although you will not have to prove beyond the shadow of a doubt that your allegation is true, you will have to show the Whistleblowing Officer or designated officer that there are reasonable reasons for your concern.

The earlier you raise a concern, the easier it will be to take effective action.

**Help for you**

You may want to discuss your concern with a friend or colleague first. You may then find it easier to raise a concern if others share the same experiences or concerns.
Your trade union representatives can also give you general support and advice, or act for you if this would help. This could be useful, particularly if you do not want the Whistleblowing Officer to know who you are. We will encourage the trade unions to support any member of staff who raises a concern with them.

**How we respond to your concerns**

Within 10 working days of you raising a concern, the Whistleblowing Officer or designated investigator will:

- acknowledge that we have received your concern
- explain how we will handle the matter; and
- tell you what support is available to you

It is difficult to set further timescales as they depend on the nature of the allegation and the type of investigation we need to carry out.

The way we deal with the concern will depend on what it involves. If we need to take urgent action, we will do this before carrying out any investigation.

We will first make enquiries to decide whether we should carry out an investigation and, if so, how we should go about it. Throughout all our enquiries and any investigation, our main concern will be to put the interests of the public first.

Your concern may be investigated by council management, our internal audit investigators, or we may refer it to:

- the police
- other agencies (for example, if it involves the abuse of children or vulnerable adults it may be referred to the relevant Director of Services)
- our external auditor; or
- an independent investigator

If your concern or allegation can be handled under any other procedure or policy, we will pass it on to the relevant person and let you know.

We may be able to settle some concerns without carrying out an investigation but by taking action agreed by you.

The amount of contact you have with the Whistleblowing Officer or designated investigator will depend on the nature of your concern, the potential difficulties involved, and whether or not the information you have given us is sufficiently clear.

If you need to have a meeting, you can be accompanied by a friend or a representative from a trade union or professional association. Meetings with the Whistleblowing Officer or designated investigator will normally take place in his or
her office but can be arranged elsewhere, but not in your home unless there are exceptional circumstances.

We will take steps to reduce any difficulties you may experience as a result of raising a concern. For instance, if you need to give evidence in criminal or disciplinary proceedings, we will arrange for you to get advice on the procedure.

If the investigation finds that misconduct and/or gross misconduct has occurred, disciplinary action may be initiated in accordance with the Council’s Disciplinary procedures.

In all cases we will seek to apply the most appropriate sanction against employees considered to be guilty of malpractice. This includes commencing disciplinary action, which may lead to dismissal, and, in the case of unlawful wrongdoing may also involve criminal proceedings.

We will usually update you on the progress of investigations and inform you of the closure of an investigation within 5 working days of completion, however, the nature and outcome of any disciplinary action taken will remain confidential.

**Who is responsible for this Whistleblowing policy?**

The Whistleblowing Officer is a senior officer in the Council who can take an independent view of any concerns raised. That officer keeps a confidential record of all concerns raised and the outcomes and gives the Public Accounts and Audit Select Committee a summary of all cases without revealing any specific details.

**What if a concern involves the officer involved in the Whistleblowing procedure?**

If a concern involves the Whistleblowing Officer, the matter should be referred to the Chief Executive, whose contact details can be found on the council’s Internet site at http://www.lbld.gov.uk/AboutBarkingandDagenham/CouncilDepartments/ChiefExecutives/Pages/ChiefExecutivesOffice.aspx

If a concern involves the Chief Executive, the matter should be referred to the Leader of the Council (or the Deputy Leader if the Leader is not available).

If there are exceptional circumstances which make reporting your concern uncomfortable, you can also obtain advice from the Chair of the Standards Committee.

**How you can take a matter further**

We hope you will be satisfied with any action we take. If you’re not, and you want to take the matter outside the Council, you could contact:

- our external auditor; contact details on the council website
- your local Citizens’ Advice Bureau
- relevant professional bodies or regulatory organisations
- a relevant voluntary organisation; or
- the police
Independent advice

You can get independent advice or support from an organisation called Public Concern at Work. Their address is:
Public Concern at Work
3rd Floor, Bank Chambers
6-10 Borough High Street
London
SE1 9QQ
Phone: 020 7404 6609
E-mail: whistle@pcaw.co.uk

Further Support, Tools & Guidance

The latest version of the Whistleblowing Policy and all of our documents can be obtained from either contacting the Group Manager – Internal Audit directly or by visiting our intranet pages:

Anti Fraud Information

If you have any comments or feedback to do with this document, we would like to hear from you, so please get in touch and email us at the following address:

david.greenfield@lbbd.gov.uk
Internal Audit

The Policy and Code of Practice of The Regulation of Investigatory Powers (RIPA)

January 2013

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Purpose

London Borough of Barking & Dagenham, “the Council” considers the RIPA Policy as being necessary to the proper conduct of crime prevention activities that involve use of covert directed surveillance. The Council has compiled a RIPA Code of Practice in accordance with the RIPA Act 2000 (the 2000 Act) as amended by the Protection of Freedoms Act 2012 (the 2012 Act) detailing the procedures necessary to comply with legislative requirements.

Staff found to have breached the Acts and the Council’s Code of Practice are deemed to have breached the Council’s staff Code of Conduct and liable to disciplinary action.

Related Documents

This policy sets out the Council’s approach to covert surveillance and the use of covert human intelligence sources. In particular, it details the checks and balances in place to ensure that any use of covert techniques is lawful, necessary and proportionate.

Who is Governed by this Policy & Strategy?

The RIPA Policy covers all council staff and those working on behalf of the Council who are engaged in prevention and detection activities which involve the use of surveillance.

Executive Summary

Local authorities can undertake surveillance and access communications data under the framework of the 2000 Act regulating how local authorities use directed surveillance and covert human intelligence sources. Regulations relating to directed surveillance were amended by the 2012 Act to limit coverage to the purpose of preventing or detecting a criminal offence where the potential punishment is a maximum term of at least 6 months of imprisonment or involving potential offences involving underage sales of tobacco and alcohol.

These rules set high standards for all public authorities that use these powers to undertake a range of enforcement functions to ensure they can keep the public safe and bring criminals to justice, whilst protecting individuals’ rights to privacy.

The London Borough of Barking & Dagenham has a strategy for tackling fraud and corruption, which covers reporting and investigation. In some circumstances the borough may wish to use surveillance techniques. RIPA defines the types of surveillance activities to be regulated, which must be subject to a formal written procedure for both authorisation and conduct.
This policy describes the Council's procedures for use of RIPA to be compliant with the 2000 & 2012 Acts and associated Code of Practice.

In line with the Code of Practice issued by Central Government associated with the 2012 Act, LBBD will use covert surveillance regulated by RIPA where it is proportionate and necessary to do so, in the investigation of serious criminal offences.

Note, RIPA provides regulation for directed surveillance but this does not prohibit the Authority from undertaking directed surveillance without RIPA authorisation. However, this will only be undertaken utilising the same standards and thresholds for ensuring proportionality and necessity to ensure individual’s rights are protected.
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The Regulation of Investigatory Powers Policy

The Regulation of Investigatory Powers is concerned with the regulation of surveillance by public authorities in the conduct of their legitimate business. Surveillance is an unavoidable part of modern public life, but was not the subject of formal statutory control until 2000. The 2000 Act was enacted to regularise that position and to ensure that, in conducting surveillance, public authorities have regard to The Human Rights Act 1998 and to Article 8 of the European Convention on Human Rights – the right to a private and family life.

The use of surveillance is an interference with rights protected by Article 8 of the European Convention on Human Rights and is prima facie a violation of those rights unless the interference is in accordance with the law, is in pursuit of one or more of the legitimate aims established by Article 8(2) and is “necessary in a democratic society”

The Council is defined as a Public Authority to which the 2000 Act applies by virtue of Section 1 of the Local Government Act 1999. The forms of surveillance that it is entitled to authorise are covert directed surveillance and the use of Covert Human Intelligence Sources (informants), known as CHIS.

The London Borough of Barking & Dagenham has approved a strategy for tackling fraud and corruption, which covers reporting and investigation and to which, in some circumstances, the borough may wish to use surveillance techniques. The RIPA policy defines the Council’s use of covert directed surveillance and the use of Covert Human Intelligence Sources.


The 2000 & 2012 Acts regulate the work of the Council in the key areas of enforcement and prosecutions, and provides a legal framework for the Council to carry out surveillance which is not intrusive and is undertaken for the purposes of a specific investigation or a specific operation in such a manner as is likely to result in the obtaining of private information about a person. This is known as Directed Surveillance.

The Acts also regulate the Council’s use of undercover officers or informants to obtain information. Under the Act they are referred to as Covert Human Intelligence Sources (‘CHIS’).

It is necessary for the Council to have a policy in order to describe and record the way in which the Authority complies with the 2000 & 2012 Acts.

The covert surveillance regulated by the 2000 Act and covered by the Code of Practice is divided into two categories: intrusive surveillance and directed surveillance. Authorisation under the Act gives lawful authority to carry out certain types of covert surveillance.

What is not intended to be covered by the 2000 Act?

- General observations such as monitoring the crowd to maintain public safety and prevent disorder
- Trading standards or HM Customs & Excise officers covertly observing and then visiting a shop as part of their enforcement function
- General observations using equipment such as binoculars or cameras where this does not involve systematic surveillance of an individual
- Open use of CCTV surveillance systems where members of the public are aware that such systems are in use, for their own protection, and to prevent crime

Protection of Freedoms Act 2012

The 2012 Act has introduced 2 key changes to the local Authority surveillance regime governing how the Investigatory Powers are used:

1. The 2012 Act requires local authorities to obtain the approval of a Magistrate/Justice of the Peace for the authorisation and renewal of Directed Surveillance and the deployment of a Covert Human Intelligence Source (CHIS)

2. For Directed surveillance applications, RIPA authorisation will only be granted for the purpose of preventing or detecting a criminal offence where the potential punishment is a maximum term of at least 6 months of imprisonment or involving potential offences involving underage sales of tobacco and alcohol. Accordingly, RIPA authorisation cannot be granted to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, anti-social behaviour, littering, dog control and fly-posting

Surveillance

What is Covert Surveillance? - Surveillance carried out in a manner calculated to ensure that the person(s) being surveyed are unaware that they are being observed.

What is Directed Surveillance? - Directed Surveillance is defined in section 26(2) of the 2000 Act as covert surveillance which is covert, but not intrusive, and undertaken:

(a) for the purposes of a specific investigation or operation;

(b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation);
(c) and otherwise than by way of an immediate response to events or circumstances
the nature of which is such that it would not be reasonably practicable for an
authorisation under this Part to be sought for the carrying out of the surveillance.

What is Private Information? - Any information relating to a person in relation to
which that person has or may have a reasonable expectation of privacy. This
includes information relating to a person’s private, family or professional affairs.
Private information includes information about any person, not just the subject(s) of
an investigation.

Examples of Directed Surveillance - the observation of a person or persons with
the intention of gathering private information to produce a detailed picture of a
person’s life, activities and associations.

Examples of Surveillance which is not Direct Surveillance - covert surveillance
carried out by way of an immediate response to events or circumstances which, by
their very nature, could not have been foreseen. For example, a plain-clothes police
officer would not require an authorisation to conceal himself and observe a
suspicious person who he comes across in the course of a patrol.

Directed surveillance does not include any type of covert surveillance in residential
premises or in private vehicles. Such activity is defined as “intrusive surveillance”
and authorisation for this will not be given for a Local Authority.

Directed surveillance does not include entry on or interference with property or
wireless telegraphy. These activities are subject to a separate regime or
authorisation and again such authorisation will not be given to a Local Authority.

What is Intrusive Surveillance? - It is defined as covert surveillance that:

(a) is carried out in relation to anything taking place on any residential premises
or in any private vehicle;
(b) and involves the presence of an individual on the premises or in the vehicle or
is carried out by means of a surveillance device

Where surveillance is carried out in relation to anything taking place on any premises
or in any vehicle by means of a device which is not actually on the premises or in the
vehicle, it is not intrusive unless the device consistently provides information of the
same quality and detail as might be expected to be obtained from a device actually
present on the premises or in the vehicle. Therefore, an observation post outside
premises, which provides a limited view and no sound of what is happening inside
the premises would not be considered as intrusive surveillance.

Residential premises can include a house, a yacht, a railway arch, makeshift shelter,
hotel rooms, bedrooms in barracks and prison cells but not any common area to
which a person is allowed access in connection with his or her occupation of such
accommodation e.g. a hotel lounge.
A private vehicle is defined as any vehicle which is used primarily for the private purpose of the person who owns it, it does not include taxis.

The Council cannot be authorised to carry out intrusive surveillance.

What if the Council works with another agency? - In cases where one agency is acting on behalf of another, it is normally for the tasking agency to obtain or provide the authorisation. For example, where surveillance is carried out by the Council on behalf of the police, authorisations would be sought by the police and granted by the appropriate authorising officer within the police force.
The London Borough of Barking & Dagenham Code of Practice

The Government provides full guidance on the use of covert surveillance by public authorities under Part II of the 2000 Act and amendments in the 2012 Act in its Code of Practices and is available on the Council Intranet Site.

How does the Acts affect the Council’s activities?

Types of Surveillance

Surveillance of Council property to detect anti-social behaviour.

Where the Council quite openly sets up CCTV cameras to monitor common or public areas of Council owned housing estates then the surveillance would not be covert and therefore would not fall under the Acts.

If however any surveillance was covert then as long as it did not collect private information about an individual(s) then authorisation should be sought under the following purpose: for the purposes of preventing and detecting serious crime.

If the surveillance collected private information about an individual e.g. watched someone coming in and out of their home, then such an individual would probably be able to argue that the Council had been in breach Article 8 of the Human Rights Act – the right to respect for his private and family life, home and correspondence. In such a situation, authorisation should be sought. Although the obtaining of authorisation would not in itself prevent an individual bringing a claim for breach of Article 8, because Article 8 does not confer an absolute right, the Council may be able to defend the claim by demonstrating that an evaluation of the necessity and proportionality of the need for the surveillance had been carried out by the Authorising Officer.

Surveillance of Council employees in the workplace.

Again, open surveillance would not fall under the Acts as long as staff were consulted and knew where the cameras were. If the cameras were introduced in a high handed way, without consultation then an employee could have a claim for constructive dismissal in that the sudden introduction of unreasonable filming constituted a breach of contract. The lawfulness will depend on the nature and degree of the filming e.g. installing a camera in a stationery cupboard where there have been many thefts as opposed to the installing of a video camera with sound recording in the coffee break area.

If the Council wishes to covertly film officers then as long as the purpose for the surveillance falls under the listed purpose: to prevent and detect serious crime – then authorisation should be sought. However, the filming could still be questionable employment practice for the reason set out above – and may lead to a claim for constructive dismissal. Considerations of privacy can also apply to a person’s life at
work, so a Human Rights Claim could also be made, and possibly defended in the same manner as above – namely by the obtaining of authorisation.

**Surveillance of employees who are suspected of ‘moonlighting’ or malingering**

There is no requirement on the part of a public authority to obtain an authorisation for a covert surveillance operation to monitor activities in this regard and the decision not to obtain an authorisation would not, of itself, make an action unlawful. However, equivalent consideration should be given to such actions which will make the action less vulnerable to challenge under the Human Rights Act 1998. Section 71 of the Act places the Council under a mandatory duty to have regard to the provisions of the code.

Carrying out surveillance of the sort would necessarily involve the collection of private information and would leave the Council open to a claim for a breach of Article 8 of the Human Rights Act.

As above, it could also leave the Council open to a claim for constructive dismissal.

Furthermore, where an officer follows an individual for a significant length of time, there is also a risk that this work will be regarded as a form of stalking in breach of the Protection from Harassment Act 1997.

If an employee is suspected of claiming statutory sick pay as well as working then the matter would be a fraud against the Benefits Agency who could be authorised to conduct their own surveillance.

**What of the recording of telephone conversations?**

The Council is not able to covertly record telephone conversations but the use of a surveillance device should not be ruled out simply because it may incidentally pick up one end of a telephone conversation, and such product can be treated as having been lawfully obtained. Further, where one party to the conversation consents, and where the surveillance is authorised, the interception is treated as directed surveillance. For example, a person may consent to the recording of a telephone conversation sent by or to him.

However, such an authorisation cannot be used as a means of deploying recording equipment without obtaining the proper authorisation. If any other recording equipment is to be used, other than in the presence of the person who has consented to the recording then the surveillance should not continue.

**Covert Human Intelligence Sources (CHIS)**

A person is a covert human intelligence source if he/she develops a relationship with another person in order to covertly obtain information or to provide access to information to a third party or to covertly disclose information obtained by the use of such a relationship and the other person is unaware that the purpose of the relationship is one of the above. The use of a CHIS must be recorded by the authorising officer and approved by the Lead Officer and a Magistrate.
The Council does not at present utilise CHIS. Any consideration of such use can only be considered with prior discussion with the Divisional Director of Finance and/or Head of Legal.

For Directed Surveillance

Covert directed surveillance means surveillance so carried out that the persons subject to the surveillance are unaware that it is or may be taking place. Surveillance is directed if it is covert, but not intrusive, and is undertaken for the purposes of a specific investigation, in such a manner to obtain private information about a person, and otherwise than by way of an immediate response to events where authorisation could not be sought.

Directed surveillance will only be carried out with the express authority of the authorising officer and a Magistrate.

Authorisation

In a Public Authority such as the council, only designated officers have authorisation powers for the purposes of this policy. No covert directed surveillance or use of covert human intelligence sources may be undertaken without obtaining authority.

Covert surveillance that is properly authorised will, as long as it is carried out in accordance with the terms of the authorisation, be legitimate. The authorisation will provide a defence to a challenge under the Human Rights Act.

Investigations requiring the use of covert directed surveillance or covert human intelligence sources may only be undertaken by officers of the Corporate Anti-Fraud Team (CAFT) or by specialist investigators who are professionally qualified and approved, engaged by the Authority.

The Council will appoint authorising officers of suitable seniority to grant surveillance authorisations for individual incidents.

An authorisation for directed surveillance may be granted by the authorising officer who must believe that the authorisation is necessary on the following grounds: for the purposes of preventing and detecting crime or of preventing serious crime.

When considering the giving of authorisation the authorising officer must also consider the following:

- That the surveillance is proportionate to what it seeks to achieve
- Whether or not the privacy of persons other than the subject(s) of surveillance will be interfered, if so then it may even be necessary to consider whether a separate authorisation is required
• Particular consideration should be given in cases where the subject of the surveillance might reasonably expect a high degree of privacy, for instance in his/her home, or where there are special sensitivities

How do you obtain an Authorisation? - Authorisations must be given in writing by an authorising officer and will cease to have effect (unless renewed or cancelled) at the end of a period of three months beginning with the time at which it took effect.

In order to obtain Magistrate’s approval, an appropriate LBBD officer will need to be formally designated to appear in person, be sworn in and present evidence or provide information as required by the Magistrate. It is envisaged at LBBD that the case investigator will fulfil this role as they will know the most about the investigation and will have determined that use of a covert technique is required in order to progress a particular case. This does not, however, remove or reduce in any way the duty of the authorising officer to determine whether the tests of necessity and proportionality have been met.

In each case, the role of the Magistrate is to ensure that the correct procedures have been followed and the relevant factors have been taken into account. The internal authorisation for such surveillance methods will not take effect until such time as a Magistrate has made an order approving it, by completing the order section of the judicial application/order form recording their decision.

In urgent cases where it is not possible for the requesting officer to complete the form, officers should consult with the Corporate Anti-Fraud Team to expedite approval by a Magistrate.

A central record of authorisations will be kept centrally by the Group Manager (Internal Audit & Anti-Fraud) and will be monitored and reviewed on a regular basis. The records will be confidential.

Any request received from external authorised agencies, such as the police or security services either to disclose communications data, e.g. Billing information, e-mail addresses, etc., or to unlock encrypted data or provide the key to unlock encrypted data, will be referred to the Divisional Director of Finance who will have the power to authorise such requests in consultation with the Head of Legal Services.

Authorising Officers must also assess the extent to which confidential information about the subject will come into the Authority’s possession as a result of the investigation. Such information may be relevant to the investigation but protected for example as a result of legal professional privilege or it may be irrelevant but sensitive information for example medical records. Deliberately obtaining (or the use of) confidential information may only be authorised by the Chief Executive as laid down in Schedule 2 of the RIPA Act 2000.

Finally, the Authorising Officer should give due consideration to the impact on the community of the use of covert surveillance methods. In particular the officer should have regard to community confidence. The officer should consider if the circumstances of the investigation were to become public, what the reaction of the
community is likely to be and whether and to what extent the Authority would be able to justify the use of its chosen methods.

All requests for an authorisation to conduct covert surveillance should be submitted by the appropriate officer to the Authorising Officer in writing using the forms attached to this policy note as updated from time to time by the Coordinating Officer, and completed in compliance with the written guidance.

Whatever the nature of the decision taken by the Authorising Officer, the decision should be confirmed in writing with reasons for the decision. Authorisations should be regularly reviewed in compliance with the legislation and the reasons for extending or terminating them should be recorded in writing.

Authorisations must not be allowed to expire. Authorisations must be reviewed regularly or cancelled after surveillance has been completed and put onto central records.

Surveillance should be carried out according to written procedures, adhering to good practice and health and safety conditions. Advice may be taken from the Corporate Anti-Fraud Team. All officers involved in applying for, authorising or undertaking surveillance will understand the legal requirements set out in the Acts and the Code of Practice. They will personally take responsibility for ensuring the propriety of their involvement. All authorisations, notebooks, surveillance logs and other ancillary documentation that relates to surveillance will be maintained to the required standards and retained for three years. All documentation will be volunteered for any management or regulatory inspection on demand.

Records relating to RIPA Authorisation will be kept securely for three years in accordance with Home Office guidance.

Wilful disregard of any part of the Code of Practice or of internal procedures shall be a breach of the Code of Conduct for council officers and will be dealt with accordingly.

**Further Support, Tools & Guidance**

Link to the websites for the Surveillance Commissioner, the Home Office and copies of the Acts can be found here:


**Designated RIPA Coordinator and Authorised Officers**
Designated RIPA Coordinator and Authorised officers can be found here: 
http://lbbd/resources/authorising-officers.htm

RIPA forms
Can be accessed here:

The latest version of the RIPA Policy and all of our documents can be obtained from either contacting the Group Manager (Internal Audit & Anti-Fraud) directly or by visiting our intranet pages:

RIPA

If you have any comments or feedback to do with this document, we would like to hear from you, so please get in touch and email us at the following address:

david.greenfield@lbbd.gov.uk
Internal Audit

The Bribery Act Policy
January 2013

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The Council's commitment to the Bribery Act Policy

The council will not condone acts of bribery in any form whether it is in the form of money, gifts or a favour, offered or given to a person in a position of trust to influence that person's views or conduct.

What are the aims and requirements of the legislation?

Where Bribery is found to occur, in any form, it will be dealt with rigorously in a controlled manner in accordance with the principles in the Bribery Act policy. It will be investigated fully and the London Borough of Barking and Dagenham will prosecute all offenders where appropriate including, Members, employees, contractors and external partners.

Who is governed by this Policy?

The Bribery Act policy covers everyone working for us, or on our behalf, including all permanent employees, temporary agency staff, contractors, members of the council (including independent members), volunteers and consultants.

Executive Summary

The Bribery Act Policy sets out the Council’s commitment to ensuring compliance with the requirements of the Bribery Act.
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The Bribery Act Policy

The Bribery Act 2010 makes it an offence to offer, promise or give a bribe (section 1). It also makes it an offence to ask for, 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 getting or keeping business or an advantage in carrying out business. There is also a new corporate offence under section 7 that we will commit if we fail to prevent bribery that is intended to get or keep business or an advantage in business for our organisation. We are no longer able to claim we were not aware of bribery and may be responsible as an organisation, but we will have a defence if we can show we had adequate procedures in place designed to prevent bribery by our staff or by people associated with our organisation. (See ‘What are adequate procedures?’ below for an explanation).

Bribery Act policy statement

Bribery is a criminal offence. We do not offer bribes to anyone for any purpose, and we do not accept bribes.

Using another person or organisation to give bribes to others is a criminal offence. We do not offer bribes indirectly or otherwise engage in bribery.

We are committed to preventing and detecting bribery. We take a zero-tolerance stance towards bribery and aim to ensure this Bribery Act policy is observed throughout the Council.

We will deal with allegations of bribery involving employees under our disciplinary procedure as “gross misconduct”. It is normal practice to dismiss employees without notice in cases where gross misconduct is considered to have taken place.

The aim of this policy

This policy provides a framework to allow those affected by it to understand and put into place arrangements to prevent bribery. It will work with related policies and other documents to identify and report when this policy is breached.

The policy aims to ensure that everyone:

- acts honestly at all times and protects the council’s resources they are responsible for; and
- keeps to the spirit, as well as the letter, of the laws and regulations that cover our work

Scope of this policy

This policy applies to all of our activities. All levels of the council are responsible for controlling the risk of bribery. We will aim to encourage schools, suppliers and other organisations we work with to adopt policies that are consistent with the principles set out in this policy.
The Bribery Act policy applies to and covers everyone working for us, or on our behalf, including all permanent employees, temporary agency staff, contractors, members of the council (including independent members), volunteers and consultants.

This means that everyone at all levels of the council has a responsibility to control the risk of bribery occurring.

**What are “adequate procedures”:**

In order for this council to show that we take the Bribery Act seriously, we need to show we have adequate procedures in place designed to prevent bribery. Whether our procedures are adequate will be for the courts to decide. Our procedures need to be in proportion to the level of risk of bribery in our organisation. Individual organisations can refer to six principles to decide whether their procedures are in proportion to the level of risk. These principles are not prescriptive. These principles are intended to be flexible, allowing for the different circumstances of organisations. Small organisations will, for example, face different challenges to those faced by large multi-national organisations. The detail of how an organisation applies these principles will be different depending on the organisation, but the outcome should always be effective Bribery Act procedures.

**What are the six principles?**

1. **Proportionate procedures**

An organisation's procedures to prevent bribery by the people associated with it should be in proportion to the risks of bribery it faces and to the nature, scale and complexity of the organisation’s activities. They should include interrogation of data for the purpose of discovering evidence and ensuring personal data is protected. The procedures should also be clear, practical, accessible and effectively put into place and enforced.

2. **Commitment at the top levels of our organisation**

Our Cabinet and Corporate Management Team are committed to preventing bribery by the people associated with us. They help create a culture in our organisation where bribery is never acceptable.

3. **Risk assessment**

We regularly assess how and to what extent we will be exposed to potential risks of bribery. We keep a record of the assessments, which include financial risks and also other risks such as damage to our reputation.

4. **Due diligence**
We apply due diligence procedures in relation to people who provide services for or on behalf of our organisation to reduce the risks of bribery. This would include carrying out checks on such organisations or companies and ensuring that they have similar anti bribery processes in place.

5. Communication (including training)

We aim to make sure that our policies and procedures to prevent bribery are understood throughout our organisation. We do this through communication inside and outside of our organisation, including training.

6. Monitoring and review

We monitor and review the procedures designed to prevent bribery and make improvements where they are needed. The Monitoring Officer and Divisional Director Assurance and Risk will oversee this.

We are committed to putting these principles into place.

We can also be fined, and if we are found guilty of an offence under section 7, can be fined an unlimited amount.

Facilitation payments

Facilitation payments are unofficial payments made to public officials in order to get them to take certain actions or take actions more quickly. Facilitation payments are illegal under the Bribery Act, and we will not tolerate them.

Gifts and hospitality

This policy is in line with our gifts and hospitality policy (this can be read at http://lbld/hr/ongoing-process-of-managing-people/gifts-and-hospitality.htm). The gifts and hospitality policy makes it clear that if members of the council or staff are offered gifts in their council role, they should not accept anything with more than a token value (examples of things that are of token value include bottles of wine, boxes of chocolates, flowers, pens, calendars and diaries).

Public contracts and failure to prevent bribery

Under the Public Contracts Regulations 2006, a company is automatically and permanently barred from competing for public contracts if it has been convicted of a corruption offence. There are no plans to amend the 2006 regulations to include the crime of failing to prevent bribery. Organisations that are convicted of failing to prevent bribery are not automatically barred from competing for public contracts. However, we can exclude organisations convicted of this offence from competing for contracts with us. We will include standard clauses in our commercial contracts forbidding bribery and corruption.

Golden Rules
We will not tolerate bribery

Those covered by the policy must not:

- give, promise to give, or offer a payment, a gift or hospitality with the expectation or hope that they will receive a business advantage, or to reward a business advantage that they have already been given
- give, promise to give, or offer a payment, a gift or hospitality to a government official or representative to speed up a routine procedure
- accept a payment from another person or organisation if they know or suspect that it is offered with the expectation that it will give them a business advantage
- accept a gift or hospitality from another person or organisation if they know or suspect that it is offered or provided with an expectation that they will provide a business advantage in return
- take action against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy; or
- take part in activities that break this policy

Our commitment to action

We are committed to:

- setting out a clear Bribery Act policy and keeping it up to date
- making all employees aware of their responsibility to keep to this policy at all times;
- training all employees so that they can recognise and avoid the use of bribery
- encouraging our employees to be aware and to report any suspicions of bribery
- providing our employees with suitable ways of telling us about their suspicions and making sure we treat sensitive information appropriately
- investigating alleged bribery and helping the police and other authorities in any prosecution that happens because of the alleged bribery
- taking firm action against any people involved in bribery
- providing information to all employees to help them tell us when someone has broken or is suspected of breaking this policy; and
- including appropriate clauses in contacts to prevent bribery

Employee Responsibilities

All the people who work for us or are under our control are responsible for preventing, detecting and reporting bribery and other forms of corruption. All staff must avoid activities that break this policy and must:

- make sure they read, understand and keep to this policy; and
- tell us as soon as possible if they believe or suspect that someone has broken this policy, or may break this policy in the future
Anyone covered by the policy found to break it will face disciplinary action, could be dismissed for gross misconduct and/or may also face civil and criminal prosecution.

**Reporting a concern**

We all have a responsibility to help detect, prevent and report instances of bribery. If anyone has a concern about suspected bribery or corruption, they should speak up – their information and support will help. The sooner they act, the sooner the situation can be dealt with.

There are several ways of informing about any concerns. For example, talking to a line manager first, or the contacts listed in the Whistleblowing Policy if this is more appropriate.

Those reporting concerns do not have to give us their name. Upon receiving a report about an incident of bribery, corruption or wrongdoing, action will be taken as soon as possible to assess the situation. There are clear procedures for investigating fraud and misconduct and these will be followed in any investigation of this kind. This will be easier and quicker if those reporting concerns decide to give their name. In some circumstances, we will have to consider reporting the matter to the Serious Fraud Office.

Staff that refuse to accept or offer a bribe, or those who report concerns or wrongdoing can understandably be worried about what might happen as a result. To encourage openness and anyone who reports a genuine concern in good faith will be supported under this policy, even if they turn out to be mistaken. There is a commitment to making sure nobody is treated badly because they have refused to take part in bribery or corruption, or because they have reported a concern in good faith.

If there are any questions about these procedures, the Monitoring Officer can be contacted, on 0208 227 2114 or the Divisional Director of Finance, on 0208 227 2951.

**Other relevant policies**

- Fraud Prosecution Policy
- Money Laundering Policy
- Whistleblowing Policy
- Employee Code of Conduct
- Rules in respect of Gifts and Hospitality
- Disciplinary Procedure and Disciplinary Rules
The latest version of the Bribery Act Policy and all of our documents can be obtained from either contacting the Group Manager – Internal Audit directly or by visiting our intranet pages:

**Anti Fraud Information**

If you have any comments or feedback to do with this document, we would like to hear from you, so please get in touch and email us at the following address:

david.greenfield@lbld.gov.uk