

Report Title:	2020-21 Review of the Council's Anti Fraud and Anti Corruption Policies
Contains Confidential or Exempt Information?	No - Part I
Chairman of Audit and Governance Committee:	Cllr Bateson
Meeting and Date:	Audit and Governance Committee 16 February 2021
Responsible Officer(s):	Andrew Vallance, Head of Finance (Deputy S151 Officer)
Wards affected:	None

www.rbwm.gov.uk



REPORT SUMMARY

The council's anti fraud and anti corruption policies have been revised and updated as part of the regular review process. A summary of the changes is attached at Appendix A to this report. Fraud policies updated include:-

1. Prosecution and Sanctions Policy
2. Anti Fraud and Anti Corruption Policy
3. Anti Bribery Policy
4. Anti Money Laundering Policy
5. Acquisition of Communications Data and Use of Covert Surveillance and Covert Human Intelligence Sources Policy
6. Whistleblowing (Raising Concerns at Work) Policy

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That the Audit and Governance Committee notes the contents of the report and:

- i) **Agrees the proposed amendments to the Anti Fraud and Anti Corruption Policy, Anti Money Laundering Policy, Prosecutions and Sanctions Policy, Anti Bribery Policy, the Acquisition of Communications Data and Use of Covert Surveillance and Covert Human Intelligence Sources Policy and the Whistleblowing (Raising Concerns at Work) Policy.**

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report

Option	Comments
Approve the policies This is the recommended option	This will ensure that activity undertaken by the Shared Audit and Investigation Service on behalf of the council, complies with legislation.
Amend the policies.	May result in legal challenge through not complying with legislation or inefficiencies within the Shared Audit and Investigation Service.
Not to approve the policies.	May result in legal challenge through not complying with legislation or inefficiencies within the Shared Audit and Investigation Service.

- 2.1 The Council's Constitution provides for the Audit and Governance Committee to consider and agree the council's anti fraud and anti corruption policies and review them on an annual basis.
- 2.2 This refresh of policies takes place on a periodic basis and is an important element of good governance.
- 2.3 The refresh will be used as a reminder to staff, councillors and others of their and our duties and roles and responsibilities and therefore is used as a good communications tool.
- 2.4 Awareness will be made to staff, councillors and others through the induction process and through periodic reminders on the Council's intranet system, Share Point and through articles in Member Update messages.
- 2.5 All policies, once approved, will be made available on Share Point.
- 2.6 A summary of the changes for each policy is set out below. Copies of each of the fraud policies are attached at Appendices A to F:-

Policy Changes – 12/2020 Review

Throughout the document

We > 'the Council' throughout (and other grammatical changes following from that).

Must / Should used appropriately in order to clarify the difference between a requirement and an expectation.

PROSECUTION AND SANCTIONS POLICY

Title changed (current practice) to Case Disposal Policy.

1.3 – clarifies who can make disposal decisions

6 – to allow sanctions / penalties where a decision not to prosecute is made.

7 – Added to ensure all costs are pursued

8 – Added to bring National File Standard formally in to the Council

ANTI FRAUD AND CORRUPTION STRATEGY

- 2 – reference to fraud being ‘new’ deleted as it is incorrect: fraud has long been defined in English law and there are many definitions of fraud in the Fraud Act, beyond those mentioned. Added ‘misrepresentations or concealment of facts or circumstances, intended to cause gain or loss’ in place of Theft, which has been moved to its own new heading under
- 2A - The council defines “theft” as taking something that doesn’t belong to the person taking it or using as if they own it when they do not. The council intends that references to “corruption” include theft. (This will include any misappropriation / unlawful disposal of council assets.)
- 6.2 – Contact details of Director of Resources and S151 Officer added
- 6.3 - Link to Whistleblowing Policy contacts, details of Whistleblowing Referral Hotline and Whistleblowing telephone number.
- 6.3 – New contact details added (Deloitte LLP)
- 13 – list of legislation removed as (a) it is, and is always likely to be, incomplete and (b) any changes would necessitate updating. There is no need to list legislation, as it is covered by the phrase, “appropriate legislation”.
- 14 – tidied up to create separate objectives and to reference Criminal Procedure Investigations Act/National File Standard requirements.
- 18 – removed the section on Council Tax. There are no specific references to any of the other type of investigation (procurement / housing &c.).
- 19 – turned into a statement of intent.
- 20 – should > must // requirement to act in accordance with the policy.

ANTI-BRIBERY POLICY

- 1.2 – strengthened and formalised language.
- 2 – clarified meaning
- 3 – clarified that working with the Council requires an undertaking to comply.
- 9/10 – added WHO must carry out due diligence & risk assessment.
- 13 – removed – it’s not a policy statement
- 16 – clarified that all offers/gifts regardless of value are covered
- 19.1 – emphasised that all good faith reports = whistleblowing

ANTI MONEY LAUNDERING POLICY

- 2 – strengthened the instruction // clarified the personal criminal liability in not reporting
- 3.1 – clarified – able to prove that disclosure has been made.
- 6 – inserted name & contact of Money Laundering Reporting Officer
- 7 – tidied and clarified.

ACQUISITION OF COMMUNICATIONS DATA AND USE OF COVERT SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES POLICY

- Added in Investigatory Powers Act to full title.
- Changed ‘short title’ to *Covert Investigations Policy*, as Regulation of Investigatory Powers Act (*RIPA Policy*) no longer accurately reflects the content.
- Cleaned to define RIPA, Investigatory Powers Act (IPA) and Data Protection Act (DPA) as abbreviations in the first section.
- Provided numbering for most sub-paras.
- Added the IPA throughout, and changed the sections on Communications Data (CD) to reflect the new Act.

1.2 – Referenced online investigations need to authorise if they go beyond open source work.

1.3 – Amended to reflect IPA provisions and confirm the status of the statutory Code of Practice (CoP).

1.3 (i) – Added to ensure continuity of National Anti Fraud Network (NAFN) membership, as this is required for access to CD

Appointments

Appoints all Authorising Officers (AOs) as Verifying Officers (VOs) for CD requests – various textual amendments needed to reflect these appointments throughout this section.

No substantive changes though – there are still a maximum of six AO / VO for the Council.

NB – A person of the same rank as the Senior Responsible Officer (SRO) is required to ‘be aware’ of all communications data requests before they are submitted.

1.4 – New Monitoring Officer appointed as SRO.

1.7 – changed to include “The Council appoints Directors and Heads of Service who meet the training criteria as AOs, subject to a maximum number of six (including the SAO) at any given time. Those appointed as AOs are also appointed to the role of VO if they hold a post of director or above.”

1.8 – Amended to instruct RMO to appoint Single Point of Contact (SPoC) or make other arrangements – in effect to contract with NAFN for the SPoC service.

1.11 – RIPA & IPA

(Throughout) – RIPA Procedure > Covert Investigation Procedure

Whistleblowing (Raising Concerns at Work Policy)

Minor changes to job title changes and contact numbers:

Director of Finance – added ‘and Section 151 Officer’

Monitoring Officer changed to - Deputy Director of Law and Strategy and Monitoring Officer.

3. KEY IMPLICATIONS

3.1 Table 2: Key Implications

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Residents have confidence that public funds are being used economically, efficiently and effectively and that Council assets and interests are being	Significant financial losses to the Council. Loss of residents' confidence	Financial losses are identified and recovered. Gain residents' confidence.	N/A	N/A	Ongoing

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
safeguarded from misappropriation / loss.	Council reputation may be affected.	Council reputation protected.			

4. FINANCIAL DETAILS / VALUE FOR MONEY

a) Financial impact on the budget

Revenue - Officer time in dealing with provision of the Shared Audit and Investigation Service
 Capital – None.

b) Financial Background – n/a – see 4(a) above

5. LEGAL IMPLICATIONS

5.1 Relevant legislation includes:

- Criminal Procedures and Investigations Act (CPIA) 1996;
- Data Protection Act 1998;
- Fraud Act 2006;
- Freedom of Information Act 2000;
- Human Rights Act 1998;
- Local Government Finance Act 1992;
- Forgery and Counterfeiting Act 1981
- Police and Criminal Evidence Act (PACE) 1984;
- Proceeds of Crime Act 2002;
- Regulation of Investigatory Powers Act (RIPA) 2000; and
- Bribery Act 2010
- Criminal Justice Act 1987

6 RISK MANAGEMENT

Risks	Uncontrolled Risk	Controls	Controlled Risk
1. Failure to have and follow appropriate fraud policies leads to breach of legislation resulting in fines, investigation	High	Appropriate fraud policies are in place, have been approved and are followed.	Low

Risks	Uncontrolled Risk	Controls	Controlled Risk
and reputation damage.			
2. Failure to provide an investigation service leads to major event, fraud and/or mismanagement of monies.	High	Appropriate fraud policies are in place, have been approved and are followed.	Low
3. Failure to have an investigation service in place to investigate potential losses.	High	Appropriate fraud policies are in place, have been approved and are followed.	Low

7. POTENTIAL IMPACTS

- 7.1 Equalities. . Equality Impact Assessments are published on the [council's website](#). The Equality Act 2010 places a statutory duty on the council to ensure that when considering any new or reviewed strategy, policy, plan, project, service or procedure the impacts on particular groups, including those within the workforce and customer/public groups, have been considered. This report is a non decision making report and updates current fraud policies. In undertaking our investigative work, we ensure we have regard for equalities.
- 7.2 Climate change/sustainability. We have considered the potential impact of the recommendations in relation to climate change / sustainability and have identified no impact.
- 7.3 Data Protection/GDPR. No personal data is being processed for this decision maker taking regard of the requirements of the Data Protection Act 2018 and the General Data Protection Regulation. Data Protection Impact Assessments are a lawful requirement under certain conditions but do not impact on this report.
- 7.4 There are no other potential impacts on e.g.: staffing/workforce, Human Rights and community cohesion, accommodation, property and assets.

8. CONSULTATION

- 8.1 Consultations were undertaken with both internal stakeholders, Corporate Leadership Team and S151 Officer in preparing this report and updating the policies.

9. TIMETABLE FOR IMPLEMENTATION

9.1 The full implementation stages are set out in Table 3.

Table 3: Implementation timetable

Date	Details
16 February 2021	Immediate implementation after approval of this report.

10. APPENDICES

10.1 This report is supported by 6 appendices:

- Appendix A - Prosecution and Sanctions Policy
- Appendix B – Anti Fraud and Anti Corruption Policy
- Appendix C – Anti Bribery Policy
- Appendix D – Anti Money Laundering Policy
- Appendix E - Regulation of Investigatory Powers Act (RIPA) Policy and Procedures
- Appendix F Whistleblowing (Raising Concerns at Work) Policy

11. BACKGROUND DOCUMENTS

Not applicable, as outlined above.

12. CONSULTATION

Name of consultee	Post held	Date sent	Date returned
Cllr Bateson	Chair of Audit and Governance Committee	1/2/21	
Duncan Sharkey	Managing Director	1/2/21	
Adele Taylor	Director of Resources/S151 Officer	15/1/21	26/1/21
Kevin McDaniel	Director of Children's Services	1/2/21	
Hilary Hall	Director of Adults, Health and Commissioning	1/2/21	3/2/21
Andrew Vallance	Head of Finance	15/1/21	4/2/21
Elaine Browne	Head of Law	1/2/21	
Emma Duncan	Deputy Director of Law and Strategy and Monitoring Officer	1/2/21	

Name of consultee	Post held	Date sent	Date returned
Nikki Craig	Head of HR, Corporate Projects and IT	1/2/21	5/2/21
Louisa Dean	Communications	1/2/21	
Karen Shepherd	Head of Governance	1/2/21	4/2/21

REPORT HISTORY

Decision type: Audit and Governance Committee for approval	Urgency item? No	To Follow item? No
Report Author:- Catherine Hickman, Lead Specialist, Audit and Investigation Tel no: 07885 983378		

www.rbwm.gov.uk



Royal Borough
of Windsor &
Maidenhead

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
POLICY
ON CASE DISPOSAL
(INCLUDING THE USE OF PROSECUTION AND OTHER SANCTIONS)

Awaiting approval by the Audit & Governance Committee on 16 February 2021

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
ON CASE DISPOSAL
(INCLUDING THE USE OF PROSECUTION AND OTHER
SANCTIONS)

Statement

The Royal Borough of Windsor and Maidenhead Council will prosecute any person who commits a criminal offence against the systems, processes and functions of the Council and/or assaults or threatens any member or employee of the Council, if there is sufficient evidence and if, in the opinion of the Council, it is in the public interest to do so.

1. Introduction

The Royal Borough of Windsor and Maidenhead Council (The Council) will prosecute any person who commits a criminal offence against the systems, processes and functions of the Council and/or assaults or threatens any member or employee of the Council, if there is sufficient evidence and if, in the opinion of the Council, it is in the public interest to do so.

1.1

When deciding if it is in the public interest, all officers authorised to decide whether to prosecute on behalf of the Council will be guided by the Code for Crown Prosecutors. Whenever it is appropriate, the Council will consider offering other sanctions as an alternative to prosecution.

1.2

The Council will consider each case on its own merits before deciding whether or not to prosecute. If it is the case that the Council has suffered a material/financial loss, it may take separate action to stop further payments/ recover money, irrespective of whether it decides to take criminal proceedings, and where steps to prevent further losses or recover losses already incurred are not available or desirable in the course of any criminal proceedings.

1.3

The Council authorises case disposal decisions to be made in accordance with the guidance in the Crown Prosecution Service guidance on charging responsibility, noting that for 'CPS' will be read 'Legal Services' and for 'police' will be read 'investigation managers', in so far as this is possible.

2 Alternatives to Prosecution - Cautions

In the issuing of Cautions the Council will be guided by the relevant statutory Guidance, currently the Ministry of Justice – Simple Caution for Adult Offender guidance.

3 Alternatives to Prosecution - Statutory Sanctions

The Council may consider a Statutory Sanction, whether a monetary penalty or otherwise, as an alternative to prosecution for an offence where the imposition or offer of such a sanction for the specified offence or offences is prescribed by law.

4 Code for Crown Prosecutors – The Evidential Test

When making a decision on whether to prosecute, the Council will first consider whether there is sufficient, admissible evidence :

- a) Is there sufficient evidence of the commission of an offence to provide a realistic prospect of conviction?
- b) Is the evidence reliable and able to be used in court?

5 Code for Crown Prosecutors – The Public Interest Test

Once the Evidential Test has been satisfied, the Council will then consider whether the Public Interest Test is satisfied. The Public Interest Test will be assessed following the guidance in the "Code for Crown Prosecutors" to ensure that any prosecution is in the public interest.

6 Other Sanctions or Penalties

Where a person engages in conduct which is not criminal, but is otherwise prohibited by legal statute or regulation applicable to the functions of the Council, or fails in their legal obligation to the Council, the Council may consider the imposition or offer of a sanction and/or monetary penalty where to impose a monetary penalty or sanction for the given circumstances is prescribed by law. The Council may also offer such sanctions and/or monetary penalties where a person undertakes criminal conduct but the council determine that a prosecution is not to be undertaken for any reason.

7 Investigation Costs

7.1 In all cases where the council is put to the cost of an investigation (and this may also include, but is not limited to, costs associated with civil and/or criminal proceedings and enforcement action), the council will seek to recover those costs from the party whose conduct has caused those costs.

7.2 In cases where legislation allows the responsible party to be billed for costs, the Council will normally do this. In litigated cases, the council will normally seek to recover all costs through the courts, as part of the relevant litigation. In other cases, the council will always consider seeking the cost directly from any party whose actions have given rise to the costs, either by voluntary contribution or by taking legal action to recover the costs.

8 Criminal Proceedings

The Council adopts the National File Standard as its approved method of file preparation in all cases to be heard in the criminal courts.

9 Processes and Procedures

The Council instructs the Lead Specialist, Audit and Investigation Shared Audit and Investigation Service to create and maintain such processes and procedures as are necessary to put this policy into effect.

10 Duty to Comply

All those mentioned in this policy are reminded that deliberately or recklessly failing to comply with this policy (or to follow the procedures and processes created in accordance with this policy) will normally amount to misconduct, which can have serious disciplinary consequences, including summary dismissal.

11 Adoption of the Policy

This version of the Policy was approved by the Audit & Governance Committee on behalf of the Council on 16 February 2021 after which it came into immediate effect. It replaces all previous policies on these subjects. .

Note: The procedures issued under para 9 may be found on Share Point.

www.rbwm.gov.uk



Royal Borough
of Windsor &
Maidenhead

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
CORPORATE POLICY
ON THE PREVENTION AND DETECTION OF FRAUD AND CORRUPTION

Awaiting approval by the Audit & Governance Committee on 16 February 2021

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD POLICY

Anti Fraud and Anti Corruption Policy

Statement

The Royal Borough of Windsor and Maidenhead Council aims to deliver high quality services and provide value for money by being fully accountable, honest and open in everything that it does.

Fraud and corruption undermine these aims by diverting resources from legitimate activities, damaging public confidence in the Council and adversely affecting staff morale.

To achieve its strategic priorities, the Council seeks to ensure that measures are taken to prevent, detect and investigate fraudulent or corrupt acts. The aim of this policy is to reduce losses from fraud and corruption to an absolute minimum.

The Council has a zero tolerance policy regarding fraud and corruption. It has adopted the following approach.

“In administering its responsibilities the Council is opposed to fraud and corruption whether it is attempted on or from within the Council and is committed to preventing, deterring, detecting and investigating fraud and corruption.”

1 Introduction

The Royal Borough of Windsor and Maidenhead Council (The Council) aims to deliver high quality services and provide value for money by being fully accountable, honest and open in everything that it does. Fraud and corruption undermine these aims by diverting resources from legitimate activities, damaging public confidence in the Council and adversely affecting staff morale.

1.1

To achieve its strategic priorities, the Council seeks to ensure that measures are taken to prevent, detect and investigate fraudulent or corrupt acts. The aim of this policy is to reduce losses from fraud and corruption to an absolute minimum.

1.2

The Council has a zero tolerance policy regarding fraud and corruption. It has adopted the following approach :

“In administering its responsibilities the Council is opposed to fraud and corruption whether it is attempted on or from within the Council and is committed to preventing, deterring, detecting and investigating fraud and corruption.”

This policy is particularly relevant to:

- a) elected Members;
- b) employees;
- c) contractors;
- d) consultants;
- e) suppliers;
- f) service users;
- g) customers (including the public); and
- h) partner organisations.

2 Defining Fraud

The Council defines “fraud” as an intentional distortion of financial statements or other records by persons internal or external to the organisation which is carried out to conceal the misappropriation of assets or otherwise for financial gain. This may involve, but is not limited to:

- a) falsification or alteration of accounting records or other documents;
- b) misrepresentations or concealment of facts or circumstances, intended to cause gain or loss;
- c) suppression or omission of the effects of transactions from accounting records of other documents;
- d) recording transactions which have no substance; and
- e) wilful misrepresentation of transactions or of the Council’s state of affairs.

2A Defining Theft

The council defines “theft” as taking something that doesn’t belong to the person taking it or using as if they own it when they do not. The council intends that references to “corruption” include theft. (This will include any misappropriation / unlawful disposal of council assets.)

3 Defining Corruption

The Council defines corruption as the offering, giving, soliciting or accepting of any inducement or reward which would influence the actions taken by the Council, its Members or Officers. Areas where corrupt practices may occur include, but are not limited to:

- a) tendering and awarding of contracts;
- b) pecuniary interests of Members and Officers;
- c) the award of permissions, planning consents and licenses; and
- d) the disposal of assets.

4 Framework for Prevention and Detection

It is a management responsibility to maintain the internal control system and to ensure that the Council's resources are properly applied in the manner and on the activities intended. This includes responsibility for the prevention and detection of fraud and other illegal acts.

5 Key Principles and Culture

The Council will not tolerate fraud and corruption in the administration of its responsibilities whether from inside or outside of the authority. The Council is committed to creating a culture of opposition to fraud and corruption. The Council is determined that the authority meets the expectations of the Committee on Standards of Public Life and is committed to the ten general principles which govern standards of conduct in local government, namely:

- a) selflessness;
- b) honesty and integrity;
- c) objectivity;
- d) accountability;
- e) openness;
- f) personal judgement;
- g) respect for others;
- h) duty to uphold the law;
- i) stewardship; and
- j) leadership.

5.1

The Council requires Members (elected and co-opted) and employees (including agency staff, consultants and contractors) to lead by example in ensuring effective opposition to fraud and corruption. This includes ensuring adherence to legislation, local rules and regulations, National and Local Codes of Conduct and that all procedures and practices are beyond reproach.

6 Raising Concerns

Employees at all levels must be alert to the possibility of fraud and corruption. They are both required and positively encouraged to raise any concerns relating to fraud and corruption which they become aware of. These can be raised in any way that the employee prefers, including with their line manager, through a Director, with the Shared Audit and Investigation Service or through the Council's Whistleblowing Policy. Whichever route is chosen, the employee can be assured that concerns raised in good faith will be fully investigated and, wherever possible, those raising concerns will be dealt with in confidence.

6.1

When management receive concerns from employees or others regarding potential fraud or corruption, they must immediately contact the Assistant Director, Governance with details of the concerns. The Assistant Director, Governance will make preliminary enquiries and in consultation with the Section 151 Officer will determine whether there are grounds for an investigation.

6.2

Councillors, service users, suppliers, partner organisations and members of the public are encouraged to report any concerns. These concerns about fraud and corruption should be reported either directly to the Director of Resources and S151 Officer:- section151@rbwm.gov.uk or via the Council's Whistleblowing Policy, where a list of telephone contacts is given, along with the Council's Whistleblowing referral hotline and telephone number.

6.3

If employees feel that they are unable to use internal routes then they can contact the council's external auditors, Deloitte LLP

Jonathan Gooding

Partner | Audit & Assurance | Deloitte LLP

3 Victoria Square, Victoria Street, St Albans, AL1 3TF

D: +44 1727 88 5650 | M: +44 7786 526459

jgooding@deloitte.co.uk | www.deloitte.co.uk

6.4

Although the Council encourages its staff to report concerns acting in good faith, any maliciously motivated and unfounded allegations may be dealt with through the Council's disciplinary code.

7 Corporate Governance

The main corporate policies and procedures which formulate the Council's framework for minimising risk and the prevention of fraud and corruption include:

- a) Anti Fraud and Anti Corruption Policy;
- b) Internal Audit Charter;
- c) Contract and Procurement Regulations;
- d) Financial Regulations;
- e) Human Resources Policy and Guidance for Discipline;
- f) Human Resources Policy for Conduct and Personal Behaviour;
- g) Human Resources Policy for Recruitment and Retention;
- h) Member's Code of Conduct;
- i) Money Laundering Policy;
- j) Officer's Code of Conduct;
- k) Prosecution and Sanction Policy;
- l) Risk Management Strategy;
- m) Scheme of Delegation;
- n) Whistleblowing Policy; and
- o) Anti Bribery Policy

8 Corporate Responsibility

Directors must ensure that all employees in their service are familiar with the corporate policies and procedures listed in Rule 9.4.7, in addition to any other relevant rules and regulations specific to their service. Failure to adhere to these policies and procedures could result in the instigation of disciplinary procedures.

9 Recruitment

The Council recognises that one of the most important issues relating to the prevention of fraud and corruption is the effective recruitment of staff and therefore takes pre-employment screening seriously.

9.1

Employee recruitment is required to be in accordance with procedures laid down by the Head of HR, Corporate Projects and IT. As part of these procedures, particular reference is made to:

- a) verifying the identity of the applicant;
- b) obtaining satisfactory references prior to appointment;
- c) verifying the applicant is able to legitimately work in the UK;
- d) verifying and retaining copies of certificates for stated qualifications; and
- e) undertaking Disclosure Barring Service checks where appropriate.

9.2

These practices apply to all permanent appointments including those where employees have entered the organisation as an agency worker or consultant in the first instance.

10 System of Internal Control

The risk of fraud and corruption can be minimised by good financial management, sound internal control systems, effective management supervision, and by raising public, member and employee awareness of fraud.

10.1

Internal control is the whole system of controls, financial and otherwise, established to provide reasonable assurance of:

- a) proper aims and objectives;
- b) efficient and effective operations;
- c) reliable management information and reporting;
- d) legitimate expenditure;
- e) compliance with laws and regulations;
- f) performance management; and
- g) security of assets and income.

10.2

Weaknesses in the design and operation of administrative and financial internal control systems may increase the risk of fraud. Systems must contain efficient, effective, and well documented internal controls that cover the following:

- a) adequate segregation of duties;
- b) proper authorisation and approval procedures;
- c) adequate physical security over assets; and
- d) reliable monitoring and reporting arrangements.

10.3

It is management's responsibility to install adequate internal controls and rectify weaknesses if they occur. To help management discharge this responsibility, systems may be subject to review by both Internal and External Audit. Auditors are responsible for reporting to management on significant weaknesses in the control environment, including deficiencies in the operation of internal controls and highlighting exposure to the risk of fraud.

10.4

High risk audit concerns are promptly followed up to ensure issues highlighted are appropriately actioned.

10.5

Management must instigate occasional deterrent compliance checks on the operation of internal controls within their service and are encouraged to seek advice from the Shared Audit and Investigation Service on what checks must be carried out. This work must be used to inform the Annual Governance Statement.

11 Risk Management

Major fraud risks relating to services must be included within local Risk Registers and subject to regular review to ensure that appropriate controls are in place to mitigate those risks.

12 Role of Statutory Officers

The Council has a statutory responsibility, under Section 151 of the Local Government Act 1972, to ensure the proper administration of its financial affairs and also to nominate one of its Officers to take responsibility for those affairs. The Council's nominated Section 151 Officer is the Director of Resources.

12.1

The Council's Monitoring Officer is responsible under Section 5 of the Local Government and Housing Act 1989 to guard against, inter alia, illegality, impropriety and maladministration in the Council's affairs.

13 Effective Action

Responsibility for investigating suspected fraud and corruption against the Council rests with the Shared Audit and Investigation Service. This is to ensure that the investigation is performed only by properly trained officers, in accordance with the appropriate legislation.

14 Procedure

All referrals will initially be risk assessed and material instances of fraud or irregularity in the Council will be referred to the Shared Audit and Investigation Service. The Shared Audit and Investigation Service will ensure the following objectives are met:

- a) Investigations are undertaken fairly, objectively and in accordance with relevant laws and regulations, so as to avoid jeopardising the outcome on legal and procedural technicalities.
- b) Evidence and unused material is secured and protected, in accordance with the law and best practice.
- c) All reasonable lines of enquiry are followed, to establish whether or not there is a case to answer.
- d) Conclusions and recommendations for action are always based on (and, where appropriate, supported by) the evidence gathered during the investigation.
- e) The case is reported and prepared in an appropriate format, in line with the relevant procedures; in the case of criminal process, this means the National File Standard.
- f) Appropriate sanctions and redress is sought against any and all individuals and organisations that seek to defraud the Council.

15 Completion

Once an investigation is completed the Shared Audit and Investigation Service may have responsibilities in relation to:

- a) recommending improvements to systems;
- b) attendance at disciplinary hearings and tribunals;
- c) attendance at Court as a witness; and
- d) reporting to the Audit Committee.

Conclusions will be based on fact allowing management to take forward any required disciplinary and / or criminal proceedings as they determine appropriate.

16 Disciplinary

The Council has in place disciplinary procedures which must be followed whenever staff are suspected of committing a fraudulent or corrupt act. The disciplinary procedures are set out in the Disciplinary Policy and Guidance. The Managing Director has overall responsibility for ensuring that the disciplinary procedure is managed effectively. Line managers, under the overall direction of a Director are responsible for day to day management and ensuring compliance with the Disciplinary Policy and Guidance.

17 Reporting and Publicity

Incidents of fraud and corruption are reported through the following mechanisms:

- a) Corporate Leadership Team;
- b) Audit & Governance Committee; and
- c) External Auditors (currently Deloitte LLP).

17.1

Where evidence of fraud and corruption is found, appropriate sanctions will be sought in line with the Council's Case Disposal Policy. The details of any proven act of fraud or corruption, including action taken by the Council will be publicised to employees, Members and the public. This is aimed at deterring further attempts of fraud or corruption by demonstrating the seriousness with which the Council views such cases. In agreement with the Section 151 Officer, Monitoring Officer, the Council will report criminal activity to the Police at the appropriate stage.

18 Working with Others

The Council will put into place and continue to develop such arrangements as it deems proportionate and necessary in order to facilitate the exchange of information between the Council and other agencies on national and local fraud and corruption activity. This includes participation in the National Fraud Initiative which matches data across a wide range of public service organisations in order to detect fraud or erroneous payments.

19 Money Laundering

Money laundering is the process of moving illegally generated funds through a cycle of transformation in order to create the end appearance of legitimately earned funds. The Proceeds of Crime Act 2002 details the three principal money laundering offences as:

- a) assisting another to retain the benefit of crime;
- b) acquisition, possession or use of criminal proceeds; and
- c) concealing or transferring proceeds to avoid prosecution.

19.1

In addition there are related offences for failing to report where a person has knowledge, suspicion or reasonable grounds for knowledge or suspicion that money laundering has taken place, as well as for tipping off a person that a disclosure has taken place.

19.2

Council Officers and Members who suspect money laundering activities must report their concern to the Council's nominated Money Laundering Reporting Officer (MLRO), the Section 151 Officer (Director of Resources). The Council has adopted an Anti-Money Laundering Policy; all reports must be made in accordance with that policy.

(Further details are contained in Appendix D Anti Money Laundering Policy.)

20 Conclusion and Review

The Council has in place a clear framework of systems and procedures to deter and investigate fraud and corruption. It will ensure that these arrangements are fair and are monitored and updated to keep pace with future developments in preventative, deterrent and detection techniques regarding fraudulent or corrupt activity.

To this end, the Council maintains a continuous review of these arrangements through, in particular the Audit & Governance Committee, the Section 151 Officer (Director of Resources), Shared Audit and Investigation Service, External Audit and the Monitoring Officer.

21 Processes and Procedures

The Council instructs the Lead Specialist – Shared Audit and Investigation Service to create and maintain such processes and procedures as are necessary to put this policy into effect.

22 Duty to Comply

All those mentioned in this policy are reminded that deliberately or recklessly failing to comply with this policy (or to follow the procedures and processes created in accordance with this policy) will normally amount to misconduct, which can have serious disciplinary consequences, including summary dismissal.

23 Adoption of the Policy

This version of the Policy was approved by the Audit & Governance Committee on behalf of the Council on 16 February 2021 after which it came into immediate effect. It replaces all previous policies on these subjects.

Note: The procedures issued under para 22 may be found on Share Point.

www.rbwm.gov.uk



Royal Borough
of Windsor &
Maidenhead

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
POLICY
ON THE PREVENTION OF BRIBERY

Awaiting approval by the Audit & Governance Committee on 16 February 2021

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
POLICY
ON THE PREVENTION OF BRIBERY

Statement

Bribery is a criminal offence. The Royal Borough of Windsor and Maidenhead Council does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor does it or will it, accept bribes or improper inducements.

1 Policy Statement: Anti Bribery

Bribery is a criminal offence. The Royal Borough of Windsor and Maidenhead Borough Council ('the Council') does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor does it or will it, accept bribes or improper inducements.

1.1

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

1.2

The Council is committed to the prevention, deterrence and detection of bribery. The Council has zero-tolerance towards bribery. The Council will embed anti-bribery compliance within its usual business processes; the Council will NOT treat it as a one-off exercise.

2 Objective of this Policy

This policy provides a coherent and consistent framework to enable the Council's employees to understand and implement arrangements that enable compliance with the anti-bribery rules. In conjunction with related policies and key documents it will also enable employees to identify and effectively report any actual or potential breaches of those rules.

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

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

3 Scope of this Policy

This policy applies to all of the Council's activities. For partners, joint ventures and suppliers, the Council will require the adoption of principals (and will seek to promote the adoption of formal policies) that are consistent with the principles set out in this policy.

3.1

Within the Council, the responsibility to control the risk of bribery occurring resides at all levels, in every service.

3.2

This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Members (including independent members), volunteers and consultants.

4 Commitment

The Council commits to:

- a) setting out a clear anti-bribery policy and keeping it up to date;
- b) making all employees aware of their responsibilities to adhere strictly to this policy at all times;
- c) training all employees so that they can recognise and avoid the use of bribery by themselves and others;
- d) encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately;
- e) rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution;
- f) taking firm and vigorous action against any individual(s) involved in bribery;
- g) provide information to all employees to report breaches and suspected breaches of this policy;
- h) include appropriate clauses in contracts to prevent bribery.

5 The Bribery Act

The Council defines bribery as ‘an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage’.

5.1

There are four key offences under the Act:

- a) bribery of another person (section 1);
- b) accepting a bribe (section 2);
- c) bribing a foreign official (section 6); and
- d) failing to prevent bribery (section 7).

5.2

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.

5.3

The guidance states that a “commercial organisation” is any body formed in the United Kingdom and “...it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made.” Therefore, the Council is a “commercial organisation”.

6 Adequate Procedures

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine proportionate procedures in the recommended areas of six principals. These principles are not prescriptive. They are intended to be flexible and outcome focussed, allowing for the different circumstances of organisations. Small organisations will, for example, face different challenges to those faced by large multi-national enterprises. The detail of how organisations apply these principles will vary, but the outcome should always be robust and effective anti bribery procedures.

7 Proportionate Procedures

An organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

8 Top Level Commitment

The Managing Director, Directors and Members are committed to preventing bribery by persons associated with it. Bribery is never acceptable.

9 Risk Assessment

The Council will assess the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage. All managers within the Council must ensure that appropriate risk assessments are carried out in relation to the work carried out by their staff.

10 Due Diligence

The Council applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks. All staff involved in managing commercial activities must ensure that appropriate due diligence is carried out before the council enters into a business relationship with another organisation.

11 Communication (including training)

The Council seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

12 Monitoring and Review

The Council monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary. The Royal Borough of Windsor and Maidenhead is committed to proportional implementation of these principles.

13 Bribery is not tolerated

It is unacceptable to:

- a) give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- b) give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure;
- c) accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them;
- d) accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return;
- e) retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy;
- f) engage in activity in breach of this policy.

14 Facilitation Payments

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

15 Gifts and Hospitality

The Council's Gifts and hospitality policy is included in the Code of Conduct - Employees must ensure:

- a) when acting in an official capacity they must not give the impression that their conduct both inside and outside work with any person or organisation is influenced by the receipt of gifts, rewards and hospitality or any other such consideration;
- b) they think about the circumstances in which offers are made and are aware that they may be regarded as owing a favour in return;
- c) they have permission from their line managers before accepting such offers and are aware that the offers may have to be returned or refused;
- d) that when gifts or hospitality have to be declined those making the offer must be courteously but firmly informed of the procedures and standards operating within the Council; and
- e) all offers, regardless of value and whether or not accepted, must be recorded in the Gifts and Hospitality register.

15.1

How an employee must react to an offer depends on the type of offer, the relationship between the parties involved and the circumstances in which the gift or hospitality is offered:

- a) employees must not be seen to be acting in their own personal interests and need to be careful that their behaviour cannot be misinterpreted;
- b) when receiving authorised gifts/hospitality, employees must be particularly sensitive as to its timing in relation to decisions which the Council may be taking affecting those providing the hospitality;
- c) an offer of a bribe or commission made by contractors, their agents or by a member of the public must be reported to the line manager and the Section 151 Officer (Director of Resources). Hospitality from contractors must also be avoided where employees / team are singled out for example Christmas lunch etc., this may be perceived as preferential treatment; and
- d) employees must not accept significant personal gifts from the contractors and outside suppliers, although the Council may wish to allow employees to keep insignificant items of token value such as pens, diaries, etc. not exceeding the value of £25. The most common form of gift is the offer of wine and chocolates etc. In general these are shared out among colleagues and provided the offers are reasonable, for example a single bottle of wine, they may be accepted. It is important that all offers are recorded in the Gifts/Hospitality Register including those that are offered and not accepted. Directors must remind their staff of the process to be followed with regards to gifts and hospitality.

15.2

No one working for, employed by, or providing services on behalf of the Council is to make, or encourage another to make any personal gain out of its activities in any way. Any person becoming aware of a personal gain being made at the expense of the Council, contractors or the public must follow the Whistleblowing procedures on the Council's website.

15.3

Employees may only accept offers of hospitality if there is a genuine need to impart information or represent the Council in the community. Offers to attend purely social or sporting functions may only be accepted when these are part of the life of the community or where the authority should be seen to be represented. All hospitality must be properly authorised and recorded in the Gifts/Hospitality Register.

15.4

Employees may accept hospitality when attending relevant conferences and courses where it is clear the hospitality is corporate rather than personal, where consent is given in advance and where it is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc. are required, employees must ensure that their service meets the cost of such visits to avoid putting at risk the integrity of subsequent purchasing decisions.

15.5

The acceptance of gifts and hospitality may be a subject of criticism placing the Council in a position that it has to defend such action. Consequently, it is essential that all offers and details of gifts and hospitality be recorded in the Gifts & Hospitality Register which will be held by the Director or nominated Manager.

16 Public Contracts and Failure to Prevent Bribery

Under the Public Contracts Regulations 2015 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. This organisation has the discretion to exclude organisations convicted of this offence.

17 Staff Responsibilities

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or under its control. All staff are required to avoid activity that breaches this policy. Staff must:

- a) ensure that they read, understand and comply with this policy; and
- b) 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.

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.

18 Raising a Concern

The Council is committed to ensuring that we all have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff to know how they can raise concerns. 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.

18.1

There are multiple channels to help you raise concerns – these are explained in the Whistleblowing Policy. Staff who refuse to accept or offer a bribe, or those who raise concerns or report wrongdoing can understandably be worried about the repercussions. The Council aim to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if they turn out to be mistaken. **For the avoidance of doubt, any and all reports made in good faith will, therefore, be treated as Whistleblowing and gain the protection that entails.**

18.2

The Council is committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith. If you have any questions about these procedures, please contact Lead Specialist Audit and Investigation, (Shared Audit and Investigation Service with Wokingham Borough Council).

19 Other Relevant Policies

- Anti Fraud and Anti Corruption policy
- Anti Money Laundering policy
- Code of Conduct and Finance
- Whistleblowing policy
- Procurement and Contract Rules and Procedures

20 Processes and Procedures

The Council instructs the Lead Specialist – Shared Audit and Investigation Service to create and maintain such processes and procedures as are necessary to put this policy into effect.

21 Duty to Comply

All those mentioned in this policy are reminded that deliberately or recklessly failing to comply with this policy (or to follow the procedures and processes created in accordance with this policy) will normally amount to misconduct, which can have serious disciplinary consequences, including summary dismissal.

22 Adoption of the Policy

This version of the Policy was approved by the Audit & Governance Committee on behalf of the Council on 16 February 2021 after which it came into immediate effect. It replaces all previous policies on these subjects. .

Note: The procedures issued under para 21 may be found on Share Point.

www.rbwm.gov.uk



Royal Borough
of Windsor &
Maidenhead

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
POLICY
IN REGARD TO THE ANTI-MONEY LAUNDERING PROVISIONS

Awaiting approval by the Audit & Governance Committee on 16 February 2021

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

POLICY

IN REGARD TO THE ANTI MONEY LAUNDERING PROVISIONS

Statement

Preventing Money Laundering is a key part of the fight against crime and criminal finances. The Royal Borough of Windsor and Maidenhead intends to take all reasonable steps to ensure that its systems are not used by criminals for such purposes.

1 Introduction

Money laundering legislation requires local authorities to establish internal procedures to prevent the use of their services for money laundering. Money laundering legislation in the UK is primarily governed by the following legislation:

- a) the Terrorism Act 2000;
- b) the Anti Terrorist Crime & Security Act 2001;
- c) the Proceeds of Crime Act 2002;
- d) Serious Organised Crime and Police Act 2005;
- e) the Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017; and
- f) Anti Money Laundering Act 2018

2 Scope of the Policy

This Policy applies to all employees and contractors of the Council. The Policy sets out the procedures that must be followed to enable the Council to comply with its legal obligations.

2.1

Staff are instructed to report any suspicions to the appointed Money Laundering Reporting Officer (MLRO) (see section 5.0) and it is for the MLRO to consider if the circumstances warrant the completion of a 'suspicious activity report' (SAR), which is sent to the National Crime Agency.

2.2

Failure by a member of staff to comply with the procedures set out in this Policy may lead to disciplinary action being taken against them in accordance with the Council's Disciplinary procedures. It may also render them liable to criminal action, if their actions have helped to facilitate money-laundering or warned the potential money-launderer of the Council's suspicions.

3 What is Money Laundering?

The legislation is not limited to major organised crimes, but covers proceeds of all crimes, however small. The primary money laundering offences and thus prohibited acts under the legislation are:

- a) concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327 of the 2002 Act); or
- b) entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (section 328 of the 2002 Act); or
- c) acquiring, using or possessing criminal property (section 329 of the 2002 Act); or
- d) 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 Terrorism Act 2000); or
- e) failing to disclose suspected money laundering.

3.1

The defence to these offences is to be able to show that the person has made an 'authorised disclosure' to an approved person. Approved persons are Customs Officers, Police Officers and the Council's MLRO (Rule 9.7.6.).

4 Suspicious Activity

Some indications of suspicious activity are:

- a) any unusually large cash payment;
- b) any overpayment or duplicate payment in cash where the refund is requested by cheque; or

- c) if a 'third party' is involved in any transaction (e.g. someone paying cash to settle someone else's bill.)

4.1

The Council must be alert to large amounts of "Cash" accepted as a payment, which would normally arouse suspicion.

4.2

Officers involved in Treasury Management and cashiering activities are the most likely to encounter attempts to launder money but all staff must be alert to the possibilities.

4.3

All organisations and each individual is required by law to try to prevent and to report any attempts to 'launder' money (i.e. to use the proceeds of crime in apparently legitimate business transactions).

4.4

Potentially any member of staff could be caught by the money laundering provisions if they suspect money laundering and either become involved with it in some way and/or do nothing about it.

5 The Council's Obligations

Organisations conducting "relevant business" must:

- a) appoint a MLRO to receive disclosures from employees of money laundering activity (their own or anyone else's);
- b) implement a procedure to enable the reporting of suspicions of money laundering;
- c) maintain client identification procedures in certain circumstances; and
- d) maintain record keeping procedures.

6 The Money Laundering Reporting Officer (MLRO)

If you have any suspicions, you must contact the MLRO. The Council's nominated MLRO is the Section 151 Officer (Director of Resources)

Adele Taylor

Director of Resources and S151 Officer

Adele.taylor@rbwm.gov.uk

7 Disclosure Procedure

Reporting to the MLRO: 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 legislation, you must disclose this as soon as practicable to the MLRO. In order to gain the protection from prosecution of having made a disclosure, the disclosure must be made as soon as reasonably practicable and, in any case, must be within "hours" of the information coming to your attention, not weeks or months later. Should you not make a prompt disclosure, you may be liable to prosecution. Disclosure must always be made in writing on the AML1 form, which is available on the shared drive.

7.1

Once you have reported the matter to the MLRO you must follow any directions they may give you. You must NOT make any further enquiries into the matter yourself.

7.2

Similarly, at no time and under no circumstances may you voice any suspicions to the person(s) whom you suspect of money laundering, without the specific consent of the MLRO; otherwise you may commit a criminal offence of "tipping off". Do not, therefore, 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.

7.3

On receipt of the disclosure the MLRO will:

- a) consider the report and make such further enquiries as are necessary to form a view on whether a person is engaged in money laundering;
- b) consider all other relevant information in making this judgement;
- c) ensure that nothing is done which could alert the person or business concerned that a report and an investigation could ensue;
- d) make a report to National Crime Agency, if appropriate, making full notes of the reasons for doing so;
- e) co-operate with any enquiries made by the proper authorities; and
- f) maintain all records of disclosures and reports for at least five years.

8 Client Identification Procedure

Each unit of the Council conducting relevant business where a business relationship is to be established and an account is to be opened or a one-off transaction or series of linked transactions amounting to 15,000 Euros (approximately £10,000) or more must maintain procedures which:

- a) require satisfactory evidence of the identity of both internal and external clients at the outset of the matter;
- b) require that if satisfactory evidence of identity is not obtained at the outset of the matter then the business relationship or one off transaction(s) cannot proceed any further;
- c) recognise the greater potential for money laundering when the client is not present; and
- d) require that where a client appears to act for another that reasonable measures are taken to establish the identity of that person.

8.1

Staff involved in Treasury Management must ensure that all dealings are carried out in accordance with the Treasury Management Strategy and Treasury Management Policies which ensure that transactions are only undertaken with approved counterparties.

9 Record Keeping Procedures

Each unit of the Council conducting relevant business must maintain records for at least five years of:

- a) client identification evidence obtained; and
- b) details of all relevant business transactions carried out for clients

9.1

The precise nature of the records is not prescribed by law, however, they must be capable of providing an audit trail.

10 Further Information and Advice

For any further information or guidance, please contact the MLRO.

11 Processes and Procedures

The Council instructs the Lead Specialist Audit and Investigation (Shared Audit and Investigation Service with Wokingham Borough Council) Council to create and maintain such processes and procedures as are necessary to put this policy into effect.

12 Duty to Comply

All those mentioned in this policy are reminded that deliberately or recklessly failing to comply with this policy (or to follow the procedures and processes created in accordance with this policy) will

normally amount to misconduct, which can have serious disciplinary consequences, including summary dismissal.

13 Adoption of the Policy

This version of the Policy was approved by the Audit & Governance Committee on behalf of the Council on 16 February 2021 after which it came into immediate effect. It replaces all previous policies on these subjects.

Note: The procedures issued under para 11 may be found on Share Point.

www.rbwm.gov.uk



Royal Borough
of Windsor &
Maidenhead

**ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
POLICY**

ON THE ACQUISITION OF COMMUNICATIONS DATA,
AND USE OF COVERT SURVEILLANCE
AND COVERT HUMAN INTELLIGENCE SOURCES
("COVERT INVESTIGATION POLICY")

Awaiting approval by the Audit & Governance Committee on 16 February 2021

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD POLICY

ON THE ACQUISITION OF COMMUNICATIONS DATA, AND USE OF COVERT SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES (REGULATION OF INVESTIGATORY POWERS ACT 2000)

Statement

Officers and employees of (and contractors working on behalf of) the Royal Borough of Windsor and Maidenhead may, in the course of their investigatory, regulatory and enforcement duties, need to make observations of persons in a covert manner, to use a Covert Human Intelligence Source or to acquire Communications Data. These techniques may be needed whether the subject of the investigation is a member of the public, the owner of a business or a Council employee.

By its very nature, this sort of action is potentially intrusive and so it is extremely important that there is a very strict control on what is appropriate and that, where such action is needed, it is properly regulated in order to comply with Legislation and to protect the individual's rights of privacy.

Privacy is a right, but in any democratic society, it is not an absolute right. The right to a private and family life, as set out in the European Convention on Human Rights, must be balanced with the right of other citizens to live safely and freely, which is the most basic function that every citizen looks to the state to perform.

Drawing on the principles set out in the Regulation of Investigatory Powers Act 2000 and the Data Protection Act 2018, this policy sets out the Royal Borough's approach to Covert Surveillance, the use of Covert Human Intelligence Sources and the acquisition of Communications Data.

The policy also sets out Members' oversight of this area, adopts a set of procedures and appoints appropriate officers to ensure that these areas are properly controlled and regulated.

Policy

- 1.1 It is the policy of The Royal Borough of Windsor and Maidenhead (the Council) that all Covert Surveillance, the use of Covert Human Intelligence Sources (informants) and the acquisition of Communications Data (CD) by those working for or on behalf of this Council (investigators) will be carried out in accordance with this policy and the associated procedure. (the Covert Investigation Procedure). Any member, officer or employee who deliberately or recklessly breaches this policy will normally be considered to have committed an act of gross misconduct and will be dealt with accordingly.
- 1.2 In so far as the Regulation of Investigatory Powers Act allows, Covert Surveillance and the use of Covert Human Intelligence Sources (informants) will always be subject to the Regulation of Investigation Powers Act (RIPA) application process. (This does NOT affect monitoring activities where the actions undertaken do not amount to covert surveillance.) Where officers wish to undertake covert surveillance or use informants but where RIPA is not available, a similar process of considering the proportionality and necessity of any such activities must be carried out before the activities are undertaken and approval gained from a RIPA authorising officer. Officers are instructed to consider when online investigations, where actions go beyond the scope of open source enquiries, would meet the criteria for covert investigations and to obtain relevant authorisations in those cases.
- 1.3 When acquiring CD officers are instructed to use the process set out in the Investigatory Powers Act (IPA) and the associated Communications Data Code of Practice, unless they are doing so with the consent of the data subject. Data Protection Act (DPA) requests and other powers may NOT be used to seek the disclosure of Communications Data. Communications data may only be obtained using IPA powers for the applicable crime purpose. (Note that the guidance in the statutory code of practice takes precedence over any contrary content of a public authority's internal advice or guidance.)
 - i. The Council resolves to maintain membership of the National Anti-Fraud Network, so that the relevant sections of the IPA and the associated Communications Data Code of Practice may be complied with.

Appointments

- 1.4 The Council appoints the Managing Director as the *Senior Authorising Officer (SAO)* for RIPA purposes ; it appoints the Council's *Monitoring Officer* as Senior Responsible Officer (SRO) for all purposes under RIPA and IPA.
- 1.5 The Council appoints the *Lead Specialist (Shared Audit and Investigation Service with Wokingham Borough Council)* as the *RIPA Monitoring Officer (RMO)* to monitor the use of covert techniques within this Council (whether using the RIPA or non-RIPA processes) and reports to members on the activities the policy covers. They are also directed to ensure that appropriate training is made available to RIPA Authorising Officers (AOs), IPA Verifying Officers (VOs) and applicants when it is required.
- 1.6 The Council directs that only those appointed by this policy as AOs and VOs may authorise covert surveillance, the use of informants or the acquisition of communications data. In so far as is practical and possible, the council intends that the same officers should be nominated as both AOs and VOs.
- 1.7 The Council appoints Directors and Heads of Service who meet the training criteria as AOs, subject to a maximum number of six (including the SAO) at any given time. Those appointed as AOs are also appointed to the role of VO if they hold a post of director or above. The Council instructs the RMO to maintain a list of all those currently authorised as part of the Covert Investigation Procedure.

- 1.8 The Council directs the RMO to appoint such persons as they may from time to time see fit to be *Single Points of Contact* (SPOC) (or to make such other arrangements as they deem appropriate) for the purposes of acquiring communications data by the use of IPA.
- 1.9 In order for the Council's RIPA authorisations to take effect, they must be approved by a Magistrate. The chief legal officer (Head of Law) is instructed to authorise all those who may need to apply to a Magistrate to appear for that purpose for the Council. The RMO is directed to maintain a list, as part of the Covert Investigation Procedure, of all those so authorised.
- 1.10 The Council appoints Directors and Heads of Service who meet the training criteria as VOs, subject to a maximum number of six at any given time. The Council instructs the RMO to maintain a list of all those currently authorised as part of the Covert Investigation Procedure.

Oversight and Reporting

- 1.11 The RMO shall report to elected Members on the use of RIPA & IPA regulated activity by officers of the Council every six months. Such a report shall be presented to the Members (or to such a sub-committee as the full council shall deem appropriate to constitute for oversight purposes) by the RMO and the SRO. The report **must not** contain any information that identifies specific persons or operations but must be clear about the nature of the operations carried out and the product obtained.
- 1.12 Alongside this report, the RMO and SRO will report details of 'Non-RIPA' surveillance undertaken or informants used in precisely the same fashion.
- 1.13 Elected Members shall have oversight of the Council's policy and shall review that policy annually should it be deemed by the RMO that significant changes have been made. At that review (or following any six-monthly report) elected Members shall make such amendments as they deem necessary to the Council's policy, and may give such directions as they deem necessary to the RMO and SRO in order to ensure that the Council's policy is followed.
- 1.14 Elected Members shall not interfere in individual authorisations. Their function is to, with reference to the reports, satisfy themselves that the Council's policy is robust and that it is being followed by all officers involved in this area. **Although it is elected members who are accountable to the public for council actions, it is essential that there should be no possibility of political interference in law enforcement operations.**

Covert Investigation Procedure

- 1.15 The RMO is instructed to create a set of procedures that provide instruction and guidance for the use of surveillance and informants, and the acquisition of communications data. They are further instructed to maintain and update these procedures, ensuring that they continue to be both lawful and examples of best practice.
- 1.16 The reference to 'maintain and update' in this section includes the duty to remove AOs / VOs from the list if they cease to be employed in a relevant role or if they no longer satisfy the requirements to be an AO / VO, and the right to add names to that list so long as (a) they satisfy the policy and regulatory requirements and (b) at no time does the number of AOs exceed six.
- 1.17 If a change is required, in the opinion of the RMO, in order to comply with this part, they are authorised to make that change without prior approval from any person.
- 1.18 The RMO must report any changes made under this section to Members when they undertake their annual oversight of the Policy, as set out above.
- 1.19 All managers are required to ensure that their staff understand that covert investigation techniques may only be used in accordance with this policy and the associated procedures.

Training

- 1.20 In accordance with this Code of Practice, AOs / VOs **must** receive full training in the use of their powers. They must be assessed at the end of the training, to ensure competence, and must undertake refresher training at least every two years. Training will be arranged by the RMO. Designated officers who do not meet the required standard, or who exceed the training intervals, are prohibited from authorising applications until they have met the requirements of this paragraph. AOs and VOs must have an awareness of appropriate investigative techniques, Data Protection and Human Rights Legislation.
- 1.21 Those officers who actually carry out surveillance work must be adequately trained prior to any surveillance being undertaken. A corporate training programme has been developed to ensure that AOs, VOs and staff undertaking relevant investigations are fully aware of the legislative framework.
- 1.22 The Corporate *Leadership Team* members who have no direct involvement with covert investigation will undertake a briefing at least biannually, to ensure that they have a good understanding of the activities that might fall into the definition of covert investigation techniques.

Exceptions, Notes and Complaints

- 1.23 CCTV cameras operated by this Council are NOT covered by this policy, unless they are used in a way that constitutes covert surveillance; only under those circumstances must the provisions of this policy and the Covert Investigation Procedures be followed.
- 1.24 Interception of communications, if it is done as part of normal business practice, does NOT fall into the definition of acquisition of communications data. (This includes, but is not limited to opening of post for distribution, logging of telephone calls, for the purpose of cost allocation, reimbursement, benchmarking, etc.; logging E Mails and internet access for the purpose of private reimbursement.)
- 1.25 If any person wishes to make a complaint about anything to which this policy applies is invited to use the Council's Complaints Procedure. Any complaint received will be treated as serious and investigated in line with this Council's policy on complaints. **Regardless of this, the detail of an operation, or indeed its existence, must never be admitted to as part of a complaint. This does not mean it will not be investigated, just that the result of any investigation would be entirely confidential and not disclosed to the complainant.**

Adoption and Amendment of the Policy

- 1.26 This version of the Policy was approved by the Audit & Governance Committee on behalf of the Council on 16 February 2021 after which it came into immediate effect. It replaces all previous policies on these subjects.

Duty to Comply

- 1.27 All those mentioned in this policy are reminded that deliberately or recklessly failing to comply with this policy (or to follow the procedures and processes created in accordance with this policy) will normally amount to misconduct, which can have serious disciplinary consequences, including summary dismissal.

Note: The procedures issued under para 1.15 et seq may be found on Share Point.

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

RAISING CONCERNS AT WORK (WHISTLEBLOWING) POLICY AND PROCEDURE (NON SCHOOLS)

Covers:

- Purpose and aims
- Scope
- How to raise a concern
- Practice and procedure
- How the council will respond
- Safeguards
- How the matter can be taken further
- Responsibility of employees / Monitoring Officer
- Contacts.

1. PURPOSE AND AIMS

- 1.1 The Royal Borough of Windsor and Maidenhead (the council) must aspire to the highest standards of quality, probity, openness and accountability in all its activities. In line with the Public Interest Disclosure Act 1998, this policy and procedure aims to create an environment in which employees and others working with council, who have concerns about any aspect of the council's work, feel encouraged to disclose information to an appropriate person within the council. Raising concerns at work also applies to members, contractors, consultants and agency staff working on council premises.
- 1.2 The council's whistleblowing policy and procedure is compliant with the Public Interest Disclosure Act 1998. It also recognises the arrival of the Enterprise and Regulatory Reform Act 2013 (ERA) and the protections inserted by the ERA into the Public Interest Disclosure Act 1998. These are designed to protect workers from being unfairly dismissed by their employer or suffering other detriment whenever they report their concerns about matters that affect the public interest to their employer, regulatory authorities or other designated persons.
- 1.3 Whistleblowing claims will only now be valid when an employee blows the whistle in relation to a matter for which the disclosure is genuinely in the public interest. This will exclude breaches of individuals' contracts of employment and breaches of other legal obligations, which do not involve issues of a wider public interest.
- 1.4 The good faith test is a test which needs to be satisfied by claimants bringing a whistleblowing claim. With the introduction of the public interest test, it was considered that the existence of two tests would have a deterrent effect and reduce the number of disclosures. This Act changes the application of the good faith test, so it will now be considered by the tribunal when deciding on remedy, rather than liability. The tribunal will have the power to reduce any compensation award by up to 25% where a disclosure has been made in predominantly bad faith.
- 1.5 Employees, because of their close proximity to council practices, are often the first to identify areas or issues that may be of concern. However, they may be reluctant to express these concerns because they feel that speaking up would be disloyal to their colleagues or to the council – and they may also be worried that they will be victimised or harassed as a result of their actions.
- 1.6 This policy is designed to help create an environment in which employees and others feel they are able to raise concerns without fear of reprisal. By responding to and addressing concerns in the quickest possible time, the council aims to contain such matters within the council. However, employees or others must be able to take matters further if they are dissatisfied with the council's response.

2. SCOPE

- 2.1 The council has an Anti-Fraud and Anti-Corruption policy (available on the council's website), which employees are encouraged to continue to use to identify and report problems or concerns, particularly in relation to financial or contractual irregularities.
- 2.2 This document is designed to sit alongside the statement, together with the council's Grievance Procedure (which enables employees to lodge a grievance relating to their employment) and the Dignity at Work Policy, which includes a procedure for dealing with claims of harassment (both available on the intranet).
- 2.3 Raising concerns at work is intended to cover concerns that fall outside the scope of these three procedures and extends the range of issues that employees are encouraged to report.
- 2.4 These concerns may be about acts that:
- Are unlawful or involve fraud, deceit and/or bribery.
 - Represent a risk to health and safety.
 - Cause environmental damage.
 - Infringe equal opportunities related legislation and / or council policies, e.g. discriminatory behaviour.
 - Amount to improper or unethical conduct, for example a breach of a statutory code of conduct, or are an abuse of position.
 - Are a miscarriage of justice.
 - Are a criminal offence or breach of law
 - Are safeguarding failures.

3. HOW TO RAISE A CONCERN

- 3.1 Concerns can be discussed with a colleague first and it may be easier to raise the matter if more than one of you has had the same experience or concern.
- 3.2 A friend, colleague, or a representative of your trade union or professional association may assist in raising a concern and may be in attendance at any related meetings.
- 3.3 Employees should, if possible, raise a concern in the first instance with their immediate manager.
- 3.4 Members should raise any concerns with their Group Leader.
- 3.5 Non-employees, for example, agency workers, contractors, partners, volunteers, should raise a concern in the first instance with the person to whom they directly report / have contact within the council.

- 3.6 In some cases, the nature or sensitivity of the concern means that this may not always be appropriate. If a person feels they cannot raise their concern with their immediate manager/contact, they are able to go directly to either the Head of Human Resources, Corporate Projects and IT, the Deputy Director of Law and Strategy and Monitoring Officer, Director of Resources and Section 151 Officer or the Lead Specialist - Audit and Investigation. They may also do so if, having raised the concern with the immediate manager/contact, they feel there has not been an appropriate response.
- 3.7 In the event of a concern being of an extreme and potentially serious nature, employees and others may raise it directly with the Managing Director or the Leader of the Council.
- 3.8 For all concerns in respect of any suspected financial irregularity, officers must notify the Director of Resources and Section 151 Officer and the Lead Specialist - Audit and Investigation immediately.
- 3.9 In circumstances where an individual feels that it is necessary to raise a concern with an independent body rather than raise it internally within the council, they may obtain guidance from the Public Concern at Work charity who can be contacted on 020 7404 6609.

4. PRACTICE AND PROCEDURE

- 4.1 Concerns are better raised in writing but can be made orally; in either case it is essential to give as much information as possible so that reasonable grounds for the concern can be demonstrated.
- 4.2 The earlier the concern is raised, the greater the opportunity for the council to take remedial action.
- 4.3 Advice and guidance on how matters of concern may be raised and pursued can be obtained from the Head of Human Resources, Corporate Projects and IT, the Lead Specialist - Audit and Investigation or the Deputy Director of Law and Strategy and Monitoring Officer.

5. HOW THE COUNCIL WILL RESPOND

- 5.1 Once a concern is raised, an appropriate council officer will make initial enquiries, taking advice from the Head of Human Resources, Corporate Projects and IT, Deputy Director of Law and Strategy and Monitoring Officer, Director of Resources and Section 151 Officer and the Lead Specialist - Audit and Investigation, to help decide if an investigation is appropriate and if so, what form it should take. As soon as possible and in any case within 10 working days of a concern being raised, the person handling the matter will write to the individual raising the concern acknowledging that it has been raised and indicating how, as far as possible, it will be dealt with. The individual will be kept informed

of progress and will receive a full and final response, subject to any legal restraints.

- 5.2 An Investigation Officer will be appointed by the relevant director.
- 5.3 In relation to allegations of fraud and corruption (including bribery) in respect of members and directors, the Managing Director will lead the process and will appoint an appropriate Investigating Officer, in liaison with the Deputy Director of Law and Strategy and Monitoring Officer, Head of Human Resources, Corporate Projects and IT, Director of Resources and Section 151 Officer and the Lead Specialist - Audit and Investigation. For cases involving the Managing Director, the Leader of the Council will direct the process.
- 5.4 Any decision to refer a matter to the police will be taken by the Deputy Director of Law and Strategy and Monitoring Officer, in consultation with the relevant director, the Lead Specialist - Audit and Investigation and the Head of Human Resources, Corporate Projects and IT, as appropriate. The council will normally wish the police to be made aware of, and investigate independently, those offenders where financial impropriety is discovered.
- 5.5 Depending on the nature of the allegation, the Investigating Officer will normally work closely with the director appointing them, to ensure that all allegations are thoroughly investigated and reported upon.
- 5.6 The Investigating Officer will:
- Deal promptly with the matter.
 - Record all evidence received.
 - Ensure that all evidence is sound and adequately supported.
 - Ensure security of all evidence collected.
 - Contact other agencies such as police.
 - Notify the council's Insurance and Risk Manager, if applicable, who in turn will notify the council's insurers.
 - Assist management to implement council disciplinary procedures, where appropriate.

The processes outlined above will also apply to members.

- 5.7 The council's disciplinary procedures will be used to facilitate a thorough investigation of any allegations of improper behaviour by employees.

6. SAFEGUARDS

Harassment or victimisation

- 6.1 The council recognises that it can be difficult to report a concern, not least because of the fear of reprisal from those responsible for the potential malpractice. The council will not tolerate harassment or victimisation of the person who has raised the issue and will take appropriate action against individuals who perpetrate such harassment.

Confidentiality

- 6.2 Wherever practical and possible, the council will protect the identity of those raising a concern if they do not wish their name to be disclosed. It must be appreciated, however, that the process of investigation may reveal the source of information and a statement may also be required as part of the evidence. Advice and support will be provided where this is the case and disclosure of your identity will not be made without your consent unless legally required to do so.
- 6.3 Anyone may approach the council confidentially if they so wish and as long as their allegation appears to have been raised honestly and in good faith, their wish for confidentiality will be supported.
- 6.4 This approach is further supported by decisions of the courts, who have recognised in certain circumstances the identity of persons who have made allegations or given information to the public and other bodies should not be revealed (in the course of legal proceedings, for example). They recognise that disclosure could discourage others from making allegations or giving information to the proper authorities.

Support for those raising concerns

- 6.5 If you are a trade union member, you are encouraged to raise and discuss matters with your union representatives before seeking to invoke the whistleblowing procedure. Trade unions can advise you whether or not to proceed and the best way to present your disclosure.
- 6.6 The council's HR Service can be a place where you can discuss how to make a disclosure and lodge a matter of concern. Employees and non-employees will often discuss the issues that worry them with members of the HR Business Partner team in the first instance. Such discussions will be in confidence if that is what you prefer, but there may be some disclosures (for instance criminal acts) that cannot remain confidential.
- 6.7 Employees of the council can contact the EAP, which is a completely independent workplace support service, accessible online and via a freephone number, 24 hrs a day, 365 days of the year. Lifestyle Support via Carefirst on 0808 1682143.
- 6.8 The service offers free and completely confidential advice and help in relation to personal or work related issues.

Anonymous allegations

- 6.9 Individuals raising concerns are strongly encouraged to put their name to any allegation. Concerns expressed anonymously are much less powerful, and will only be considered if the Deputy Director of Law and Strategy and Monitoring Officer advises that the allegation demonstrates sufficient cause to take the matter further.

Untrue allegations

- 6.10 If someone makes an allegation in good faith and it is not confirmed by an investigation, no action will be taken against the person who has made the report. If, however, an individual makes an allegation, which is subsequently shown to be malicious or vexatious, disciplinary action is likely to be taken against them.

7. HOW THE MATTER CAN BE TAKEN FURTHER

- 7.1 This policy is intended to provide employees and others with an effective process for raising concerns within the council. The council hopes that those using this process will be satisfied with the way their concerns are treated and any investigations that may be carried out. However, if they are not satisfied and feel it is right to take the matter outside the council, then either the Head of Human Resources, Corporate Projects and IT or the Deputy Director of Law and Strategy and Monitoring Officer will provide advice as to other options.

8. RESPONSIBILITY OF OFFICERS / MONITORING OFFICER

- 8.1 The Head of Human Resources, Corporate Projects and IT and the Deputy Director of Law and Strategy and Monitoring Officer have overall responsibility for the maintenance and operation of this policy.
- 8.2 The Lead Specialist - Audit and Investigation should be notified of all concerns raised through this policy. All concerns raised and the outcomes (in a form which respects the individual's confidentiality) will be maintained by the Head of Human Resources, Corporate Projects and IT.

9. CONTACTS

Internal

Managing Director 01628 796727

Deputy Director of Law and Strategy 01628 796553
and Monitoring Officer

Lead Specialist - Audit and Investigation Service	07885 983378
Director of Resources and Section 151 Officer (Financial Issues)	01628 796341
Head of Human Resources, Corporate Projects and IT	01628 796627
External	
Confidential.whistleblowing@wokingham.gov.uk Confidential Whistleblowing hotline number (Wokingham BC)	0118 9746550
External Audit (Deloitte LLP) Jonathan Gooding, Partner jgooding@deloitte.co.uk	01727 88 5650
Audit Commission (Whistleblowing Line)	0845 052 2646
Your Local Union Representative Public Concern at Work (www.pcaw.co.uk)	020 7404 6609

10 PUBLICITY

- 10.1 This policy should be publicised to the widest possible audience so that all internal and external parties related to the council are aware of its existence in the event they have a legitimate concern or complaint.