

Agenda Item No: 8
Report To: **Audit Committee**



Date: **26 June 2014**

Report Title: **Anti-Fraud and Corruption Strategy**

Portfolio Holder: Portfolio Holder for Resource Management and Control,
Graham Galpin

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Investigations Manager, Hannah Davies
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Summary:

This report provides a 'suite' of updated policies which, when taken together, review and strengthen the council's approach to tackling fraud, corruption and money-laundering whilst providing a framework for officers to speak up about concerns they might have regarding the organisation.

1. Anti-fraud and corruption

A strong anti-fraud and anti-corruption culture, alongside an effective strategy is a key part of good Corporate Governance. The council is committed to the prevention, deterrence, detection and investigation of all forms of fraud and corruption at all levels of its activity. The council will seek to prosecute or apply other appropriate sanctions to perpetrators of fraud and corruption.

2. Money Laundering

This policy enables employees and Members to respond to any concerns they have regarding money laundering in the course of their dealings for the council, giving them avenues to report such concerns to the designated Money Laundering Reporting Officer (Head of the Internal Audit Partnership).

3. Whistleblowing

The 'Speaking Up' policy (also known as Whistleblowing) has been updated in accordance with best practice and the Enterprise and Regulatory Reform Act (ERRA) that came into effect last year.

It is now no longer a requirement for a disclosure to be made in 'good faith' for it to be protected, but it is now a requirement that a disclosure is made 'in the public interest' (stopping employees raising concerns about breaches of their own contract of employment).

4. Bribery

The Bribery Act was introduced in 2010 and, amongst other responsibilities, it places a legal duty on the council to prevent bribery in its actions, processes and procedures.

Key Decision:	NO
Affected Wards:	ALL
Recommendations:	Audit Committee is asked to consider the ‘suite’ of policies in this report, and recommend to Council that it adopts the policies enclosed
Policy Overview:	This suite of policies complements other council strategies and policies which are aimed at promoting the highest standards of conduct and behaviour in all activities. In particular, these documents complement the Code of Conduct and Financial Regulations in seeking to minimise the potential for actual fraud and corruption.
Financial Implications:	None specifically arising from the report, but the detection and prevention of fraud, corruption and other malpractice is essential to the efficient and effective management (financial or otherwise) of the organisation.
Risk Assessment	Yes
Equalities Impact Assessment	Yes
Portfolio Holders Comments	Although this report contains four very distinct policies, when taken together they provide an update and strengthening of the council’s commitment to tackling fraud, corruption, money-laundering and bribery – key underpinnings of a professional, effective and trustworthy public body. Importantly, the ‘Speaking Up’ policy also provides an important and necessary mechanism whereby officers can speak up about concerns they might have about the organisation. I therefore support and approve of the policies included.
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Report Title: Anti-Fraud and Corruption Strategy

Purpose of the Report

1. To provide the Audit Committee with a 'suite' of revised policies which, when taken together, review and strengthen the council's approach to tackling fraud, corruption and money-laundering whilst providing a framework for officers to speak up about concerns they might have regarding the organisation.
2. There are four distinct, but interconnected, policies which have been individually reviewed and updated by officers, being the council's –
 - i. Anti-fraud and Corruption Strategy
 - ii. Money Laundering Policy
 - iii. 'Speaking Up' Policy (also known as Whistleblowing)
 - iv. Bribery Act Policy Statement

Issue to be Decided

3. For the Audit Committee to consider the four interconnected policies in this report, and recommend to council that it adopts the policies enclosed.

Background

4. These policies complement other council policies which are aimed at promoting the highest standards of conduct and behaviour in all activities. In particular, these documents complement the Code of Conduct and Financial Regulations in seeking to minimise the potential for actual fraud and corruption.
5. The council recognises that an anti-fraud and corruption culture is essential if a strong control framework is to be adhered to. It is determined that the culture and tone of the organisation promotes honesty, and opposition to fraud and corruption, whereby fraud and corruption are not tolerated or perpetrated.
6. The council is committed to the highest ethical and moral standards and to openness and accountability. Elected Members and employees at all levels are therefore expected to share in this commitment by leading by example in ensuring adherence to all council regulations, procedures, practices and codes of conduct. The council expects individuals and organisations with which it comes into contact, to act honestly and without intent to commit fraud or corruption.
7. These documents aim to provide compliance through "business as usual", rather than as a one-off exercise. To this end the council has control systems in place designed to ensure the legitimacy of expenditure, the security of assets and income, the reliability of management information, and the accuracy of financial and other records. Within these systems are procedures

which control the authorisation of transactions, ensure that duties and responsibilities are clearly segregated, provide internal checks, safeguard assets and regulate their proper use.

8. Effective strategies in this area are a key part of good Corporate Governance, with the council directing and controlling its business with openness, integrity and accountability. The council is therefore committed to strategies which are designed to:
 - Encourage prevention
 - Promote detection
 - Identify a clear pathway for investigation and remedial action.
9. The council is also aware of the high degree of external scrutiny of its affairs by a variety of bodies including:
 - The Local Government Ombudsman
 - The council's External Auditor
 - Her Majesty's Revenue and Customs
 - The Department for Work and Pensions
 - Other Central Government Departments
 - Auditors of organisations for whom the council acts as agent
 - Auditors of organisations that provide specific funding for the council, such as European funding organisations.
10. This report includes four policy documents which, although distinct, overlap and reinforce the council's commitment to the principles above.

Anti-Fraud and Corruption

11. The council is committed to the highest ethical and moral standards and to openness and accountability. Elected Members and employees at all levels are therefore expected to share in this commitment by leading by example in ensuring adherence to all council regulations, procedures, practices and codes of conduct.
12. Where appropriate, the council will co-operate with other organisations, agencies and local authorities in countering fraud and corruption. This strategy also extends to any agents, contractors or not-for-profit organisations working on the council's behalf. The council will not knowingly enter into any contractual agreement with an organisation that fails to comply with its codes of practice and/or other related procedures. In order to ensure that any organisations working on the council's behalf uphold the council's standards, appropriate clauses in respect of honesty, accountability and probity are included in tender documents, service level agreements or any other relevant documentation.
13. A key element to preventing fraud and corruption is recruitment, with due regard being given to the previous record of potential employees in terms of propriety and integrity. Recruitment procedures for all employees, including temporary and contract staff, must therefore be in accordance with the procedures adopted by the council.

14. It is the responsibility of Heads of Service to prevent and detect fraud and corruption. However, it is often the alertness of employees and the public that enables detection to occur and the appropriate action to take place. Any member of staff who has concerns regarding any circumstance which may suggest the possibility of irregularity or loss of any kind should raise those concerns with their Head of Service. The Head of Service shall immediately notify the Head of the Internal Audit Partnership.
15. The Head of the Internal Audit Partnership shall inform the relevant Head of Service if any subsequent investigation identifies evidence of a financial irregularity or any other unacceptable behaviour on the part of a member of their staff. In the event that the investigation produces evidence of illegal acts, the presumption will be that the matter will be referred to the police. Referral to the police will not prohibit action under the council's Disciplinary Procedure.
16. Where an investigation indicates fraud or corruption, the council will seek:
 - a. Recovery wherever appropriate
 - b. To prosecute or apply other sanctions to perpetrators

Anti-Money Laundering

17. Money laundering describes offences involving the integration of the proceeds of crime, or terrorist funds, into the mainstream economy.
18. Although not a legal requirement, the council has also developed formal client identification procedures which must be followed when council land or property is being sold. These procedures require individuals and if appropriate, companies to provide proof of identity and current address.
19. Where officers know or suspect that money laundering activity is taking/has taken place, they must disclose this as soon as practicable to the Money Laundering Reporting Officer MLRO (Head of the Internal Audit Partnership).
20. The MLRO will consider the report and any other available internal information they think is relevant, for example:
 - a. reviewing other transaction patterns and volumes;
 - b. the length of any business relationship involved;
 - c. the number of any one-off transactions and linked one-off transactions;
 - d. any identification evidence held;
21. The MLRO will undertake such other reasonable inquiries they think appropriate in order to ensure that all available information is taken into account in deciding whether a report onwards.
22. Officers considered likely to be exposed to suspicious situations, will be made aware of these by their senior officer and provided with appropriate training.
23. Additionally, all employees and Members will be familiarised with the legal and regulatory requirements relating to money laundering and how they affect both the council and themselves.

'Speaking Up' Policy (Whistleblowing)

24. The 'Speaking Up' policy (also known as Whistleblowing) has been updated in accordance with best practice and the Enterprise and Regulatory Reform Act (ERRA) that came into effect last year (amending the Public Interest Disclosure Act 1998).
25. The most prominent change to note under the Act is that it is no longer a requirement for a disclosure to be made in 'good faith' for it to be protected. Tribunals will however have the discretion to reduce compensation by up to 25% for detriment or dismissal if the disclosure was not made in good faith. Awards are currently uncapped and based on losses suffered.
26. It is however now a requirement that a disclosure is made 'in the public interest' for it to be protected (to stop employees raising concerns about breaches of their own contract of employment under this legislation).
27. Other changes to highlight are that employers can be held vicariously liable for employees that are harassed or victimised as a result of making a disclosure, unless they can show they took reasonable steps to prevent this treatment. Personal liability has also been introduced for the person that is carrying out the victimisation.
28. In line with best practice, the following changes are also recommended:
 - a. That staff are encouraged to raise other matters that they are concerned about that are not specifically covered under the Act, for example unauthorised use of council funds and property, waste/frivolous expenditure or other unethical conduct.
 - b. That disclosures are acknowledged within five working days with a fuller response within ten working days (all correspondence being sent to the home address). The acknowledgement should also contain a written statement of what the concern is understood to be if raised verbally.
 - c. That a central record of concerns raised under the policy is held by the Head of the Internal Audit Partnership
 - d. That the council's Disciplinary Policy be amended to include instances where:
 - i. A member of staff is deterred from raising a concern (whether by colleagues or management)
 - ii. A member of staff that has made a disclosure is harassed or victimised because of this
 - iii. It is felt that a disclosure has been made that is vexatious, malicious or done for personal gain
29. It should be noted that unlike other pieces of employment law, there is no minimum qualifying period of service required to apply the protection of the Act.
30. A training programme is being devised to refresh the knowledge and skills of managers applying this suite of policies. As part of the communication plan for

all staff a leaflet will be designed to encourage 'Speaking Up' in accordance with the policy. This leaflet will also be included in new starter packs.

Bribery Act (Policy Statement)

31. Bribery is a criminal offense. The council does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor does it accept bribes or improper inducements. To use a third party as a conduit to channel bribes to others is a criminal offence.
32. It is therefore unacceptable:
 - a. to give, promise to give, or offer a payment, gift, hospitality or other advantage with the intention that a business advantage will be received, or to reward a business advantage already given
 - b. to give, promise to give, or offer a payment, gift, hospitality or other advantage to a government official, agent or representative to "facilitate" or expedite a routine procedure
 - c. to request or accept a payment, gift, hospitality or other advantage from a third party with the intention that you or someone else will then provide a business advantage to that third party
 - d. for you or someone else you asked or someone else with your approval to provide a business advantage to a third party in anticipation of or as a consequence of requesting or accepting a payment, gift, hospitality or other advantage from that third party
 - e. to request or accept a payment, gift, or hospitality or other advantage from a third party in return for having provided a business advantage to that third party
33. Within the organisation, the responsibility to control the risk of bribery occurring resides at all levels of the organisation. It does not rest solely within assurance functions, but in all business units and corporate functions.
34. The council has a 'zero-tolerance' approach to bribery (as set out in the Bribery Act 2010) and has procedures in place to prevent bribery, such as:
 - a. Obliging Members and employees to declare specified gifts and hospitality
 - b. Allocating council housing to people on the waiting list based on published criteria with the decision made by a manager rather than the case officer
35. Any staff wishing to raise concerns regarding bribery are required to refer allegations of bribery to one of the following:
 - a. A senior manager,
 - b. The Chief Executive
 - c. The Section 151 Officer
 - d. The Head of the Internal Audit Partnership
 - e. The Head of Legal Services
 - f. The Head of Personnel & Development

Handling

36. This report has been sent to Unison and considered by the Joint Consultative Committee in preparation for the Audit Committee. Both are happy with its contents.

Risk Assessment

37. If the council does not put in place robust frameworks to detect, prevent and allow the reporting of concerns regarding fraud, corruption or other malpractice then there is a risk to the wider governance and effectiveness of the organisation. These policies, when taken together, update and strengthen the council's corporate response to the overarching issue of fraud and corruption.

Equalities Impact Assessment

38. The policies contained within this report are concerned with *processes* which strengthen the prevention, detection and reporting of concerns relating to activities prohibited by law. As such, there are no negative impacts on people with protected characteristics resulting from them. Indeed, updating the council's 'Speaking Up' policy provides clearer guidance for staff that any concerns they might have will be dealt with in a fair and transparent manner.

Portfolio Holder's Views

39. Although this report contains four very distinct policies, when taken together they provide an update and strengthening of the council's commitment to tackling fraud, corruption, money-laundering and bribery – key underpinnings of a professional, effective and trustworthy public body. Importantly, the 'Speaking Up' policy also provides an important and necessary mechanism whereby officers can speak up about concerns they might have about the organisation. I therefore support and approve of the policies included.

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Anti-Fraud and Corruption Strategy

40 Introduction

- 40.1 The council will not tolerate any form of fraud and corruption from within the council, from external organisations, or from individuals. The council is committed to the prevention, deterrence, detection and investigation of all forms of fraud and corruption at all levels of its activity including (but not limited to) housing benefit, council tax, housing tenancy and election fraud. The council will seek to prosecute or apply other appropriate sanctions to perpetrators of fraud and corruption.
- 40.2 In this strategy, fraud and corruption are defined as **Fraud** being: ‘the intentional distortion of financial statements or other records by persons internal or external to the council which is carried out to conceal the misappropriation of assets or otherwise for gain’. **Corruption** can generally be described as “the abuse of entrusted power for private gain”. Corruption can be classified as ‘grand’, ‘petty’ and ‘political’, depending on the amounts of money lost and the sector where it occurs.
- 40.3 ‘Grand’ corruption consists of acts committed at a high governmental level that distort policies or the central functioning of the organisation.
- 40.4 ‘Petty’ corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with residents.
- 40.5 ‘Political’ corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers.
- 40.6 Importantly, although corruption may manifest in individual acts of bribery, fraud or other illegal activities, it is often more wide-ranging and systemic in nature.
- 40.7 This strategy complements other council strategies and policies which are aimed at promoting the highest standards of conduct and behaviour in all activities. In particular, this Strategy complements the Code of Conduct and Financial Regulations in seeking to minimise the potential for actual fraud and corruption. These strategies, policies and procedures include the Bribery Act Policy Statement, Money Laundering policy and ‘Speaking Up’ policy.
- 40.8 An effective Anti-Fraud and Corruption Strategy is a key part of good Corporate Governance, with the council directing and controlling its business with openness, integrity and accountability. The council is therefore committed to an Anti-Fraud and Corruption Strategy which is designed to:
- Encourage prevention
 - Promote detection
 - Identify a clear pathway for investigation and remedial action.
- 40.9 The council is also aware of the high degree of external scrutiny of its affairs by a variety of bodies including:

- The Local Government Ombudsman
- The council's External Auditor
- Her Majesty's Revenue and Customs
- The Department for Work and Pensions
- Other Central Government Departments
- Auditors of organisations for whom the council acts as agent
- Auditors of organisations that provide specific funding for the council, such as European funding organisations.

41 Culture and Stance against Fraud and Corruption

- 41.1 The council recognises that an anti-fraud and corruption culture is essential if a strong control framework is to be adhered to. It is determined that the culture and tone of the organisation promotes honesty and opposition to fraud and corruption, whereby fraud and corruption are not tolerated or perpetrated.
- 41.2 The council is committed to the highest ethical and moral standards and to openness and accountability. Elected Members and employees at all levels are therefore expected to share in this commitment by leading by example in ensuring adherence to all council regulations, procedures, practices and codes of conduct. The council expects individuals and organisations with which it comes into contact, to act honestly and without intent to commit fraud or corruption against it.
- 41.3 Very often members of the public will become aware of instances of fraud and are encouraged to come forward and give information. There is guidance on how to raise concern on the council's website www.ashford.gov.uk/benefit-fraud.
- 41.4 Employees are usually the first to be aware of a suspected malpractice. The council has therefore introduced a Whistleblowing Policy ('Speaking Up') for its employees which is designed to:
- Support and protect whistleblowers from reprisals or recrimination
 - Protect the confidentiality of the whistleblower
 - Encourage staff to raise their concerns
 - Inform the whistleblower of the action being taken
 - Protect against malicious and false allegations
- 41.5 The council's elected Members and employees are an important element in its stance on fraud and corruption. The council's Whistleblowing Policy actively encourages elected Members and employees to raise concerns in confidence without fear of reprisals or victimisation so that they can be investigated properly and fairly. All matters raised will be:
- treated in confidence
 - properly investigated, and
 - dealt with impartially
- 41.6 Senior management are expected to deal swiftly and firmly with those who defraud the council or who are corrupt.

42 Prevention

42.1 Where appropriate, the council will co-operate with other organisations, agencies and local authorities in countering fraud and corruption. Arrangements are in place and continue to be developed to exchange information between the council and other agencies on national and local fraud and corruption activity in relation to local authorities. The council liaises with, amongst others:

- Kent Financial Officers Association
- Kent Audit Group
- Audit Commission (particularly in relation to the National Fraud Initiative)
- Department of Work & Pensions
- Police

42.2 There are four dimensions essential to the overall process for the prevention of fraud and corruption:

- Elected Members
- Officers, Agents and Contractors
- Systems of Governance and Control
- The council's Standards Committee and the Audit Committee

43. Elected Members

43.1. Elected Members are required to operate within:

- National Code of Local Government Conduct
- Sections 94-96 of the Local Government Act 1972
- Local Authorities Members' Interests Regulations 1992 (S.I.618)
- Ashford Borough Council's Standing Orders and Code of Conduct for Members.

44. Employees, Agents and Contractors

44.1. A key element to preventing fraud and corruption is recruitment with due regard being given to the previous record of potential employees in terms of propriety and integrity. Recruitment procedures for all employees, including temporary and contract staff, must therefore be in accordance with the procedures adopted by Ashford Borough Council.

44.2. Each employee is governed in their work by the council's Contract Rules, Financial Rules and by the council's Employees' Code of Conduct. Copies of other policies relevant to employees are available on the internal intranet.

44.3. This strategy also extends to any agents, contractors or not-for-profit organisations working on the council's behalf. The council will not knowingly enter into any contractual agreement with an organisation that fails to comply with its codes of practice and/or other related procedures. Prior to engagement therefore, steps will be taken to establish, as far as possible, the track record of such organisations in this respect. This includes where the council may be acting in collaboration with other organisations.

44.4. In order to ensure that any organisations working on the council's behalf uphold the council's standards, appropriate clauses in respect of honesty, accountability and probity are included in tender documents, service level agreements or any other relevant documentation.

45. Systems of Governance and Control

45.1. The Deputy Chief Executive has a statutory duty, under Section 151 of the Local Government Act 1972, to ensure the proper administration of the council's financial affairs.

45.2. The council has control systems in place designed to ensure the legitimacy of expenditure, the security of assets and income, the reliability of management information, and the accuracy of financial and other records. Within these systems are procedures which control the authorisation of transactions, ensure that duties and responsibilities are clearly segregated, provide internal checks, safeguard assets and regulate their proper use.

46. The Council's Standards Committee and the Audit Committee

46.1. The role and functions of the council's Standards Committee are contained within the council's constitution. It is responsible amongst other things for:

- Advice to the Council on the adoption or revision of the Code of Conduct, the Protocol for Member/Officer Relations
- Monitoring the operation of the Authority's Code of Conduct
- Overseeing the council's Whistleblowing regime in relation to Members.

46.2. The Terms of Reference for the Audit Committee require the committee to consider/monitor or advise on appropriate regulatory policies including the Anti-Fraud and Corruption Strategy and Whistle Blowing Policy in the context of officers.

47 Detection and Investigation

47.1 The various internal control systems within the council help to provide indicators of, or deter, any fraudulent activity.

47.2 It is the responsibility of Heads of Service to prevent and detect fraud and corruption. However, it is often the alertness of employees and the public that enables detection to occur and the appropriate action to take place.

47.3 The proper reporting of suspected irregularities is essential to the Anti-Fraud and Corruption Strategy, as it facilitates:

- The consistent treatment of information regarding fraud and corruption
- Proper investigation by suitably experienced, qualified professional staff
- Proper implementation of a fraud response investigation plan.

47.4 Any member of staff who has concerns regarding any circumstance which may suggest the possibility of irregularity or loss of any kind shall raise those concerns with their Head of Service. The Head of Service shall immediately notify the Head of Audit Partnership.

- 47.5 The Head of Audit Partnership shall inform the relevant Head of Service if any subsequent investigation identifies evidence of a financial irregularity or any other unacceptable behaviour on the part of a member of their staff.
- 47.6 In the event that the investigation produces evidence of illegal acts, the presumption will be that the matter will be referred to the police. Prior to referral to the police, the Audit Partnership will seek the endorsement of the council's Section 151 Officer and the Monitoring Officer to the proposed course of action.
- 47.7 Referral to the police will not prohibit action under the Disciplinary Procedure. Once referred to the police, the decision to proceed to prosecution is with the police and the Crown Prosecution Service.
- 47.8 The council recognises that the submission of incorrect or incomplete information by an individual or individuals in order to fraudulently obtain housing, council tax discounts or social housing will not be tolerated and will be given to preparing cases for prosecution.

48 Recovery and Sanctions

- 48.1 Where an investigation indicates fraud or corruption, the council will seek:
- Recovery wherever appropriate
 - To prosecute or apply other sanctions to perpetrators
- 48.2 Where fraud or corruption by employees is indicated, and where the Head of Personnel & Development considers it appropriate, action will be taken in accordance with the council's disciplinary procedures. This may be in addition to any recovery action or sanctions.

49 Keeping the strategy timely and relevant

- 49.1 This Anti-Fraud and Corruption Strategy will be reviewed and updated in the light of new legislative and professional and technological developments.
- 49.2 Access to this Strategy shall be achieved by:
- Availability on the council's Intranet and Internet facilities
 - Individual circulation to the Chief Executive and Heads of Service
 - Inclusion in the Members' Library
- 49.3 In order to raise awareness of the strategy and fraud and corruption in general, the council will, in conjunction with other agencies, actively promote regular publicity campaigns. It will also issue instructions aimed at encouraging fraud awareness and reminding individuals of their responsibilities, and will publicise the methods of reporting suspected irregularities, e.g. whistle-blowing arrangements.
- 49.4 Where appropriate, the council will publicise the results of any investigations in order to promote awareness, to deter, and to demonstrate the need for preventative measures.

Anti-Money Laundering Policy

50 Introduction

50.1 Ashford Borough Council is committed to the highest possible standards of conduct and has, therefore, put in place appropriate and proportionate anti-money laundering safeguards and reporting arrangements.

51 Scope of the Policy

51.1 This policy applies to all employees, whether permanent or temporary, and Members of the council.

51.2 Its aim is to enable employees and Members to respond to a concern they have in the course of their dealings for the council. Individuals who have a concern relating to a matter outside work should contact the police.

52 Definition of Money Laundering

52.1 Money laundering describes offences involving the integration of the proceeds of crime, or terrorist funds, into the mainstream economy. Such offences are defined under the Proceeds of Crime Act 2002 as the following 'prohibited acts':

- Concealing, disguising, converting, transferring or removing criminal property from the UK
- Becoming involved in an arrangement which an individual knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
- Acquiring, using or possessing criminal property
- Doing something that might prejudice an investigation e.g. falsifying a document
- Failure to disclose one of the offences listed in a) to c) above, where there are reasonable grounds for knowledge or suspicion
- Tipping off a person(s) who is or is suspected of being involved in money laundering in such a way as to reduce the likelihood of or prejudice an investigation

52.2 A full definition is attached at **Appendix 1**.

53 Requirements of the Money Laundering Legislation

53.1 The main requirements of the legislation are to:

- Appoint a money laundering reporting officer (Head of Audit Partnership)
- Maintain client identification procedures in certain circumstances
- Implement a procedure to enable the reporting of suspicions of money laundering
- Maintain record keeping procedures

54 Background – Legislation and Regulations relating to Money Laundering

ACT	Description	Impact on Local Authorities	Details
Financial Services and Markets Act 2000	Defines relevant /regulated business activities	HIGH	Clarifies the fact that council activities fall outside the relevant activities specified for the purpose of money laundering regulations
Statutory Instrument 2001 no. 544	Specifies the types of regulated activity.	MEDIUM	Councils deposit taking and mortgage operations are exempt from the direct money laundering regulations.
Statutory Instrument 2001 no. 1177	Identifies and distinguishes regulated activities from unregulated activities	HIGH	This Order makes provision as to circumstances in which persons are, or are not, to be regarded as carrying on regulated activities by way of business for the purposes of the Financial Services and Markets Act 2000.
Statutory Instrument 2001 no. 1201	Exempts local authorities in respect of accepting deposits.	HIGH	Exempts local authorities in respect of accepting deposits, therefore in that respect they are not required to carry out regulated activities.
Money Laundering Regulations 2007	Apply to relevant /regulated business as defined in paragraph 3 of the ML Regulations	MEDIUM	This updates the Money Laundering Regulations 2003 with updated provisions on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
Statutory Instrument 2003 no. 3075	The provisions updated in S1 3075 do not significantly change the council's existing money laundering responsibilities.	LOW	These Regulations replace the Money Laundering Regulations 1993 and 2001 with updated provisions which reflect Directive 2001/97/EC of the European Parliament and of the council amending council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

ACT	Description	Impact on Local Authorities	Details
Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2001 & the Proceeds of Crime Act 2002	Initiated direct council employee responsibilities, which will require their wider practices, which in part clarify council Money Laundering procedures	HIGH	Councils may not directly fall under the Money Laundering Regulations, (other than TMP requirements) but individual officers will need in practice to develop and implement the Money laundering regulatory requirements. Crime areas, e.g. housing benefit require consideration within the control system.

54.1 Further details on money laundering and how it relates to Ashford Borough council and its employees can be found in **Appendix 1**.

55 Client Identification Procedures

55.1 Although not a legal requirement, the council has developed formal client identification procedures which must be followed when council land or property is being sold. These procedures require individuals and if appropriate, companies to provide proof of identity and current address.

55.2 Further details can be found in **Appendix 2**.

55.3 All personal data collected must be kept in compliance with the Data Protection Act.

56 The Money Laundering Reporting Officer (MLRO)

56.1 The council has designated the **Head of the Audit Partnership** as the Money Laundering Reporting Officer (MLRO). He can be contacted on **(01233) 330442** or at **Richard.Clarke@ashford.gov.uk**. In the absence of the MLRO or in instances where it is suspected that the MLRO themselves are involved in suspicious transactions, concerns should be raised with the Section 151 Officer.

57 Reporting Procedure for Suspicions of Money Laundering

57.1 Where you know or suspect that money laundering activity is taking/has taken place, or become concerned that your involvement in a matter may amount to a prohibited act under the Act, you must disclose this as soon as practicable to the MLRO. The disclosure should be within "hours" of the information coming to your attention, not weeks or months later.

57.2 Your disclosure should be made to the MLRO using the disclosure report, available in **Appendix 3**. The report must include as much detail as possible including:

- Full details of the people involved
- Full details of the nature of their/your involvement.
- The types of money laundering activity involved
- The dates of such activities
- Whether the transactions have happened, are ongoing or are imminent;
- Where they took place;
- How they were undertaken;
- The (likely) amount of money/assets involved;
- Why, exactly, you are suspicious.

57.3 Along with any other available information to enable the MLRO to make a sound judgment as to whether there are reasonable grounds for knowledge or suspicion of money laundering and to enable him to prepare his report to the National Crime Agency (NCA), where appropriate. You should also enclose copies of any relevant supporting documentation.

57.4 If you are concerned that your involvement in the transaction would amount to a prohibited act under sections 327 – 329 of the Act, then your report must include all relevant details, as you will need consent from the NCA, via the MLRO, to take any further part in the transaction - this is the case even if the client gives instructions for the matter to proceed before such consent is given. You should therefore make it clear in the report if such consent is required and clarify whether there are any deadlines for giving such consent e.g. a completion date or court deadline.

57.5 Once you have reported the matter to the MLRO you must follow any directions he may give you. You must **NOT** make any further enquiries into the matter yourself: any necessary investigation will be undertaken by the NCA. Simply report your suspicions to the MLRO who will refer the matter on to the NCA if appropriate. All members of staff will be required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation.

57.6 Similarly, at no time and under no circumstances should you voice any suspicions to the person(s) whom you suspect of money laundering, even if the NCA has given consent to a particular transaction proceeding, without the specific consent of the MLRO; otherwise you may commit a criminal offence of “tipping off”.

57.7 Do not, for example, make any reference on a client file to a report having been made to the MLRO – should the client exercise their right to see the file, then such a note will obviously tip them off to the report having been made and may render you liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

58 Consideration of the disclosure by the Money Laundering Reporting Officer

58.1 Upon receipt of a disclosure report, the MLRO must note the date of receipt on his section of the report and acknowledge receipt of it, advising you of the timescale within which they expects to respond to you.

- 58.2 The MLRO will consider the report and any other available internal information they think is relevant, for example:
- reviewing other transaction patterns and volumes;
 - the length of any business relationship involved;
 - the number of any one-off transactions and linked one-off transactions;
 - any identification evidence held;
- 58.3 The MLRO will undertake such other reasonable inquiries they think appropriate in order to ensure that all available information is taken into account in deciding whether a report to the NCA is required (such enquiries being made in such a way as to avoid any appearance of tipping off those involved). The MLRO may also need to discuss the report with you.
- 58.4 Once the MLRO has evaluated the disclosure report and any other relevant information, they must make a timely determination as to whether:
- there is actual or suspected money laundering taking place; or
 - there are reasonable grounds to know or suspect that is the case; and whether they need to seek consent from the NCA for a particular transaction to proceed.
- 58.5 Where the MLRO does so conclude, then they must disclose the matter as soon as practicable to the NCA on their standard report form and in the prescribed manner.
- 58.6 Where the MLRO suspects money laundering but has a reasonable excuse for non-disclosure, then they must note the report accordingly; then give their consent for any ongoing or imminent transactions to proceed.
- 58.7 In cases where legal professional privilege may apply, the MLRO must liaise with the Section 151 Officer to decide whether there is a reasonable reason for not reporting the matter to the NCA.
- 58.8 Where consent is required from the NCA for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until the NCA has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from the NCA.
- 58.9 Where the MLRO concludes that there are no reasonable grounds to suspect money laundering then they shall mark the report accordingly and give his consent for any ongoing or imminent transaction(s) to proceed.
- 58.10 All disclosure reports referred to the MLRO and reports made by him to the NCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.
- 58.11 The MLRO commits a criminal offence if they know or suspect, or has reasonable grounds to do so, through a disclosure being made to him, that another person is engaged in money laundering and they do not disclose this as soon as practicable to the NCA.

59 Training

- 59.1 Officers considered likely to be exposed to suspicious situations, will be made aware of these by their senior officer and provided with appropriate training.
- 59.2 Additionally, all employees and Members will be familiarised with the legal and regulatory requirements relating to money laundering and how they affect both the council and themselves.
- 59.3 Notwithstanding the paragraphs above, it is the duty of officers and Members to report all suspicious transactions whether they have received their training or not.

60 Review

- 60.1 This policy will be reviewed every two years.

June 2014

PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING) –ASHFORD BOROUGH COUNCIL’S AND YOUR OWN PERSONAL RESPONSIBILITIES

PURPOSE

These notes are important. They are designed to help you familiarise yourself with the legal and regulatory requirements relating to money laundering, as they affect both the organisation and you personally.

WHAT IS MONEY LAUNDERING?

Money laundering is the term used for a number of offences involving the proceeds of crime or terrorist funds. The following acts constitute the act of money laundering:

- concealing, disguising, converting, transferring or removing criminal property from England and Wales, or from Scotland, or from Northern Ireland;
- becoming concerned in an arrangement in which someone knowingly or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person;
- becoming concerned in an arrangement facilitating concealment, removal from the jurisdiction, transfer to nominees or any other retention or control of terrorist property (section 18 of the Terrorist Act 2000).
- acquiring, using or possessing criminal property.

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

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

Activities that could be indicative of money Laundering are:

- Payment of a substantial sum in cash (over £2,500). (See Appendix 3 on procedures which apply to anyone accepting large sums of money for the council)
- A secretive client: e.g. refuses to provide requested information without a reasonable explanation;
- Concerns about the honesty, integrity, identity or location of a client (much of this type of activity is from abroad such as countries within the former soviet bloc).
- Illogical third party transactions: unnecessary routing or receipt of funds from third parties or through third party accounts;
- Involvement of an unconnected third party without logical reason or explanation;
- Substantial overpayments by a client;

- Large unsolicited payments in advance or deposits, which may ultimately need to be returned;
- Absence of an obvious legitimate source of the funds;
- Movement of funds overseas, particularly to a higher risk country or tax haven;
- Where, without reasonable explanation, the size, nature and frequency of transactions or instructions (or the size, location or type of a client) is out of line with normal expectations;
- A transaction without obvious legitimate purpose or which appears uneconomic, inefficient or irrational;
- Requests for release of client account details other than in the normal course of business;
- Companies and trusts: extensive use of corporate structures and trusts in circumstances where the client's needs are inconsistent with the use of such structures;
- Poor business records or internal accounting controls;

WHAT LAWS EXIST TO CONTROL MONEY LAUNDERING?

In recent years, new laws have been passed which shift significantly the burden for identifying acts of money laundering away from government agencies and more towards organisations and their employees. They prescribe potentially very heavy penalties, including imprisonment, for those who are convicted of breaking the law. These laws are important and a list of them appears at the end of these notes, together with a list of useful websites.

WHAT IS THIS ORGANISATION'S POLICY ON MONEY LAUNDERING?

Our policy is to do all we can to prevent, wherever possible, the organisation 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. We cannot stress too strongly, however, that it is every member of staff's responsibility to be vigilant.

The organisation has nominated the Head of Finance, to be responsible for the coordination of anti-money laundering measures within the organisation.

WHAT ARE THE MAIN MONEY LAUNDERING OFFENCES?

There are three principal offences – concealing, arranging, and acquisition/use/possession. These are dealt with under sections 327 to 329 of the Proceeds of Crime Act 2002.

Concealing (s.327) is where someone knows or suspects a case of money laundering, but conceals or disguises its existence. Arranging (s.328) is where someone involves himself or herself in an arrangement to assist in money laundering. Acquisition (etc) (s.329) is where someone seeks to benefit from money laundering by acquiring, using or possessing the property concerned.

There are also two 'third party' offences – failure to disclose one of the three principal offences, and 'tipping-off'. Tipping off is where someone informs a person or people who are, or are suspected of being, involved in money laundering, in such a way as to reduce the likelihood of their being investigated, or prejudicing an investigation.

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

WHAT ARE THE IMPLICATIONS FOR THE COUNCIL AND ITS STAFF?

The council has accepted the responsibility to ensure that those of its staff who are most likely to be exposed to money laundering can make themselves fully aware of the law and, where necessary, are suitably trained. The council has also implemented procedures for reporting suspicious transactions and, if necessary, making an appropriate report to the National Criminal Agency (NCA).

The consequences for staff of committing an offence are potentially very serious. Whilst it is considered most unlikely that a member of staff would commit one of the three principal offences, the failure to disclose a suspicion of a case of money laundering is a serious offence in itself, and there are only very limited grounds in law for not reporting a suspicion.

Whilst stressing the importance of reporting your suspicions, however, you should understand that failure to do so is only an offence if your suspicion relates, in the event, to an actual crime.

WHAT ARE THE PENALTIES?

Money laundering offences may be tried at a magistrate's court or in the Crown Court, depending on the severity of the suspected offence. Trials at the former can attract fines of up to £5,000, up to six months in prison, or both. In a Crown Court, fines are unlimited, and sentences from two to 14 years may be handed out.

WHAT SHOULD I DO IF I SUSPECT A CASE OF MONEY LAUNDERING?

You should report the case immediately to the MLRO, either using a form they will give to you or, if you prefer, in a discussion. The MLRO will decide whether the transaction is suspicious and whether to make a report to the NCA. There is no clear definition of what constitutes suspicion – common sense will be needed. If you are considered likely to be exposed to suspicious situations, you will be made aware of these by your senior officer and, where appropriate, training will be provided.

SUMMARY

Robust money laundering procedures are essential if the council and its staff are to comply with our responsibilities and legal obligations. It falls to councillors or members of the council's staff, as well as to the council itself, to follow these procedures rigorously.

LEGISLATION AND REGULATIONS RELATING TO MONEY LAUNDERING

- Please refer to the council's Anti-Money Laundering Policy for details of relevant legislation and regulations.

GUIDANCE NOTE TO ANYONE ACCEPTING CASH PAYMENTS EXCEEDING £2,500 ON BEHALF OF THE COUNCIL

Money Laundering Regulations 2003

The Money Laundering Regulations 2003 became fully operational on 1 March 2004.

The Regulations apply in the main to businesses in the “Regulated” sector, that is mainly financial institutions, and to businesses registered as “High Value Dealers”, that is any business which may accept payment in cash of 4,250 euros, Approximately £2,500, or more in any single transaction, regardless of currency.

Advice from CIPFA is that the Regulations currently do not apply to Local Authorities. This is not consistent with the view of the Audit Commission. However, the council has a moral obligation to report any transaction, which could be considered to be connected with money laundering.

The following guidance is based on the recommended practice for Regulated business’.

Types of Transaction to watch for

- **All "Cash" transactions of £2,500 or more.** These may be individual transactions, or a series of transactions, which appear to be linked, totalling £10,000 or more, or, where there is a suspicion that the transaction involves money laundering.
- **Cash means notes, coins or travellers' cheques** in any currency. Non-cash transactions (cheques / bank transfers etc.) are not included as cash.

Cash payments of £2,500 (€4,250) or greater should not be accepted, and this should be made clear by way of notice in the reception area.

Identification procedures (detailed below) should apply when a client seeks to make a payment of £2,500 (€4,250) or greater, and/or where two or more transactions appear to be linked and involve a total payment of £2,500 (€4,250) or greater. They should also apply in other situations where payments are received from an unexpected source, where a new customer makes a substantial payment in cash, or where a new business relationship is established with a company or individual with whom the council has not dealt before.

Once identification has been verified it is important that the evidence is retained for at least five years from the end of the business relationship or the one-off transaction(s).

Identification procedures

Satisfactory evidence of identity should be established – this is defined as evidence, which is reasonably capable of establishing (and does in fact establish to the satisfaction of the person who obtains it) that the customer is who he/she claims to be.

Identification procedures should be initiated as early as possible, and preferably with the customer present. The customer should be able to produce at least two pieces of identity – one to confirm who he/she is, **preferably with a photograph**, and the other to confirm his/her address. Copies of the evidence produced should be taken. If evidence is not obtained, the transaction should not proceed any further. The MLRO should be contacted.

Evidence of identity may include – (original documentation only)

- Passport, (current & valid)
- Drivers licence, (current & valid)
- Birth certificate,
- Medical card,
- Bank / building society statement, no older than three months, but not if also used to prove address,
- National Insurance number

Evidence of address may include – (original documents only)

- Any utility bill, (in customers own name, no older than three months)
- Bank or building society statements no older than three months (but not if used to prove identity),
- Letter from solicitor
- Letter from Inland Revenue or other government office

If the customer is acting for another person, reasonable measures must be taken to establish the identity of that other person. This may be by checking with another member of staff who may have dealings with them.

Record Keeping

Once evidence of identity has been taken, a copy of that evidence should be passed to the MLRO where it will be retained. Additionally, there is a requirement to retain a record containing details concerning all transactions carried out by the customer. This record will be created & maintained by the MLRO.

Records are to be retained for at least five years commencing with the date of the completion of all activities taking place in the course of that transaction (or, as the case may be, the last of the series of transactions).

Internal reporting

The Head of the Audit Partnership has been nominated within the council to receive disclosures (The Money Laundering Reporting Officer).

Anyone in the council, who, in the course of business, receives any information which causes them to know or suspect, or have reasonable grounds for knowing or suspecting that a person is engaged in money laundering must, as soon as is practicable disclose this to the Money Laundering Reporting Officer.

Where a disclosure is made to the Money Laundering Reporting Officer, it will be considered in the light of any relevant information to determine whether it gives rise to such knowledge or suspicion or such reasonable grounds for knowledge or suspicion.

Where the Money Laundering Reporting Officer considers there to be reasonable grounds, the information will be disclosed to a person authorised by the Director General of the National Criminal Agency to receive the report.

Anti-Money Laundering Disclosure Report Form

CONFIDENTIAL

YOUR DETAILS

To: Head of Audit Partnership (ABC Money Laundering Reporting Officer)

From: _____ [insert name of employee]

Service _____

Team _____

Ext/Tel No _____

DETAILS OF SUSPECTED OFFENCE:

Name(s) and address(es) of person(s) involved:

[if a company/public body please include details of nature of business]

Nature, value and timing of activity involved:

[Please include full details e.g. what, when, where, how. Continue on a separate sheet if necessary]

Nature of suspicions regarding such activity:

[Please continue on a separate sheet if necessary]

Has any investigation been undertaken (as far as you are aware)? Yes / No

[Please delete as appropriate]

If yes, please include details below:

Have you discussed your suspicions with anyone else? Yes / No

[Please delete as appropriate]

If yes, please specify below, explaining why such discussion was necessary:

THE FOLLOWING PART OF THIS FORM IS FOR COMPLETION BY THE MLRO

Date initial notification received _____ (attach notification/e-mail)

Date receipt of report acknowledged _____

Date of meeting to discuss initial notification _____

CONSIDERATION OF DISCLOSURE:

Action plan:

OUTCOME OF CONSIDERATION OF DISCLOSURE:

Are there reasonable grounds for suspecting money laundering activity? Yes/No

If there are reasonable grounds for suspicion, will a report be made to the NCA? Yes / No

If yes, please confirm date of report to NCA: and complete the box below:

Details of liaison with the NCA regarding the report:

Notice Period: _____ to _____

Moratorium Period _____ to _____

Is consent required from the NCA to any ongoing or imminent transactions, which would otherwise be prohibited acts? Yes / No

If yes, please confirm full details below:

Date consent received from NCA: _____

Date consent given by you to employee:

If there are reasonable grounds to suspect money laundering, but you do not intend to report the matter to the NCA, please set out any reasonable excuse for non-disclosure.

Date consent given by you to employee for any prohibited act transactions to proceed: _____

Other relevant information:

Signed: _____

Dated: _____

THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS
A COPY OF EACH COMPLETED FORM IS TO BE SENT TO INTERNAL AUDIT

‘Speaking Up’ Policy (Whistleblowing)

61 Introduction

61.1 Ashford Borough Council is committed to the highest possible standards of transparency and accountability. The public has a right to expect the highest standards of integrity from those who serve the community whether employed directly or indirectly by the council. In line with this commitment, this policy aims to create an environment where you feel able to voice any concerns you may have at an early stage.

61.2 We recognise that you would often be the first to realise that there was something wrong within the organisation. Sometimes concerns are easily resolved, but when they are about unlawful conduct, fraud, corruption or dangers to the public or the environment it may be difficult to know what to do. This policy is in place to make it clear that you can raise concerns without fear of harassment or victimisation.

61.3 We would specifically like you to raise concerns if you think one of the following has occurred, is occurring or is likely to occur (here in the UK or abroad):

- A criminal offence
- A breach of legal obligation
- A miscarriage of justice
- Endangerment to an individual’s health and safety
- Environmental damage
- Deliberate concealing of information about the above

61.4 When raising concerns about any of the above you are protected by law under the Public Interest Disclosure Act (PIDA) 1998 (see paragraph 63.2).

61.5 We would also encourage you to raise other matters that you are concerned about that are not specifically covered under the Act, for example unauthorised use of council funds and property, waste/frivolous expenditure or other unethical conduct.

61.6 It could be something that:

- Makes you feel uncomfortable in terms of known standards or your experience
- Is against council policy
- Amounts to improper conduct

62 Aims and scope of this policy

62.1 This policy aims to:

- Encourage you and make you feel confident in reporting concerns
- Set out a procedure for you to raise concerns and receive feedback

- Reassure you that your concerns will be dealt with in confidence (unless there are specific circumstances that require you to provide evidence – see paragraph 66.1)
- Ensure that you are aware of how to take your concerns outside of the authority
- Reassure you that we will take action to ensure you are protected against harassment or victimisation as set out in paragraph 63.1

62.2 This policy applies to all employees (whether permanent, temporary, fixed term or casual), agency staff, apprentices, work placements, graduate placements and directly employed consultants (not those sent by another employer). It does not replace the council's corporate complaints procedure in which people other than those stated above can raise concerns about their treatment by the council.

62.3 It covers concerns that fall outside the scope of other procedures. For example, there are separate policies which cover grievances relating to your employment or complaints of bullying or harassment.

63 Our assurances to you

63.1 We recognise that reporting a concern can be difficult because of fear of reprisal from those responsible for the malpractice. We will not tolerate the harassment or victimisation of anyone raising genuine concerns, and such instances may be dealt with under our Disciplinary Policy. Likewise, any attempt to deter you from raising a concern (whether by colleagues or management) could be treated as a serious disciplinary matter. Managers are strictly required to act on your concerns.

63.2 You will not be at risk of losing your job or suffering any form of discrimination as a result of your disclosure. As previously mentioned, you are protected by law under the Public Interest Disclosure Act (PIDA) 1998 (there are different rights for workers as opposed to employees). You are covered by this as long as you have a reasonable belief that the concern you raise (officially termed a 'disclosure' is in the public interest, and relates to one of the categories in paragraph 61.3.

63.3 It should be noted that unlike other pieces of employment law, there is no minimum qualifying period of service required to apply its protection.

63.4 You would not be protected under law if you broke the law to discover the malpractice, or if you found out about it when someone wanted legal advice (e.g. if you are a solicitor in the legal department).

64 How to speak up

64.1 The first point of contact should be your line manager. However this depends on the seriousness and sensitivity of your concerns and who is thought to be involved. If you feel unable to raise the matter with your manager you can contact any of the following managers (contact details are listed in Section 70):

- Chief Executive
- Head of Personnel and Development

- Monitoring Officer
- Head of the Internal Audit Partnership

64.2 You may raise concerns verbally (although it is preferred in writing to ensure that details are correctly understood), but either way you will need to be as clear as possible and set out the background of the concern including names, dates and places where applicable, and the reason why you are particularly concerned about the situation. Where you raise a concern verbally, a copy of what we understand your concerns to be will be included with our acknowledgement to give you an opportunity to clarify any points that may have been misunderstood.

64.3 When raising a concern you should demonstrate that there are sufficient grounds for concern but you are not expected to prove beyond all reasonable doubt the truth of an allegation. Under no circumstances should you investigate a concern yourself.

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

65 How we will respond

65.1 The action we take will depend on the nature of the concern. It could be:

- Investigated internally by management or internal audit
- Referred to the External Auditor
- Referred to the police
- Form the subject of an independent inquiry

65.2 We will begin by making initial enquiries to decide whether an investigation is appropriate and if so, what form it should take. As referred to in paragraph 62.3, if your concern falls under the scope of other specific procedures it will be considered under these instead. Some concerns may be resolved by agreed action without the need for investigation, and some could be better addressed as part of a forthcoming audit or review. If urgent action is needed this may take place before a full investigation is conducted.

65.3 Your concerns will be acknowledged within five working days (including a written copy of what we understand your concerns to be if you raised them verbally), and within ten working days you will receive the following information:

- How we propose to deal with the matter
- An estimate of how long it will take to provide a final response
- Whether initial enquiries have been made
- Whether further investigation will take place and if not, why not
- Support mechanisms that are available to you

65.4 All correspondence will be sent to your home address. You may be asked for further information or for clarification. You can invite your trade union representative, staff representative or colleague to any meeting you are asked to attend in connection with the concern you have raised (these can be held offsite if preferred).

65.5 We understand that you will need to be assured that the matter has been properly addressed. Therefore we will inform you of the outcome of any investigation, bearing in mind that it may not be appropriate (or legally possible) to supply you with full details.

66 Confidentiality

66.1 All concerns will be treated in confidence and we will not disclose your identity without consent. However, if we are not able to resolve your concerns without revealing your identity (for instance because your evidence is needed to pursue an investigation or in court), we will discuss with you how we can proceed and appropriate support will be offered.

66.2 Anonymous allegations will also be considered, but any investigation could be hampered by the inability to gain further information. Therefore you are encouraged to provide some method of contacting you to assist the process. An anonymous allegation will be considered at the discretion of the officer that receives it. Factors to be taken into account are:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegation from attributable sources

67 Misuse of this policy

67.1 We recognise that there may be circumstances where you raise an allegation that you reasonably feel to be true, which is not confirmed by an investigation.

67.2 However we will consider the option of disciplinary action where it is felt the allegation is vexatious, malicious or done for personal gain.

67.3 It is also not the case that you receive immunity from action by making a disclosure about malpractice that you were involved in.

67.4 If at the time of making a disclosure you are subject to any other procedure (for example disciplinary action or you are at risk of redundancy) that process will not:

- End or pause
- Give you an advantage
- Cause you detriment

68 External disclosures

68.1 It is hoped that this policy will reassure you that you can raise concerns internally in a safe environment. We do however recognise that you can also contact an appropriate external body – the Secretary of State has produced a prescribed list setting out both the permitted regulatory bodies and their remits - http://www.legislation.gov.uk/ukxi/1999/1549/pdfs/ukxi_19991549_en.pdf.

68.2 The following organisations are relevant to the work of the council although there may be others applicable in the list:

- Audit Commission 0303 444 8346 (valid until 31 March 2015)
- National Audit Office 020 7798 7999
- Health and Safety Executive 0300 003 1647
- Environment Agency 03708 506 506

68.3 When raising your concerns with these organisations you will still be protected under PIDA as long as the test for internal disclosures is met and you reasonably believe that your concerns are substantially true. However you will need to ensure that you do not disclose confidential information.

68.4 Before you make contact it would be wise to seek the free independent advice of the charity Public Concern at Work by telephone on 020 7404 6609, by email at whistle@pcaw.org.uk or by visiting www.pcaw.org.uk.

68.5 Wider public disclosures are only protected if rigorous conditions are met and as above it is recommended that you seek advice. These conditions include a requirement that you do not make the disclosure for financial gain and that it is reasonable to make the disclosure in the circumstances.

69 Records

69.1 The Head of the Internal Audit Partnership maintains a record of concerns raised under this policy and the outcomes (in a form which does not endanger your confidentiality), and will report as necessary to the Audit Committee.

70 Contact details

Chief Executive	John Bunnett	John.bunnett@ashford.gov.uk	01233 330201
Head of Personnel and Development	Michelle Pecci	Michelle.pecci@ashford.gov.uk	01233 330602
Monitoring Officer	Terry Mortimer	Terry.mortimer@ashford.gov.uk	01233 330210
Head of the Internal Audit Partnership	Rich Clarke	Richard.clarke@ashford.gov.uk	01233 330442

71 Other Policies and Review

71.1 The content of this policy also has links to other policies within the council's Conditions of Service. In particular please refer to the policies on *Anti Fraud and Corruption*, *Anti-Money Laundering*, the *Code of Conduct* and the *Bribery Act Policy Statement*.

71.2 This policy will be reviewed bi-annually to ensure it remains effective and is up to date with legislation.

June 2014

Bribery Act 2010 Policy Statement

72 Introduction

72.1 Bribery is a criminal offence. We do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we, accept bribes or improper inducements.

72.2 To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

72.3 We require that all personnel, including those permanently employed, temporary agency staff and contractors:

- act honestly and with integrity at all times and to safeguard the organisation's resources for which they are responsible
- comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the organisation operates, in respect of the lawful and responsible conduct of activities.

72.4 Bribery is not tolerated, it is unacceptable:

- to give, promise to give, or offer a payment, gift, hospitality or other advantage with the intention that a business advantage will be received, or to reward a business advantage already given
- to give, promise to give, or offer a payment, gift, hospitality or other advantage to a government official, agent or representative to "facilitate" or expedite a routine procedure
- to request or accept a payment, gift, hospitality or other advantage from a third party with the intention that you or someone else will then provide a business advantage to that third party
- for you or someone else you asked or someone else with your approval to provide a business advantage to a third party in anticipation of or as a consequence of requesting or accepting a payment, gift, hospitality or other advantage from that third party
- to request or accept a payment, gift, or hospitality or other advantage from a third party in return for having provided a business advantage to that third party
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy
- engage in activity in breach of this policy.

72.5 Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions.

72.6 The prevention, detection and reporting of bribery is the responsibility of everyone who is subject to this policy. Everyone is required to avoid activity that breaches this policy. You must:

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

73 Objective of this policy

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

74 Scope of this policy

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

74.2 Within the organisation, the responsibility to control the risk of bribery occurring resides at all levels of the organisation. It does not rest solely within assurance functions, but in all business units and corporate functions.

74.3 This policy covers all employees, councillors and any other person who performs services for the council or on its behalf. It does not change the requirements of our Code of Conduct concerning gifts and hospitality.

75 This Council's commitment to action

75.1 We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance towards bribery. We aim to maintain anti-bribery compliance "business as usual", rather than as a one-off exercise.

75.2 This organisation commits to:

- Set out a clear anti-bribery policy and keeping it up to date
- Make everyone to whom this policy applies aware of their responsibilities to adhere strictly to this policy at all times, we will do this by publishing the policy on the intranet, including it in tender documents, issuing it to all new employees and councillors and communicating our commitment regularly through a range of channels.
- Training employees and councillors so that they can recognise and avoid the use of bribery by themselves and others, and by ensuring the training materials are made available to others whom this policy applies.
- Encouraging everyone to whom this policy applies to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.
- Rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution

- Taking firm and vigorous action against any individual(s) involved in bribery
- Include appropriate clauses in contracts and tender documents to prevent bribery.

76 The Bribery Act

76.1 There are four key offences under the Act:

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

76.2 The Bribery Act 2010 makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2). Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business. There is also a corporate offence under Section 7 of failure by a commercial organisation to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation. An organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent bribery by or of persons associated with the organisation. http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1

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

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

76.4 Organisations guilty of an offence under section 7 are liable to an unlimited fine.

76.5 Examples of bribery include:

- a) You offer a hot food takeaway to turn a blind eye to any contraventions during an environmental health inspection, but only if they agree to give council employees a discount on purchases.

This is bribery because you have requested an advantage from the takeaway (the employee discount) with the intention of then providing a business advantage to the takeaway (overlooking contraventions). If the takeaway agreed to provide discounts and you ignored contraventions, that would be bribery as well.

- b) The director of a company bidding for a work offers to pay for a family holiday for the contract officer if that officer recommends the company for the tender.

This is bribery because the director is offering a gift (the family holiday) with the intention that a business advantage will be received (the

officer's recommendation). It would also be bribery if the contract officer made the recommendation in anticipation of or as a consequence of the family holiday.

76.6 The council has procedures in place to prevent bribery, such as:

- a) Obliging councillors and employees to declare specified gifts and hospitality
- b) Allocating council housing to people on the waiting list based on published criteria with the decision made by a manager rather than the case officer.

76.7 Our procedures:

- a) Are Proportionate – Under the Contract Procedure Rules, only contracts with a value of up to £5000 may be entered into without a tender or quotation, although the Rules require all contracts to include a clause which allows the contract to be cancelled if the contractor has bribed an officer
- b) Have top level commitment – The council's procedures are approved by the council's management team or Cabinet
- c) Are informed by risk assessment – The council's internal audit section carries out independent audits of processes and recommends improvements
- d) Provide for due diligence – Applicants for employment must declare if they are related to Members or officers
- e) Are communicated – Councillors are trained in their obligations under the Code of Conduct
- f) Are monitored and reviewed.

76.8 Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. However, this organisation has the discretion to exclude organisations convicted of this offence.

77 Raising a concern

77.1 This organisation is committed to ensuring that all of us have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff and elected Member to know how they can raise concerns.

77.2 We all have a responsibility to help detect, prevent and report instances of bribery. If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

77.3 There are multiple channels to help you raise concerns staff and Members are required to refer allegations of bribery to one of the following:

- A senior manager,
- The Chief Executive
- The Section 151 Officer
- The Audit Partnership Manager

- The Head of Legal Services
- The Head of Personnel & Development

77.4 Please refer to the Speaking Up (whistleblowing) policy and determine the appropriate course of action.

77.5 Senior management should ensure all allegations are dealt with urgently by referring them immediately to the Chief Executive, Section 151 Officer and Audit Partnership Manager who will arrange an internal investigation and make a decision whether to refer the issue to the police.

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

77.7 Examples of instances that should be reported:

- a) A member of the public says they could “make it worth your while” in return for you doing something or not doing something
- b) You hear a colleague talking about going to a football match with tickets paid for by a contractor. The colleague says they will not report the gift because they don’t want anyone to know about it.
- c) You discover a process for which there is no procedure but which is susceptible to bribes being sought or made.
- d) You are at a meeting at which an employee of another council says they will only attend future meetings if they are paid a fee. You are aware that the other council has no policy requiring payment of such fees.
- e) A consultant acting on the council’s behalf is negotiating with another party. The consultant tells you that the other party offered him money in order to change his advice.