

## ANTI-FRAUD POLICY AND FRAUD RESPONSE PLAN

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### ANTI-FRAUD POLICY

#### 1. Purpose and Scope

The Ethical Standards Commissioner (ESC) requires all employees at all times to act honestly and with integrity and to safeguard the public resources for which they are responsible. ESC will not accept any level of fraud or corruption; consequently, any case will be thoroughly investigated and dealt with appropriately. The Commissioner is committed to ensuring that opportunities for fraud and corruption are reduced to the lowest possible level of risk.

This policy applies to all employees regardless of working pattern or nature of employment contract. It also applies to anyone working within the premises of and / or for the Commissioner (for example sub-contractors, consultants, secondees from another organisation or agency staff). The word employee(s) in the context of this policy should be taken to mean all such individuals, unless specifically referred to as being directly employed by ESC.

#### 2. Implementation, monitoring and review of the policy

Overall responsibility for policy implementation, monitoring and review lies with ESC. Everyone covered by the scope of the policy is obliged to adhere to and facilitate implementation of the policy. Appropriate action will be taken to inform all new and existing employees and others covered by the scope of the existence of the policy and their role in adhering to it. The policy will be reviewed at such times as legislation or a change to the ESC policy position requires it. The policy will be made available to the general public.

#### 3. What is Fraud?

The term "fraud" is used in this context to describe such acts as deception, bribery, forgery, extortion, corruption, theft, conspiracy, embezzlement, misappropriation, false representation, concealment of material facts and collusion. It includes activities such as depriving someone of something by deceit, whether by way of theft, misuse of funds or other resources, or by more complicated crimes like false accounting and the supply of false information. For example, internal fraud can be linked to claims for travel and subsistence, irregularities in procurement procedures and the abuse of flexible working hours. Submitting bogus invoices is an example of external fraud.

The above definition is not exhaustive providing only examples of types of behaviour covered by the policy.

## 4. Danger Signs

Employees must always be alert to the risk of fraud, other forms of theft, and corruption. Danger signs of internal fraud include evidence of excessive spending by an employee, inappropriate relationships with suppliers, reluctance of employees to take leave, requests for unusual patterns of overtime and where there seems to be undue possessiveness of records. Employees should resist any pressure to circumvent internal controls or to override control mechanisms. Such action could be indicative of fraudulent activity and should be reported – see below.

## 5. Avenues for Reporting Fraud

ESC has in place avenues for reporting suspicions of fraud, which are detailed in the Fraud Response Plan and the Whistleblowing Policy. Employees should report any such suspicion to the Accountable Officer unless the suspicion concerns the Accountable Officer. The Whistleblowing Policy gives direction for employees on reporting matters which may involve the Accountable Officer.

All matters will be dealt with in confidence and in strict accordance with the terms of the Public Interest Disclosure Act 1998. This statute protects the legitimate personal interests of employees. Vigorous and prompt investigations will be carried out into all cases of suspected fraud.

## 6. Responsibilities

The Scottish Public Finance Manual sets out the responsibilities of ESC, in relation to fraud. These responsibilities will usually fall to the Accountable Officer, but if not, all employees will be informed of this and advised who currently fulfils that role.

The Accountable Officer, is responsible for establishing and maintaining a sound system of internal control that supports the achievement of policies, aims and objectives. The system of internal control is designed to respond to and manage the whole range of risks that ESC faces. The system of internal control is based on an on-going process designed to identify the principal risks, to evaluate the nature and extent of those risks and to manage them effectively. Managing fraud risk will be seen in the context of the management of this wider range of risks.

Overall responsibility for managing the risk of fraud lies with the Accountable Officer. Certain responsibilities have been delegated to the Head of Corporate Services. These are:

- Establishing an effective anti-fraud policy and fraud response plan, taking into account the level of fraud risk identified;
- Establishing and maintaining a Scheme of Delegation which outlines the reporting lines and methods of managing fraud risk for key areas of the business;
- Designing an effective control environment to prevent fraud, taking into account the level of risk identified;
- Establishing appropriate mechanisms for:
  - reporting fraud risk issues;
  - reporting incidents of fraud to the Commissioner.
- Ensuring that the external auditor assesses annually ESC's methods of managing fraud risk;

- Making sure that all employees are aware of the organisation's anti-fraud policy and know what their responsibilities are in relation to combating fraud;

The Accountable Officer remains directly responsible for:

- Ensuring that vigorous and prompt investigations are carried out if fraud occurs or is suspected;
- Taking appropriate legal and/or disciplinary action against perpetrators of fraud and against any employee who fails to report fraud, and to recover assets. Employees found to have perpetrated any frauds or whose negligence is held to have facilitated any frauds may be found to have engaged in gross misconduct, the penalty for which may include summary dismissal in line with the Disciplinary Policy;
- Ensuring that appropriate action is taken to minimise the risk of similar frauds occurring in future.

Every employee is responsible for:

- Acting with propriety in the use of official resources and the handling and use of public funds whether they are involved with cash or payments systems, receipts or dealing with suppliers;
- Conducting themselves in accordance with ESC's Code of Conduct;
- Being alert to the possibility that unusual events or transactions could be indicators of fraud;
- Assessing the types of risk involved in the operations for which they are responsible;
- Ensuring that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively;
- Reporting details immediately through the appropriate channel if they suspect that a fraud has been committed or see any suspicious acts or events;
- Co-operating fully with whoever is conducting internal checks or reviews or fraud investigations.

## **7. Notification and Accounting**

Losses due to fraud are subject to the guidance on Losses and Special Payments detailed in the Scottish Public Finance Manual. Any losses must be brought, as appropriate, to the attention of the Scottish Parliament through notes to the Annual Accounts.

## **FRAUD RESPONSE PLAN**

### **Purpose**

This Fraud Response Plan sets out arrangements to ensure that when there is any suspicion of fraud against ESC, prompt and effective action is taken to:

- investigate the circumstances;
- minimise the risk of subsequent loss;
- ensure that appropriate recovery action is taken or, failing recovery, to initiate action to write off any losses;
- remedy any weaknesses in internal control procedures;
- initiate disciplinary and legal procedures, where appropriate;
- demonstrate that ESC is not a soft target for attempted fraud; and
- maintain a record of reported frauds and provide reports to the Commissioner on the progress of cases and outcomes.

### **Initial Actions**

Individual employees should report any suspicion of fraud to the Accountable Officer.

Where a suspected fraud involving an employee is reported, the Accountable Officer will decide on the action to be taken. Where it is not immediately clear from the evidence presented that a fraud may have been committed, the Accountable Officer may decide to initiate action to determine whether there is substance to the allegations. For example, colleagues may be asked to confirm the accuracy of particular allegations. The aim at this stage should be to gather sufficient evidence to enable the Accountable Officer to reach a view on whether the allegations of fraud are likely to be substantiated.

If the Accountable Officer considers this is likely to be the case, the Accountable Officer will initiate the following action, insofar as it is appropriate to the particular case:

- appoint an Investigating Officer (who may not be someone in the employment of ESC);
- agree the scope and nature of any investigative work required to establish the facts, which may include the examination of the conduct of employees who are the subject of allegations such as in relation to travelling and subsistence claims, flexible working hours, overtime claims, etc;
- decide the level at which other employees should be involved and bring the allegations to their notice if appropriate, at the same time confirming the investigative arrangements and reporting line;
- take whatever action is needed to secure records and assets, including restrictions on access to offices, computer terminals and ESC's information such as by way of remote access;
- decide whether to seek legal advice;
- decide whether the Police/Procurator Fiscal Service should be informed;
- consider the prima facie case for suspension of employees who are the subject of allegations; and
- agree a timetable for completion of the agreed action.

## Scope of Investigations

The Accountable Officer should consider carefully the terms of reference for any investigative work necessary to establish the facts. Investigations should not be restricted solely to allegations against an individual that may lead to a charge of gross misconduct. If there is a possibility that instances of serious misconduct (e.g. misconduct other than fraud) may also have occurred, these should be investigated at the same time as the fraud allegations. The terms of reference should not preclude reporting any evidence of fraud or serious misconduct which was not identified in the initial report to the Accountable Officer. Investigations will be based on ESC's Disciplinary Policy.

## Actions During the Investigation

As appropriate, the Accountable Officer will:

- arrange to suspend the individual(s) pending the outcome of investigations (and review the notice of suspension at regular intervals throughout the period of investigation);
- liaise with legal advisors;
- consider the sensitivity of the allegations in terms of public interest and whether any external bodies, e.g. the Scottish Parliamentary Corporate Body, should be informed and whether media briefing should be prepared;
- take whatever action is required to safeguard funds or assets at risk;
- initiate action to recover misappropriated funds, if there is a clear case for doing so in advance of a full investigation;
- consider the case for recovery action; and
- notify the Police/Procurator Fiscal Service of the case.

As appropriate the Investigating Officer will:

- instruct action to protect accounting and other records including those held on computer;
- ensure that data backed-up offsite is secure;
- restrict access to offices and records of individuals allegedly or possibly involved by altering or withdrawing cards/passwords;
- plug any immediately obvious gaps in financial controls; and
- establish possible financial implications for the business plan and running costs.

## Report and Review of Findings

As soon as investigations have been completed, reports and any other relevant documentation (subject to any confidentiality requirements) should be passed to the Accountable Officer. The Accountable Officer will decide whether the evidence tends to substantiate allegations of fraud. The Accountable Officer may instruct further investigation, for example, where evidence gathered is inconclusive, contradictory or incomplete. Once the Accountable Officer is satisfied that no further investigations are required, consideration must be given to:

- what, if any, disciplinary action should be initiated against those involved;
- the form and content of the final report; and
- whether the Police/Procurator Fiscal should be notified (if this has not already been done).

Where any person being investigated is not directly employed by ESC, the results of any investigation will be reported to the relevant office/employer. This may also result in ESC terminating any contract subject to the outcome of the investigation.

## Action on Findings

If the Accountable Officer decides that disciplinary action should be taken against a person, they will provide the employee with a written statement setting out details of the allegation and the conclusion on the facts established. Thereafter, the disciplinary procedures as set out in the Disciplinary Policy will be followed. If evidence of gross misconduct or lesser instances of misconduct have been identified during the investigation, the lesser instances will not be disregarded solely because a charge of gross misconduct is proposed in respect of certain aspects of the individual's actions.

Further action will include:

- pursuing recovery of funds;
- informing other public and government bodies, as appropriate;
- considering the adequacy of internal control procedures;
- considering the impact on the budget and take any action to deal with the consequences;
- arranging, where necessary, for notation of the relevant accounts; and
- liaising with the Police/Procurator Fiscal as necessary.

The Police/Procurator Fiscal are understood to be willing to provide advice on an informal basis. However, the Police are obliged to report formal approaches to the Procurator Fiscal. In the latter case, the Police/Procurator Fiscal would expect ESC to have conducted inquiries or initial investigations and to have established at least a prima facie case before referral to them.

## Follow Up and Review of Cases

Where evidence of fraud or serious misconduct has been identified, the Accountable Officer will consider whether any action needs to be taken to prevent a recurrence. In such cases, an action plan should be drawn up setting out recommendations and the Commissioner should ensure that the agreed recommendations are implemented.

## Confidentiality

The Accountable Officer and Investigating Officer will receive all information relating to individual cases. They must treat all information relating to individual employees in strictest confidence and should ensure that it is only passed on to colleagues on a strictly need to know basis. Only those allegations which have resulted both in disciplinary charges and a finding against the employee will be noted in their Personnel record. Where an employee identifies and reports fraud, a note recognising this will be kept in their Personnel record.

## External Fraud

External frauds are frauds perpetrated by third parties against ESC (e.g. contract fraud or fraudulent invoices). In the case of Public Appointments Advisers, contractors and suppliers, a finding of fraud will normally lead to termination of their contract. If there is any suspicion of collusion on the part of employees in an external fraud, the procedures relating to internal fraud will be adapted to apply as appropriate, given any requirements arising

from ongoing Police/Procurator Fiscal investigations. Subject to that condition, cases of suspected external fraud should be reported to and handled by the Accountable Officer as for internal fraud.

### Equality Impact Assessment

Does this policy comply with the general Public Sector Equality Duty (s149 Equality Act 2010)?

This policy applies to all employees. Its impact was considered when drafting. We consulted with all employees prior to publication to identify and address any issues.

### Data Protection Impact Assessment

Have we considered any effect the policy may have on the collecting, processing and storing of personal data?

The records generated by this policy will contain personal data and may contain sensitive and special category personal data. Suitable retention and destruction policies are in place to manage this material.

### Information Security Impact Assessment

Have we considered the impact any policy may have on our cyber-resilience?

This policy may impact our cyber-resilience if the fraud discovered is cyber in nature. We have plans to cover this eventuality in our cyber-resilience plans.

### Records Management Impact

Have we considered the impact any policy may have on our ability to manage our records?

This policy could impact on our ability to manage our records if the fraud discovered related to information security concerns. We have plans to cover this eventuality in our cyber-resilience plans.

Version	Description	Date	Author
1.0	First draft	01/06/21	Public Appointments Officer