

Oldham Council Audit and Counter Fraud

Counter Fraud, Anti-Bribery Strategy and
Counter Fraud Response Plan

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Version Control

Version	Version Date	Revised by	Description
1	July 2006	Janette Parkin	New Policy
2	July 2012	Andrew Bloor	Revised – Bribery Act 2010
3	July 2015	Andrew Bloor	Revised – Sanctions Policy and Counter Fraud Response Plan
4	August 2019	Andrew Bloor	Revised – Suitability of Offenders for Prosecution
5	November 2022	John Miller	Revised – Fighting Fraud and Corruption Locally.
6	March 2024	John Miller	Refresh and update

Counter Fraud, Anti-Bribery Strategy and Counter Fraud Response Plan

1. Introduction

- 1.1 Oldham Council recognises that it has a responsibility to protect the public purse. In order to meet these responsibilities, the Council has an effective Counter Fraud, Anti-Bribery Strategy and Counter Fraud Response Plan and has set out to ensure that it creates a zero-tolerance culture.

2. Fraud and Theft

- 2.1 Fraud can be broadly described as acting dishonestly with the intention of making a gain for oneself or another, or inflicting a loss (or a risk of loss) on another; including:
- Dishonestly making a false representation.
 - Dishonestly failing to disclose to another person, information which you are under a legal duty to disclose.
 - Committing fraud by abuse of position, including any offence as defined in the Fraud Act 2006 (see Annex A).
- 2.2 Theft is defined in the 1968 Theft Act. It is the dishonest taking of property belonging to another person with the intention of permanently depriving the owner of its possession. The maximum sentence is 7 years imprisonment.

3. Bribery

- 3.1 The Bribery Act 2010 defines bribery as “the inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages whether monetary or otherwise”.
- 3.2 Corruption is the abuse of entrusted power for private gain. It affects everyone who depends on the integrity of people in a position of authority. The Bribery Act 2010 repealed all Corruption Acts in whole and therefore there is now no offence of corruption. Therefore, whilst corruption exists as a term, it no longer exists as an offence.
- 3.3 Section 7 of the Act creates a new offence of failure by an organisation to prevent a bribe being paid for or on its behalf. It is possible to provide a defence by implementing adequate procedures to prevent bribery occurring within the organisation. If these cannot be demonstrated and an offence of bribery is committed within the organisation, senior officers of the Council can be held accountable. An extract of the Bribery Act is shown at Annex B

4 Aims

- 4.1 The Council has a duty to reduce fraud and bribery to an absolute minimum in order to **protect** its customers and itself. This Strategy sets out the Council’s commitment to preventing, detecting and deterring fraud, corruption, bribery or other irregularity.
- 4.2 By adopting the Strategy, the Council has **acknowledged** the fraud risk. The Strategy aims to improve the integration of fraud awareness, **prevention** and detection into the culture and working practices of the Council, its partnerships and contracts.

4.3 The Strategy requires that adequate and effective **governance** measures are in place, with all perpetrators being **pursued** in order to effect **redress**, recover losses and, where appropriate, **prosecute**.

4.4 The Strategy outlines the Council's stance in implementing a zero-tolerance approach towards fraud and irregularity and actions to **deter** it.

5. Approach

5.1 The Council takes the threat of fraud, corruption, financial loss and bribery seriously, in that it has the necessary dedicated and specialist resource, comprising of the Internal Audit and Counter Fraud Team. The team is focussed on co-ordinating the approach that Oldham Council takes in protecting its assets and finances from fraud, financial loss, corruption and bribery.

5.2 Fraud, by its very nature, is hidden, and conducted in such a manner that fraudulent actions are actively concealed. It is therefore vital to provide a strong anti-fraud culture and advocate a zero-tolerance approach. If done effectively this will not only provide a deterrence effect to potential fraudsters, but also encourage an environment where individuals feel comfortable coming forward to raise concerns.

5.3 In compiling the strategy, we have considered the Council's objectives and have also incorporated guidance and best practice of combatting fraud and loss within Local Government from a number of different sources, including:

a) CIPFA Code of Practice on Managing the Risk of Fraud and Corruption

5.4 The CIPFA Code of Practice on Managing the Risk of Fraud and Corruption identifies five key principles to be adopted in the fight against fraud, these are:

- acknowledge the responsibility of the governing body for countering fraud and corruption
- identify the fraud and corruption risks
- develop an appropriate counter fraud and corruption strategy
- provide resources to implement the strategy
- take action in response to fraud and corruption.

b) Fighting Fraud and Corruption Locally (FFCL) 2020s Strategy

5.5 The Fighting Fraud and Corruption Locally 2020s Strategy has been developed by Local Government in collaboration with anti-fraud and corruption professionals. There are five key elements of the strategy:

- **Govern:** Having robust arrangements and executive support to ensure anti-fraud, bribery and corruption measures are embedded throughout the organisation. Having a holistic approach to tackling fraud is part of good governance.
- **Acknowledge:** Acknowledging and understanding fraud risks and committing support and resource to tackling fraud in order to maintain a robust anti-fraud response.
- **Prevent:** Preventing and detecting more fraud by making better use of information and technology, enhancing fraud controls and processes and developing a more effective anti-fraud culture.
- **Pursue:** Punishing fraudsters and recovering losses by prioritising the use of civil sanctions, developing capability and capacity to investigate fraudsters

and developing a more collaborative and supportive local enforcement response.

- **Protect:** Protecting against serious and organised crime, protecting individuals from becoming victims of crime and protecting against the harm that fraud can do to the community. For a Local Authority this will also cover protecting public funds, protecting its organisation from fraud and cybercrime and also protecting itself from future frauds

5.6 The Fighting Fraud and Corruption Locally (FFCL) 2020s Strategy also identifies “six Cs” as central to an effective counter fraud approach:

- **Culture** – creating a culture where fraud and corruption are unacceptable and that is measurable.
- **Capability** – assessing the full range of fraud risks and ensuring that the range of counter fraud measures deployed is appropriate.
- **Capacity** – deploying the right level of resources to deal with the level of fraud risk that is monitored by those charged with governance.
- **Competence** – having the right skills and standards commensurate with the full range of counter fraud and corruption activity.
- **Communication** – raising awareness internally and externally, deterring fraudsters, sharing information, celebrating successes.
- **Collaboration** – working together across internal and external boundaries: with colleagues, with other Local Authorities, and with other agencies; sharing resources, skills and learning, good practice and innovation, and information.

5.7 In addition to compiling this strategy in line with these principles, the Council also assesses its compliance with them against the self-assessment checklist for Local Authorities contained in FFCL 2020s.

6. Policy Statement

6.1 The Council expects all elected Members, employees, consultants, contractors, service users and any other external and partner organisations to uphold the highest standards of honesty and integrity.

6.2 Elected Members and staff at all levels should be aware of their respective roles in preventing and detecting fraud and lead by example in ensuring adherence to rules, procedures, Codes of Conduct and recommended practices.

6.3 The Council supports and promotes zero tolerance to any form of theft, fraud, bribery or corruption and will pursue perpetrators to the full extent of the law.

6.4 Our strategy to reduce fraud is based on prevention, deterrence, detection, investigation, sanctions and redress within an over-riding anti-fraud culture. We will promote this culture across all our service areas and within the community as a whole.

7. Fraud Prevention - the Corporate Framework and Responsibilities

7.1 The corporate framework which underpins this strategy includes the following:

- The relevant Codes of Conduct for elected Members and employees
- The Council’s Constitution including the Finance Procedure Rules, Contract Procedure Rules and the Scheme of Delegation
- The Whistleblowing Policy
- The Anti- Money Laundering Policy
- Sanctions/Prosecutions Policies

- The work by the Audit and Counter Fraud Service in National Anti-Fraud Initiatives (NFI) and the National Anti-Fraud Network (NAFN)
- The ICT Acceptable Use Policy
- Recruitment procedures
- Staff disciplinary procedures.
- The Annual Governance Statement to support the production of the Statement of Final Accounts.

7.2 The responsibilities of various parties in relation to managing the risk of fraud and corruption are detailed below.

7.3 Responsibilities of Elected Members

7.3.1 Elected members have a responsibility for approving major policies on the use of the Council's physical, financial and human resources and participating in the governance and management of the Council. All elected Members should be familiar with the Counter Fraud, Anti-Bribery Strategy and Counter Fraud Response Plan and support its application in all activities, in order to help maintain a culture which will not tolerate fraud or corruption. At all times, elected Members must maintain the highest standards of conduct and ethics as the public would expect of their elected representatives and observe the Members' Code of Conduct.

7.4 Responsibilities of the Audit Committee

7.4.1 The role of the Council's Audit Committee in relation to fraud and corruption includes:

- Reviewing and ensuring the adequacy of the Council's Counter Fraud, Anti-Bribery and Counter Fraud Strategy and related documents, and to consider the effectiveness of the arrangements for counter fraud;
- Reviewing and ensuring that adequate arrangements are established and operating to deal with situations of suspected or actual fraud, financial loss and corruption;
- Reviewing the annual Internal Audit work programme to consider the proposed and actual Internal Audit coverage and whether this provides adequate assurance on the main business risks;
- Receiving and considering the Council's Annual Governance Statement.

7.5 Responsibilities of Management

7.5.1 It is acknowledged that fraud may be committed from within the organisation. The responsibility for managing the risk of fraud and corruption lies with management. Management includes all of the Council's Directors, Heads of Service, managers, line managers and supervisors. These are all responsible for establishing and maintaining sound systems of internal control in all of their service's operations to prevent and detect fraud, bribery, corruption and theft.

7.5.2 Management must promote staff awareness of the risk of fraud and corruption and ensure that all suspected or reported irregularities are immediately referred in accordance with the Fraud Response Plan.

7.5.3 Where fraud or corruption has occurred because of a breakdown in the systems or procedures in place, management must ensure that appropriate improvements in systems of control are implemented to prevent a reoccurrence.

7.5.4 Managers must ensure that awareness is raised about the need to register interests and to include in the Register of Gifts and Hospitality any gifts or hospitality. They

should also ensure that compliance with procedures is maintained in accordance with the Code of Conduct for Employees.

7.6 Responsibilities of All Employees

7.6.1 The Council expects all elected Members and employees, to act with integrity, and to carry out their duties in accordance with appropriate legal requirements, internal codes, rules and procedures and to act at all times with honesty and probity in the discharge of their functions in line with the Principles of Public Life (The Nolan Principles) shown at Annex C. All employees are expected to give the highest possible standard of service and to act with propriety in the use of public funds. Employees are required to avoid activity that breaches this policy and must:

- Ensure that they read and comply with this policy.
- Report suspicions of theft, fraud, serious and intentional breaches of financial regulations, bribery or corruption.
- Comply with the Council's 'Code of Conduct for Employees'.
- Declare all offers of gifts, hospitality, and potential conflicts of interest.

7.7 Responsibilities of Suppliers, Contractors, Consultants, Agency workers, Public and Partner Organisations

7.7.1 All outside individuals, including suppliers, contractors, consultants, agency workers, public and partner organisations are expected to conduct themselves towards the Council with honesty and integrity, and not do anything that involves fraud or corruption. All those working on behalf of the Council should be aware of procedures to be followed if they suspect that fraudulent or corrupt acts have been committed and must report their concerns.

7.8 Role of Internal Audit

7.8.1 Internal audit provides an independent and objective opinion to the organisation on the overall adequacy and effectiveness of the organisation's framework of governance, risk management and control. Internal audit work, undertaken by the Audit and Counter Fraud Service, in reviewing the standard of internal control, assists management to fulfil their responsibilities in preventing incidents of fraud and corruption. The Audit and Counter Fraud Service develops and reviews the Counter Fraud, Anti-Bribery Strategy and Counter Fraud Response Plan and, where appropriate, investigates issues reported under the Fraud Response Plan or the Whistleblowing Policy where fraud is suspected.

7.9 Role of Counter Fraud Team

7.9.1 The Counter Fraud Team is a dedicated resource which has been established to investigate potential irregularities in relation to a number of different areas administered by the authority. This includes categories such as Council Tax Discounts, Council Tax Support, Non-Domestic Rates (Business Rates) & Direct Payments. The consideration of sanctions or prosecution of offenders is governed by the Council's Sanctions and Suitability of Offenders for Prosecution Policies. The team forms part of the Audit and Counter Fraud Service and develops and reviews the Council's Counter Fraud, Anti-Bribery Strategy and Counter Fraud Response Plan.

7.10 Role of External Audit

7.10.1 As part of their work plan, the Council's External Auditors are required to identify any risk of material misstatement (whether due to fraud or error) and to reach a conclusion on the Authority's arrangements to secure value for money.

8. Deterrence

8.1 The Council is committed to maintaining a culture which will not tolerate theft, fraud, bribery or corruption and will deal swiftly and firmly with any persons who defraud or attempt to defraud the Council, or who are corrupt. Such action may include:

- Disciplinary action;
- Prosecution;
- Recovery of financial loss;
- Publicising successful prosecutions.

8.2 Disciplinary Action

8.2.1 All cases of fraud, bribery corruption or theft, will be referred for disciplinary investigation and will be treated as gross misconduct. If any allegations are made maliciously or for personal gain, disciplinary action may be taken against the person making the malicious allegation. Any elected Member found to have acted fraudulently or corruptly will also face action. Where appropriate, the Council's Monitoring Officer will be consulted about the action to be taken.

8.3 Prosecution

8.3.1 Where sufficient evidence exists to suggest that a criminal offence may have been committed, it is the policy of the Council to refer the matter for prosecution in line with the Council's Sanctions and Suitability of Offenders for Prosecution policies, and to seek to recover losses incurred.

8.4 Recovery of financial loss

8.4.1 The Council will seek to recover any financial loss incurred as a result of fraudulent activity. The Council is committed to taking further appropriate action against fraudulent claims submitted for financial assistance in relation to any service which the Council delivers such as Council Tax, Non-Domestic Rates (Business Rates) and Social Care. Consideration will be given to either prosecuting or applying alternative sanctions where it is considered appropriate to do so, in accordance with the Council's Sanctions and Suitability of Offenders for Prosecution policies. Disciplinary action will be taken in all cases where employees are found to have either made or participated in the making of fraudulent applications to this or any other public body.

8.5 Publicising Successful Prosecutions

8.5.1 Press releases will be issued in suitable cases to seek to maximise the deterrent effect and raise the level of public fraud awareness. Consideration will be given to the amounts involved, the nature of the offence, public interest and the deterrent value of publicising a particular case.

9. Detection

9.1 The Role of Management

9.1.1 Management must ensure that an effective system of internal control is in place. Controls in place should be adequately documented and implemented. It is the

responsibility of management to ensure that appropriate controls are established, and that the operation of all controls is kept under review.

9.2 Reporting Suspected Incidents of Fraud or Corruption

- 9.2.1 All elected Members and employees have a vital role in the detection of fraud and corruption and must be vigilant against the possibility of fraudulent and corrupt activity. All suspicions of illegality, financial impropriety or breach of procedure should be reported in accordance with the requirements of the Fraud Response Plan.
- 9.2.2 The Council has a Whistleblowing Policy to give confidence to employees who wish to raise concerns in a confidential manner. The policy provides a framework for reporting, investigating and following up such concerns in accordance with the Public Interest Disclosure Act 1998 (PIDA).
- 9.2.3 Where any person indicates that they wish to raise a concern in relation to suspected fraud, they should be referred to the contact details shown in the Fraud Response Plan for guidance on how to report their concerns in confidence. Contact details and guidance for reporting fraud are included on the Council website and reflected in the Fraud Response Plan. Any referrals received via these contact details will be allocated accordingly depending on the nature of the allegation received.
- 9.2.4 A list of common fraud indicators is shown at Annex D.

9.3 The Investigation of Incidents of Fraud or Corruption

- 9.3.1 The Council's Audit and Counter Fraud Service is responsible for receiving all referrals of suspected theft, fraud and corruption. Responsibility for conducting the investigation will depend on the nature of the alleged offence(s).
- 9.3.2 The relevant investigating team will liaise with other relevant services to agree an appropriate approach and to ensure that action is taken to research allegations of suspected fraud in accordance with this policy. Account will be taken of the particular circumstances of each case to ensure appropriate services are involved in the process. There will be liaison with the Human Resources team and other functions / individuals as necessary such as Legal Services, relevant service managers and other internal and/or external services.
- 9.3.3 Where theft, fraud or corruption has occurred, management will be advised about any recommended improvements to systems and procedures as appropriate. The Council's Director of Finance (as the Section 151 Officer) will be informed of all incidents of fraud where it is alleged that the incident involves a member of staff, partner, contractor or councillor. Action for undertaking an investigation will be agreed in liaison with Human Resources in accordance with investigation processes set out as part of the Council's Disciplinary Procedure.

9.4 Data Matching

- 9.4.1 Data Matching Arrangements are in place, and will continue to be developed, which encourage 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 (NFI). All such arrangements will adhere to data protection legislation.

10. Sanctions and Redress

- 10.1 In all cases of theft, fraud, financial misconduct, serious and intentional breach of Financial Procedure Rules or Contract Procedure Rules, bribery or corruption committed by employees, the Council will seek disciplinary action for gross misconduct. This includes fraud related to employment with the Council as well as other forms of engagement e.g., through applications for financial assistance made to the Council by employees or members.
- 10.2 Where evidence of fraud exists this will be reported to the Police or the Council's Legal Services where appropriate and considered for criminal prosecution, in line with the Sanctions and Suitability of Offenders for Prosecution Policies. Where a financial loss has been identified, the Council will seek to recover this loss either through civil or criminal processes.
- 10.3 The Council will seek prosecution in all cases involving theft from vulnerable clients or where there is evidence of bribery or corruption of public officials.
- 10.4 The Council's Sanctions Policy (Fraud and Bribery) is shown at Annex E, and the Policy on the Suitability of Offenders for Prosecution (Prosecution Policy) is shown at Annex F

11. Fraud Response Plan

- 11.1 Our staff are our first line of defence against most acts, or attempts, of fraud, corruption, financial loss or bribery. We expect and encourage them to be alert to the possibility of acts of fraud, corruption, potential financial loss or bribery and to raise any such concerns at the earliest opportunity.
- 11.2 Staff have a duty to protect the assets of the Council, including information, as well as property. When an employee suspects that there has been fraud or corruption, they have a duty to report the matter to the Internal Audit and Counter Fraud Team.

12. Reporting Lines - Reporting a Fraud

- 12.1 Suspicions of fraud will be treated seriously and will be reviewed and investigated in accordance with the Public Interest Disclosure Act, the Human Rights Act and the Council's fraud investigation procedures
- 12.2 There are a number of ways that individuals may raise a concern or report suspected fraud or bribery.
- The Council has a dedicated confidential fraud hotline (0161 770 4969) which is monitored by key personnel within the Internal Audit and Counter Fraud Service.
 - Concerns may also be raised by writing direct to the Counter Fraud Team, and by email at investigations@oldham.gov.uk
- 12.3 This Fraud Response Plan is intended to provide employees with an avenue within the Council to raise concerns. If it is felt that the Council has not acted appropriately, the matter may be reported to one of the following:
- The Council's External Auditor.
 - One of the Council's recognised Trade Unions, i.e. UNISON or GMB.
 - Public Concern at Work (see paragraph 13.3 below).
 - Citizens' Advice Bureau.

- Relevant professional bodies or regulatory organisations such as the Health and Safety Executive and utility regulators.
- The police.

If the matter is reported to a person or body outside of the Council, care should be taken not to disclose confidential information.

13. Whistleblowing

13.1 The Council's Whistleblowing Policy encourages employees (and those of contractor and partner organisations) to report concerns that are in the public interest. The Policy outlines the process for raising concerns and the types of conduct that should be reported. For example:

- Criminal offences.
- Failure to comply with legal obligations.
- Actions which endanger the health or safety of any individual.
- Actions which cause damage to the environment.
- Actions which are intended to conceal any of the above.

All referrals are treated in the strictest confidence and callers who wish to may remain anonymous.

13.2 The Council will not tolerate any harassment or victimisation of anyone raising a genuine concern. All such acts of harassment or victimisation will be referred for disciplinary investigation.

13.3 Employees unsure of whether or how to raise a concern or for those who may want confidential advice are advised to contact the independent charity, Protect (formerly Public Concern at Work). Protect provides free confidential advice on how to raise a concern about serious malpractice at work. Their contact details are:

- Telephone: 020 7404 6609
- Web-site/Email: <https://protect-advice.org.uk/contact-protect-advice-line/>

13.4 Where allegations are found to be malicious, they will also be considered for further investigation and subject to appropriate disciplinary action.

14. Action by Managers/Heads of Service

14.1 Managers must take action to deal with suspicions of theft, fraud or corruption. Managers should:

- Listen to the concerns raised by staff and treat every report received seriously and sensitively.
- Make sure that all concerns are given a fair hearing.
- Reassure staff that they will not suffer because they have raised suspicions. The Council will not tolerate any harassment or victimisation (including informal pressures) of anyone raising a genuine concern.
- Get as much information as possible, including any notes and any evidence that may support the allegation.
- Report the matter as outlined in this document.
- NOT interfere with any evidence and make sure it is kept in a safe place.
- NOT try to carry out an investigation. This may hinder any subsequent investigation action that may be taken.

15. Fraud Investigation

- 15.1 The Council's Audit and Counter Fraud Service is responsible for receiving all referrals of suspected theft, fraud and corruption. Responsibility for conducting the investigation will depend on the nature of the alleged offence(s).
- 15.2 The relevant investigating team will liaise with other relevant services, to agree an appropriate approach to ensure that action is taken to research allegations of suspected fraud in accordance with this policy. Account will be taken of the particular circumstances of each case to ensure appropriate services are involved in the process. Liaison will take place with Human Resources and other functions / individuals as necessary such as Legal Services, relevant service managers and other internal and/or external services
- 15.3 Where theft, fraud or corruption has occurred, management will be advised about any recommended improvements to systems and procedures as appropriate.

16. Disciplinary procedure

- 16.1 Cases of theft, fraud, bribery or corruption by employees will be referred for disciplinary investigation in accordance with the procedures set out in the Council's Disciplinary Policy and will be treated as gross misconduct.
- 16.2 Where sufficient evidence exists, this will be reported to the police in accordance with the Sanctions and Suitability of Offenders for Prosecution Policy.
- 16.3 Where there is evidence that an allegation of misconduct was made maliciously or for personal gain, disciplinary action will be taken against the person making the malicious allegation.

List of Annexes

Annex A - Summary of the Fraud Act 2006

Annex B - Extract from the Bribery Act 2010

Annex C - The Principles of Public Life (The Nolan Principles)

Annex D - Fraud Indicators

Annex E - Sanctions Policy (Fraud & Bribery)

Annex F – Suitability of Offenders for Prosecution.

Summary of the Fraud Act 2006

Key areas of the Fraud Act 2006

There are a number of other areas that are not included within this summary. This summary focuses on those issues that are more likely to affect counter fraud investigations in the public sector.

Section 1 - Fraud

A person is guilty of fraud if he/she is in breach of any of the Sections listed in subsection (2) (which provide for different ways of committing the offence).

The Sections are:

- Section 2 - Fraud by false representation
- Section 3 - Fraud by failing to disclose information
- Section 4 - Fraud by abuse of position
- Section 7 – Making or supplying articles for use in fraud.

Maximum penalty is imprisonment for a term up to 10 years (note: this was previously 7 years).

Section 2 - Fraud by false representation

A person is in breach of this Section if he/she:

- Dishonestly makes a false representation; and
- Intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

Explanatory notes

- Note a gain need not have taken place, intent suffices
- 'Gain' includes keeping what one has, as well as a gain by getting what one does not have
- 'Loss' means not getting what one might get, as well as losing something that one has
- Importantly the loss can be permanent or temporary (previously the onus was on intention to permanently deprive)
- 'Dishonest' is defined in case law (R v Gosh 1982) and is based upon the two-tier test of whether his behaviour was regarded as being dishonest by the ordinary standards of reasonable and honest people (Clapham Omnibus) and whether the defendant was aware that his conduct was dishonest.

A representation is false if:

- It is untrue or misleading; and
- The person making it knows that it is, or might be, untrue or misleading
- The term 'representation' is defined under s.2 (3) of the Act as

- Any representation as to fact or law, including a representation as to the state of mind of the person making it, or any other person.

Subsection (4) states the representation may be expressed or implied.

Section 3 - Fraud by failing to disclose information

A person is in breach of this Section if he/she:

- Dishonestly fails to disclose to another person information which he is under a legal duty to disclose; and
- Intends, by failing to disclose the information, to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

Explanatory notes

This section applies to all parties where a person is under a duty to disclose something and by not doing so could create some gain (e.g. not disclosing an illness for medical insurance) or where the failure to disclose causes a loss or puts another at a risk of a loss.

This may include verbal or written contracts. The Law Commission's Report of Fraud on the concept of 'legal duty' is as follows:

Section 4 - Fraud by abuse of position

A person is in breach of this Section if he/she:

- Occupies a position, in which he is expected to safeguard, or not act against, the financial interests of another person
- Dishonestly abuses that position; and
- Intends, by means of the abuse of that position to make a gain for himself or another, or to cause loss to another or expose another to a risk of loss.

Explanatory notes

S.4 (2) A person may be regarded having abused his position even though his conduct consisted of an omission rather than an act.

This offence focuses on those persons who are in positions of financial trust and have insight and possibly control of another's financial situation. There will be some form of relationship or agreement between both parties for the offence to operate: the relationship can be one of client, employee, family, trustee and beneficiary or simple trust. Although the offence focuses on the area of finance of the victim, it appears by the wording of the section that the actual gain to the offender may not be monetary, although it invariably will be.

The following examples are given:

- Where an employee fails to take up a contract to allow a rival company to obtain the contract at the expense of the employee's company
- Where someone is looking after elderly or vulnerable persons and has access to their bank account and abuses their position by removing money from the account.

Section 7 – Making or supplying articles* for use in frauds

Under section (1) a person is guilty of an offence if he makes, adapts, supplies or offers to supply any article:

- Knowing that it is designed or adapted for use in the course of or in connection with fraud: or
- Intending it to be used to commit, assist in the commission of, fraud.

An article includes any program or data held in electronic form and can also include anything that can be used to make, alter, remove, supply or store something by electronic means in connection with fraud.

Fraud under this section may be manipulating or amending the date on a Blue Badge or photocopying a badge and supplying to another.

Extract from the Bribery Act 2010

1 Offences of bribing another person

- (1) A person (“P”) is guilty of an offence if either of the following cases applies.
- (2) Case 1 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) P intends the advantage—
 - (i) to induce a person to perform improperly a relevant function or activity, or
 - (ii) to reward a person for the improper performance of such a function or activity.
- (3) Case 2 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.
- (4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.
- (5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

2 Offences relating to being bribed

- (1) A person (“R”) is guilty of an offence if any of the following cases applies.
- (2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).
- (3) Case 4 is where—
 - (a) R requests, agrees to receive or accepts a financial or other advantage, and
 - (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.
- (4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.
- (5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—
 - (a) by R, or

- (b) by another person at R's request or with R's assent or acquiescence.
- (6) In cases 3 to 6 it does not matter—
 - (a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,
 - (b) whether the advantage is (or is to be) for the benefit of R or another person.
- (7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.
- (8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

3 Function or activity to which bribe relates

- (1) For the purposes of this Act a function or activity is a relevant function or activity if—
 - (a) it falls within subsection (2), and
 - (b) meets one or more of conditions A to C.
- (2) The following functions and activities fall within this subsection—
 - (a) any function of a public nature,
 - (b) any activity connected with a business,
 - (c) any activity performed in the course of a person's employment,
 - (d) any activity performed by or on behalf of a body of persons (whether corporate or unincorporate).
- (3) Condition A is that a person performing the function or activity is expected to perform it in good faith.
- (4) Condition B is that a person performing the function or activity is expected to perform it impartially.
- (5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.
- (6) A function or activity is a relevant function or activity even if it—
 - (a) has no connection with the United Kingdom, and
 - (b) is performed in a country or territory outside the United Kingdom.
- (7) In this section “business” includes trade or profession.

4 Improper performance to which bribe relates

- (1) For the purposes of this Act a relevant function or activity—
 - (a) is performed improperly if it is performed in breach of a relevant expectation, and
 - (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

- (2) In subsection (1) “relevant expectation”—
- (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned, and
 - (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.
- (3) Anything that a person does (or omits to do) arising from or in connection with that person's past performance of a relevant function or activity is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity.

5 Expectation test

- (1) For the purposes of sections 3 and 4, the test of what is expected is a test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned.
- (2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of any part of the United Kingdom, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.
- (3) In subsection (2) “written law” means law contained in—
- (a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or
 - (b) any judicial decision which is so applicable and is evidenced in published written sources.

6 Bribery of foreign public officials

- (1) A person (“P”) who bribes a foreign public official (“F”) is guilty of an offence if P's intention is to influence F in F's capacity as a foreign public official.
- (2) P must also intend to obtain or retain—
- (a) business, or
 - (b) an advantage in the conduct of business.
- (3) P bribes F if, and only if—
- (a) directly or through a third party, P offers, promises or gives any financial or other advantage—
 - (i) to F, or
 - (ii) to another person at F's request or with F's assent or acquiescence,
 and
 - (b) F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the offer, promise or gift.

- (4) References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, which includes—
- (a) any omission to exercise those functions, and
 - (b) any use of F's position as such an official, even if not within F's authority.
- (5) "Foreign public official" means an individual who—
- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory),
 - (b) exercises a public function—
 - (i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision), or
 - (c) is an official or agent of a public international organisation.
- (6) "Public international organisation" means an organisation whose members are any of the following—
- (a) countries or territories,
 - (b) governments of countries or territories,
 - (c) other public international organisations,
 - (d) a mixture of any of the above.
- (7) For the purposes of subsection (3)(b), the written law applicable to F is—
- (a) where the performance of the functions of F which P intends to influence would be subject to the law of any part of the United Kingdom, the law of that part of the United Kingdom,
 - (b) where paragraph (a) does not apply and F is an official or agent of a public international organisation, the applicable written rules of that organisation,
 - (c) where paragraphs (a) and (b) do not apply, the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in—
 - (i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or
 - (ii) any judicial decision which is so applicable and is evidenced in published written sources.
- (8) For the purposes of this section, a trade or profession is a business.

7 Failure of commercial organisations to prevent bribery

- (1) A relevant commercial organisation ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending—

- (a) to obtain or retain business for C, or
 - (b) to obtain or retain an advantage in the conduct of business for C.
- (2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.
- (3) For the purposes of this section, A bribes another person if, and only if, A—
- (a) is, or would be, guilty of an offence under section 1 or 6 (whether or not A has been prosecuted for such an offence), or
 - (b) would be guilty of such an offence if section 12(2)(c) and (4) were omitted.
- (4) See section 8 for the meaning of a person associated with C and see section 9 for a duty on the Secretary of State to publish guidance.
- (5) In this section—
- “partnership” means—
 - (a) a partnership within the Partnership Act 1890, or
 - (b) a limited partnership registered under the Limited Partnerships Act 1907,
 or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,
 - “relevant commercial organisation” means—
 - (a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
 - (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,
 - (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or
 - (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,
 and, for the purposes of this section, a trade or profession is a business.

8 Meaning of associated person

- (1) For the purposes of section 7, a person (“A”) is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.
- (2) The capacity in which A performs services for or on behalf of C does not matter.
- (3) Accordingly A may (for example) be C's employee, agent or subsidiary.
- (4) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.
- (5) But if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

9 Guidance about commercial organisations preventing bribery

- (1) The Secretary of State must publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 7(1).
- (2) The Secretary of State may, from time to time, publish revisions to guidance under this section or revised guidance.
- (3) The Secretary of State must consult the Scottish Ministers [and the Department of Justice in Northern Ireland] before publishing anything under this section.
- (4) Publication under this section is to be in such manner as the Secretary of State considers appropriate.
- (5) Expressions used in this section have the same meaning as in section 7.

The Principles of Public Life (The Nolan Principles)

The Council expects all elected Members and employees, to act with integrity, and to carry out their duties in accordance with appropriate legal requirements, internal codes, rules and procedures and to act at all times with honesty and probity in the discharge of their functions. All elected Members and employees of Oldham Council are expected to comply with their relevant Code of Conduct. Underpinning the Codes of Conduct are the seven Principles of Public Life:

1. **Selflessness** — Holders of public office should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
2. **Integrity** — Holders of public office should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
3. **Objectivity** — Holders of public office should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
4. **Accountability** — Holders of public office should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.
5. **Openness** — Holders of public office should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
6. **Honesty** - Holders of public office should be truthful.
7. **Leadership** — Holders of public office should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Fraud Indicators

A number of frauds can come to light because of suspicions aroused by, for instance, the behaviour of certain individuals. It is impossible to give a definitive list of fraud indicators or warning signs. The following are types of risk factors that may, either alone or cumulatively with other factors, suggest the possibility of fraud and may therefore warrant further investigation or enquiry.

- **Unusual employee behaviour:** Refusal to comply with normal rules and practices, fails to take leave, refusing promotion, managers by-passing subordinates, subordinates by-passing managers, living beyond means, regularly working long-hours, job dissatisfaction/unhappy employee, secretiveness or undue defensiveness.
- **Financial irregularities:** Key documents missing (e.g. invoices, contracts); absence of controls and audit trails; missing expenditure vouchers and official records; general ledger out of balance; bank and ledger reconciliations are not maintained or cannot be balanced; excessive movements of cash or transactions between accounts; numerous adjustments or exceptions; constant overdue pay or expense advances; duplicate payments; ghost employees on the payroll; large payments to individuals; excessive variations to budgets or contracts.
- **Bad procurement practice:** Too close a relationship with suppliers/contractors; suppliers/contractors who insist on dealing with only one particular member of staff; unjustified disqualification of any bidder; lowest tenders or quotes passed over with minimal explanation recorded; defining needs in ways that can be met only by specific contractors; single vendors; vague specifications; splitting up requirements to get under small purchase requirements or to avoid prescribed levels of review or approval.
- **Disorganisation:** Understaffing in key control areas; consistent failures to correct major weaknesses in internal control; inadequate or no segregation of duties.
- **Inadequate supervision:** Policies not being followed; lack of senior management oversight; inadequate monitoring to ensure that controls work as intended (periodic testing and evaluation); low staff morale, weak or inconsistent management.
- **Lax corporate culture:** Management frequently override internal control; climate of fear or a corporate culture; employees under stress without excessive workloads; new employees resigning quickly; crisis management coupled with a pressured business environment; high employee turnover rates in key controlling functions.
- **Poor work practices:** Lack of common-sense controls; work is left until the employee returns from leave; post office boxes as shipping addresses; documentation that is photocopies or lacking essential information; lack of rotation of duties; unauthorised changes to systems or work practices.

Sanctions Policy (Fraud & Bribery)**Introduction:**

Oldham Council (Oldham) is committed to delivering public services in an efficient and effective way and takes its responsibility for protecting public funds seriously. Oldham has a duty to reduce fraud and bribery to a minimum, the strategy for doing so is detailed within the Counter Fraud, Anti-Bribery Strategy and Counter Fraud Response Plan.

The use of sanctions is governed by this policy and principles.

Objectives:

The objectives of Oldham are to ensure that:

- Sanctions are applied fairly and consistently
- Sanctions are applied in an effective and cost-effective way
- The sanction decision making process is robust, transparent and fair.

The sanction decision will have regard to Oldham's Counter Fraud, Anti-Bribery Strategy and Counter Fraud Response Plan and the overall impact of any decision on the individual and the wider community.

Oldham has a range of sanctions that will be considered:

- No further action
- Disciplinary action and/or referral to professional bodies
- Civil proceedings
- Criminal proceedings
- Parallel sanctions (i.e. combination of the above options 2- 4).

No further action

Oldham may consider closing a case without taking any further action. This may be due to the following factors:

- Evidence is not robust or reliable
- The offence is minor
- The cost to pursue the case is not proportionate to the offence committed.

Disciplinary action

In the event that an allegation is made against an Oldham employee, the Internal Audit and Counter Fraud Team will consult with Human Resources, in accordance with the HR Disciplinary Policy and the relevant Head of Service. Any disciplinary action will be taken in conjunction with Human Resources, and the decision as to whether to refer the issue to any other enforcement agencies, for example, Police, HM Revenue & Customs will be a joint decision between the Director of Finance, the relevant Head of Service and Human Resources.

Sanctions may include warnings or dismissal.

Civil Proceedings

Where it is considered that a criminal prosecution will not be pursued, as evidence is not sufficient to prove a case beyond reasonable doubt, Oldham may consider civil proceedings.

For civil proceedings the standard of proof is on the balance of probabilities.

Where it is evident that Oldham has been defrauded by one of its employees (or service users/customers) – the proceeds of fraud may be preserved through civil proceedings without notice to the subject, by the following measures:

- Freezing/tracing injunctions – an interim measure which restrains a person from removing or dealing with assets located within the jurisdiction
- Search order – an interim order for the preservation of evidence
- Recovery of money.

Regardless of whether or not any sanction action is taken, Oldham Council, will always seek to recover any overpayments or misused monies.

The Accounts Receivable Team will be consulted, and their usual procedures applied, including civil action when necessary.

Criminal proceedings

Where Oldham considers that there is sufficient evidence to indicate that a criminal act has taken place, the Internal Audit and Counter Fraud Team would refer the matter in the first instance to either the local Police or via the Action Fraud helpline.

The decision taken by the Police or Crown Prosecution Service will be the final decision as to whether or not to pursue the case. Before a decision is taken whether or not to prosecute, the following factors will be considered:

Evidential criteria – the evidence must be:

- Clear, reliable and admissible in court
- Strong enough for a realistic chance of prosecution, i.e. to prove a case ‘beyond reasonable doubt.’

The Public Interest Test will also need to be considered, i.e. the prosecutor will decide whether there are public interest factors tending against prosecution. In making this decision, the following factors will be considered:

- Seriousness &/or monetary value of the offence
- Cost and proportionality of the prosecution
- Age & medical conditions
- Other social factors
- Vulnerability of subject.

However, Oldham is also empowered, under Section 222 of the Local Government Act, where they consider it ‘expedient for the promotion or protection of the inhabitants of their area’ to:

- Prosecute or defend or appear in legal proceedings and, in the case of civil proceedings, institute them in their own name, and;

- In their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of and Minister or public body under any enactment.'

Oldham will consider undertaking prosecution through this route if appropriate, usually in exceptional circumstances, as referral to the Police/Action Fraud is the preferred route.

Parallel Sanctions

As a matter of principle, it would be wrong to assume that any sanction(s) should be held in abeyance to wait for another to proceed to conclusion. The option of pursuing parallel sanctions may be considered.

It is preferable for the appropriate sanctions to proceed simultaneously, but it is not necessary for anyone to await the result of another before concluding. However due consideration must be given to all proceedings to ensure that one does not impact improperly upon another.

In such instances Oldham will carry out an investigation with a view to pursuing criminal prosecution whilst, simultaneously, Human Resources will coordinate an internal disciplinary investigation. The advantage of this approach is that all appropriate action is taken by Oldham at the earliest opportunity to avoid any additional costs that may be incurred e.g. continuing salary whilst subject is on suspension and/or cost of employing replacement staff in the interim.

The decision to run parallel sanctions will be determined on a case by case basis with emphasis, for the majority of cases, on a successful criminal sanction being of the highest priority. In any event advice should always be sought from the Internal Audit and Counter Fraud Team and Human Resources before progressing any course of action.

Suitability of Offenders for Prosecution

When considering whether it is appropriate to instigate proceedings, consideration will be given as to whether there is sufficient admissible evidence to justify bringing a prosecution and if the prosecution is in the public interest.

The following paragraphs outline factors that will be considered, to ensure consistent and equitable treatment of those accused of fraud.

Evidential Test

In making a decision to prosecute, the Local Authority must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction'. A realistic prospect of conviction is an objective test meaning that a jury, Magistrate or Judge hearing a case which, is properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged offence. Evidence must be able to be used in a court of law. It must have been gathered appropriately, in accordance with the law and be from a reliable source.

If a case does not pass the 'evidential test' it must not go ahead no matter how important or serious the offence seems. If the case does pass the evidential stage, then it should move on to the second stage to decide if a prosecution is appropriate in the public interest.

Public Interest Test

Oldham Council will always consider public interest judiciously and will balance the factors for and against prosecution objectively. In making the decision whether it is in the public interest to prosecute, the following factors will be considered.

Financial Limits

Careful consideration will be given to commencing a prosecution where the fraudulent activity has not resulted in 'significant financial gain' to the offender, for example the amount of the reduction or discounts overpayment is less than the cost of proceedings.

Where there is no significant financial gain a prosecution could still be considered if it is felt that the fraud was a deliberate attempt to gain (if, for example, the fraud has been discovered after a relatively short space of time and a significant financial gain has not yet occurred), or in the case of a persistent offender or any other case where prosecution would be warranted.

Physical / Mental Factors

Consideration will be given to the defendant's mental and physical condition (including age) when deciding whether to prosecute. The Counter Fraud Officer will consider whether there are significant personal or mental problems that may have contributed to the reasons for committing the offence. In addition, due consideration will be given where there is any evidence to suggest that the claimant or partner or a third party (for example a child) would be severely affected by the action.

Voluntary Disclosure

It may not be appropriate to prosecute those, whose disclosure of their own free will, has led to the identification of a fraud of which the Council was unaware. Admissions made after enquiries or an investigation had commenced do not constitute voluntary disclosure.

Previous Incidence of Fraud

Any evidence of previous benefits-related fraudulent activity would form part of the overall "prosecution assessment", regardless of whether any previous offences resulted in prosecution.

Social Factors

If it is considered that the defendant's failure to declare the correct circumstances has been caused by significant extenuating social or financial factors these would be fully evaluated. (The fact that an individual was in debt or has limited assets would not in itself meet this requirement.)

Adequacy of Evidence

Substantive evidence is essential to secure any conviction. Proceedings would not be sought if there is any doubt that the required evidence is not available. It must be clear that the fraudulent act was actually committed, that it was committed in the full knowledge of benefit regulations and that it was committed with the clear and deliberate intention to obtain property by deception. Satisfying the requirements of the Code for Crown Prosecutors Evidential Test will ensure that evidence is of the standard required by the courts.

Failure in Investigation

It should be evident on the case file that all appropriate procedures have been adhered to with regard to satisfying the requirements of the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigations Act 1996 and other relevant legislation. Particular consideration would also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.

Failure in Administration

Full account will be taken of poor administration or fault on the part of the Authority that has contributed to the processing of the fraudulent claim and subsequent award of discount or reduction in liability.

Authorisation of Prosecution

Cases being referred for prosecution will be authorised by the Head of Audit and Counter Fraud. Cases involving Council Members or employees will also be referred to the Group Solicitor or appropriate Head of Service so that any standards issues can be addressed.

Cases may also be referred to the police where it is considered that the nature of the offence, or the procurement of evidence require them to undertake or assist in the investigation.

