

Counter fraud strategy and framework

1. Introduction

1.1 The public is entitled to expect Brighton & Hove City Council (the council) to conduct its affairs with integrity, honesty and openness and demand the highest standards of conduct from those working for and with it. They also expect that the council will safeguard public funds and ensure that they are available and used for their intended purpose of providing services for the citizens of Brighton and Hove.

1.2 The council is committed to meeting these expectations by working with its members, officers, contractors, partners and the public to create a zero tolerance to fraud and to maintain high ethical standards in its administration of public funds.

1.3 This strategy and framework sets out the council's

- approach to countering fraud
- policies and procedures that set out the responsibilities of members, officers, contractors, partners and the public and how to report concerns.

2. Definition of fraud and the impact on the council

2.1 The Fraud Act 2006 defines fraud as obtaining money, property or services dishonestly by making a false or misleading representation, failing to disclose information or abusing a position of trust. For the purpose of this strategy it includes:

- internal fraud by members or employees, for example by abusing their position in the council for personal gain
- fraud committed on the council by contractors or members of the public. This includes offering bribes or falsifying information to receive payments for work not done or making untrue statements in order to obtain access to council services such as a council dwelling or a parking permit.

2.2 Fraud deprives the council of funds, diverts services and resources away from those that need it most and undermines confidence in the council.

3. The council's approach to fraud

3.1 The council's approach to fraud is based on three key strands.

<p>1 Acknowledge</p> <p>That fraud happens and understanding fraud risks</p>	<ul style="list-style-type: none"> • The council acknowledges and understands fraud risks and takes appropriate actions to mitigate these through <ul style="list-style-type: none"> ○ continually reviewing and updating fraud risk assessment ○ maintaining a robust counter fraud framework ○ an annual counter fraud programme ○ raising awareness of fraud and how to report concerns
<p>2 Prevent</p> <p>Committed to preventing and detecting fraud happening</p>	<ul style="list-style-type: none"> • Maintaining and continually improving arrangements to prevent fraud by: <ul style="list-style-type: none"> ○ developing a strong internal control environment including an effective counter fraud culture ○ providing a safe environment to report suspected cases of fraud and corruption ○ ensuring key policies and procedures are up to date, effective and complied with ○ using information and technology and sharing intelligence to prevent and detect fraud ○ learning from instances of fraud to building stronger fraud prevention measures and improve system processes.
<p>3 Pursue</p> <p>Being committed to punishing fraud and recovering losses</p>	<ul style="list-style-type: none"> • Taking immediate action when fraud is detected including disciplinary, civil, regulatory and criminal action by: <ul style="list-style-type: none"> ○ maintaining capability to investigate and sanction fraud ○ collaborating with other organisations such as the Police, Government Departments and other local authorities ○ effective use of fraud recovery processes to recover as far as possible, any loss suffered as a result of fraud.

4. Corporate Fraud Framework

4.1 The council's counter fraud framework comprises the internal control system, internal audit and a wide range of interrelated policies and procedures including codes of conduct, financial regulations, whistle blowing arrangements and staff disciplinary procedures. It also includes policies and procedures that are specifically targeted at countering fraud. These are attached as appendices to this strategy.

Appendix	Document	What it covers
A	Anti-bribery policy	The council's policy on zero-tolerance of bribery and the arrangements in place for complying with the Bribery Act 2010.
B	Anti-money laundering policy and procedure	Responsibilities of members and officers in respect of money laundering. Includes the legal requirement to report suspicions promptly and avoiding "tipping off" those suspected of money laundering.
C	Fraud response plan	Procedures for ensuring that the council deals promptly and effectively with suspected fraud including: <ul style="list-style-type: none"> responsibilities of members and officers if they suspect or become aware of a fraud guidance for members and officers on how to report a fraud how the council will investigate and deal with allegations of fraud
D	Sanctions Policy	Policy and guidance on determining sanctions when a fraud has been committed.

5. Reporting suspected fraud (excluding housing benefit fraud)

5.1 The council has put in place a safe environment to report suspected cases of fraud. This provides a range of channels for reporting fraud. As noted above detailed guidance for members and officers is set out in the fraud response plan (appendix C). In addition to this

- **Members of the public**, including those working for contractors, can report fraud via the council's website www.brighton-hove.gov.uk

- **Any individual** (including council members, members of the public and officers) can contact the corporate fraud team direct:
 - by email at anti-fraud@brighton-hove.gov.uk
 - by telephone on 01273 291847
 - or by post at Corporate Fraud Team
First Floor,
Brighton Town Hall
Bartholomew Square
Brighton
BN1 1JA

- **Members of the council, officers, contractors and agents** of the council who may be concerned about recriminations for reporting fraud may wish to refer to the council's whistle blowing policy on www.brighton-hove.gov.uk

6. Reporting all benefit fraud (including Housing Benefit)

6.1 The Department for Work and Pensions is responsible for investigating all benefit fraud including housing benefit fraud. They can be contacted at www.gov.uk/report-benefit-fraud.

7. Review of the strategy and framework

7.1 This strategy will be reviewed and updated on at least an annual basis.

Appendix A

Anti-bribery policy

1. Introduction

1.1. The council has a zero tolerance approach to all forms of fraud and corruption, including bribery.

1.2. This policy forms part of the council's counter fraud strategy and framework and sets out:

- definitions and legal background to the Bribery Act 2010 (the Act)
- the council's approach to bribery, including the arrangements the council has put in place for "adequate procedures" under the Act

1.3. It should be read alongside the council's:

- Code of Conduct for Employees (gifts and hospitality)
- fraud response plan (appendix C of the counter fraud strategy and framework)

2. Definitions and Legal Background

2.1. An act of bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage. The Bribery Act 2010 makes it *a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad.*

2.2. All 'relevant commercial organisations' are required to comply with the Act, which defines a 'relevant commercial organisation' as including any body incorporated in the UK that engages in commercial activities. It further states '...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.'

2.3. The Act directs that all organisations should demonstrate that they have adequate procedures in place to:

- prevent bribery; and,
- ensure that all employees, or anyone else doing business with the organisation, are aware of the procedures and adhere to its principles.

2.4. There are four key offences under the Act:

- to offer, promise or give a bribe (**Section 1**)
- to request, agree to receive, or accept a bribe (**Section 2**)
- bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business (**Section 6**)
- a corporate offence 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 (**Section 7**).

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

- on conviction in a magistrates court, to imprisonment for a maximum term of 12 months (six months in Northern Ireland), or to a fine not exceeding £5,000, or to both
- on conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both Organisations are liable for these fines and if guilty of an offence under Section 7 are liable to an unlimited fine as well as the possibility of civil prosecution.

2.6. Although the Act does not distinguish between the public and private spheres, it does apply to organisations providing public functions, such as local authorities. Public bodies, such as the council, must also ensure that the commercial organisations that they do business with also comply with Section 7 of the Act.

2.7. An organisation will have a defence to this corporate offence of failure to prevent bribery if it can show that it had in place “adequate procedures” designed to prevent bribery by or of persons associated with the organisation.

2.8. Whether an organisation’s 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.

2.9. Under the Public Contracts Regulations 2006 (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. There are no plans to amend the 2006 Regulations for this to include the crime of failure to prevent bribery. 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.

3. The council's approach to bribery

3.1. The council requires that all members and personnel, including permanent and fixed term employees, contractors, agency workers and other agents of the council:

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

3.2. Members, employees, contractors or agents engaged in any activity for or on behalf of the council must not:

- 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
- give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to facilitate¹ or expedite a routine procedure
- accept payment from a third party that they know or suspect is offered with the expectation that it will obtain a business advantage for the third party
- accept a gift or hospitality from a third party if they know or suspect that it is offered or provided with an expectation that a business advantage will be provided by the council in return

¹ Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions. Actions can include, but are not limited to:

- awarding contracts,
- making appointments to temporary or permanent positions,
- awarding of benefits and concessions
- determining eligibility to receive services
- approval of applications under regulations.

- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns about a bribery
- engage in activity in breach of this strategy.

3.3. In addition to criminal or civil action under the Act, failure to comply with the requirements of the Act or the requirements of this strategy will result in action being considered under the corporate sanctions policy. This includes:

- for employees, disciplinary action under the council's Disciplinary Policy, which may result in dismissal for gross misconduct
- for Members, action under the Code of Conduct for Members
- for contractors and agents, action as set out in their terms of engagement or contract terms and conditions.

4. Reporting suspected bribery

4.1 The council has put in place a safe environment to report suspected cases of fraud. This includes bribery and provides a range of reporting channels. Detailed guidance for members and officers is set out in the fraud response plan (appendix C). In addition to this

- **Members of the public**, including those working for contractors, can report fraud via the council's website www.brighton-hove.gov.uk
- **Any individual** (including council members, members of the public and officers) can contact the corporate fraud team direct:
 - by email at anti-fraud@brighton-hove.gov.uk
 - by telephone on 01273 291847
 - or by post at Corporate Fraud Team
First Floor
Brighton Town Hall
Bartholomews Square
Brighton
BN1 1JA
- **Members of the council, officers, contractors and agents** of the council who may be concerned about recriminations for reporting fraud may wish to refer to the council's whistle blowing policy on www.brighton-hove.gov.uk

Appendix B

Anti-money laundering policy and procedure

1. Introduction

1.1 The Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007 (as amended by the Money Laundering (Amendment) Regulations 2012) place obligations on the council, including its members and employees, with respect to suspected money laundering.

1.2 Most money laundering in the UK takes place outside the public sector and not all of the council's activities fall within the scope of the Money Laundering Regulations. However, the public is entitled to expect the council to have the highest standards of conduct and vigilance by employees of the council can help identify those who are or may be perpetrating crimes relating to the financing of terrorism and money laundering. As such the council has established this policy to ensure compliance.

1.3 This policy and procedure forms part of the council's counter fraud strategy and framework and sets out:

- definitions and legal background in respect of money laundering
- the council's approach to money laundering including the responsibility on members and officers to report suspicions promptly and avoid "tipping off"
- detailed guidance and procedures for members and officers

1.4 It should be read alongside the council's fraud response plan (appendix C of the counter fraud strategy and framework).

2. Definitions and legal background

2.1. Money laundering is any attempt to use the proceeds of crime for legitimate purposes. The primary money laundering offences are:

- concealing, disguising, converting, transferring, or removing from the UK, any criminal property (section 327 of the Proceeds of Crime Act 2012)
- becoming concerned in an arrangement which you know or suspect, facilitates the acquisition, retention, use, or control of criminal property (section 328)
- acquiring, using, or possessing criminal property (section 329)

2.2. There are also two secondary offences:

- failure to disclose any of the three primary offences
- tipping off (where someone informs a person or people who are, or who are suspected of being involved in money laundering, in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation).

2.3. Any member of the council or officer could potentially 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. The key requirement is to report promptly any suspected money laundering activity to the Money Laundering Reporting Officer.

3. The council's approach to money laundering

3.1. The council will do all it can to:

- prevent the council and its staff being exposed to money laundering
- identify the potential areas where money laundering may occur
- comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases of money laundering.

3.2. Every member of the council and officer has a responsibility to be alert to the possibility of money laundering and to:

- report promptly, all suspicions of money laundering activity to the Money Laundering Reporting Officer (MLRO) or Deputy MLRO
- follow any subsequent directions of the MLRO or Deputy.

3.3. Failure to comply with the requirements of this strategy will result in action being considered under the corporate sanctions policy (see appendix D) including:

- for employees, disciplinary action under the council's Disciplinary Policy, which may result in dismissal for gross misconduct
- for Members, action under the Code of Conduct for Members

4. The Money Laundering Reporting Officer (MLRO)

- 4.1. The officer nominated to receive disclosures about money laundering activity within the council is the Head of Audit:

Graham Liddell
Head of Audit
Brighton & Hove City Council,
First Floor
Brighton Town Hall
Bartholomew's Square
Brighton
BN1 1JA

Telephone: 01273 291323

Email: Graham.Liddell@brighton-hove.gov.uk

- 4.2. In the absence of the MLRO, the Corporate Fraud Manager (the CFM) is authorised to deputise:

Tony Barnard
Corporate Fraud Manager
First Floor
Brighton Town Hall
Bartholomew's Square
Brighton
BN1 1JA

Telephone: 01273 291330

Email: Tony.Barnard@brighton-hove.gcsx.gov.uk

5. Procedures

5.1. Cash payments

- 5.1.1. No payment to the council will be accepted in cash if it exceeds £10,000²

5.2. Responsibilities of members and officers who suspect money laundering activity

² Cash is defined as including notes, coins or travellers' cheques in any currency

5.2.1. Any member or officer who suspects money laundering must report their suspicion promptly (ie within hours) to the MLRO, or to the deputy MLRO if appropriate. If you prefer, you can discuss your suspicions with the MLRO or deputy first.

5.2.2. You must follow any subsequent directions of the MLRO or deputy, and must not:

- make any further enquiries into the matter
- take any further steps in any related transaction without authorisation from the MLRO
- disclose or otherwise indicate their suspicions to the person suspected of the money laundering
- discuss the matter with others or make file notes that a report has been made to the MLRO in case this results in the suspect becoming aware of the situation.

5.2.3. The disclosure should ideally be made within “hours” of the information coming to your attention wherever practicable, not weeks or months later.

5.2.4. Your disclosure should be made to the MLRO using the proforma attached at appendix 1 to this policy

5.3. Responsibilities of the MLRO

5.3.1. The MLRO or deputy must promptly evaluate any disclosure to determine whether it should be reported to the National Crime Agency (NCA).

5.3.2. The MLRO or deputy must, if they so determine, promptly report the matter to NCA on their standard report from and in the prescribed manner. Up to date forms can be downloaded from the NCA website at www.nationalcrimeagency.gov.uk.

5.3.3. The MLRO or deputy will commit a criminal offence if they know or suspect, or have reasonable grounds to do so, through a disclosure being made to them, that another person is engaged in money laundering and they do not disclose this as soon as practicable to the NCA.

5.4. Carrying out a 'client identification process' for 'relevant business'

5.4.1. The council must carry out its **client identification process** where it is carrying out **relevant business**³ and as part of this:

- forms an ongoing business relationship with a client
- **or** undertakes a one-off transaction involving payment by or to the client of €15,000 (or the current equivalent in Sterling) or more.

5.4.2. Where the relevant business is being provided to another public sector body then you must ensure that you have signed, written instructions on the body's headed paper before any business is undertaken.

5.4.3. Where the relevant business is not for a public sector body, then you should seek additional evidence of identity such as:

- checking with the organisation's website to confirm their business address
- conducting an on-line search via Companies House
- seeking evidence from the key contact of their personal identity and position within the organisation.

5.4.4. Where relevant business is carried out then the client identification evidence and details of the relevant transaction(s) for that client must be retained for at least five years.

³ **Relevant business** is defined as the provision 'by way of business' of: advice about tax affairs; accounting services; audit services; legal services; services involving the formation, operation or arrangement of a company or trust or; dealing in goods wherever a transaction involves a cash payment of €15,000 or more.

5.5. Guidance and training

5.5.1. The council will:

- make all staff aware of the obligations placed on the council and on themselves as individuals, by the anti-money laundering legislation
- give targeted training to those most likely to encounter money laundering activity.

5.5.2. Further information can be obtained from the MLRO and the following sources:

- www.nationalcrimeagency.gov.uk - website of the National Crime Agency
- “Proceeds of Crime (Anti-Money Laundering) – Practical Guidance for Public Service Organisations” – CIPFA
- “Anti-Money Laundering (Proceeds of Crime and Terrorism) - Second Interim Guidance for Accountants” – CCAB (www.ccab.org.uk)
- Money Laundering Guidance at www.lawsociety.org.uk Anti-Money Laundering Policy

Appendix 1 to Money Laundering Policy and Procedure

Confidential report to Money Laundering Reporting Officer in respect of money laundering activity

To Money Laundering Reporting Officer:

From:
[insert name of employee and position]

Directorate: Ext/Tel No:.....
[insert post title and Service Unit]

DETAILS OF SUSPECTED OFFENCE:

Name(s) and address(es) of person(s) involved:
[if a company/public body please include details of nature of business]

Nature, value and timing of activity involved:
[Please include full details e.g. what, when, where, how. Please include whereabouts of laundered property, so far as you are aware. Continue on a separate sheet if necessary]

You must follow any subsequent directions of the MLRO or deputy, and must not:

- make any further enquiries into the matter
- take any further steps in any related transaction without authorisation from the MLRO
- disclose or otherwise indicate their suspicions to the person suspected of the money laundering
- discuss the matter with others or make file notes that a report has been made to the MLRO in case this results in the suspect becoming aware of the situation.

THE FOLLOWING PART OF THIS FORM IS FOR COMPLETION BY THE MONEY LAUNDERING REPORTING OFFICER

Date report received:

Date receipt of report acknowledged:

CONSIDERATION OF DISCLOSURE:

What action is to be taken?

OUTCOME OF CONSIDERATION OF DISCLOSURE:

Are there reasonable grounds for suspecting money-laundering activity?

Do you know the identity of the alleged money launderer or the whereabouts of the property concerned?

If there are reasonable grounds for suspicion, will a report be made to the NCA? *[Please tick the relevant box]*

Yes

No

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

Details of liaison with the NCA regarding the report:

Notice Period: to

Moratorium Period: to

Is consent required from the NCA to any ongoing or imminent transactions, which would otherwise be, prohibited acts?

Yes

No

If yes, please confirm full details in the box below:

Date consent received from NCA:

Date consent given by you to employee:

If there are reasonable grounds to suspect money laundering, but you do not intend to report the matter to the NCA, please set out below the reason(s) for non-disclosure:

[Please set out any reasonable excuse for non-disclosure]

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

.....

Other relevant information

Signed:..... **Dated:**.....

THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS

Appendix C

Fraud response plan

1. Introduction

- 1.1 This document provides guidance to members and officers who become aware of, or suspect, that a fraud has been committed, on the circumstances in which a fraud investigation is carried out and what to expect from an investigation.

2. Responsibilities of members and officers

- 2.1. If you become aware of or suspect a fraud there are three critical rules to follow:

- **Report your concerns** to the appropriate person as soon as possible (see section 4).
- **Document** what you have witnessed and any information you have or are aware of at the earliest opportunity. You should provide as much detail as possible including dates, times and sequence of events. Follow the **guidance on preserving evidence** (see section 8)
- **Don't discuss your concerns** with other colleagues and **never confront** the person you suspect.

- 2.2. You must only report genuine concerns and believe the concerns to be true. Any reports which are subsequently determined to be malicious could be dealt with as a disciplinary matter.

3. Reporting to the appropriate person

- 3.1. The appropriate person to report your concerns to depends on the nature of the fraud and who is involved. Detailed guidance is set out in the tables below.
- 3.2. In some cases you may not wish to report to the "appropriate person", for example if you suspect that person of committing the fraud. For this reason the council also provides other channels to report fraud. These are set out in section 4.

Appropriate person for members

Type of fraud	Appropriate person to report concerns (see contact details below)	Notes
Money laundering	<ul style="list-style-type: none"> • Money Laundering Reporting Officer or <ul style="list-style-type: none"> • Deputy Money Laundering Officer 	Please refer to the anti-money laundering policy and procedure attached at appendix B)
Other fraud	<ul style="list-style-type: none"> • The Monitoring Officer or <ul style="list-style-type: none"> • The Corporate Fraud Manager 	

Appropriate person for officers

Type of fraud	Appropriate person to report concerns (see contact details below)	Notes
Money laundering	<ul style="list-style-type: none"> • Money Laundering Reporting Officer or <ul style="list-style-type: none"> • Deputy Money Laundering Officer 	Please refer to the anti-money laundering policy and procedure attached at appendix B
Receiving an offer of a bribe or inducement	<ul style="list-style-type: none"> • Your line manager and <ul style="list-style-type: none"> • The Monitoring Officer 	The referral to the monitoring officer can be by you directly or by your line manager.
Fraud by a member	<ul style="list-style-type: none"> • The Monitoring Officer or <ul style="list-style-type: none"> • The Head of Internal Audit 	
Other fraud in your area of service	<ul style="list-style-type: none"> • Your line manager and <ul style="list-style-type: none"> • The Corporate Fraud Team 	The referral to the corporate fraud team can be by you directly or by your line manager.
Other fraud outside your area of service	<ul style="list-style-type: none"> • The Corporate Fraud Team 	

4. Other ways to report fraud and corruption

- 4.1. You may not wish to report to your line manager or other individual particularly if you suspect that person of committing the fraud or corrupt act or having an involvement or knowledge.

4.2. The council is committed to ensuring that all of us have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member, employee, contractor and agent to know how they can raise concerns. If you wish to raise a concern the council provides several channels for you to be able to do this, as set out below:

- The line manager's manager
- Executive Director
- via the whistle blowing policy. Details of this policy can be found on [the Wave](#) and the council's external website
- contacting the Corporate Fraud Team on 01273 291847.
- Sending an email to anti-fraud@brighton-hove.gov.uk.

4.3. Referrals received via the whistle blowing policy and calls/emails to the Corporate Fraud Team will be treated in confidence. These provide you with an option to leave an anonymous referral but please consider whether this approach will provide the council with all the information necessary to take an investigation forward to a satisfactory conclusion, as the opportunity to ask you follow up questions or to seek clarification will have been lost.

5. Line manager responsibilities

5.1. Where a line manager receives an allegation of fraud from a member of their team, they should:

- ensure that the fraud is reported as soon as possible to the corporate fraud team
- liaise with the corporate fraud team to consider whether there is any other information that might be relevant to the specific case and whether there are any suspicions that similar frauds are or could be being committed.

5.2. Under no circumstances should a manager discuss a suspected employee fraud with other staff members or peer managers.

6. Responsibilities for investigating allegations of fraud

6.1. Any allegation of fraud against a member will be considered by the Monitoring Officer.

6.2. The DWP are responsible for investigating all benefit fraud (including Housing Benefit). If the DWP investigate an allegation of benefit fraud that relates to an employee of the council they will inform the council's Corporate Fraud Team who will consider whether any action of an internal nature under the council's Disciplinary Policy is required.

6.3. When a suspected fraud or corrupt act is reported to or identified by the Corporate Fraud Team an officer within the team will carry out a Fraud Risk

Assessment. Where the risk assessment shows that there is sufficient evidence of a potential fraud the Corporate Fraud Team will carry out a detailed investigation.

7. What to expect from an investigation by the Corporate Fraud Team

- 7.1. Any conversations you have with, or information that you provide to the Corporate Fraud Team will remain confidential. You should remember, however, that the Corporate Fraud Team has a responsibility to investigate all cases of fraud that are referred, where there is sufficient evidence, with a view to considering prosecution.
- 7.2. The council is restricted in how much information it can give about the outcome of any investigation by Data Protection legislation and the council's duty of confidentiality to employees and members. However, where it is possible to do so, the Corporate Fraud Team will update you about the outcome of any investigation.
- 7.3. The Corporate Fraud Team will offer advice and assistance on the most appropriate course of action. Subsequent action could involve the securing of evidence. This evidence could be documents, CCTV tapes or computer records, all of which can easily be destroyed or tampered with. The securing of computers and associated data and records is a specialised procedure and should only be attempted by specialists at the request of the Corporate Fraud Manager or Head of Internal Audit. Further guidance on preserving evidence is given in Section 8 below.
- 7.4. The Corporate Fraud Manager in consultation with the Head of Internal Audit will consider commissioning specialist services from both within and outside the Council to assist with an investigation.
- 7.5. In most instances the Corporate Fraud Team will carry out any further investigation in conjunction with the line manager or other appointed person. In most cases the Corporate Fraud Team will lead the investigation, however each case will be considered individually and the appropriate course of action agreed. One officer, normally an officer in the Corporate Fraud Team, will be responsible for co-ordinating interviews and ensuring any interviews are conducted fairly and in accordance with the Police and Criminal Evidence Act 1984 (PACE). Given the need to comply with PACE regulations all formal interviews will, where possible, be tape-recorded. Interviews will usually be conducted by two officers.

7.6. If the allegation is serious it may be desirable to remove an employee from the workplace, whilst the investigation is undertaken. If suspension is being considered the line manager and the member of the Corporate Fraud Team will discuss the case with HR and a decision as to whether to suspend or not should be taken promptly.

8. Preserving evidence

8.1. When the initial enquiry has established that further investigation is required, it is essential that all available evidence relating to the fraud be preserved. There is a fine balance between preserving evidence and not alerting the alleged perpetrator to your suspicions. In the first instance advice should be sought from the Corporate Fraud Team regarding the procedures to follow to ensure full compliance with RIPA and PACE with regards to obtaining and documenting evidence, to ensure that the evidence obtained remains admissible in a court of law. The most common forms of evidence and a brief note of how they should be preserved are given below:

- **Original documents.** Original documents should be obtained and retained. The documents should be handled as little as possible and should be put in a protective folder. Under no circumstances should they be marked in any way. All original documents should be given to the Corporate Fraud Team for review and preparation as evidence. A record of all documents should be maintained, detailing how, when and where they were obtained. All copies of original documents or screen images should be formally certified as a true copy with the date of copying.
- **Computer based data.** When evidence is held on a computer, the computer should be secured and ICT Security and the Corporate Fraud Manager should be consulted about the most appropriate way of retrieving the data in accordance with the rules of evidence. Under no circumstances should any computer thought to contain likely evidence be powered down or access/download be attempted by individuals not appropriately trained.
- **Video evidence.** There may be CCTV based evidence available. If you suspect that a camera system may have information of value, secure the hard copy media or arrange for a certified download of the data in such a way as it can be treated as evidence in accordance with the rules of evidence. The camera system engineer should be able to provide an appropriate download but you should initially seek advice from the Corporate Fraud Manager and/or ICT Security about how to proceed. Whenever a person is suspended from work they should be asked to remove all personal belongings from their desk/cupboard and be informed that the desk/cupboard may be examined. Under no circumstances should an employee once suspended be allowed to access

their files or computer records, any ASDL or phone-in links should be terminated immediately if not before the suspension is actioned.

9. External Audit

9.1. In some cases it may be necessary to immediately inform the Council's External Auditor of the fraud. This will be the responsibility of either the Head of Internal Audit or Corporate Fraud Manager.

10. Press and Publicity

10.1. The Internal Communications Team will deal with the press and publicity in all matters regarding fraud. Where appropriate the details of all successful prosecutions for fraud should be released to the media through the Internal Communications Team. Staff and Managers must not directly disclose to the press the details of any cases suspected or under investigation. Disclosure of details to the media without the express authority of the Internal Communications Team may be regarded a disciplinary matter. The aim is to publicise the council's intolerance of fraud or corruption both within the council and by users of its services, it also serves to publicise our successes against those who would perpetrate such fraud or corruption against the council

Appendix D Sanctions Policy

1. Introduction

- 1.1. Where an investigation results in evidence of fraud, the council will use the full range of sanctions available. This policy provides guidance to determine the appropriate action to take.
- 1.2. The policy is not prescriptive as a range of factors will need to be considered before deciding on the appropriate action. These include the circumstances of each case, the seriousness of the offence and the person involved in the matter.

2. Sanction/Prosecution Options

2.1. Where there is evidence of fraud the following options will be considered:

- disciplinary action
- referral to professional bodies
- civil action (to recover money, interest, costs or property)
- prosecution (for the purposes of fines, imprisonment, confiscation orders and compensation) by:
 - the DWP
 - the Crown Prosecution Service (via the Police)
 - the council
- administrative penalty (DWP – Benefit Fraud)
- taking no further action

Sanction	Guidance
Disciplinary action	<p>If there is adequate evidence that an officer has committed a fraud, the matter will be reported to HR for disciplinary action. Fraud committed by an officer represents gross misconduct and an officer who commits fraud would be expected to be dismissed.</p> <p>At the same time other appropriate action will be considered, including referral to professional bodies, prosecution and taking civil action.</p>
Referral to professional bodies	<p>If there is adequate evidence that a person or entity has breached professional duties or responsibilities, the council will refer the matter to the relevant professional body.</p>
Civil action	<p>Overpayments or monetary losses that result from fraud will be pursued rigorously and, where</p>

	necessary, legal action will be taken to effect recovery.
Prosecution and administrative penalties applied by DWP	<p>If there is evidence of fraud involving losses relating to Housing/Council Tax Benefits and/or DWP benefit, the DWP may either prosecute or apply administrative penalties.</p> <p>If it is established that a council employee has personally been involved in benefit fraud the matter will be reported to HR for disciplinary action.</p>
Referral to the Police and prosecution by the Crown Prosecution Service (CPS)	<p>There are some offences which can only be prosecuted by the CPS. These include certain offences that are contrary to the Representation of People Act, the Prevention of Corrupt Acts 1906 and 1916, or the Bribery Act 2010. Evidence of such offences will be referred to the Police.</p> <p>The council may also refer other frauds to the police (for example if a fraud is complex and involves large sums of money or organised crime is suspected).</p> <p>Any decision to refer a fraud to the Police will be taken by the Monitoring Officer and/or Chief Finance Officer as advised by the Head of Internal Audit and Corporate Fraud Manager as appropriate.</p>
Prosecution by the local authority	<p>The council may also prosecute fraud offences. This decision will be taken by the Monitoring Officer and/or Chief Finance Officer as advised by the Head of Internal Audit and Corporate Fraud Manager and will include consideration of:</p> <ul style="list-style-type: none"> • whether prosecution would be in the Public Interest Test. • the circumstances of the offence including the duration of the alleged offence. • Factors relating to the offender including their age and state of health. • Other relevant factors and mitigating circumstances. <p>Further guidelines on whether to prosecute are set out below</p>

3. Guidelines on whether to prosecute

- 3.1 Consideration when deciding on an appropriate course of action will be given to:
- The Public Interest Test
 - Circumstances of the offence including the duration of the alleged offence.
 - Factors relating to the offender including their age and state of health.
 - Other relevant factors and mitigating circumstances
- 3.2 Where the decision is made that a matter is not in the public interest to prosecute the following factors will be considered:
- The court is likely to impose a very small or nominal penalty
 - The loss or harm caused was minor and resulted in a single incident resulting from a misjudgement
 - If the offender is considered vulnerable
 - The value of the loss or possible gain to the individual
 - The offender has not previously offended
 - The act was calculated or premeditated
 - There was no other persons involved
 - The cost of bringing the prosecution (e.g. would it represent value for money for the public purse).
- 3.3 The following factors will be considered where prosecution is the most likely course of action:
- The deterrent value of a prosecution
 - The length of time the fraud has continued
 - Whether the offence was calculated and premeditated
 - Sufficient evidence leading to a reasonable prospect of conviction and there are no serious errors in the investigation
 - Officer from the council has been obstructed from carrying out their investigation by the offender
 - Evidence of collusion (with landlord, employer or family member etc)
 - Offender holds a position of trust
 - Previous history relating to fraud
 - The cost of bringing the prosecution e.g. is there sufficient budgetary provision to allow the prosecution to take place
- 3.4 If any of the following factors exist, it may be unlikely that prosecution will be pursued:
- Serious errors in investigation or assessment of loss
 - Unacceptable delay in investigation or the case is 'out of time' for prosecution under certain time limited legislation

- Poor publicity may be attracted, or low deterrent factors exist
- Vulnerable person may be put at risk
- Evidence is insufficient to gain conviction
- Voluntary disclosure of the offence by the offender before the fraud was uncovered, and true remorse is shown
- Evidence that the person has committed the offence under duress
- Prosecution would not particularly deter others from committing a similar offence and it is likely to damage the council's reputation

3.5 Some factors relating to the offender may exist that could influence Brighton & Hove City Council's decision on whether to prosecute or impose another type of sanction. Examples of these factors are as follows:

- Poor health, either mental or physical, of the offender likely to be considerably and permanently worsened by prosecution
- Young, elderly or vulnerable persons
- Families
- Whether the offender has reasonable understanding of the offence committed
- Person is sole carer for vulnerable dependents

4. Housing/Tenancy Fraud

4.1 The view of the council is that one property that has been obtained through fraudulent means is one less property that can be made available for use by genuine applicants that are in need of housing. In all cases of fraudulent housing or homeless applications, where a tenancy has been obtained, the council will seek repossession of the property and will recover any financial losses where it is cost effective to do so.

4.2 Fraud and illegal subletting committed by housing and homeless applicants will be considered for criminal prosecution under the most appropriate legislation e.g. Prevention of Social Housing Fraud Act.

4.3 The factors that will affect our decision to prosecute will be based on the evidential and the public interest test.

5. Welfare Fraud

5.1 This includes any local or national benefit/allowance administered on behalf of the council or central government, for example, council tax support, social fund, direct payment, some council tax discounts/exemptions that the council is empowered to investigate.

5.2 Under amendments to the Local Government and Social Security legislation there is sometimes an option to consider financial penalties as an alternative to prosecution and these should always be considered. However, in serious

cases of fraud or where repeat offending occurs the option to prosecute offenders should be kept open.

- 5.3 The Local Government Finance Act, the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 and the Social Security Administration Act (as amended by the Welfare Reform Act) all provide councils with the ability to impose financial penalties where a person fails to report a material fact or where a person fails, without good reason, to correct an error.
- 5.4 Each Act lays out its own requirement for such a penalty to be imposed but essentially they all require: -
- As a general rule the penalties are fixed one-off fines to be added to a person's liability to pay.
 - They can only be offered where a person fails to report a material fact or is negligent in some way and that failure resulted in an overpayment of benefit or a reduction in council tax liability.
 - These penalties can only be imposed where no criminal charges or other administrative penalties are offered.
 - The person receiving the penalty can appeal against the imposition of it, if permitted by the relevant legislation.

6. Publicity

6.1 In the event of a successful prosecution the decision to publicise the outcome will take into account the following criteria:

- Interest of Brighton & Hove City Council
- Deterrent value to others

