

## CORPORATE AFFAIRS AND AUDIT COMMITTEE

<b>Date:</b> Thursday 30th September, 2021
<b>Time:</b> 3.30 pm
<b>Venue:</b> Council Chamber

### AGENDA

1. Welcome and Evacuation Procedure
2. Apologies for Absence
3. Declarations of Interest  
To receive any declarations of interest.
4. Minutes - Corporate Affairs and Audit Committee - 5 August 2021 3 - 8
5. Payment of Council Tax - Councillors 9 - 36
6. Internal Audit and Counter Fraud Progress Report 37 - 56
7. Annual Counter Fraud Framework Report 57 - 100
8. Procurement Overview for 2020/21 101 - 106
9. Subject Access Requests - Compliance Update 107 - 110
10. Verbal Update - Statement of Accounts Audit Progress/VAT  
The Head of Finance and Investment will provide a verbal update.

11. Any other urgent items which in the opinion of the Chair, may be considered

12. Exclusion of Press and Public

To consider passing a Resolution Pursuant to Section 100A (4) Part 1 of the Local Government Act 1972 excluding the press and public from the meeting during consideration of the following items on the grounds that if present there would be disclosure to them of exempt information falling within paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

13. Appointment of LA Governors

111 - 116

Charlotte Benjamin  
Director of Legal and Governance Services

Town Hall  
Middlesbrough  
Wednesday 22 September 2021

#### MEMBERSHIP

Councillors B Hubbard (Chair), J Platt (Vice-Chair), T Higgins, J Hobson, T Mawston, D Rooney and C Wright

#### **Assistance in accessing information**

**Should you have any queries on accessing the Agenda and associated information please contact Susan Lightwing, 01642 729712, [susan\\_lightwing@middlesbrough.gov.uk](mailto:susan_lightwing@middlesbrough.gov.uk)**

**CORPORATE AFFAIRS AND AUDIT COMMITTEE**

A meeting of the Corporate Affairs and Audit Committee was held on Thursday 5 August 2021.

**PRESENT:** Councillors B Hubbard (Chair), J Platt (Vice-Chair), T Higgins, J Hobson, T Mawston, D Rooney and C Wright

**PRESENT BY INVITATION:** Councillors D Coupe

**ALSO IN ATTENDANCE:** A Metcalfe

**OFFICERS:** C Benjamin, S Bonner, D Johnson, P Stephens, J Weston and I Wright

21/2 **WELCOME AND EVACUATION PROCEDURE**

The Chair welcomed all present to the meeting and read out the Evacuation Procedure.

The Chair welcomed Councillor Jim Platt as the Committee's new Vice Chair and Cllr David Coupe.

21/3 **DECLARATIONS OF INTEREST**

<b>Name of Member</b>	<b>Type of Interest</b>	<b>Item/Nature of Interest</b>
Councillor Higgins	Non pecuniary	Agenda Item 7 – Member of Teesside Pension Fund
Councillor Hubbard	Non pecuniary	Agenda Item 7 - Member of Teesside Pension Fund
Councillor Rooney	Non pecuniary	Agenda Item 7 - Member of Teesside Pension Fund

21/4 **MINUTES - CORPORATE AFFAIRS AND AUDIT COMMITTEE**

The minutes of the Corporate Affairs and Audit Committee meetings held on 29 April and 22 July 2021 were submitted and approved as a correct record.

21/5 **MIDDLESBROUGH COUNCIL LONG-TERM FINANCIAL SUSTAINABILITY**

A report of the Director of Finance was submitted, the purpose of which was to inform the Corporate Affairs and Audit Committee of the publication of the new CIPFA Financial Management Code (FM Code) which was applicable in shadow form during 2020/21, with the first full year of compliance being 2021/22.

An initial self-assessment that had been undertaken of the Council's assessed level of compliance compared to the Standards contained within the CIPFA Financial Management Code and the associated actions arising to ensure full compliance was attached at Appendix 1 to the submitted report. The results of the CIPFA Financial Resilience Index 2021 and a comparison and analysis with other Local Authorities, was attached at Appendix 2 to the submitted report.

The Director of Finance advised the Committee that the report had already been approved by Executive and it would be beneficial for all Members to be aware of its contents.

Members were also advised that despite requisite systems in place to manage issues, staffing in this area had been impacted over the previous 10 to 15 years.

The levels of Council reserves were discussed during which it was clarified the s.151 officer assessed reserve levels based on budgetary activity year to year.

In terms of Middlesbrough's council tax base; it was confirmed that Middlesbrough was oversubscribed with properties with lower Council Tax bandings. It was important for Middlesbrough to grow its council tax base by increasing the number of homes with a council tax band of either D, E or F. It was also commented that despite being the fourth best improver for council tax collection, more improvement was required.

Borrowing levels were discussed during which it was confirmed the Council's current levels of borrowing stood at £218 million. The Director of Finance agreed to supply further details on spend against borrowing to Members outside of the meeting.

Members discussed how due diligence was carried out with stakeholders and how scenario testing was involved in this process. It was clarified that due diligence was robustly carried out, but could be strengthened in places. Scenario testing had been carried out for a number of years informally, and informed the Medium Term Financial Plan (MTFP). However this needed to become formally embedded in the process.

Members queried if there was a limit to the number of houses to be built in order to satisfy financial need. It was clarified house building would have a limit but it was important to try and reach a normal mix of housing type across the town. Members were also advised that, where appropriate, they would always be involved in future decisions regarding house building in the town.

The Chair queried what the ideal level of reserves were and it was clarified reserves currently stood at £11.5 million and the s.151 officer was comfortable with this level.

**AGREED** that the following were noted by the Committee:

1. the contents of the report.
2. the key points of the CIPFA Financial Management Code (FM Code) and the initial self-assessment of compliance with the Code, the associated actions arising to ensure full compliance, and the next steps.
3. the results of the analysis of the CIPFA Financial Resilience Index 2021.

21/6

#### **ANNUAL REPORT OF THE HEAD OF INTERNAL AUDIT AND ANNUAL COUNTER FRAUD REPORT**

A report of the Head of Internal Audit was presented to provide Members with a summary of internal audit work undertaken in 2020/21 and provide an opinion on the overall adequacy and effectiveness of the Council's framework of governance, risk management and internal control.

The annual report was included at Appendix 1 to the submitted report and included a summary of findings from recently finalised audit work as well as the status of agreed audit actions. The report also provided details of Veritau's Quality Assurance and Improvement Programme (QAIP) which included ongoing quality assurance arrangements and activities, annual self-assessment, external assessments at least once every five years, as well as an annual survey of senior management in each client organisation.

Veritau also provided a counter fraud service to the Council and the annual report setting out counter fraud activity and performance was included as part of the submitted report, attached at Appendix 2.

From the report Veritau drew the Committee's attention to the following areas:

- There was no single register showing what CCTV equipment or systems were in use across the Council and so demonstrating relevant compliance was difficult;
- The report presented was at the draft stage. Any future actions agreed with service would be brought back to a future meeting of the committee and;
- It was not possible to fully assess the impact the Covid Pandemic had on the Council.

A Member queried if further information could be provided regarding the delay in responding to information requests. It was clarified that the performance management dashboard, which

was monitored by Senior Management, would monitor Fol response times.

The Committee expressed their thanks to Veritau for their work.

**AGREED** that the following were noted by the Committee:

1. the results of internal audit work and counter fraud work undertaken.
2. the opinion of the Head of Internal Audit on the adequacy and effectiveness of the Council's framework of governance, risk management and internal control.
3. the significant control issue identified by internal audit which was considered relevant to the preparation of the Council's Annual Governance Statement.
4. the outcome of the Quality Assurance and Improvement Programme and the confirmation that the internal audit service conformed with the Public Sector Internal Audit Standards.

21/7

#### **2020-21 EY PLANNING REPORT**

The 2020-21 Audit Planning Reports for Middlesbrough Council and the Teesside Pension Fund were presented. The reports set out how EY would carry out its responsibilities as auditor.

The purpose of the reports was to provide the Corporate Affairs and Audit Committee with a basis to review EY's proposed audit approach and scope for the 2020/21 audit in accordance with the requirements of the Local Audit and Accountability Act 2014, the National Audit Office's new 2020 Code of Audit Practice, the Statement of Responsibilities issued by Public Sector Audit Appointments (PSAA) Ltd, auditing standards and other professional requirements. The report was also intended to ensure that EY's audits were aligned with the Committee's service expectations.

The plans summarised EY's initial assessment of the key risks driving the development of an effective audit for the Council and the Teesside Pension Fund, and outlined EY's planned audit strategy in response to those risks. EY's planning procedures were not yet fully completed and if any material changes arose they would be communicated to the Committee, as appropriate.

**AGREED** that the 2020-21 Audit Planning Reports for Middlesbrough Council and the Teesside Pension Fund were received and noted.

21/8

#### **DRAFT STATEMENT OF ACCOUNTS 2020/21**

A joint report of the Director of Finance and the Executive Member for Finance and Governance was presented for Members of the Corporate Affairs and Audit Committee to note and review the draft Statement of Accounts for 2020/21.

The Audit and Accounts regulations 2015 had been amended for 2021. The statutory timetable had been revised to reflect the continuing impact on local authorities and their finance teams of the pandemic, plus recommendations from the Redmond Review. The dates had been revised to the end of July and the end of September for the draft and audited accounts respectively.

Although Covid-19 had had a significant effect on both the Council and the preparation of the statement of accounts for this year, the statutory deadline had been met for the preparation of the draft Statement of Accounts.

The draft Statement of Accounts for 2020/21 agreed with the Financial Outturn report to Executive on 15 June 2021 which showed an almost balanced revenue budget position and the year-end position on the Investment Strategy. The general fund balance was £10.5 million as at the 31 March 2021 and slightly above the minimum level recommended by the Director of Finance within the Council's medium term financial plan, of £9.4m. There had been a number of significant changes in the balance sheet of the Council, mainly increases in pension liabilities and changes in earmarked reserves. Although the balance sheet now had more liabilities in total than assets, it was expected that the asset values on both pensions and property would recover in the medium to longer term. There would be no immediate financial pressures on the Council's financial plans as a result of this

The Head of Finance and Investment provided a detailed presentation of the Draft Statement of Accounts 2020/2021 highlighting the following elements:

- The report was complex, and Members were required to consider the draft statement of accounts and highlight any issues they were interested in.
- Members were encouraged to ask questions and seek further information.
- The report was only for noting until external auditors had qualified the accounts. The Committee would then be responsible for signing off the accounts from a political perspective.
- The Covid pandemic had changed the time scales for completing this work, which was a reflection of how complex the accounts now were. For example, this year's draft accounts needed to be completed by the end of July and finalised by the end of September.
- The audit process had taken longer than normal, due to resourcing issues. The committee was advised it was probable the September deadline would be missed. If auditor exceeded their deadline a notice will be issued advising of this.

Members were invited to make general comments and observations for further analysis. Comments and observations included; how Covid payments worked; the investment strategy; the Middlesbrough Development Company; explanation of business rates reduction in the town; town centre development and training on officer remuneration. TM: More information on the MDC and its actions in Middlesbrough; code of corporate governance review and what progress had been made on this issue.

**AGREED** as follows:

1. the Draft Statement Accounts published by the Director of Finance on the 19 July 2021, was noted.
2. Committee Members would undertake further training to enable them to fulfil their statutory role.

21/9

## **DRAFT ANNUAL GOVERNANCE STATEMENT**

The Draft Annual Governance Statement was presented to the Committee.

The Annual Governance Statement (AGS) formed part of the Statement of Accounts that the Council must produce on an annual basis and have approved by the Mayor of Middlesbrough and the Council's Chief Executive and Section 151 Officer.

The following points were highlighted:

- The previous Chair had requested Internal Audit look at a range of governance issues, including how the Annual Governance Statement was developed. These had now been done and provided a substantial level of assurance.
- Overall good progress had been made despite the Covid Pandemic.
- There were no Priority 1 issues identified in the draft and action was underway to address the lack of a CCTV register identified by auditors.
- A deadline of March 2022 was identified to complete key actions.
- Overall the assessment of the Council's corporate governance was sound with areas for improvement.
- An improvement plan would be created and monitored throughout the year.

A question was raised regarding how procurement processes aligned with the Annual Governance Statement. It was clarified that procurement processes featured throughout the Statement but that a separate, detailed, training exercise on procurement would be beneficial for Members.

It was also agreed that training opportunities on this matter would be cascaded to political groups.

**AGREED** that the draft Annual Governance Statement was noted.

**LESSONS LEARNT - BEST VALUE INSPECTION OF LIVERPOOL CITY COUNCIL**

A joint report of the Director of Legal and Governance Services and Director of Finance (Section 151 Officer) was presented, setting out the governance issues identified in the Best Value Inspection of Liverpool City Council (LCC) report and assessed whether there were any lessons to be learnt for corporate governance within Middlesbrough Council. The report also provided an update on actions previously agreed for Middlesbrough Council following consideration of the Best Value inspection of Northamptonshire County Council and the public interest report issued by the external auditor of London Borough of Croydon Council.

The following areas were highlighted in the report:

- Officer structures, roles and responsibilities.
- Regeneration and planning.
- Elected members – roles and responsibilities understanding.
- Corporate governance compliance.
- Legal corporate governance.
- Use of Local Authority Trading Companies.
- Inspection Team recommendations.
- Consequences of the inspection.
- Improvement actions.

LCC had the same democratic governance model as Middlesbrough Council. It was therefore not surprising that the inspector's recommendations relating to governance and structure were relevant to Middlesbrough Council. The self-assessment identified a range of planned actions that focussed on member and officer relationships and awareness and understanding of roles and responsibilities. Those recommendations aligned with a recent internal audit report on Member decision-making, which was currently at the draft report stage. There was a risk that if roles and responsibilities were not fully understood and adhered to by both Members and officers, Middlesbrough Council could experience the same issues as LCC.

The actions previously agreed for Middlesbrough Council following consideration of the public interest report issued by the external auditor of London Borough of Croydon Council had been completed as follows:

- The Reserves Risk Assessment was shared with Scrutiny as part of the consultation for the 2020/21 budget setting process.
- Training on treasury management had been planned into the work programme of Corporate Affairs and Audit Committee for 2021/2022.  
The first session took place on the 24th June 2021 focusing on Treasury Management Principles with a second to follow on the Prudential Code.
- Council approved a revised Investment Strategy and a Capital Strategy including Treasury Management Policy, Borrowing Strategy, Minimum Revenue Provision Policy and Prudential Indicators on 16 February 2021. These had all been considered in light of the COVID-19 pandemic.

All actions following a self-assessment against a Best Value inspection report on Northamptonshire County Council had also been completed; with the exception of the overarching partnership governance action. Plans for this changed with the political administration, however a partnership governance policy was now in place which would ensure partnerships were developed and managed in alignment with the Council's strategic priorities.

Work was progressing to expand demand forecasting products in Children's safeguarding to incorporate financial forecasting. Further work was planned in relation to lessons learnt from complaints during 2021 to strengthen practice in this area.

A Member remarked that prior to the meeting they had submitted a significant number of queries. The Director of Finance responded in general terms advising the Committee that while the Council had reduced resilience, staff were doing their best and that Senior Management was could not be classed as a more inexperienced.

A discussion took place regarding decision transparency and how Executive decisions were made and recorded. The Monitoring Officer advised she was confident that decisions were

adequately recorded as well as their reasons. It was commented that all Members should be aware of their responsibilities during the decision making process.

**AGREED** as follows that the Committee:

1. noted the contents of the report and the planned actions to ensure lessons are learnt from events at Liverpool City Council (LCC).
2. noted an update on previously agreed actions to ensure lessons were learnt from the issues experienced by London Borough of Croydon Council (LBCC) and Northamptonshire County Council (NCC).

21/11

**ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED**

None.



<b>Report of:</b>	Ian Wright, Director of Finance
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<b>Submitted to:</b>	Corporate Affairs and Audit Committee – 30 September 2021.
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<b>Subject:</b>	Payment of Council Tax – Councillors
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**Summary**

<b>Proposed decision(s)</b>
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That the Committee notes the findings of the report.
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Report for:	Key decision:	Confidential:	Is the report urgent?
To note	Not applicable	No	Not applicable

<b>Contribution to delivery of the 2021-24 Strategic Plan</b>
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Business	People	Place
Maximising Council Tax Collection.	Not applicable	Not applicable

<b>Ward(s) affected</b>
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Not applicable
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**What is the purpose of this report?**

1. To outline the council's position and approach in regards to the collection of Council Tax from Councillors and the obligations on Councillors around meeting payment requests and provide information on councillors compliance with their legal duties in relation to the payment of Council Tax.

**Why does this report require a Member decision?**

2. This report has been requested by the Chair of this Committee which has oversight of the Council's Corporate Governance framework.

**Report Background**

**Councillors and Council tax**

3. The payment of Council Tax is a statutory obligation and is governed by the Local Government Finance Act 1992. Payment of Council Tax is due in regular intervals,

and would normally be on a monthly basis. Both the date of payment and the amount to be paid are shown on the Council Tax bill, therefore having access to the most recent bill is of the utmost importance as it holds essential information, such as the account number, how and when to pay. Should non-payment result in further action, the legislation is very clear on the stages that can be taken to secure payment when payment becomes a problem.

4. Following the issue of a bill, if payment is not made as indicated on the bill, a reminder notice will be issued within 14 days of the amount becoming overdue. If payment is still not forthcoming, the account will be selected for a summons and the full years council tax will become payable. If full payment is not forthcoming the Council will make a request to the Courts for a Liability Order and if granted provides additional powers to recover monies due. One of these powers is an attachment to the member's allowances. At no point prior to this is the Local Authority permitted to take such action<sup>1</sup>. If an attachment is undertaken, a percentage of the allowance can be deducted on a monthly basis until the amount due is cleared.
  - Checks made from 2015 show that no Councillor has been excluded from voting, albeit a small number may have fallen behind with payment, this did not prevent any Councillor from voting.
  - All Councillor Accounts are up to date, in some instances the full year's amount has been paid.
5. Revenues Service provide monthly checks against each Councillor account. Notification is forwarded to Democratic Services should any Councillor hit triggers and fall behind with payment by 2 months or more. It should be noted that although the service undertake these checks, the responsibility for meeting payment obligations and raising non-payment issues rests entirely with the Councillor - see para 8, as it would also apply to any other resident within the borough. The Council does not provide any variation in service that would result in Councillors being treated preferentially over other residents.
6. Middlesbrough Council has 46 Councillors excluding the elected Mayor of which one vacancy will be filled on 16 September 2021. 87.5% of Councillors pay by monthly direct debit with the remainder choosing to pay by cash on a monthly basis. Whilst cash is a payment option which is offered to residents, the most obvious way to ensure payment is made on the due date is for payment to be made by the councils preferred method which is direct debit as it avoids any oversight with late or missed payments, however the method of payment is an individual choice.

### **Councillors and compliance with Council Tax legal obligations**

7. The legislation which governs the payment of Council Tax and the obligations of Councillors is contained within Section 106 of the Local Government Finance Act 1992 (LGFA 1992) which makes it a criminal offence for any Member who has arrears of Council Tax which have been outstanding for two months or more to attend any meeting at which a decision affecting the budget is to be made, unless the Member concerned declares at the outset of the meeting that he or she is in arrears and will not be voting on the decision for that reason.

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<sup>1</sup> SI 613 LGFA 1992

8. The application of Section 106 of the 1992 Act is very wide and Members should be aware that the responsibility for ensuring that they act within the law at all times rests solely with the individual Member concerned.
9. It is accepted that payment difficulties can arise, and in exactly the same way as is offered to residents, support and payment plans can be put in place for elected members. Para 27 of the Members Code of Conduct, provides that the elected member must at the earliest opportunity make arrangements to repay. Any service response to this will be dealt with confidentially, provided non-payment has not resulted in triggers – also note para 10.
  - Para 27 Members Code of Conduct (Appendix A):-
    - i. The law makes specific provision that if an elected member is in two months arrears with payment of Council Tax that elected member may not participate in certain decisions concerning Council Tax issues.
    - ii. If you owe a debt to the Council, you must put in place at the earliest opportunity arrangements for repayment. You must avoid being in a situation which might lead the public to believe that preferential treatment is being sought you must not participate in any decision which may create suspicion or a conflict of interest.
10. Section 4 and Section 8 of the Members Handbook (Appendix B) provide members with the information pertaining to S106 of the Local Government Finance Act 1992.
  - Public Interest
    - i. Decisions made by information tribunals and also courts make it clear that elected officials should have a greater expectation of scrutiny regarding the payment of their Council Tax than an ordinary member of the public, Information regarding late and non-payment of Council Tax in regards to elected members may be released if it falls within the public interest test.
11. Regulation 3, Statutory Instrument 1992/613 also provides that as a resident any Councillor must report any changes in circumstances such as an address change, change to a discount entitlement etc., within 28 days of this occurring. Following any reported change a new bill will be issued and forms the basis of any future payments to the Local Authority.

**What decision(s) are being asked for?**

12. That the committee notes the contents findings of the report.

**Why is this being recommended?**

13. The report sets out the legal and statutory obligations/requirements of meeting their council tax payments for councillors and residents and the steps the authority takes to ensure compliance with those duties for all.

**Other potential decisions and why these have not been recommended**

14. Not applicable.

**Impact(s) of recommended decision(s)**

15. Not applicable.

### **Legal**

16. Elected members are responsible for complying with Section 106 of the Local Government Finance Act 1992.

### **Financial**

17. There are no financial implications arising as a result of this report.

### **Policy Framework**

18. Not applicable.

### **Equality and Diversity**

19. Not applicable. This report is for information only.

### **Risk**

20. Not applicable, this report is for information only, however links into the following risks on the risk register 08-105, 08-075, 08-054, 08-055, 08-059.

### **Actions to be taken to implement the decision(s)**

21. Not applicable. The service will continue to follow existing processes and take action where appropriate to do so.

### **Appendices**

22. Appendix A = Members Code of Conduct.

23. Appendix B = Members Handbook (Section 4 and Section 8)

### **Background papers**

**Contact:** Janette Savage, Head of Revenues and Benefits

**Email:** Janette\_Savage@middlesbrough.gov.uk



# MIDDLESBROUGH COUNCIL MEMBERS' CODE OF CONDUCT

# INTRODUCTION

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct.

The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government. This Code is based on the Seven Principles of Public Life/Nolan Principles which apply to anyone who works as a public office-holder.

Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

## Application of the Code

This Code of Conduct (the Code) applies to every elected member and co-opted member<sup>1</sup> of Middlesbrough Council<sup>2</sup>. As an Elected Member, it is your responsibility to make sure that you are familiar with, and that your actions comply with, its provisions.

This code should be read in conjunction with other relevant policies e.g. ICT Acceptable Use Policy, Social Media Policy and the Member / Officer Protocol. Members' should be aware that a breach of any such policy /protocol may also be a breach of the Members Code of Conduct.

The Code of Conduct applies to you when you are acting, claiming or giving the impression that you are acting in your capacity as a member or representative of the Council, although you are expected to uphold high standards of conduct and show leadership at all times.

The Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and via social media, including where you could be deemed to be representing the council, or if there are potential implications for the Council's reputation.

The Code does not apply to the actions of the authority as a whole, nor to the conduct of its officers and employees. It also does not cover matters under the Localism Act 2011 where criminal sanctions apply. The Code is not intended to be an exhaustive list of all the obligations that are placed on Members. Elected Members hold public office under the law and must observe the rules of conduct stemming from the law, this Code, and the rules, standing orders and regulations of the Council. It is your personal responsibility to comply with these and review your register of interests regularly, at least annually, particularly when your circumstances change. You must not, at any time, advocate or encourage any action contrary to the Code.

A very clear line however, must be drawn between this Code's requirements of respect for others, including those with opposing views, and the freedom to disagree with the views and opinion of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other. Nothing within this Code seeks to stifle free speech.

<sup>1</sup> Co-opted member is a person who is not an elected Member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council and who is entitled to vote on any question that falls to be decided at that meeting of that committee or sub-committee

<sup>2</sup> This means it applies when you are carrying out your official duties, for example when you are acting on, considering or discussing council business

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# KEY PRINCIPLES OF THE CODE OF CONDUCT

Everyone in public office at all levels – ministers, civil servants, members, council officers – all who serve the public or deliver public services should uphold the seven principles of public life. This Code has been developed in line with these seven principles of public life. The following general principles upon which this Code of Conduct is based should be used for guidance and interpretation only. They define the standards that members should uphold and serve as a reminder of the purposes of the Code of Conduct. This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of Member.

**Duty** - You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the Council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which you have been elected to serve, and to represent their interests conscientiously.

**Selflessness** - You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

**Objectivity** - In carrying out public business you must make decisions impartially, fairly and on merit, without bias or discrimination, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

**Accountability** - You are accountable to the public for your decisions and actions and must submit yourself to the scrutiny necessary to ensure this. You have a duty to consider issues on their merits, taking account of the views of others, and you must ensure that the Council uses its resources prudently and in accordance with the law.

**Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty and integrity** - You must be truthful and you must not place yourself in situations where your honesty and integrity may be questioned. You must not behave improperly and must on all occasions avoid the appearance of such behaviour. You must avoid placing yourself under any obligation to people or organisations that might try inappropriately to influence you in your work. You should not act or take decisions in order to gain financial or other material benefits for yourself, your family, or friends. You must declare and resolve any interests and relationships.

**Leadership** - You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence and be willing to challenge poor behaviour.

**Respect** - You must respect all other Elected Members and all Council employees and the role they play. Similarly, you must respect members of the public when performing duties as an Elected Member.





# GENERAL PRINCIPLES

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

The rules of good conduct apply to you whenever you act in your official capacity. This includes whenever you conduct business of the Council or act, claim to act, or give the impression or reasonable perception that you are acting in your official capacity as representative of the Council, which includes when using social media.

You may also act as a representative of the Council on another body, for example where you have been appointed by the Council to an outside body. When acting for that other body, you must comply with the Middlesbrough Code of Conduct, unless it conflicts with lawful obligations of the other body.

## 1. You must treat others with Civility and respect

Civility means politeness and courtesy in behaviour, speech, and in the written word, and social media.

You should follow the principles of mutual respect in all your dealings and be prepared to accept that others may have equally strong views in good faith that differ from your own. You should always treat colleagues with respect and not engage in any behaviour towards other members or staff, which might reasonably be interpreted, as discriminatory, bullying or harassment.

In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate and does not in itself amount to bullying or failing to treat someone with respect. You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or do anything that hinders the Council's fulfilment of its positive duties under equality laws. Such conduct may cause the Council to breach the law, and you may find yourself subject to complaint that you have breached the Code of Conduct.

It is not disrespectful to question political opinions or to have a different point of view to somebody. It is disrespectful however, to use offensive language or to accuse them of dishonesty, wrongdoing or incompetence without producing any specific evidence, thereby seeking to damage their reputation.

While of course it is legitimate for you to express concern about the way in which a service is run or policy is being implemented by officers, you should avoid undermining, or making detrimental remarks about, individual named officers at meetings, or in any public forum, including on social media. This would be damaging both to effective working relationships and to the public respect for the Council. It is also unfair as in general, staff are unable to defend themselves against criticism in a public forum.

Examples of bad practice in this area include:

- Spreading malicious rumours, or insulting someone by word or behaviour.
- Copying correspondence that is critical about someone to others who do not need to know.
- Ridiculing or demeaning someone – picking on them or setting them up to fail.
- Exclusion or victimisation.
- Unfair treatment.
- Overbearing supervision or other misuse of power or position.
- Unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected.
- Making threats or comments about job security without foundation.
- Reporting to professional bodies without foundation.
- Deliberately undermining a competent worker by overloading and constant criticism.
- Preventing individuals progressing by intentionally blocking promotion or training opportunities.

Chairs of meetings are also expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

In your contact with the public you should treat them courteously. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return you have a right to expect courtesy from the public. If members of the public are being abusive, threatening or intimidatory you are entitled to close down any conversation in person or online, refer them to the council, any social media provider or if necessary, the police.

## **2. Do not bully, harass or intimidate another person**

Bullying is offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health. Intimidation is another form of bullying. It is the act of frightening someone into doing something that they do not otherwise want to do. This usually involves threats that make the person who is subjected to intimidation feel threatened or afraid.

Bullying and intimidatory conduct can also involve preventing people from doing something, behaving in an abusive or threatening way, or making allegations about people in public, or in the company of any of their colleagues, through the press or social media. It may happen once or be part of a pattern of behaviours, although minor isolated incidents are unlikely to be considered bullying.

The Equality Act 2010 defines harassment as 'unwanted conduct related behaviour which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.'

## **3. Do not compromise the impartiality of anyone who works for, or on behalf of, the Council**

You should not approach or pressure anyone who works for, or on behalf of, the Council to carry out his or her duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

## **4. Do not disclose confidential/exempt information**

There will be times when you will be required to treat discussions, documents or other information relating to or held by the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

Legislation also gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out your Council duties. Such information is, however, for your use as an Elected Member and must not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.



You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe or ought reasonably to be aware, is of a confidential nature, except where:

- i) you have the consent of the person authorised to give it;
  - ii) you are required by law to do so;
  - iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice, provided that the third party agrees not to disclose the information to any other person; or
  - iv) the disclosure is: reasonable and in the public interest; and
- b) made in good faith and in compliance with the reasonable requirements of the authority; and
- c) you have consulted with the authority's Monitoring Officer prior to its release.

Personal data is confidential and is protected by the *General Data Protection Regulations (GDPR)*. Never share information with family or friends or allow access to personal data disclosed to you in your role as an Elected Member.

When conducting Council business you must only use the email account provided by the Council.

Personal email addresses may be used for your personal dealings or communicating directly with constituents. In these circumstances Elected Members are data controllers under GDPR and are responsible for the personal data that they collect, store, use and delete.

## **5. Do not prevent anyone getting information that they are entitled to by law**

You must not prevent any person from accessing information which they are entitled to by law. This includes information under the Freedom of Information Act or personal data requests under the General Data Protection Regulations. Further information can be found in the Members' Handbook.

## **6. Do not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else**

You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member.

## **7. Do not misuse Council resources**

You should never use the Council's resources or facilities for your own private or business purposes. It is also not appropriate to use, or authorise others to use, the Council's facilities or resources (including IT and staff resources) for political purposes, party political purposes, election campaigning, group flyers etc. When using the authority's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the Local Government Act (1986) or similar Act.

## **8. Conduct at Meetings**

You must respect the Chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, or represent, the Council. You must comply with the Council procedure rules and comply with any rulings from the Chair in the conduct of the business of these meetings.

## **9. Training**

You must attend mandatory training provided by the Council and receive, attend and consider updates when required.

Failure to attend may result in you not being able to participate in some decision making meetings or access personal information (subject to consultation with the Monitoring Officer).



## 10. Do not bring your role or local authority into disrepute

You are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful, actions which may be of a criminal nature that may bring the local authority into disrepute.

## 11. Communications

You must be clear when communicating with the media or speaking in public, and particularly if you are using social media, that you do not give the impression you are acting in an official capacity when you are acting in a personal capacity. Since the judgment of whether you are perceived to be acting as an Elected Member will be taken by someone else, it is safest to assume that any online activity can be linked to your official role.

Members should also monitor their social media sites and remove any inappropriate posts/comments and avoid any actions that may give the impression that they endorse those comments.

## 12. Do have regard to advice from the Monitoring Officer or S151 Chief

### Finance Officer

If you seek advice, or advice is offered to you, for example, on whether or not you should register an interest, you should have regard to this advice before you make your mind up.

You must also give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by the Council. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected.

(1) Do have regard to any relevant advice provided to you by the Council's Chief Financial Officer and Monitoring Officer where such advice is offered pursuant to their statutory duties.

(2) Do give reasons for the decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.

(3) Do consult with the Monitoring Officer where there is doubt about the authority's powers to act; or whether the action proposed lies within the policy framework of the authority; or where the legal consequences of action or failure to act by the authority might have important repercussions.

(4) Do consult with the Chief Finance Officer where there is doubt about the authority's ability to fund an action; or whether the action proposed lies within the budget framework of the authority; or where the financial consequences of action or failure to act by the authority might have important repercussions. Elected Members are required to comply with any formal Standards investigation and must not submit trivial or malicious allegations against other Elected Members.

Where you disagree with officer recommendations in making a decision, you will need to take particular care in giving clear reasons for the decision.



# INTERESTS

You need to register your interests so that the public, council employees and fellow members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest. The register also protects you. You have an obligation to declare an interest in a meeting whenever an item of business is to be discussed, where you may have a relevant interest.

## 13. General Principles

The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at all meetings that you attend and that your attendance, even as an observer, does not give rise to any suggestion that your presence could influence the outcome of the meeting. The rules which require registration of interests, along with the rules on declaration of interest, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as an Elected Member.

## 14. Mandatory Registration of Disclosable Pecuniary Interests

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property). They are called "Disclosable Pecuniary Interests" (DPIs).

Regulations made by the Secretary of State describe the detail and timescale for registering DPIs.

You have a DPI if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see Annex 1 attached). You must, within **28 days of taking office**, notify the Monitoring Officer of any DPI where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

You must also, within **28 days of becoming aware of any new DPI**, or change thereto, notify the Monitoring Officer of such new or changed interest.

It is your personal responsibility to comply with these regulations, and you should review regularly and at least once a year, your personal circumstances to ensure that your registration of interests is up to date.

## 15. Criminal Sanctions

It is a criminal offence if, without a reasonable excuse, you fail to tell the Monitoring Officer about your DPIs.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of the Council, where that business involves a DPI.

## 16. Gifts and Hospitality

You must not accept significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.

You must register with the Monitoring Officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term "gift" includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

You must never ask for gifts or hospitality.

You are personally responsible for all decisions connected with the acceptance of gifts or hospitality offered to you, and for avoiding the risk of damage to public confidence in the Council and in local government. As a general guide, it is usually appropriate to refuse offers except:

- a) isolated gifts of a trivial character, the value of which must not exceed £25.
- b) normal hospitality associated with your duties and which would reasonably be regarded as appropriate; or
- c) civic gifts received on behalf of the Council.

The receipt of these gifts must be registered with the Council within 28 days. This includes a requirement to disclose the name of the person who is believed to be the source of the gift or hospitality.

You must not accept any offer of a gift or hospitality from any individual or organisation who is an applicant awaiting a decision from the Council or who is seeking to do business or to continue to do business with the Council. If you are making a visit to inspect equipment, vehicles, land or property that the Council is intending to purchase, then as a general rule you should ensure that the Council pays for the cost of these visits.

You must only accept offers to attend social or sporting events where these are clearly part of the life of the community or where the Council would be expected to be represented.

You must not accept repeated hospitality or repeated gifts from the same source.

If the Council seeks sponsorship for some of its activities or events, you must ensure that your involvement with the sponsors is limited to the event in question and does not damage public confidence in the relationship between the Council and the sponsors.

## DECLARATIONS OF INTERESTS

It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as an Elected Member in regard to a particular matter. You can, of course, seek advice from the Monitoring Officer. In making decisions for which you are personally responsible you are advised to err on the side of caution.

You may feel able to state truthfully that an interest would not influence your role as an Elected Member in discussion or decision-making. You must, however, always comply with the objective test ("the objective test") which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision-making in your role as an Elected Member.

You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other Elected Members, including party group meetings, meetings of joint boards and joint committees and any other meeting, formal or informal, where you are representing the Council.

## 17. Declaration of a Disclosable Pecuniary Interest at a meeting of the Council

Your obligation to disclose a DPI to a meeting applies when you are aware of or ought to be aware of the existence of the DPI.

If you are present in any capacity (and this includes a private capacity) at a meeting of the Council, its executive, or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of the Council, and you have a DPI relating to any business that is or will be considered at the meeting, you must declare that interest and you must not participate in:

- any discussion of the business at the meeting, or if you become aware of your disclosable DPI during the meeting participate further in any discussion of the business;
- or any vote or further vote taken on the matter at the meeting.

If the interest is not registered, you must still disclose the interest to the meeting. If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

These prohibitions apply to any form of participation including speaking (or even observing the meeting) as a member of the public. You must leave the room. You cannot remain in the public gallery even if only to observe any discussion or vote on the matter.

In certain circumstances you can request from the Monitoring Officer a dispensation from these prohibitions.

## 18. Dispensations which do not amount to DPIs

You do not have a DPI in the following circumstances:

1. Setting of Council Tax or precept or local arrangements for council tax support;
2. Housing: where you (or your spouse or partner) hold a tenancy or lease with the Council as long as the matter does not relate to your particular tenancy or lease;
3. Housing Benefit: where you (or your spouse or partner) directly receive housing benefit in relation to your own circumstances; or
4. An allowance, travelling expense, payment or indemnity for Elected Members.

## 19. Declaration of "Other" Interests

Sometimes you may have "other" interests in a matter if that matter affects the well-being of you, members of your family, or people with whom you have a close association, more than it would affect most people in the ward affected by the decision, or in the Council's area.

An "other" interest can affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, a personal interest may need to be declared in both situations.

Your obligation to disclose an "other" interest to a meeting only applies when you are aware of or ought to be aware of the existence of the personal interest. Providing that the "other" interest does not amount to a "prejudicial" interest you can remain in the room, participate in any discussion and vote on the business at the meeting.



## 20. What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a “prejudicial” interest.

The mere existence of local knowledge, or connections within the local community however, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

## 21. What you should do if you have a “prejudicial” interest

If you have a “prejudicial” interest in a matter being discussed at a meeting, even if you are only attending to observe the meeting from the public gallery, you must declare that you have a prejudicial interest and the nature of that interest as soon as that interest becomes apparent to you **and you must leave the room immediately. You cannot stay in the room or the public gallery.**

This Code of Conduct however, aims in certain circumstances to still provide you with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you will be provided with the same opportunity. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. **You may not however, take part in the discussion.**

You must **immediately leave after** you have made your representations, given evidence or answered questions, and before any debate starts.

If the meeting decides that you should finish speaking, despite your intention to say more, you must comply with the meeting’s decision. Although members of the public may be allowed to observe the discussion and vote on the matter, **you are not allowed to do so and must leave the room immediately. Failure to do so may be viewed as an attempt to improperly influence the meeting.**

## 22. Bias/Predetermination

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct but you still need to make clear that you are not biased or predetermined going into the decision-making process.

Even though you may have been scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact.

You are entitled to have a **predisposition** one way or another as long as you have not pre-determined the outcome. In essence you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or indirectly indicated what view you may take. You are able to express an opinion providing that you can show that you have come to the relevant meeting with an open mind, able to take account of all of the evidence and make your decision on the day.

However, there is still a need for anyone proposing to participate in decisions to examine their position with scrupulous care. This should be in the light of how proposed involvement is likely to be seen by critical external observers (“the objective test”).





## 23. Dual-Hatted Members

Membership of another public body gives rise to a personal interest where you are involved in discussions or decisions relating to that other public body.

You should be able however, to regard most interests arising out of membership of another public authority as being personal non-prejudicial interests, even where there are financial implications. Examples of the sort of situation where the interest may become prejudicial, and will therefore rule you out of participation in any discussions and decision-making, are:

- a) Consideration of a licensing or planning application submitted by the other authority of which you are a member;
- b) A discussion or decision where two public authorities are in dispute and where litigation is threatened or has been commenced or;
- c) Where the financial implications are so significant that one authority would have to reconsider its budget.

## OTHER MATTERS

The following do not in themselves comprise part of the Code of Conduct. However, you should be aware that a failure to act in accordance with the advice as set out below will be taken into account in any allegation that there has been a breach of the Code of Conduct.

## 24. Remuneration, Allowances and Expenses

You must comply with the rules for the payment to Elected Members of remuneration, allowances and expenses as set out in the Members' Scheme of Allowances.

## 25. Appointments to Partner Organisations

You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.

If you become a director of a company as a nominee of the Council you will assume personal responsibilities under the Companies Acts. It is possible that a conflict of interest may arise for you between the company and the Council. In such cases it is your responsibility to take advice on your responsibilities to the Council and to the company. This will include questions of declarations of interest. The same applies if you assume other responsibilities such as becoming a director of a charitable trust.

## 26. Dealings with the Council

You will inevitably have dealings on a personal level with the Council of which you are a member - for example as a Council taxpayer, tenant, or recipient of a Council service or applicant for a licence or consent granted by the Council. You must not seek preferential treatment for yourself, your family, friends, colleagues or employees because of your position as an Elected Member or as a member of a body to which you are appointed by the Council and you must avoid any action which could lead members of the public to believe that preferential treatment is being sought.



## 27. Responsibilities to the Council as a Member of the Public

The law makes specific provision that if an Elected Member is in two months arrears with payment of Council tax that Elected Member may not participate in certain decisions concerning Council tax issues.

If you owe a debt to the Council, you must put in place at the earliest opportunity arrangements for repayment. You must avoid being in a situation which might lead the public to believe that preferential treatment is being sought. You must not participate in any decision which may create suspicion of a conflict of interest.

# ANNEX 1 DISCLOSABLE PECUNIARY INTERESTS

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011. Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and it is either the interest of yourself; or your partner (which means spouse or civil partner; a person with whom you are living as husband or wife; or a person with whom you are living as if you are civil partners) within the following descriptions:

(In the extracts from the Regulations below, 'M' means you and the 'relevant person' means you and your partner, as above):

SUBJECT	PRESCRIBED DESCRIPTION
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and Middlesbrough Council - <ul style="list-style-type: none"> <li>• under which goods or services are to be provided or works are to be executed; and</li> <li>• which has not been fully discharged.</li> </ul>
Land & property	Any beneficial interest in land or property which is within the area of Middlesbrough Council. Including rented accommodation.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Middlesbrough Council for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge) - <ul style="list-style-type: none"> <li>• the landlord is Middlesbrough Council; and the tenant is a body in which the relevant person has a beneficial interest.</li> </ul>



## SUBJECT

Securities

## PRESCRIBED DESCRIPTION

Any beneficial interest in securities of a body where -

- that body (to M's knowledge) has a place of business or land in the area of Middlesbrough Council; and either -
- the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on interests are subject to the following definitions;

"the Act" means the Localism Act 2011;

"body in which the relevant person has a beneficial interest" means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

"director" includes a member of the committee of management of an industrial and provident society;

"land" excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

"M" means a member of Middlesbrough Council; "member" includes a co-opted member;

"relevant period" means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

"relevant person" means M or any other person referred to in section 30(3)(b) of the Act;

"securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.



# DECLARATION OF INTERESTS – GUIDANCE NOTES FOR ELECTED MEMBERS - ANNEX 2

The following guidance notes are intended to assist members in determining the nature of their interests at meetings. The following information should not be considered as a replacement for knowledge of the Code of Conduct, which can be found on page 132 of the Council's Constitution.

## DISCLOSABLE PECUNIARY INTERESTS

These are interests that directly affect the financial position of members or their partner or spouse.

A members' interest may be a disclosable pecuniary interest if a decision is likely to affect the employment, employers, businesses, shares, land or property owned or rented, or an ongoing contract of a member or their partner or spouse.

Disclosable pecuniary interests must be declared. Members with disclosable pecuniary interests must withdraw from the meeting and leave the room during the relevant item. Members must not take part in any discussion or vote, or attempt to influence the decision.

If the interest is not already declared in the register of interests, members should notify member services so that it can be amended accordingly.

In certain circumstances members may receive a dispensation for their disclosable pecuniary interests. Please contact member services for further information.

## OTHER PECUNIARY INTERESTS

These are interests that indirectly affect the financial position of members or their partner or spouse.

A members' interest may be a pecuniary interest if a decision is likely to affect any employer or body that has appointed the member or their partner/spouse, or any contract between the Council and the member or the member's business that has ended in the last 12 months.

An interest may also be a pecuniary interest if it could be reasonably considered to financially benefit the member or their partner/spouse more so than the majority of council tax payers or inhabitants of the ward affected by their decision.

Pecuniary interests must be declared. It is at the members' discretion if they should withdraw from the meeting or not. If it is felt that a member of the public with knowledge of the relevant facts would consider the interest so significant that it would prejudice the member's judgement, then the member should leave the room and not take part in any discussion or vote. Otherwise members may remain in the meeting, debate and vote as usual.



## NON-PECUNIARY INTERESTS

These are interests that are unlikely to significantly affect the financial position of members.

A members' interest may be a non-pecuniary interest if it relates to a body that the member is appointed to by the Council; a public, charitable or political body of which the member is in a position of management; or the interests of a person the member has received a gift from.

An interest may also be non-pecuniary if it could reasonably be considered to affect the wellbeing of the member or of their partner/spouse more so than the majority of other council tax payers or inhabitants of the ward affected by the decision.

Non-pecuniary interests must be declared. However, members may remain in the meeting, debate and vote as usual, so long as the member is not considered to be biased or have a pre-determined view. **Failure to declare an interest may be a breach of the Members Code of Conduct.**

**NOTE ON BIAS AND PRE-DETERMINATION:** Separate to the above considerations, you should consider withdrawing from a meeting if a member of the public is likely to perceive bias or pre-determination. For example, if you are appointed by the Council as a trustee of a charity, and you are present at a meeting where that charity will have an application for a grant or planning permission determined – then a member of the public may reasonably consider you to be biased. In such instances, you may wish to consider leaving the meeting. Similarly, if you have publicly stated that you will vote a particular way, and there is nothing that will change your mind, then you are pre-determined and should withdraw from the meeting. This is not the same as having a pre-disposition, i.e. publicly stating your opinion, but also your willingness to consider both sides of an argument. Members are permitted to be pre-disposed, but not pre-determined.



# DECLARATION OF INTERESTS - GUIDANCE CHART FOR ELECTED MEMBERS

What matters are being discussed at the meeting?

Do any relate to members interests?

A. Is the interest declared as a disclosable pecuniary interest in the register of interests? **OR**

B. Does it directly affect the financial position of the member or their spouse or partner; particularly:

- Their employment, employers, businesses, or any for profit vocation;
- Any companies in which they are a director or where you have a share holding of more than £25,000 or 1% of the total issued share capital of that body;
- Any land, leases or licenses they own or hold;
- Any contract that has not been fully discharged?

NO

YES

**DISCLOSABLE PECUNIARY INTEREST** Members must declare the interest and withdraw from the meeting by leaving the room. Members must not take part in any discussion or vote, or attempt to influence the decision.

If the interest is not already declared in the register of interests, members should notify member services so that the register can be amended accordingly.

**OTHER PECUNIARY INTEREST** The interest must be declared.

YES

Does the matter relate to:-

- Any employment, or body that has appointed the member or their partner/spouse;
- Any contract between the Council and the member or their business that has been fully discharged in the last 12 months? **OR**
- Could the decision reasonably be regarded as of financial benefit to the member or their partner/spouse more so than the majority of council tax payers or inhabitants of the ward affected by the decision?

Would a member of the public with knowledge of the relevant facts regard this interest as so significant that it would likely prejudice the member's judgement?

YES

NO

NO

**NON-PECUNIARY INTEREST** The interest must be declared.

YES

Does the matter relate to:-

- Any body the member is appointed to by the Council;
- Any public, charitable or political body of which the member is in a position of management;
- The interests of any person from who the member has received a gift or hospitality to the value of at least £25? **OR**
- Could the decision reasonably be regarded as affecting the member's wellbeing or the wellbeing of their partner/spouse more so than the majority of council tax payers or inhabitants of the ward affected by the decision?

The member may remain in the meeting, participate and vote. However, members should consider withdrawing if they are otherwise biased or pre-determined.

NO

The Monitoring Officer can offer advice to Members on whether to declare an interest; but the final decision about whether to declare an interest or whether it is right to participate in discussion or voting remains one for elected members. Declarations of Interest must be declared within 28 days of becoming aware of the interest.



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## **COUNCIL TAX AND VOTING RESTRICTIONS**

Section 106 of the Local Government Finance Act 1992 introduced restrictions on voting by Elected Members who were two months in arrears in the payment of Council Tax.

The Department of Communities and Local Government's advice is:

Section 106 (1) and 2 (a) provide that a Member who is two or more months in arrears with payment of Council Tax must declare his/her arrears and not vote at meetings on any calculation required by chapters 111 (for setting amounts of Council Tax), (the issue of precepts) or V (limitation of Council Tax or precepts): in short on matters concerning budgetary requirements and the level of Council Tax. Sub-sections (2) (b) and (c) widen the restrictions to any decisions that might have a bearing on the calculation and to matters concerning collection, enforcement and penalties of Council Tax.

### **Extract Local Government Finance Act 1992 – Section 106**

Council tax and community charges: restrictions on voting.

**106.** (1) This section applies at any time to a member of a local authority, or a member of a committee of a local authority or of a joint committee of two or more local authorities (including in either case a sub-committee), if at that time

- (a) a sum falling within paragraph 1(1)(a) of Schedule 4 to this Act; or
- (b) a sum falling within paragraph 1(1)(a), (b), (d) or (ee) of Schedule 4 to the 1988 Act (corresponding provisions with respect to community charges),

has become payable by him and has remained unpaid for at least two months.

(2) Subject to subsection (5) below, if a member to whom this section applies is present at a meeting of the authority or committee at which any of the following matters is the subject of consideration, namely—

- (a) any calculation required by Chapter III, IV or V of Part I of this Act;
- (b) any recommendation, resolution or other decision which might affect the making of any such calculation; or
- (c) the exercise of any functions under Schedules 2 to 4 to this Act or Schedules 2 to 4 to the 1988 Act (corresponding provisions with respect to community charges),

he shall at the meeting and as soon as practicable after its commencement disclose the fact that this section applies to him and shall not vote on any question with respect to the matter.

(3) If a person fails to comply with subsection (2) above, he shall for each offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale, unless he proves that he did not know—

- (a) that this section applied to him at the time of the meeting; or
- (b) that the matter in question was the subject of consideration at the meeting.

(4) A prosecution for an offence under this section shall not be instituted except by or on behalf of the Director of Public Prosecutions.

(5) Subsections (1) to (3) of section 97 of the [1972 c. 70.] Local Government Act 1972 (removal or exclusion of liability etc.) shall apply in relation to this section and any disability imposed by it as they apply in relation to section 94 of that Act and any disability imposed by that section.

(6) In this section "local authority" has the same meaning as in sections 94 and 97 of the [1972 c. 70.] Local Government Act 1972.

**The Council Tax department will advise the Members' Services Manager should this be identified, who will subsequently discuss it with the individual Member concerned.**

## **Freedom of Information Act 2000 and Elected Members**

The Freedom of Information Act came into force on 1 January 2005. It gives the public and other bodies a mechanism by which they can request information that is held by a “public authority” e.g. Central Government, NHS, Police, Schools, BBC and of course the Local Authority.

The Act means that anyone can request information that is held by the Council, subject to a number of exemptions/fees. It covers all information HELD including financial information, policy information and historical information and can also include information about you as an elected member.

The Council has a duty to advise and assist any person who makes a request to a public authority for information and we must also inform them whether:

- a) The Council holds that information, and
- b) Supply that information (subject to a number of exemptions or fees).

There are 24 exemptions within the Freedom of Information Act that can be used to prevent the release of certain information including sensitive commercial information, personal information or information that is readily available by another means.

Any exemption has to be balanced against the public interest test.

Every public authority is required to adopt and maintain a publication scheme setting out the classes of information it holds, the manner in which it intends to publish the information, and whether a charge will be made for the information. This document informs the public of the types of information that is routinely made available by the Council and can be found on the Council’s website.

Individuals have the right of access to information about themselves under the Data Protection Act 2018.

### **Submitting a request**

In general Councillor’s information requests are dealt with through members’ casework arrangements, however in some cases it may be more appropriate to treat them as Freedom of Information requests i.e. when they are submitted on behalf of a constituent.

In order for a request to be valid under the Freedom of Information Act, the request has to meet the following criteria: -

1. The request must be in writing. This includes letters and emails.
2. The request must include a name and address for correspondence. An email address will suffice.
3. Lastly, the request must include a description of the information that the requester is looking for.

The Council must comply with requests promptly, and should provide the information within 20 working days, unless an exemption applies or extra time is needed to consider the public interest test.

Please note that the request does not have to mention the Freedom of Information Act itself, or have to be on a special form.

So if you receive a request for information from one of your constituents, and it meets the three criteria above, then please send it to [foi@middlesbrough.gov.uk](mailto:foi@middlesbrough.gov.uk) as soon as you can. If you wish to submit an FOI request, then simply send to the same email account.

### **Freedom of Information and Elected Members**

There may be times when the public ask for information about Councillors or the work they do. Each request will be considered on its own merit. However, the Council first needs to determine whether it holds the information.

#### **When does the Council hold information?**

Elected Members, are not employed by Middlesbrough Council, however:

- If an elected member uses the local authority's computer or office facilities for political or representative purposes, this information is held by the local authority only on behalf of the councillor, and is **not covered by the FOIA**.

Information received, created or held by an individual councillor will be subject to the FOIA, if the councillor is acting on behalf of the local authority for example.

- A cabinet member acting in their executive function is acting on behalf of the local authority. Therefore, information produced or received by them in that role is produced or received by the local authority.
- Information received or produced by a councillor acting as a representative of a council is covered by the FOIA. This would include, for example, where a councillor is representing the authority on a regional board or drafts an authority's response to a consultation.

Information will be covered by the FOIA if it is held by the local authority on its own behalf or for its own work.

- Information sent by the councillor to the local authority will be held by the authority for its own purposes. For example, a councillor might write to the council in support of a resident. This information is held by the authority and is subject to the FOIA.
- Where the local authority provides administrative support (not just storage and office facilities), this may count as one of its purposes, and information held for this purpose may be covered by the FOIA.
- Whether information relates to the authority's own purposes does not depend solely on the legal status or functions of the authority. Relevant factors may include the amount of control the authority has over the information; whether the information is produced or used by the authority's staff; and whether the authority provides for these purposes out of its own budget.

Councillors should also be aware that it is against the law to delete / destroy any information after a request has been received.

Further information on the Act itself and the duty this Act imposes on local authorities can be found at: **Information Commissioner:** [www.ico.org.uk](http://www.ico.org.uk)

<b>Report of:</b>	Head of Internal Audit, Veritau
<b>Submitted to:</b>	Corporate Affairs and Audit Committee, 30 September 2021
<b>Subject:</b>	Internal Audit and Counter Fraud progress report

**Summary**

<b>Proposed decision(s)</b>
<p>That the Committee:</p> <ul style="list-style-type: none"> <li>notes the progress of internal audit and counter fraud work in 2021/22 and the outcomes from work completed since the last report to this committee.</li> </ul>

<b>Report for:</b>	<b>Key decision:</b>	<b>Confidential:</b>
Information	n/a	No

<b>Contribution to delivery of the 2021-24 Strategic Plan</b>		
<b>People</b>	<b>Place</b>	<b>Business</b>
Receiving details of internal audit and counter fraud work completed will help the Committee perform its role. Internal audit and counter fraud work contributes towards achieving the Council's priorities by identifying potential issues which may obstruct that achievement.	Internal Audit assists management in delivering their priorities by working to an annual programme of work that includes assignments linked to corporate risks and priorities, and which seeks to add value by assessing the quality of controls, ensure value for money and achieve better outcomes for local people.	Delivering balanced budgets, maintaining front line services, and addressing budget shortfalls are priorities for the Council. Ensuring appropriate controls are in place and preventing fraud from occurring and recovering loss helps the Council achieve these aims.

<b>Ward(s) affected</b>
None.

### **What is the purpose of this report?**

1. To provide Members with an update on progress with the delivery of internal audit and counter fraud work and on reports issued and other work completed since the last update report to this committee.

### **Why does this report require a Member decision?**

2. Internal audit professional standards require that internal audit reports to the committee on progress with the delivery of audit plans and on the findings and conclusions from work completed.

### **Report Background**

3. Internal audit provide independent and objective assurance and advice on the Council's operations. It helps the organisation to achieve overall objectives by bringing a systematic, disciplined approach to the evaluation and improvement of the effectiveness of risk management, control and governance processes.
4. The work of internal audit is governed by the Accounts and Audit Regulations 2015 and relevant professional standards. These include the Public Sector Internal Audit Standards (PSIAS), CIPFA guidance on the application of those standards in Local Government and the CIPFA Statement on the role of the Head of Internal Audit.
5. Fraud is a significant risk to the public sector. Annual losses are estimated to exceed £40 billion in the United Kingdom. Veritau are engaged to deliver a counter fraud service for Middlesbrough Council. The service helps the council to mitigate fraud risks and to take appropriate action where fraud is suspected.
6. The purpose of this report is to provide an update on internal audit and counter fraud work carried out in 2021/22. The Council's internal audit and counter fraud work programmes were approved by this Committee in March 2021.

### **Internal Audit Progress report**

7. The internal audit progress report is contained in annex 1. It reports on progress against the internal audit work programme. This includes a summary of current work in progress, internal audit priorities for the year, completed work, and follow-up of previously agreed audit actions.

### **Counter Fraud Progress report**

8. The counter fraud progress report is contained in annex 2. It reports on progress against the counter fraud work programme. A range of work is detailed including activity to promote awareness of fraud, work with external agencies, and information on the level of fraud reported to date.

### **What decision(s) are being asked for?**

9. That the committee:
  - notes the progress of internal audit and counter fraud work in 2021/22 and the outcomes from work completed since the last report to this committee.

### **Why is this being recommended?**

10. Internal audit professional standards require that progress in delivering internal audit work, and the findings and outcomes from audit work are reported to the committee.

### **Other potential decisions and why these have not been recommended**

11. This report is for information. There are no other options available.

### **Impact(s) of recommended decision(s)**

12. There are no implications to this report in relation to:

- *Legal*
- *Financial*
- *Policy Framework*
- *Equality and Diversity*

### **Risk**

13. The Council will fail to comply with proper practice for internal audit if Members are not regularly updated on progress of and outcomes from internal audit work.

### **Actions to be taken to implement the decision(s)**

14. n/a

### **Appendices**

Annex 1 – internal audit progress report September 2021

Annex 2 – counter fraud progress report September 2021

### **Background papers**

No background papers were used in the preparation of this report

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# INTERNAL AUDIT PROGRESS REPORT 2021/22

Date: 30 September 2021

Annex 1





## BACKGROUND

- 1 Internal audit provides independent and objective assurance and advice about the Council's operations. It helps the organisation to achieve overall objectives by bringing a systematic, disciplined approach to the evaluation and improvement of the effectiveness of risk management, control and governance processes.
- 2 The work of internal audit is governed by the Accounts and Audit Regulations 2015 and relevant professional standards. These include the Public Sector Internal Audit Standards (PSIAS), CIPFA guidance on the application of those standards in Local Government and the CIPFA Statement on the role of the Head of Internal Audit.
- 3 The internal audit work programme was agreed by this committee in March 2021. The number of agreed days is 555 and the plan is flexible in nature. Work is being kept under review to ensure that audit resources are deployed to the areas of greatest risk and importance to the Council.
- 4 The purpose of this report is to update the committee on internal activity between 1 April 2021 and 31 August 2021.



## INTERNAL AUDIT PROGRESS

- 5 A summary of internal audit work currently underway is included in appendix 1. The current work plan showing the priorities for internal audit work during 2021/22 can be found at appendix 2.
- 6 Work so far in 2021/22 has largely been focused on finalising outstanding 2020/21 work. Appendix 3 summarises the key findings from work completed that we have not previously reported to this committee.
- 7 In addition to the audits listed at appendix 3, there are another four 2020/21 audits that are still in progress. The audits of Project Management and Council Tax Support & Housing Benefits are at draft report stage. The audits of Social Care & Emergency Payments and Council Tax & NNDR are ongoing. We expect to be able to report findings for each of these audits to the next meeting of this committee.
- 8 New audit work that has started includes an audit of the Youth Employment Initiative and supplier relief relating to Covid 19.
- 9 We are also starting to review grant claims relating to Supporting Families as well as those awarded by the Department for Transport and the Tees Valley Combined Authority.



## FOLLOW-UP OF AGREED ACTIONS

- 10 All actions agreed with services as a result of internal audit work are followed up to ensure that underlying control weaknesses are addressed. A summary of the current status is at appendix 4.

## APPENDIX 1: 2021/22 INTERNAL AUDIT WORK

Audit	Status	Assurance Level
Supplier Relief	In progress	
Youth Employment Initiative	In progress	
<b>Other work</b>		
Internal audit work has been undertaken in a range of other areas during the period, including those listed below.		
<ul style="list-style-type: none"> <li>Quarterly review of Supporting Families claims</li> </ul>		

## APPENDIX 2: CURRENT PRIORITIES FOR INTERNAL AUDIT WORK

Audit / Activity	Rationale
<p><b>Corporate &amp; cross cutting</b></p> <p><b>Category 1 (do now)</b></p> <p>Senior management reviews Covid-19 response including supplier relief</p> <p><b>Category 2 (do next)</b></p> <p>Future High Streets Fund governance Home working Purchasing Cards</p> <p><b>Category 3 (do later)</b></p> <p>Procurement and contract management Financial planning and resilience Strategic planning Risk management and emergency planning Performance management and data quality Budgeting and savings plans Corporate governance Partnerships Training &amp; Development</p>	<p>Raised by the CAAC as an issue for review. Significant priority for the Council.</p> <p>New, significant funding stream for the Council. Significant risk for the Council from a health and safety perspective. Following on from 2020/21 work to focus on areas of high spend.</p>

<p>Investment Strategy  Information governance and data protection  Environment, climate change and waste  Health and safety</p>	
<p><b>Financial / corporate systems</b></p> <p><b>Category 1 (do now)</b></p> <p>Debtors – data analysis</p> <p><b>Category 2 (do next)</b></p> <p>Teesside Pension Fund – overpayments  Benefits - overpayments</p> <p><b>Category 3 (do later)</b></p> <p>Main accounting/general ledger  Debtors  Council Tax/NNDR and benefits  Capital accounting and assets  Treasury Management  Payroll/personnel  Teesside Pension Fund – administration and investments</p>	<p>Wider data analysis not carried out as part of previous audit.</p> <p>Not included as part of 20/21 audit.  Not included as part of 20/21 audit.</p>

<p><b>ICT</b></p> <p><b>Category 1 (do now)</b></p> <p>n/a</p> <p><b>Category 2 (do next)</b></p> <p>Strategy and governance ICT change management ICT asset management</p> <p><b>Category 3 (do later)</b></p> <p>ICT risk management ICT information security Cyber security Digitalisation and automation</p> <p><b>Operational audits</b></p> <p><b>Category 1 (do now)</b></p> <p>Asset maintenance</p> <p>Youth Employment Initiative review</p> <p><b>Category 2 (do next)</b></p> <p>Children’s Commissioning and Contract Management</p>	<p>ICT audits are yet to be agreed with the service.</p> <p>Key ICT risk area. Including the Council’s transition to Office 365. This is linked to home working and use of Council assets outside of the office.</p> <p>Agreed by CAAC to do a further piece of work following the Transporter Bridge report.</p> <p>Required periodic audit by the scheme provider.</p> <p>Deferred from 2020/21. Links to the audit work carried out last year following the ofsted inspection.</p>
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<p>Middlesbrough Development Company</p> <p>Commercial Property Management</p> <p>Children’s caseload management</p> <p>Schools – themed audit</p> <p>External providers for children’s care</p>	<p>Significant priority for the Council.</p> <p>Significant funding stream for the Council.</p> <p>Recognised nationally as a significant risk.</p> <p>Theme to be agreed with the service.</p> <p>Raised as an area for review by the DMT.</p>
<p><b>Category 3 (do later)</b></p> <p>Measures to improve school attendance</p> <p>Town Hall strategic management</p> <p>Liberty Protection Safeguards</p> <p>Environmental health</p> <p>Homelessness</p> <p>EHC plans</p> <p>Residential placements</p> <p>Contracts and commissioning</p> <p>Transition procedures</p> <p>Highways and fleet management</p> <p>Economic Development</p> <p>Housing strategy</p>	



## APPENDIX 3: SUMMARY OF KEY ISSUES FROM AUDITS FINALISED SINCE THE LAST REPORT TO THE COMMITTEE

System/area	Opinion	Area reviewed	Date issued	Comments / Issues identified	Management actions agreed
Use of CCTV	Limited Assurance	Compliance with legislative requirements and operating procedures.	July 2021	No central register exists of all CCTV sites and therefore compliance with legislation could not be confirmed.	A complete register will be produced and responsibilities will be identified to demonstrate compliance with legislation and operating procedures.
Officer and Member Decision Making	Reasonable Assurance	Recording of decisions, compliance with the Constitution and access to information.	July 2021	A number of minor issues were identified including logging of decisions, inaccurate processes and unclear guidance.	Refresher training will be provided and any errors will be rectified.
Schools Themed Audit – Pupil Premium	Reasonable Assurance	Receipt of funding, strategies to spend funding and promotion and publication.	July 2021	A number of minor issues were identified at the schools reviewed as part of the audit. This included demonstrating governor oversight and utilisation of funding.	Strategies to be presented to governors and these will include demonstration of how funding will be spent.
Teesside Pension Fund – Investments	Substantial Assurance	The transition of funds into the Border Coast Pensions Partnership Limited.	July 2021	Processes in place are working well and no major issues identified.	Risk registers will be presented to the Pension Fund Committee on a regular basis.
Teesside Pension Fund – Administration	Substantial Assurance	Compliance with legislation and procedures, reconciliation of payments, early retirements and transfers from other employers.	August 2021	Processes in place are working well and no major issues identified.	Policy documents will be updated.

System/area	Opinion	Area reviewed	Date issued	Comments / Issues identified	Management actions agreed
Governance Arrangements	Substantial Assurance	Updating of the Council's local code of governance and the effectiveness of the Annual Governance Statement.	September 2021	Processes in place are working well. However, the local code should be made more accessible and some improvements were suggested in line with best practice for the Annual Governance Statement.	Access to the local code will be clearly linked and the Annual Governance Statement will be updated.
Main Accounting System	Reasonable Assurance	Control/suspense accounts, bank reconciliations, journals, feeder systems, virements, budget monitoring.	September 2021	A number of minor issues were identified including evidencing of checks, including journal narratives and reasons for virements.	Processes will be implemented or adapted to address the issues raised.
Cyber Security Awareness	Substantial Assurance	Cyber security risks, training and guidance, policies and procedures. A survey was sent to all staff and members and a number of phishing exercises were undertaken by ICT alongside the audit.	September 2021	Processes in place are working well and no major issues identified.	ICT will raise awareness of the issues identified, communications will be sent out as well as further phishing exercises and a follow-up survey.

## APPENDIX 4: FOLLOW UP OF AGREED AUDIT ACTIONS

Where weaknesses in systems are found by internal audit, the auditors agree actions with the responsible manager to address the issues. Agreed actions include target dates and internal audit carry out follow up work to check that the issue has been resolved once these target dates are reached. Follow up work is carried out through a combination of questionnaires completed by responsible managers, risk assessment, and by further detailed review by the auditors where necessary. Where managers have not taken the action they agreed to, issues are escalated to more senior managers, and ultimately may be referred to the Corporate Affairs and Audit Committee.

### Actions followed up

A total of 81 actions have been agreed as a result of internal audit work completed in 2020/21. A summary of the priority of these actions is included below.

Actions agreed		Actions followed up by directorate					
Priority of actions	Number of actions agreed	Environment & Community Services	Finance	Adult Social Care & Health	Legal & Governance	Children's Services	Regeneration & Culture
<b>1</b>	9	9	0	0	0	0	0
<b>2</b>	25	10	7	2	3	3	0
<b>3</b>	47	4	15	0	15	13	0
<b>Total</b>	<b>81</b>	<b>23</b>	<b>22</b>	<b>2</b>	<b>18</b>	<b>16</b>	<b>0</b>

Of the 81 agreed actions, 59 were due for implementation before the end of August 2021. Of these, 30 (51%) have been satisfactorily implemented. The remaining actions are either still being followed up with the relevant service area or a revised date has been agreed. This is done where the delay in addressing an issue will not lead to unacceptable exposure to risk and where, for example, the delays are unavoidable. No actions have currently been outstanding for longer than 6 months beyond the agreed implementation date. The remaining actions will be followed up when their implementation dates are due.

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# COUNTER FRAUD PROGRESS REPORT 2021/22

Date: 30 September 2021

Annex 2





## BACKGROUND

- 1 Fraud is a significant risk to local government. Losses to councils are estimated to exceed £7.8 billion annually in the United Kingdom.<sup>1</sup>
- 2 Veritau delivers a corporate fraud service to the Council which aims to prevent, detect and deter fraud and related criminality. The counter fraud team investigate allegations of fraud, plan and take part in counter fraud campaigns (e.g. the National Fraud Initiative), undertake fraud awareness activities with staff and the public, and maintain and update the Council's counter fraud framework and associated policies.
- 3 This report updates the Corporate Affairs and Audit Committee on counter fraud activity between 1 April 2021 and 31 August 2021.



## FRAUD MANAGEMENT

- 4 The Council's counter fraud framework has been reviewed and updated for 2021/22. This includes an updated strategy action plan, anti-fraud, corruption, and bribery policy, and fraud risk assessment.
- 5 A key objective for the counter fraud team is to raise awareness of fraud with members of staff and the public, and to inform them of how to report fraud if they suspect it is happening. Fraud awareness training has been delivered to staff working in adult social care and the revenues and benefits department this year. Awareness campaigns for all staff on cybercrime, whistleblowing, anti-bribery and money laundering are planned for later in the year.
- 6 The Council's website and intranet have been updated to assist staff and the public to report fraud if they have a concern. Further work to make staff and public aware of what to report and how to do it forms part of this year's strategy action plan.
- 7 In May the Council's counter fraud transparency data was updated to include data on counter fraud work in 2020/21, meeting the Council's obligation under the Local Government Transparency Code 2015.
- 8 Veritau attends the North East Regional Investigation Officers Group (NERIOG) on behalf of the Council. Whilst meetings of the group have been disrupted during the pandemic Veritau staff have met with NERIOG members to develop regional contacts.

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<sup>1</sup> Annual Fraud Indicator 2017, Crowe Clark Whitehill



## MULTI-AGENCY WORK

- 9 Work on the 2020/21 National Fraud Initiative is ongoing. The counter fraud team provides support to council officers addressing data matches. Over 5,500 matches across a range of council areas were produced by the exercise. Instances of suspected fraud will be considered for investigation where appropriate.



## INVESTIGATIVE WORK

- 10 In 2021/22, the team has received twelve referrals of suspected fraud. These cover potential adult social care fraud, internal fraud, and debt recovery. There are currently three cases under investigation.
- 11 As part of a review of Covid-19 grant payments to businesses an erroneous application was identified. The grant has now been withdrawn and the business has been asked for the £10k grant to be repaid. In addition a claim for Small Business Rate Relief by the business was cancelled resulting in a further invoice of nearly £6k in unpaid business rates.
- 12 During the pandemic, the counter fraud team has established practices to conduct interviews under caution using video conferencing. This allows interviews to be conducted remotely when it is in the best interest of the council and the member of the public (for example where they are unable to attend council offices).

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**MIDDLESBROUGH COUNCIL**

<b>Report of:</b>	Head of Internal Audit, Veritau
<b>Submitted to:</b>	Corporate Affairs and Audit Committee, 30 September 2021
<b>Subject:</b>	Annual Counter Fraud Framework Report

**Summary**

<b>Proposed decision(s)</b>
<p>That the Committee notes:</p> <ul style="list-style-type: none"> <li>• the updated Counter Fraud Strategy Action Plan</li> <li>• the updated Fraud Risk Assessment</li> <li>• the updated Anti-Fraud, Corruption, and Bribery Policy</li> </ul>

<b>Report for:</b>	<b>Key decision:</b>	<b>Confidential:</b>
Information	n/a	No

<b>Contribution to delivery of the 2021-24 Strategic Plan</b>		
<b>People</b>	<b>Place</b>	<b>Business</b>
<p>The prevention and detection of fraud as well as the recovery of losses helps the Council to ensure the effective use of public funds for the benefit of residents and to achieve its strategic goals. Having a strong approach in addressing fraud positively reinforces goals surrounding crime and anti-social behaviour.</p>	<p>The Council aims to make considerable investment in homes, cultural assets, and the town centre. Tackling fraud against the council increases the resources available to achieve these objectives.</p>	<p>Delivering balanced budgets, maintaining front line services, and addressing budget shortfalls. Losing money to fraud makes these goals more challenging. Preventing fraud from occurring and recovering lost funds is an opportunity to produce potentially significant savings for the Council.</p>

<b>Ward(s) affected</b>
None.

### **What is the purpose of this report?**

1. To update members on the impact of fraud nationally and in particular on local authorities. The Council's counter fraud policy framework has been reviewed and the Counter Fraud Strategy action plan, the Fraud Risk Assessment, and the Anti-Fraud, Bribery and Corruption Policy have all been updated.

### **Why does this report require a Member decision?**

2. The Corporate Affairs and Audit Committee has a responsibility under the Council's constitution to keep under review the Council's counter fraud framework which is made up of policies such as the Anti-Fraud, Bribery, and Corruption Policy.
3. To protect public funds, it is important for the Council to have a framework in place to prevent, detect and deter fraud, and to recover any losses. A strong anti-fraud framework that minimises loss through fraud and error will ensure that the Council has more resources available to focus on providing services for people with greatest needs, which is fundamental to tackling inequality and poverty.

### **Report Background**

4. The annual counter fraud framework report is included in annex 1 to this report.

### **What decision(s) are being asked for?**

5. That the committee notes:
  - the updated Counter Fraud Strategy Action Plan
  - the updated Fraud Risk Assessment
  - the updated Anti-Fraud, Bribery, and Corruption Policy

### **Why is this being recommended?**

6. A strong counter fraud framework that minimises loss through fraud or error and maximises recovery could mean the Council has more resources to achieve its strategic aims and to provide services for people with the greatest needs. The Council also has a duty to protect public funds.

### **Other potential decisions and why these have not been recommended**

7. This report is for information. There are no other options available.

### **Impact(s) of recommended decision(s)**

8. There are no implications to this report in relation to:
  - *Legal*
  - *Financial*
  - *Policy Framework*
  - *Equality and Diversity*

## ***Risk***

9. The Council will fail to comply with best practice for counter fraud work if Members are not regularly updated on counter fraud policy and risk.

### **Actions to be taken to implement the decision(s)**

10. n/a

## **Annex**

Annex 1 – Counter Fraud Framework Report 2021/22

### **Background papers**

No background papers were used in the preparation of this report

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# COUNTER FRAUD FRAMEWORK REPORT

30 September 2021

## ANNEX 1

**Assistant Director - Corporate Fraud:**  
Jonathan Dodsworth

**Head of Internal Audit:** Max Thomas





## INTRODUCTION

- 1 Fraud is a significant risk to the UK public sector. Losses to local government due to fraud results in less funding for public services. It is estimated that the cost of fraud against local authorities is as much as £7.8 billion annually.<sup>1</sup> An estimated 40% of all crime committed in the UK is categorised as fraud.<sup>2</sup>
- 2 To effectively combat fraud the Council needs to have a counter fraud framework that helps it prevent, detect and deter fraud. Counter fraud work needs to develop at least as quickly as the techniques used by fraudsters.



## NATIONAL PICTURE

- 3 Local authorities have been responsible for the administration of a number of schemes designed to support businesses and the public during the pandemic. No reports into the level of loss found in local authority administered schemes have been published, but the Department for Business, Economy and Industrial Strategy (BEIS) conclude that as councils deal with fraud on a day to day basis that they will have been more equipped to deal with fraud arising from these schemes.<sup>3</sup>
- 4 The Covid-19 pandemic has created additional opportunities for fraudsters to attack public sector organisations, private businesses, and members of the public. In March 2021, the National Audit Office (NAO) reported a significant rise in the risk fraud and error due Covid-19.<sup>4</sup>
- 5 The government has acknowledged the speed with which fraudsters can adapt to exploit organisations' weaknesses. To better tackle the evolving threat, an improved national fraud and cybercrime reporting system will be introduced to replace Action Fraud.<sup>5</sup> Cooperation and intelligence sharing between national and local agencies will help combat fraud.
- 6 Cybercrime remains a significant risk to all organisations, public and private. High profile attacks across the UK and worldwide have continued throughout the pandemic, and cybercriminals have shown disregard for the effects of their actions. An attack in the United States in May 2021 stemmed from a single compromised password and account, and resulted in the company involved paying a ransom of over £3 million.
- 7 Supply chain attacks have also become prevalent in the last 12 months. These attacks occur when a software or IT supplier is targeted and criminals use the knowledge they gain to attack the end users of the company's software. Several high profile attacks in 2020 resulted in governments and businesses in the United States, the UK, and Europe being affected. This included unauthorised access to email accounts and

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<sup>1</sup> Annual Fraud Indicator 2017, Crowe Clark Whitehill

<sup>2</sup> Public Accounts Committee Report – Fraud and Error, June 2021, HM Government

<sup>3</sup> Public Accounts Committee Report – Fraud and Error, June 2021, HM Government

<sup>4</sup> Economic Crime Plan 2019-22 HM Government

<sup>5</sup> Beating Crime Plan 2021, HM Government

confidential documents, leading to data breaches. It's essential that oversight of organisational ICT infrastructure is maintained to ensure controls remain up to date and able to reduce the impact of emerging threats.



## LOCAL PICTURE

- 8 The counter fraud team have seen an increase in the number of fraud referrals made to the team in 2021/22 compared to the previous financial year, but these have all been made internally by members of staff. The Council's website has been updated to direct members of the public wishing to report fraud to the counter fraud hotline, however further work is required to engage with residents to ensure that when they have concerns about fraud against the Council that these are reported. Work to publicise fraud reporting lines to residents is planned for this year.
- 9 Raising fraud awareness with staff is key to identifying and tackling fraud. Veritau continue to engage staff and investigate reported allegations of fraud. Key areas of awareness planned for delivery in 2021/22 include cybersecurity, bribery, and money laundering in addition to service area specific training.



## FRAUD RISK ASSESSMENT

- 14 It is recognised good practice for councils to assess their risk of fraud on a regular basis. An updated fraud risk assessment is contained in appendix A.
- 15 Covid-19 related fraud has been downgraded as a result of the high value payments seen in 2020/21 coming to an end. New cases of grant fraud may be identified through the National Fraud Initiative which includes cross boundary data matches which have not been previously available to local authorities. The Council is responsible for attempting to recover incorrectly paid grants.
- 16 Theft of assets has also been downgraded from a high risk to a medium risk. This is a result of the easing of Covid-19 related restrictions and increased staff presence at Council premises.
- 17 The risk assessment highlights areas of work to be undertaken by the internal audit and counter fraud teams (e.g. fraud awareness training) in addition to actions included in the counter fraud and corruption strategy action plan.



## COUNTER FRAUD FRAMEWORK

- 10 The Council has a robust counter fraud framework which includes a counter fraud strategy and associated action plan, an anti-fraud and corruption policy, a fraud risk assessment, and a number of related policies (e.g. whistleblowing). A review of the framework is conducted annually.
- 11 A new counter fraud and corruption strategy was adopted last year. The strategy sets out the Council's aims for counter fraud work over the next few years. The strategy also includes actions needed to maintain and develop counter fraud arrangements at the Council. The associated strategy action plan is reviewed and updated annually. This year's update is contained in appendix B. It details progress made against last year's plan and introduces new priorities for the counter fraud team in 2021/22. New objectives this year include:
  - Raising awareness of cyber security issues with members of staff;
  - Promoting the methods in which the public as well as members of staff can report concerns of fraud to the Council.
- 12 The current review identified that the Anti-Fraud, Corruption, and Bribery Policy should be strengthened to include more details of the Bribery Act 2010. The act created a number of offences for people who offer or accept bribes. Organisations that fail to prevent these offences from occurring can be found to have broken the law and could face unlimited fines. One of the criteria that a court would use to assess an organisation's liability is whether it has sufficiently strong anti-bribery policies in place which have been communicated to, and understood by, employees. An annex to the policy has been added detailing processes and best practice.
- 13 In addition the Anti-Fraud, Corruption, and Bribery Policy requires updates to reflect new guidance from the Attorney General relating to disclosure in criminal prosecutions. The guidance, which came into force in December 2020, seeks to ensure that all relevant evidence is disclosed to the defence ahead of a criminal prosecution, and that there is an opportunity for discussion between the defence and prosecutor up to commencement of any proceedings. Proposed changes to the policy, contained in appendix C, are shown as tracked changes.



## APPENDIX A: Fraud Risk Assessment (September 2021)

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
<p>Adult Social Care Fraud</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 65</p>	<p>Fraud within the adult social care system is an area of concern for the Council in terms of loss to the authority and the impact on individuals affected. CIPFA report a 104% increase in the value of social care fraud detected in 2019 compared to the previous year. The average loss in individual cases of fraud detected in this area is £29k.</p> <p>Losses can occur through deprivation or non-declaration of capital which can involve the transfer or disguise of property in order to avoid paying for residential or domestic care provision. Further fraud occurs through the misuse of the Direct Payment scheme, where monies allocated to meet a customer's assessed needs are not then used to procure these services. Residential homes could also continue to claim for customers who are no longer in residence (e.g. after they pass away).</p>	<p>Applications for care funding are carefully assessed to ensure that recipients meet the eligibility criteria and that any financial contribution for care by the customer is correctly calculated.</p> <p>A range of monitoring and verification controls are operated by the service. This includes requiring customers in receipt of Direct Payments to have a separate bank account for managing these funds and complying with monitoring procedures to verify spending. In instances of misused Direct Payments, customers are moved to a commissioned service.</p>	<p>High</p>	<p>Counter Fraud Team (CFT) to deliver a rolling programme of fraud awareness training with staff in safeguarding, financial assessments and with relevant legal services team members.</p> <p>Periodic reviews of the control environment through internal audits will further assist the Council in ensuring robust processes are in place.</p> <p>Concerns of fraud should be reported to the CFT who can determine if criminal investigation would be effective.</p> <p>CFT has assisted the Council to update application forms relating to access to adult social care.</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
<p>Council Tax &amp; Business Rates Frauds (discounts and exemptions)</p>	<p>Council Tax fraud is a common occurrence. CIPFA report that 66% of all local government related fraud, recorded as part of their annual survey, involved Council Tax or Business Rates payments. Single Person Discount fraud accounted for £28.9m of loss due to fraud in 2019/20 according to the survey.</p> <p>Depending on the scheme, there are several ways in which fraud can occur. These include applicants providing false information and recipients failing to notify the Council when they no longer qualify.</p> <p>Revenue from Council Tax and Business Rates is a key income stream. Fraud in this area threatens this source of funding.</p>	<p>The Council employs a number of methods to help ensure only valid applications are accepted. This includes requiring relevant information on application forms, visits to properties (where necessary) and an annual canvass requiring businesses to confirm that they continue to be entitled to a discount or exemption.</p> <p>Messages reminding residents and businesses to update their circumstances when necessary appear on annual bills issued by the Council.</p> <p>The Council routinely takes part in the National Fraud Initiative.</p>	<p>High</p>	<p>CFT have delivered fraud awareness training to staff in the Revenues and Benefits department about frauds affecting Council Tax and Business Rates.</p> <p>An audit of Council Tax and Business Rates is underway this year.</p>
<p>Council Tax Reduction Fraud</p>	<p>Council Tax Reduction (CTR) is a council funded reduction in liability introduced in 2013 to replace Council Tax Benefit. Unlike its predecessor, it is resourced entirely through Council funds. CIPFA's fraud tracker showed the value of CTR fraud detected in</p>	<p>The Council undertakes eligibility checks on those who apply for support. There are established lines of communication with the Department for Work and Pensions (DWP) where claims for support are linked to externally funded benefits.</p>	<p>High</p>	<p>CFT have raised awareness of fraud with staff processing claims for CTR.</p> <p>An audit of Benefits and Council Tax Support is currently being finalised.</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 67</p>	<p>2019 was £4.9m.</p> <p>Frauds in this area can involve applicants failing to declare their total assets, correct household composition or household income. Those receiving support are also required to notify relevant authorities when they have a change in circumstances that may affect their entitlement to support.</p> <p>The Department for Work and Pensions have reported an increase in fraud within the Universal Credit system during 2020/21 as a result of Covid-19. As CTR claims are often linked to Universal Credit claims there is likely to be an associated increase in CTR fraud against the Council.</p> <p>Fraudulently obtained CTR represents a loss of Council funds.</p>	<p>The Council is able to report Housing Benefit and other benefit frauds to the DWP but this does not necessarily allow the Council control over resolving false claims for CTR.</p>		
Creditor Fraud	<p>A range of frauds can be committed against the Council as a result of publically available creditor payment data. Criminals undertaking these types of fraud are often found to be operating</p>	<p>The Council has a number of controls in place to identify fraudulent attempts to divert payments from genuine suppliers and to validate any requests to change supplier details.</p>	High	<p>The CFT undertake work to raise staff awareness of these types of frauds. Increased awareness provides greater chances of stopping fraudulent attempts before</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 68</p>	<p>from overseas.</p> <p>The most common issue is mandate fraud where fraudsters impersonate legitimate suppliers and attempt to divert payments by requesting changes in bank details. Other types of fraud in this area include whaling, where senior members of the Council are targeted and impersonated in order to obtain fraudulent payments.</p> <p>In recent years there have been increased instances nationally of hackers gaining direct access to email accounts of suppliers and then attempting to perpetrate mandate frauds. These attempts are much more difficult to detect and prevent.</p> <p>With increased remote working due to Covid-19, there have been increased opportunities for fraudsters to impersonate budget holders or suppliers in electronic communications to divert funds.</p>	<p>A Creditors audit in 2020/21 found robust processes were in place, in line with the Council's Financial Regulations, and gave the area substantial assurance.</p>	<p style="background-color: red; color: black;">High</p>	<p>losses occur.</p> <p>All instances of whaling fraud reported to CFT will be reported to the relevant agencies, such as the National Cyber Security Centre, as well as directly to the email provider from where the false emails originated from.</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
Cybercrime	<p>Cybercrime is a constantly evolving area where criminals are continually refining their techniques in order to overcome controls put in place to protect organisations, to obtain unauthorised access and information, and to frustrate systems.</p> <p>Types of cybercrime experienced by local authorities in recent years include ransomware, phishing, whaling, hacking, and denial of service attacks. Attacks can lead to loss of funds, systems becoming unavailable to use impacting service delivery, and loss of data.</p> <p>There have been a number of high profile cyber-attacks on public and private sector organisations in recent years. Attacks stemming from the hacking of software or IT service providers have become more prevalent. These are known as supply chain attacks and are used by hackers to target the end users of the software created by the organisations targeted.</p>	<p>The Council has a skilled ICT department which helps mitigate the threat of cybercrime.</p> <p>The Council's information security procedure requires the central reporting of all cybersecurity incidents; including near misses.</p> <p>An audit conducted in 2020/21 of cybersecurity awareness amongst staff and Members found the Council has good measures in place. A substantial assurance opinion was given.</p>	High	<p>Raising awareness with staff can be crucial in helping to prevent successful cyberattacks. Any counter fraud training delivered will reinforce cybersecurity messages to members of staff.</p> <p>An awareness campaign is planned for cybersecurity awareness month in October.</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
Procurement Fraud  Page 70	<p>Procurement fraud has been perceived as a high risk by local authorities in the CIPFA fraud tracker for a number of years.</p> <p>Procurement fraud, by its nature, is difficult to detect but can result in large scale loss of public funds over long periods of time. The Competition and Markets Authority (CMA) estimates that having a cartel within a supply chain can raise prices by 30% or more.</p> <p>CIPFA reported losses of £1.5m in 2019/20 for local authorities, due to procurement fraud. It found that 8% of fraud detected in this area involved 'insider fraud'.</p>	<p>The Council has established Contract Procedure Rules. The rules are reviewed regularly and ensure the requirement for a competitive process (where required) through an e-tender system. A team of procurement professionals provide guidance and advice.</p> <p>The Middlesbrough Manager Framework includes contract management expectations for managers. The Contract Procedure Rules also set out the requirements for declarations of interest to be made.</p>	High	<p>Continued vigilance by relevant staff is key to identifying and tackling procurement fraud. The CFT will continue to provide training to raise awareness of fraud risks in this area.</p> <p>CFT and Internal Audit will monitor guidance on fraud detection issued by the Competition and Markets Authority and other relevant bodies.</p> <p>Any suspected procurement fraud should be reported to the CFT for further investigation.</p> <p>Audit work in this area will be considered during 2021/22.</p>
COVID-19 related fraud	<p>Throughout the Covid-19 pandemic local authorities have been responsible for providing support to businesses and residents. The Council had to respond quickly to deliver a number of support schemes in 2020/21. New processes for verifying applications</p>	<p>Over the course of 2020/21 the Council developed robust processes to identify fraudulent applications for support. This included use of national data matching resources.</p>	Medium (downgraded from High)	<p>Where payments were found to have been fraudulently or incorrectly made a recovery process was instigated.</p> <p>Veritau conducted a post-event assurance exercise at the end of 2020/21 which</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 21</p>	<p>had to be implemented very quickly.</p> <p>These schemes have been subject to attempted fraud at a local, national and international level due to the significant amount of funding available.</p> <p>While funding was provided by central government, the Council was charged with the responsibility for identifying genuine applicants and investigating and recovering incorrect payments.</p>	<p>The CFT shared details of all known frauds occurring regionally and nationally.</p> <p>Government mandated post-assurance activities have been undertaken to review the success of controls in place.</p>		<p>reviewed payments to businesses made during the first lockdown period. The exercise concluded that the vast majority of payments sampled had been made correctly and in line with government guidance.</p>
Internal Fraud	<p>There are a range of potential employee frauds including falsifying timesheets and expense claims, abusing flexitime or annual leave systems, undertaking alternative work while sick, or working for a third party on Council time. Some staff have access to equipment and material that may be misused for private purposes.</p> <p>With increased staff working remotely, working hours and associated claims may be more difficult to monitor. It is essential</p>	<p>The Council has a whistleblowing policy through which concerns can be raised. The Council has an anti-bribery policy that asks staff and members to report concerns through the whistleblowing policy.</p> <p>Controls are in place surrounding flexitime, annual leave and sickness absence.</p> <p>Participation in the National Fraud Initiative helps the Council identify potential cases of internal fraud.</p>	Medium	<p>The CFT will investigate any suspicions of corruption while internal audit ensure that appropriate checks and balances are in place to help prevent it.</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
Page Fraud	<p>that these issues are tackled as they can cause reputational damage and affect staff morale and performance.</p> <p>Payroll related fraud can involve the setting up of 'ghost' employees in order to divert salary payments to others.</p> <p>Corruption and bribery is a significant risk to all public sector organisations, however, only low levels have ever been detected.</p>			
Recruitment Fraud	<p>Recruitment fraud can affect all organisations. Applicants can provide false or misleading information in order to gain employment such as bogus employment history and qualifications or providing false identification documents to demonstrate the right to work in the UK.</p>	<p>The Council has controls in place to mitigate the risk of fraud in this area. DBS checks are undertaken where necessary.</p> <p>Additional checks are made on applications for roles involving children and vulnerable adults.</p>	Medium	<p>Where there is a suspicion that someone has provided false information to gain employment, the CFT will be consulted on possible criminal action in tandem with any disciplinary action that may be taken.</p>
Theft of Assets	<p>The theft of assets can cause financial loss and reputational damage. It can also negatively impact on employee morale and disrupt the delivery of services.</p>	<p>Specific registers of physical assets (e.g. capital items, property and ICT equipment) are maintained.</p> <p>The Council's whistleblowing</p>	Medium (downgraded from High)	<p>Members of staff should also be vigilant and report all possible thefts promptly to the Police and CFT.</p>



Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
	<p>The Council owns large numbers of physical items, such as IT equipment, vehicles and tools.</p> <p>The reduction of staff at Council premises during the Covid-19 outbreak increased the risk of theft. This risk has reduced significantly as restrictions have lifted and staff have begun to return to the office.</p>	<p>arrangements provide an outlet for reporting concerns of theft.</p>		
<p>Blue Badge Fraud</p> <p>Page 73</p>	<p>Blue Badge fraud carries low financial risk to the authority but can affect the quality of life for disabled residents and visitors. There is a risk of reputational damage to the Council if abuse of this scheme is not addressed.</p> <p>People using a Blue Badge that does not belong to them and without the badge holder present are acting contrary to the law. They may also incorrectly be exempted from parking charges or pay reduced fees, in addition to being able to park in restricted areas including on many double yellow lines.</p>	<p>Measures are already in place to control the legitimate issue of blue badges. The Council participates in the National Fraud Initiative which flags badges issued to deceased users, and badge holders who have obtained a blue badge from more than one authority, enabling their recovery to prevent misuse.</p> <p>Enforcement officers make checks of badges seen in use. Where an issue is identified, the badge is confiscated and returned to the issuing authority.</p>	<p>Low</p>	<p>Periodic proactive days of action between the CFT and the Council's enforcement team will raise awareness and act as a deterrent to badge misuse.</p> <p>Instances of misuse should be reported to the CFT who can investigate any criminal misuse.</p>

Risk Area	Risk Description	Risk Controls	Risk Category	Risk Mitigation
Fraudulent Insurance Claims	The Council may receive exaggerated or fabricated insurance claims. CIPFA's 2019/20 report estimated that insurance fraud cost local government £3.9m.	While insurance fraud is common, the burden of risk is currently shouldered by the Council's insurers who have established fraud investigation systems.	Low	n/a

## APPENDIX B: COUNTER FRAUD STRATEGY ACTION PLAN

Veritau have responsibility for maintaining, reviewing, and strengthening counter fraud arrangements at the Council. This includes an annual review of the Council's counter fraud policy framework.

Veritau also provide a number of other ongoing activities including:

- a rolling programme of fraud awareness training for officers based on priorities identified through the fraud risk assessment and any emerging issues
- regular reporting of counter fraud activity to the Corporate Affairs & Audit Committee.

### New one off and developmental activity:

Ref	Action Required	Target Date	Responsibility	Notes
1	Promote counter fraud reporting lines to members of the public and staff.	March 2022	Veritau / Communications Team	Undertake internal and external publicity campaign to promote how to report potential fraud affecting the Council.
2	Raise awareness of cyber security issues and promote good practice.	October 2021	Veritau / Communications Team	Raise awareness of cyber security issues with all staff during cyber security awareness month in October 2021.
3	Promote the Council's counter fraud policy framework.	June 2022	Veritau / Communications Team	Raise awareness of issues such bribery, money laundering, and whistleblowing.
4	Explore additional verification tools for social care financial assessment process.	August 2022	Veritau / Adult Social Care Services	Use of new tools could help the Council to complete more accurate financial assessments and reduce the risk of fraud and error.

Ref	Action Required	Target Date	Responsibility	Notes
5	Increase sharing of counter fraud intelligence to enhance fraud prevention.	March 2022	Veritau	Veritau to promote sharing of counter fraud intelligence from regional and national forums.

### Completed activities:

Ref	Action Required	Responsibility	Update
1	Prepare a counter fraud strategy which acknowledges fraud risks facing the Council and sets overall counter fraud aims. The strategy should link together existing counter fraud related policies and set out actions required for developing counter fraud arrangements.	Chief Finance Officer / Veritau	The Council adopted a new counter fraud strategy last September that runs until 2023. This table details completed actions from that strategy and the preceding table details new actions covering the next 12 months. The committee will be updated on progress against the strategy action plan on an annual basis.
2	Prepare an updated counter fraud policy to take account of the latest national guidance, and reflecting changes to the Council's counter fraud arrangements.	Chief Finance Officer / Veritau	A new Anti-Fraud, Corruption, and Bribery policy was adopted last September. Updates to the policy are included in this report. The policy and related policies will be reviewed on an annual basis.
3	Review and update the Council's Fraud Risk Assessment.	Chief Finance Officer / Veritau	The Council's fraud risk assessment was completed in September 2020. The assessment will be updated on an annual basis, the latest version is contained in appendix A of this report.

Ref	Action Required	Responsibility	Update
4	Regularly report to the Corporate Affairs and Audit Committee on counter fraud activity.	Veritau	Counter fraud matters are reported on as part of all progress reports to the committee in addition to an end of year report.
5	Meet managers of key service areas to discuss fraud provision.	Veritau / Relevant service areas	Discussions have been held with key service areas. Information sharing is in place and the team is working with areas to strengthen counter fraud arrangements. This work has led to fraud investigation work starting in a number of areas.
6	Undertake specific fraud awareness training for priority service areas identified through the fraud risk assessment.	Veritau	Fraud awareness training has been delivered to staff within adult social care, human resources, parking enforcement and the revenues and benefits service.
7	Review paper and online application forms in relevant services to ensure that they have sufficiently robust declarations to undertake national and local datamatching exercises (e.g. National Fraud Initiative) and criminal investigation.	Veritau / Relevant service areas	All relevant application forms and privacy notices were reviewed ahead of the 2020/21 NFI. In addition, forms are being updated in the adult social care department to aid in the investigation of fraud and the recovery of any associated loss.
8	Publicise new channels to report fraud for both members of staff and the public.	Veritau	The Council's website and intranet have been updated to include details of how to report fraud.

APPENDIX C: Anti Fraud Bribery and Corruption Policy  
(Updated)



**ANTI FRAUD BRIBERY  
AND CORRUPTION  
POLICY**

## **1 Introduction**

- 1.1 All organisations are at increasing risk of fraud and corruption. Some commentators estimate that annual fraud losses to local government in the UK could be £7.8 billion. It is therefore a risk that the Council cannot and should not ignore.
- 1.2 Any fraud committed against the Council effectively constitutes a theft of taxpayer's money. It is unlawful and deprives the Council of resources which should be available to provide services to the public. By putting in place effective measures to counter the risk of fraud and corruption the Council can reduce losses which impact on service delivery as a contribution to the achievement of overall Council priorities.
- 1.3 This document sets out the Council's policy in relation to fraud and corruption perpetrated against it, and its overall arrangements for preventing and detecting fraud. It includes the Fraud and Corruption Prosecution Policy contained in annex A. It forms part of the Council's overall policy framework for combating fraud and corruption and should be read in conjunction with the counter fraud strategy, the constitution, the financial regulations, contract procedure rules, the whistleblowing policy, anti money laundering policy, and disciplinary procedures.

## **2 Definitions and Scope**

- 2.1 For the purpose of this policy, the term fraud is used broadly to encompass:
  - acts which would fall under the definition in the Fraud Act (2006)
  - anything which may be deemed fraudulent in accordance with the generally held view of fraud as causing loss or making a gain at the expense of someone by deception and dishonest means
  - any offences which fall under the Social Security Administration Act (1992), Council Tax Reduction Schemes Regulations (2013) and the Prevention of Social Housing Fraud Act (2013)
  - any act of bribery or corruption including specific offences covered by the Bribery Act (2010)
  - acts of theft
  - any other irregularity which is to the detriment of the Council whether financially or otherwise, or by which someone gains benefit they are not entitled to.
- 2.2 This policy does not cover fraud or corruption against third parties, except where there may be an impact on the service provided by the Council. In addition, it does not cover other acts – for example offences involving

violence - which may affect the Council, and which should in most cases be reported directly to the police.

### **3 Principles**

- 3.1 The Council will not tolerate fraud or corruption in the administration of its responsibilities, whether perpetrated by members, officers, customers of its services, third party organisations contracting with it to provide goods and/or services, or other agencies with which it has any business dealings. There is a basic expectation that members, employees, and contractors' staff will act with integrity and with due regard to matters of probity and propriety, the requirement to act lawfully and comply with all rules, procedures and practices set out in legislation, the constitution, the Council's policy framework, and all relevant professional and other codes of practice.
- 3.2 The council will not tolerate any form of bribery to or by employees, members, or suppliers. Any act of bribery puts the council at risk of committing a criminal offence. Please see the council's Anti-Bribery Policy which is contained in annex B.
- 3.3 The Council will seek to assess its exposure to risks of fraud and corruption. It will prioritise resources available to prevent and deter fraud in order to minimise this risk.
- 3.4 The Council will consider any allegation or suspicion of fraud seriously, from whatever source, and if appropriate will undertake an investigation to confirm whether fraud has occurred and determine the appropriate outcome. Any investigation will be proportionate. The Council may refer any incident of suspected fraud to the police or other agencies for investigation, if appropriate.
- 3.5 To act as a deterrent, the Council will take action in all cases where fraud (or an attempt to commit fraud) is proved, in proportion to the act committed. This may include prosecution, application of internal disciplinary procedures, or any other action deemed appropriate to the offence (for example referral to a professional body). Prosecution decisions will be made in accordance with the Fraud and Corruption Prosecution Policy (Annex A).
- 3.6 As a further deterrent, and to minimise losses, the Council will attempt to recover any losses incurred through civil or legal action. In addition, the Council will seek to apply any appropriate fines or penalties, and recover any costs incurred in investigating and prosecuting cases.



## **4 Responsibilities**

- 4.1 Overall responsibility for counter fraud arrangements rests with the Council's Chief Finance Officer (CFO), on behalf of the Council. The CFO has a professional responsibility for ensuring the Council has appropriate measures for the prevention and detection of fraud and corruption, which are reflected in legislation.
- 4.2 The Corporate Affairs and Audit Committee has responsibility to consider the effectiveness of counter fraud and anti-corruption arrangements at the Council. This includes monitoring of Council policies on raising concerns at work and counter fraud and corruption.
- 4.3 The Leadership Management Team are collectively responsible for ensuring that the Council has effective counter fraud and corruption procedures embedded across the organisation that comply with best practice and good governance standards and requirements.
- 4.4 Veritau (who provide internal audit and counter fraud services to the Council) is responsible for reviewing the Council's counter fraud and corruption policies on a regular basis and recommending any required changes to those policies. In addition, Veritau leads on fraud prevention and detection issues for the Council and is responsible for investigating suspected cases of fraud or corruption. The internal audit team carries out audit work to ensure that systems of control are operating effectively, which contributes to the reduction in opportunities for committing fraud. The Head of Internal Audit is required to report their professional opinion on the Council's control environment to members of the Corporate Affairs and Audit Committee on an annual basis in accordance with proper practice.
- 4.5 All senior managers have a responsibility for preventing and detecting fraud within their service areas. This includes maintenance of effective systems of internal control and ensuring that any weaknesses identified through the work of internal audit or by other means are addressed promptly.
- 4.6 The Head of Finance and Investments is the Council's nominated officer for the purposes of the Money Laundering Regulations (2007), and is responsible for reporting any issues referred to them in this capacity.
- 4.7 All staff have a general responsibility to be aware of the possibility of fraud and corruption, and to report any suspicions that they may have to Veritau. Where appropriate, staff may use the Whistleblowing Policy to raise concerns anonymously.

- 4.8 Officers within human resources have a responsibility to support service departments in undertaking any necessary pre-disciplinary investigation and disciplinary process.

## **5 Overall Counter Fraud Arrangements**

### **Introduction**

- 5.1 The purpose of this section is to set out the Council's overall framework for countering the risk of fraud and corruption. While the Council aims to follow best practice in relation to counter fraud activity<sup>1</sup>, it recognises that new and emerging fraud risks will require a dynamic approach to fraud prevention and detection.

### **Measurement**

- 5.2 The Council will assess the potential risks and losses due to fraud and corruption, will use these to prioritise counter fraud activity, and will review the resources available to counter those risks. The review will include an assessment of actual levels of fraud<sup>2</sup> and the effectiveness of counter fraud activity in reducing losses. The outcome of this review will be reported to the Corporate Affairs and Audit Committee on an annual basis as part of the audit and fraud planning cycle.

### **Culture**

- 5.3 The Council will promote a culture whereby all staff, members, service users, and contractors are aware that fraud or corruption in any form is unacceptable. To do this, it will:
- ensure that there are clear arrangements in place for reporting suspicions about potential fraud or corruption, whether that be by staff, council members, partners, stakeholders, contractors or members of the public;
  - investigate reported suspicions and where evidence of fraud or corruption is found will prosecute where appropriate and take any other action necessary in accordance with the financial regulations, contract procedure rules, fraud and corruption prosecution policy, disciplinary procedures, members code of conduct, or any relevant legislation or guidance;

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<sup>1</sup> For example the CIPFA Code of Practice on Managing the Risk of Fraud and Corruption.

<sup>2</sup> All suspected fraud should be reported to Veritau. A record of all such information will be maintained on a confidential basis.

- ensure that the consequences of committing fraud and/or partaking in corrupt practices are widely publicised.

## **Prevention and Detection**

### Controls

- 5.4 As part of its ongoing operating procedures, the Council seeks to ensure that proper systems of internal control are in place. This includes controls to directly prevent and detect fraud, such as separation of duties and management review, along with other procedures such as vetting as part of recruitment processes and systems for declaration of interests and gifts and hospitality. The effectiveness of systems of control are monitored and a formal report is made as part of the process for preparing the Annual Governance Statement. The Council maintains a system of internal audit to provide independent review of control systems on an ongoing basis, in accordance with a risk assessment.
- 5.5 Services will be encouraged to consider the risk of fraud as part of the Council's risk management process. Any information on risks identified will be used to inform the annual review of counter fraud activity.

### Proactive Work

- 5.6 The Council will carry out targeted project work (for example data matching exercises) to identify fraud and corruption in known high risk areas. This work will be carried out by Veritau as part of its annual work plan. Resources will be prioritised based on a risk assessment as part of the annual review of counter fraud activity. Work may include joint exercises with other agencies, including other local councils.
- 5.7 The Council will take part in projects led by other agencies such as the Cabinet Office and the DWP to identify potential fraud e.g. the National Fraud Initiative. Resources will be allocated to follow up high risk data matches, and will include support through the internal audit and counter fraud teams to review potential control issues and suspected fraud. Veritau will work with service departments to ensure that they are aware of the need to include notices to service users stating that any data held may be subject to use for data matching purposes.

### Relationships

- 5.8 The Council has established relationships with a number of other agencies. It will continue to support these relationships and develop new ones to further the prevention and detection of fraud. Organisations which the Council will work with include:
- the police
  - the courts

- the Cabinet Office
- the Ministry of Housing, Communities & Local Government
- the Department for Works and Pensions
- other councils
- registered social landlords
- community groups

5.9 Veritau will work with Council departments to ensure that systems for reporting and investigating suspected fraud and corruption are robust.

#### Fraud Awareness Training

5.10 As part of its annual work plan, Veritau will provide targeted fraud awareness training to specific groups of staff, based on its annual risk assessment.

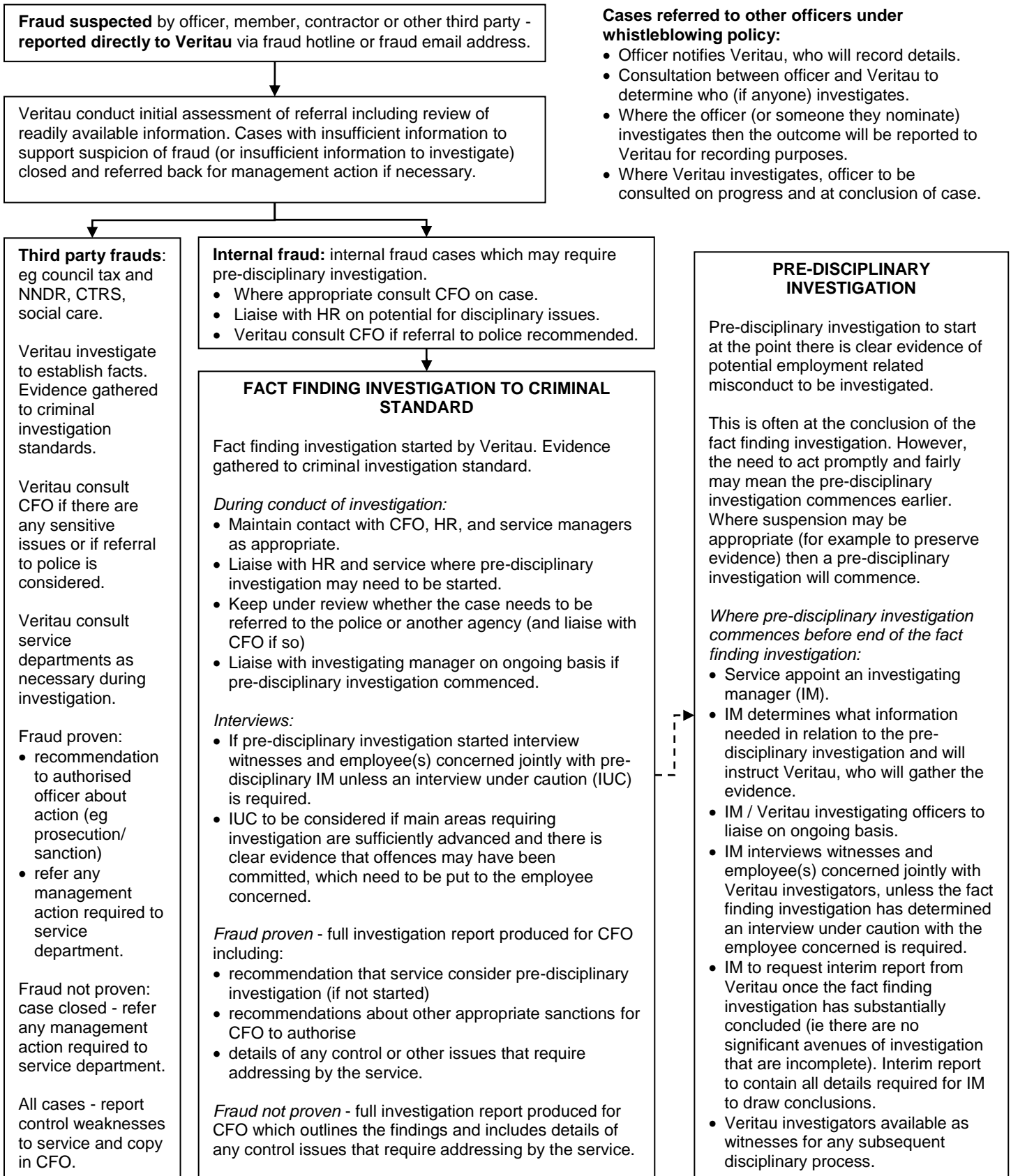
#### Investigation

5.11 Suspected cases of fraud, corruption, theft or other irregularity that are considered to be of high risk will be investigated. The nature of each investigation will depend on the circumstances of each case. Veritau will act as a first port of call for any suspected fraud and will provide advice on whether other agencies should be notified (e.g. the police). Veritau will determine the extent of the investigation to be carried out in consultation with the Chief Finance Officer (CFO), service departments and human resources as appropriate. Where necessary, Veritau may refer cases to other agencies (for example the police) at the discretion of the Head of Internal Audit. Figure 1 overleaf outlines the fraud referral and investigation process.

5.12 All staff involved in the investigation of fraud will be appropriately trained. They will be required to comply with any relevant legislation and codes of practice. For example the Police and Criminal Evidence Act (PACE), Regulation of Investigatory Powers Act (RIPA), the General Data Protection Regulation (GDPR), the Criminal Procedures Investigations Act (CPIA), and any relevant guidance from the Attorney General. Investigators will take into account the individual circumstances of anyone involved in an investigation and adjustments to procedure will be made where necessary to ensure that all parties are treated equitably (where it is appropriate and reasonable to do so).

5.13 As part of the outcome of every investigation, a review of any weaknesses in control will be made and if necessary recommendations will be made to address any issues identified. These will be set out in a formal report to the managers of the service concerned, and will be followed up to ensure the issues are addressed.

**Figure 1: Middlesbrough Council referral and investigation process**



**Cases referred to other officers under whistleblowing policy:**

- Officer notifies Veritau, who will record details.
- Consultation between officer and Veritau to determine who (if anyone) investigates.
- Where the officer (or someone they nominate) investigates then the outcome will be reported to Veritau for recording purposes.
- Where Veritau investigates, officer to be consulted on progress and at conclusion of case.

**Third party frauds:**  
eg council tax and NNDR, CTRS, social care.

Veritau investigate to establish facts. Evidence gathered to criminal investigation standards.

Veritau consult CFO if there are any sensitive issues or if referral to police is considered.

Veritau consult service departments as necessary during investigation.

**Fraud proven:**

- recommendation to authorised officer about action (eg prosecution/sanction)
- refer any management action required to service department.

**Fraud not proven:**  
case closed - refer any management action required to service department.

All cases - report control weaknesses to service and copy in CFO.

**Internal fraud:** internal fraud cases which may require pre-disciplinary investigation.

- Where appropriate consult CFO on case.
- Liaise with HR on potential for disciplinary issues.
- Veritau consult CFO if referral to police recommended.

**FACT FINDING INVESTIGATION TO CRIMINAL STANDARD**

Fact finding investigation started by Veritau. Evidence gathered to criminal investigation standard.

*During conduct of investigation:*

- Maintain contact with CFO, HR, and service managers as appropriate.
- Liaise with HR and service where pre-disciplinary investigation may need to be started.
- Keep under review whether the case needs to be referred to the police or another agency (and liaise with CFO if so)
- Liaise with investigating manager on ongoing basis if pre-disciplinary investigation commenced.

*Interviews:*

- If pre-disciplinary investigation started interview witnesses and employee(s) concerned jointly with pre-disciplinary IM unless an interview under caution (IUC) is required.
- IUC to be considered if main areas requiring investigation are sufficiently advanced and there is clear evidence that offences may have been committed, which need to be put to the employee concerned.

*Fraud proven* - full investigation report produced for CFO including:

- recommendation that service consider pre-disciplinary investigation (if not started)
- recommendations about other appropriate sanctions for CFO to authorise
- details of any control or other issues that require addressing by the service.

*Fraud not proven* - full investigation report produced for CFO which outlines the findings and includes details of any control issues that require addressing by the service.

**PRE-DISCIPLINARY INVESTIGATION**

Pre-disciplinary investigation to start at the point there is clear evidence of potential employment related misconduct to be investigated.

This is often at the conclusion of the fact finding investigation. However, the need to act promptly and fairly may mean the pre-disciplinary investigation commences earlier. Where suspension may be appropriate (for example to preserve evidence) then a pre-disciplinary investigation will commence.

*Where pre-disciplinary investigation commences before end of the fact finding investigation:*

- Service appoint an investigating manager (IM).
- IM determines what information needed in relation to the pre-disciplinary investigation and will instruct Veritau, who will gather the evidence.
- IM / Veritau investigating officers to liaise on ongoing basis.
- IM interviews witnesses and employee(s) concerned jointly with Veritau investigators, unless the fact finding investigation has determined an interview under caution with the employee concerned is required.
- IM to request interim report from Veritau once the fact finding investigation has substantially concluded (ie there are no significant avenues of investigation that are incomplete). Interim report to contain all details required for IM to draw conclusions.
- Veritau investigators available as witnesses for any subsequent disciplinary process.

**Civil action** may be taken in relation to any investigation which identifies financial loss to the council, or where financial redress may be sought. This will generally commence later in the investigation, once clear evidence of any actual loss to the council has been gathered through the fact finding investigation. In some cases, accredited financial investigators may be employed at an early stage to identify and restrain assets related to criminal activity.

- 5.14 The Head of Internal Audit will ensure that systems for investigating fraud are reviewed on an ongoing basis, to ensure that they remain up to date and comply with best practice.

#### Publicity

- 5.15 The Council will publicise all successful prosecutions undertaken either by itself or by partner organisations, to act as a deterrent against future fraud.
- 5.16 In addition, where appropriate, targeted publicity will be used to raise the awareness of fraud to staff, members, the public, and other agencies. This will consist of both internal and external publicity and will aim to:
- raise awareness about potential fraud and ensure all stakeholders are alert to the possibilities of fraud;
  - inform all stakeholders of the procedures to be followed if they have suspicions of fraud;
  - ensure that all stakeholders are aware that the Council will not tolerate fraud and the consequences of committing fraud against it.

#### Recovery of Monies

- 5.17 Where any loss has been incurred by the Council or additional costs have been incurred as a result of fraud or corruption, the Council will seek to recover these from the individual or organisation concerned. This will help to ensure that the financial impact of fraud on the Council is minimised and act as a deterrent. As a further deterrent, the Council will seek to levy any appropriate fines or penalties where it is possible and desirable to do so.
- 5.18 Methods of recovery may include (but are not limited to):
- recovery from assets held by the organisation or individual (using the Proceeds of Crime Act or any other relevant legislation);
  - bankruptcy where appropriate;
  - recovery from future salary payments if an individual remains an employee of the Council;
  - recovery of pension contributions from employees or members who are members of the Teesside Pension Fund.

## **6 Monitoring & Review Arrangements**

- 6.1 The arrangements set out in this policy document will be reviewed on an annual basis as part of the audit and fraud planning cycle and will include the Fraud and Corruption Prosecution Policy (Annex A) and other related guidance. Veritau will work with other departments to ensure that other related guidance and policy (such as the whistleblowing policy) are

reviewed on a regular basis and any amendments or necessary changes are reported to members for approval.

**LAST REVIEWED AND UPDATED: 28 September 2021**



**FRAUD AND  
CORRUPTION  
PROSECUTION POLICY**



## **1 Scope and Purpose**

- 1.1 The fraud and corruption prosecution policy forms part of the Council's overall counter fraud and corruption arrangements. The policy covers all acts, and/or attempted acts, of fraud or corruption committed by officers or members of the Council, or committed by members of the public, or other organisations or their employees, against the Council.
- 1.2 The policy sets out the circumstances in which the Council will take legal action against the perpetrators of fraud or corruption. It also sets out the circumstances when it is appropriate to consider alternative courses of action such as offering a caution. The policy does not cover internal disciplinary procedures which are the subject of the Council's separate disciplinary policy and procedures.
- 1.3 This policy should be read in conjunction with the Council's constitution, financial regulations, contract procedure rules, the counter fraud and corruption policy and the strategy, the whistleblowing policy and the Council's disciplinary policy and procedures.
- 1.4 The policy contains specific guidelines for determining the most appropriate course of action when fraud has been identified. Offences other than fraud and corruption (for example those relevant to the enforcement of regulations) are dealt with by the appropriate service departments under other policies and relying on specific legal powers.

## **2 Principles**

- 2.1 The Council is committed to deterring fraud and corruption. As part of its overall strategy to do this the Council will seek to take appropriate action against anyone proven to have attempted and/or committed a fraudulent or corrupt act against it. The Council considers that those guilty of serious fraud or corruption must take responsibility for their actions before the courts.
- 2.2 The policy is designed to ensure that the Council acts fairly and consistently when determining what action to take against the perpetrators of fraud or corruption.
- 2.3 Staff and members who are found to have committed fraud or corruption against the Council may be prosecuted in addition to such other action(s) that the Council may decide to take, including disciplinary proceedings in the case of staff and referral to the relevant officer or body in the case of members. Any decision not to prosecute a member of staff for fraud and corruption does not preclude remedial action being taken in accordance with the Council's disciplinary procedures or other policies.

- 2.4 This Policy is also designed to be consistent with Council policies on equalities. The Council will be sensitive to the circumstances of each case and the nature of the crime when considering whether to prosecute or not.
- 2.5 The consistent application of the policy will provide a means for ensuring that those who have perpetrated fraud and corruption are appropriately penalised. It will also act as a meaningful deterrent to those who are contemplating committing fraud or corruption. The Council recognises the deterrent value of good publicity and therefore information regarding successful prosecutions and sanctions will be made public.
- 2.6 Any decision taken by an authorised officer to prosecute an individual or to offer a formal sanction will be recorded in writing. The reason for the decision being taken will also be recorded.
- 2.7 Irrespective of the action taken to prosecute the perpetrators of fraud and corruption, the Council will take whatever steps necessary to recover any losses incurred, including taking action in the civil courts.

### **3 Prosecution**

- 3.1 The policy is intended to ensure the successful prosecution of offenders in court. However, not every contravention of the law should be considered for prosecution. The Council will weigh the seriousness of the offence (taking into account the harm done or the potential for harm arising from the offence) with other relevant factors, including the financial circumstances of the defendant, mitigating circumstances and other public interest criteria. All cases will be looked at individually and be considered on their own merit.
- 3.2 To consider a case for prosecution the Council must be satisfied that two tests have been passed. Firstly, there must be sufficient evidence of guilt to ensure conviction. This is called the **evidential test**. Secondly, it must be in the public interest to proceed – the **public interest test**.
- 3.3 To pass the evidential test, authorised officers must be satisfied that there is a realistic prospect of conviction based on the available evidence (that is, there must be sufficient admissible, substantial and reliable evidence to secure a conviction).
- 3.4 To pass the public interest test, the authorised officer will balance, carefully and fairly, the public interest criteria against the seriousness of the offence. The public interest criteria include;
- the likely sentence (if convicted);

- any previous convictions and the conduct of the defendant;
- whether there are grounds for believing the offence is likely to be repeated;
- the prevalence of the offence in the area;
- whether the offence was committed as a result of a genuine mistake or misunderstanding;
- any undue delay between the offence taking place and/or being detected and the date of the trial;
- the likely effect that a prosecution will have on the defendant;
- whether the defendant has put right the loss or harm caused.

3.5 It will generally be in the public interest to prosecute if one or more of the following factors applies, subject to any mitigating circumstances;

- the actual or potential loss to the Council was substantial;
- the fraud has continued over a long period of time;
- the fraud was calculated and deliberate;
- the person has previously committed fraud against the Council (even if prosecution did not result) and/or there has been a history of fraudulent activity;
- the person was in a position of trust (for example, a member of staff);
- there has been an abuse of position or privilege;
- the person has declined the offer of a caution or financial penalty;
- the case has involved the use of false identities and/or false or forged documents.

3.6 Investigating officers and prosecutors will review the appropriateness of pre-charge engagement where prosecution is considered. This is likely to occur where such engagement may lead the defendant to volunteer additional information that may identify new lines of inquiry. Pre-charge engagement may be instigated by the investigating officer, the council prosecutor, the defendant's representative or a defendant themselves (if unrepresented).

#### **4 Mitigating Factors**

4.1 The following mitigating factors will be taken into account when determining whether to prosecute;

### **Voluntary Disclosure**

4.2 A voluntary disclosure occurs when an offender voluntarily reveals fraud about which the Council is otherwise unaware. If this happens, then the fraud will be investigated but the offender will not be prosecuted unless in exceptional circumstances. However, any person colluding in the crime will still be prosecuted. A disclosure is not voluntary if the:-

- admission is not a complete disclosure of the fraud;
- admission of the fraud is made only because discovery of the fraud is likely, (for example, the offender knows the Council is already undertaking an investigation in this area and/or other counter fraud activity);
- offender only admits the facts when challenged or questioned;
- offender supplies the correct facts when making a claim to Legal Aid.

### **III Health or Disability**

4.3 Where the perpetrator (and/or their partner) is suffering from prolonged ill health or has a serious disability or other incapacity then the offender will not normally be prosecuted. Evidence from a GP or other doctor will be requested if the condition is claimed to exist, unless it is obvious to the investigator. It is also necessary to prove that the person understood the rules governing the type of fraud committed and was aware that their action is wrong. This may not be possible where, for instance, the offender has serious learning difficulties. However, simple ignorance of the law will not prevent prosecution.

### **Social Factors**

4.4 A wide range of social factors may make a prosecution undesirable. The test is whether the court will consider the prosecution undesirable, and go on to reflect that in the sentence.

### **Exceptional Circumstances**

4.5 In certain exceptional circumstances the Council may decide not to prosecute an offender. Such circumstances include;

- the inability to complete the investigation within a reasonable period of time;
- the prosecution would not be in the interests of the Council;

- circumstances beyond the control of the Council make a prosecution unattainable.

## **5 Alternatives to Prosecution**

5.1 If some cases are considered strong enough for prosecution but there are mitigating circumstances which cast a doubt as to whether a prosecution is appropriate then the Council may consider the offer of a sanction instead. The two sanctions available are;

- a caution, or;
- financial penalty.

### **Simple Cautions**

5.2 A simple caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. All cautions are recorded internally and kept for a period of six years. Where a person offends again in the future then any previous cautions will influence the decision on whether to prosecute or not.

5.3 For less serious offences a simple caution will normally be considered where all of the following apply;

- there is sufficient evidence to justify instituting criminal proceedings;
- the person has admitted the offence;
- there is no significant public requirement to prosecute;
- it was a first offence, and;
- a financial penalty is not considered to be appropriate.

Only in very exceptional circumstances will a further caution be offered for a second or subsequent offence of the same nature.

5.4 Cautions will be administered by the Head of Internal Audit (or deputy), Assistant Director - Corporate Fraud, Corporate Fraud Manager, or a Senior Corporate Fraud Investigator, on behalf of the Council. If a caution is offered but not accepted then the Council will usually consider the case for prosecution. In such cases the court will be informed that the defendant was offered a penalty but declined to accept it.

### **Financial Penalties**

5.5 The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, permit a financial penalty to be offered to claimants as an alternative to prosecution. The penalty is

set at 50% of the amount of the excess reduction, subject to a minimum of £100 and a maximum of £1,000. Once a penalty is accepted, the claimant has 14 days to change their mind.

5.6 Subject to the criteria set out in the guidelines below, a financial penalty will normally be offered by the Council in the following circumstances;

- the Council believes that there is sufficient evidence to prosecute;
- it was a first offence or a previous offence was dealt with by way of a caution, and;
- in the opinion of the Council, the circumstances of the case mean it is not overwhelmingly suitable for prosecution, and;
- the claimant has the means to repay both the overpayment and the penalty, and;
- there is a strong likelihood that both the excess reduction and the penalty will be repaid.

5.7 It is important to note that the claimant does not need to have admitted the offence for a financial penalty to be offered. Financial penalties will be administered by the Head of Internal Audit (or deputy), Assistant Director - Corporate Fraud, Corporate Fraud Manager or a Senior Corporate Fraud Investigator. If a financial penalty is not accepted or is withdrawn then the Council will usually consider the case for prosecution. In such cases the court will be informed that the defendant was offered a penalty but declined to accept it.

## **6 Proceeds of Crime Act 2002 (POCA)**

6.1 In addition to the actions set out in this policy, the Council reserves the right to refer all suitable cases for financial investigation with a view to applying to the courts for restraint and/or confiscation of identified assets. A restraint order will prevent a person from dealing with specific assets. A confiscation order enables the Council to recover its losses from assets which are found to be the proceeds of crime.

## **7 Implementation Date**

7.1 This revised policy is effective from 28 September 2021 and covers all decisions relating to prosecutions and sanctions after this date.



# **ANTI-BRIBERY POLICY**

## **1 Introduction**

- 1.1 The Bribery Act became law in 2011 and was enacted to enable robust action to be taken against all forms of bribery. The Council is committed to protecting the public purse and the services it provides from being abused. The Council has a zero-tolerance approach towards bribery and promotes the prevention, deterrence and detection of bribery.
- 1.2 Bribery is defined as the offering, giving, receiving or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty. The act of bribery is the intention to gain a personal, commercial, regulatory or contractual advantage.
- 1.3 Facilitation payments are unofficial payments made to public officials to secure or expedite actions. These are not tolerated and are illegal.
- 1.4 This policy should be read in conjunction with the Council's Acceptance of Gifts and Hospitality Policy.

## **2 Principles**

- 2.1 The Council is committed to the prevention, deterrence and detection of bribery.
- 2.2 The Council commits to:
  - Making all employees and associated people aware of their responsibilities to adhere strictly to this policy at all times.
  - Training members of staff so that they are aware of the Bribery Act.
  - Encouraging all employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.
  - Rigorously investigate instances of alleged bribery and assist the police and other authorities in any investigations or prosecutions they undertake.
  - Taking strong action against any individual(s) involved in bribery.

## **3 Scope**

- 3.1 This policy applies to all of the Council's activities, members of staff (permanent and temporary), agency staff, volunteers, consultants, and members.



- 3.2 For partners, joint ventures, and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.
- 3.3 All employees and members are required to:
- Raise concerns as soon as possible if it is believed or suspected that this policy has been breached or may be breached in the future.
  - 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.
- 3.4 As well as the possibility of civil and criminal prosecution, employees breaching this policy will face disciplinary action, which could result in dismissal in cases of gross misconduct.

## **4 Offences**

- 4.1 There are four key offences under the Bribery Act 2010.

### **Section 1 – Offence of bribing another person**

- 4.2 This section makes it an offence when a person offers, promises or gives a financial or other advantage to another person and intends the advantage to induce a person to perform improperly a relevant function or activity or to reward a person for the improper performance of such a function or activity.
- 4.3 It is also an offence when a person offers, promises or gives a financial or other advantage to another person and knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

### **Section 2 – Being bribed**

- 4.4 This section makes it an offence when a person requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly.
- 4.5 It is an offence when a person requests, agrees to receive or accepts a financial or other advantage and the request, agreement or acceptance itself constitutes the improper performance of the person of a relevant function or activity.

- 4.6 It is an offence if a person requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance of a relevant function or activity.
- 4.7 It is also an offence if a person in anticipation of or in consequence of the person requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly.

### **Section 6 – Bribery of foreign public officials**

- 4.8 Under this section of the Act an offence is committed when a person intends to influence a foreign official in their official capacity and intends to obtain or retain business or an advantage in the conduct of business.
- 4.9 It is also an offence to offer, promise or give any financial or other advantage to a foreign public official.

### **Section 7 – Failure of a commercial organisation to prevent bribery**

- 4.10 A relevant commercial organisation is guilty of an offence if a person associated with the organisation bribes another person intending to obtain or retain business for the organisation or to obtain or retain an advantage in the conduct of business for the organisation and the organisation fails to take reasonable steps to implement adequate procedures to prevent such activity.

### **Corporate Responsibility**

- 4.11 Middlesbrough Council is considered to be a commercial organisation under the Bribery Act. It is therefore important that the Council takes steps to prevent bribery from occurring within the organisation.
- 4.12 If an offence did occur then courts would consider six tests to determine whether the Council was culpable:
- Does the Council have proportionate procedures in place to prevent bribery by persons associated with it? These should be clear, practical and accessible.
  - Is there top level commitment to preventing bribery? This includes members as well as officials.
  - Is the Council's exposure to potential external and internal risks of bribery periodically assessed?

- Does the Council take a proportionate and risk based approach to mitigate identified bribery risks.
- Are anti-bribery policies and procedures embedded and understood throughout the organisation? Are they communicated internally and externally?
- Are procedures monitored and reviewed regularly?

## **Penalties**

- 4.13 A person guilty of an offence under sections 1, 2, or 6 of the Bribery Act is may be sentenced to:
- a maximum imprisonment of 12 month and/or a fine not exceeding £5,000 (if convicted in a magistrates court).
  - a maximum imprisonment of 10 years and/or an unlimited fine (if convicted at a crown court).
- 4.14 An organisation found guilty of allowing bribery offences to occur will be subject to an unlimited fine that is in part determined by the gain that was sought to be made through bribery offences and an assessment of an organisation's culpability by the court.

## **5 How to raise a concern**

- 5.1 We all have a responsibility to help detect, prevent and report instances of bribery. If a member of staff or councillor has a concern regarding a suspected instance of bribery or corruption then please speak up. The sooner you act, the sooner it can be resolved.
- 5.2 Employees who raise concerns or report wrongdoing (e.g. that they have been offered a bribe, have been asked to bribe a third party, or are aware of bribery occurring within the Council or its suppliers) can be concerned that there may be repercussions. The Council aims to encourage openness and will support anyone who raises concerns under this policy, even if those concerns prove to be incorrect.
- 5.3 The Council is committed to ensuring nobody suffers detrimental treatment by refusing to take part in bribery or corruption, or because they report a concern that they believe is true.
- 5.4 Members of staff should consult the Council's Whistleblowing policy which sets out a number of routes for reporting concerns. Any concerns can be reported to the whistleblowing hotline, 0800 9179247 or via email to [counter.fraud@veritau.co.uk](mailto:counter.fraud@veritau.co.uk).

- 5.5 Concerns can be raised anonymously and the Council will still take action. However, it is easier and quicker if concerns are not made anonymously. The Council will take all possible precautions to ensure that the identities of people who raise concerns are protected.

## **6 What to do if someone reports a concern**

- 6.1 All reports of potential bribery within the Council should be reported to the Council's Monitoring Officer, Director of Finance (Section 151 Officer), and Veritau.

**Last reviewed and updated: 28 September 2021**

**MIDDLESBROUGH COUNCIL**

<b>Report of:</b>	Ian Wright, Director of Finance Councillor Barrie Cooper, Executive Member for Environment and Finance and Governance
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<b>Submitted to:</b>	Corporate Affairs and Audit Committee 30 <sup>th</sup> September 2021
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<b>Subject:</b>	Procurement Overview for 2020/21
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**Summary**

<b>Proposed decision(s)</b>
That the committee notes the report and the governance in placement for procurement.

Report for:	Key decision:	Confidential:	Is the report urgent? <sup>1</sup>
Information	n/a	No	Non-urgent

Contribution to delivery of the 2021-24 Strategic Plan		
People	Place	Business
Procuring high quality services to meet the needs of our residents.	Supports the delivery of Investment Strategy where procurement is required.	Promoting local commissioning directs contract opportunities to the local market.

<b>Ward(s) affected</b>
All wards.

<sup>1</sup> Remove for non-Executive reports

## What is the purpose of this report?

1. The purpose of this report is to provide a summary of the Council's procurement activity over the last financial year including compliance with Standing Orders, practice changes and contract awards.

## Why does this report require a Member decision?

2. The report is necessary as it is within the terms of reference for this committee to have oversight of the Council's corporate governance arrangements.

## Report Background

3. The Council has in place the Contract Procedure Rules as part of the Council's Constitution and these provide the governance in respect of procurement practices.
4. The table below shows the thresholds as at 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021, which all procurement activity should adhere to:

WORKS	GOODS/ SERVICES/ CONSULTANTS	LIGHT TOUCH REGIME	TENDERING PROCEDURE
Up to £10,000	Up to £10,000	Up to £10,000	Neither written quotations nor tenders need to be invited. Ensure value for money is achieved using local suppliers where possible.
£10,001 - £1,000,000	£10,001 - £189,330	£10,001 - £663,540	At least 3 written quotations. The quotation system must be used for quotations. Use local suppliers where possible. Tenders can be sought but this is optional.
£1,000,001 - £4,733,252	N/A	N/A	At least 4 tenders must be sought. The Tender advert(s) must be placed on Contracts Finder. The NEPO portal must be used.
Above £4,733,252	Above £189,330	Above £663,540	EU Procedure - OJEU Notice. At least 5 tenders must be sought, ensuring that the tender process complies with the EU Directives. The NEPO portal must be used.

5. The pandemic has had a significant impact on procurement activity during 2020/21 and there have been some significant challenges, which the procurement team have handled positively with our suppliers to ensure continuity of provision and services.
6. There were a number of Public Procurement Notices (PPN) published by Crown Commercial Services (CCS) in order to offer assistance and guidance for Contracting Authorities:
  - PPN 01/20 – Responding to COVID-19
  - PPN 02/20 – Supplier Relief Due to Coronavirus
  - PPN 03/20 – Use of Procurement Cards – COVID-19
  - PPN 04/20 – Recovery & Transition from COVID-19
  - PPN 01/21 – Procurement in an Emergency (building on from PPN 01/20)
7. One of the consequences of the pandemic and respective lock down's has been the extension of 77 contracts as it was not possible for formal tenders to be carried out.

8. These extensions were compliant with the Public Contract Regulations and the relevant PPN's and contracts were formally varied. These procurements are now being re-scheduled into future tender pipeline.
9. During the pandemic the Council has worked extremely hard to ensure that services continue without disruption and that suppliers, especially local suppliers were supported as much possible.
10. In compliance with PPN 02/20 the Council has agreed supplier relief in order to ensure sustainability of services and markets to the following:
  - NEPO Food Suppliers – In collaboration with the other NE Local Authorities and managed via NEPO the Councils have offer supplier reflect to JR Holland and Freemans Butchers
  - Transport – Taxi providers
  - Day Care Services – Adults and Children
  - Older Persons Residential Market
  - Home Care Market
  - Roundabout Advertising
11. There has been procurement activity undertaken during the year, as we moved out of lock down and 53 contracts have been awarded through the following routes:
  - Quotations - 40
  - Tenders - 13
12. There are currently 475 active contracts recorded on our contract register, which is publically available.
13. In line with Standing Orders there are occasions where an Exemption from Standing Orders can be obtained through a fully transparent approval process. During 2020/21 there were 48 exemptions approved, compared to 60 in 2019/20.

<b>Directorate</b>	<b>Number of Exemptions</b>
Adults	9
Children's	5
ECS/Regeneration	15
Finance & Legal	8
Public Health	11

14. There are reasons why Standing Order Exemptions are supported and these are detailed in the constitution, the main reasons for the above requests were noted to be for technical specification requirements, person centred care and evidenced value for money.
15. The Director of Finance has identified exemptions as an area for review as they would like to see the number of requests continue to decrease.
16. The procurement team are now a gate keeper via Business World for any orders raised over £5k up to £100k which is enabling the team to have a greater

understanding of the Councils spend. Furthermore it allows the team to challenge and ensure compliance with standing orders is being followed.

17. There are occasions where standing orders may not have been followed, on such occasions, the team will work closely with the service area in order to identify what has happened and make sure actions are taken in order to avoid it happening again.
18. The main reasons where standing orders are not followed tend to be situational or lack of understanding of procurement processes and as such the team will provide advice and guidance. They will also direct them to the procurement and commissioning intranet page which hosts a variety of information, guidance and documentation that will ensure the service area understands the process moving forward.
19. 2020/21 breaches were minimal due to COVID restrictions reducing the procurement activity being undertaken by the Council. However we are aware of more recent occasions where standing orders have not be adhered to but assurance measures are being undertaken now to deal with them and further detail will be provided in next years report. It appears that further training would be beneficial for staff in order to further promote understanding of the contract procedure rules and the Procurement Manager has been tasked with developing this work.
20. Purchasing cards continue to be managed by the team and following a recent audit further actions have been put in place in order to ensure that all staff and line managers understand their role and responsibility when it comes to the purchasing card process.
21. During 2020/21 the Council spent £7,515,013 via purchasing cards which was 25,438 transactions. The majority of spend continues to be low value with 16,842 (66%) being under £99, 6,621 (26%) were £100 to £499.99 and 1,975 (8%) were over £500.
22. Rebates for the cards are paid 1<sup>st</sup> December to 30<sup>th</sup> November and in December 2020 the Council received a rebate of £67,345.83 and a further rebate will be received in December 2021.
23. In line with the purchasing card policy staff are responsible for reviewing all spend on their card by the 28<sup>th</sup> of each month which includes providing the receipt, detail of expenditure, cost centre and GL codes. Managers of staff with cards are also responsible for monitoring spend.
24. Members will be contacted separately by Head of Finance and Investments to provide an update on the VAT review in relation to purchasing cards.
25. The Council takes the monitoring of purchasing cards very seriously and monthly reports are undertaken on cardholders reviewing performance and to identify any areas of concern, in 2020 through this process a staff member's card spend raised significant concerns and was formally deal with under the Council's disciplinary policy.
26. The team have actioned the audit recommendations and these have further strengthened our monthly reporting to cardholders and line managers on the reviewing of the purchasing cards and cards being cancelled where the Council's policy is not being adhered to.
27. The team also held a number of refresher training sessions for staff and line managers in July 2021 and feedback on these has been really positive.



28. Middlesbrough Council is now seeking Executive agreement (report being presented on 7<sup>th</sup> September) to procure the Supplier Incentive Programme (SIP) (also known as an Early Payment System) with Oxygen Finance via the NEPO Framework in order to enable early as possible payment options for all suppliers in return for a rebate payment.
29. This project will have a number of efficiencies both in relation to practice as well as financial and will result in a decreased use of purchasing cards as we currently know it. Purchasing cards will continue to be used but will significantly decrease.
30. It is anticipated that the SIP will be live by the end of the financial year and more detail on its performance will be provided in next year's report.
31. Local spend continues to be monitored against our set target, and work to enhance our reporting continues to be developed. A new report has been designed in Business World and the Data Team have assisted in transferring that report into PowerBI in order to provide a visual data dashboard on our spend performance.
32. A summary of our performance during 2020/21 is shown below:

<b>PERIOD</b>	<b>TARGET</b>	<b>ACHIEVED</b>	<b>SPEND</b>
April – June 2020	40%	28%	£6,579,961.24
July – September 2020	40%	40%	£5,754,246.21
October – December 2020	40%	31%	£3,143,785.03
January – March 2021	31%	26%	£3,727,866.80

33. Throughout the year the achievement of the target has been challenging due the reduction in procurement activity caused by COVID and contracts being extended. As we move out of lock down and procurement activity increases we are confident we will achieve the 2021/22 target and we have already seen an improvement in Quarter 1 2021/22 achieving 48.8%.
34. Local spend is an area of work which we will continue on analysis of our spend data to make sure it is accurate as possible.

**What decision(s) are being asked for?**

35. That the committee notes the report and acknowledges the governance in place for procurement.

**Why is this being recommended?**

36. The report is for information purposes and no recommendation is being sought.

**Other potential decisions and why these have not been recommended**

37. Not applicable.

## **Impact(s) of recommended decision(s)**

38. This report provides assurance that procurement guidance is being adhered to.

### ***Legal***

39. The Procurement Manager and the Procurement Solicitor work closely in order to monitor and govern procurement activity, dealing with any issues that may arise. There are no direct legal implications as a result of this report.

### ***Financial***

40. There are no direct financial implications as a result of this report, however this report does set out how the Council manages its procurement process to ensure compliance with financial regulations and standing orders.

### ***Policy Framework***

41. Not applicable as this report is for information only.

### ***Equality and Diversity***

42. Not applicable as this report is for information only.

### ***Risk***

43. There are no direct risks associated with this report, however, compliance with the policies and procedures that are in place to support procurement strategies positively influences a number of risks including:

- 08-055 – Failure to respond effectively and efficiently to legislative changes
- 013-001 – (SIRO 02 and 16) Poor procurement checks and contract management

## **Actions to be taken to implement the decision(s)**

44. Not applicable.

### **Appendices**

45. Not applicable.

### **Background papers**

46. Not applicable.

**Contact:** Claire Walker, Specialist Commissioning & Procurement Senior Manager  
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<b>Report of:</b>	The Data Protection Officer
<b>Submitted to:</b>	Corporate Affairs and Audit Committee of 30 September 2021
<b>Subject:</b>	Subject Access Requests – Compliance Update

**Summary**

<b>Proposed decision(s)</b>
That the Committee notes the content of this report and provides comment as it sees fit.

<b>Contribution to delivery of the 2021-24 Strategic Plan</b>		
<b>People</b>	<b>Place</b>	<b>Business</b>
The right of subject access is fundamental to our ability, not only to maintain legal compliance, but also to ensure that our citizens, of all ages, are positively engaged with us and that they can count on integrity and transparency in their relationships with our representatives across all services, especially where they have significant lasting cause and effect on their rights and freedoms.		
<b>Ward(s) affected</b>		
All Wards		

**What is the purpose of this report?**

This report provides an update regarding Middlesbrough Council’s legal compliance with the right of subject access.

**Why does this report require a Member decision?**

This report is for information.

**Report Background**

The Committee previously received the Annual Senior Information Risk Owner (SIRO) Report at its meeting on 29 April 2021 which included an update regarding the ‘backlog’ of subject access requests (SARs).

“The second priority for 2020 was to clear the Council’s backlog of subject access requests (which fall largely within Children’s Services) and put in place arrangements to ensure compliance for all information requests within statutory timescales in at least 90% of cases...This resulted in only minor reduction in the Council’s backlog of SARs, which reduced from 32 at the end of 2019 to 26 at the end of 2020.”

Since the last update to the Committee, the temporary post in the Children's Services department has been put on a more permanent footing within the Medium Term Financial Plan. The effect of that role, and the existing post dedicated to historical Children's Services SARs, has resulted in a reduction of the backlog of cases received prior to 2021 to 10 within that department.

A small number of these cases are awaiting 'life story work' to be provided by the Children Looked After Service to ensure that those requestors receive the information they have asked for but with the right level of pastoral support and explanation about their time in care. The other requests are taking a significant amount of time to process due to the nature of those cases – some of whom have spent a significant number of years in care. In one example there is in excess of 650 files totalling 6,000 pages, all of which must be reviewed and redacted to comply with the data protection legislation. The requestors in those cases are aware of the reasons for the delays and are content to receive the information in a number of partial responses as the work progresses.

The Committee should also note that a further 56 SARs were received by the Children's Services department in 2021 so far, 42 of which have been responded to. In total, the current number of open SARs in the department is 24, with 17 of those being overdue.

### **What decision(s) are being asked for?**

That the Committee notes the content of this report and provides comment as it sees fit.

### **Why is this being recommended?**

To assist the Committee with its responsibilities of keeping the Council's arrangement for Corporate Governance under review.

### **Other potential decisions and why these have not been recommended**

This report responds to a request from the Committee to provide an update on this subject.

### **Impact(s) of recommended decision(s)**

#### ***Legal***

The UK General Data Protection Regulation 2016 and Data Protection Act 2018 impose duties on the local authority as a data controller to respond to certain rights of the data subject including the right of access. Failure to adequately respond to these requests within the statutory timescales can lead to enforcement action from the Information Commissioner's Office (ICO) - the UK information rights regulator. In addition, the deliberate alteration of data after the receipt of a subject access request is a recordable criminal offence.

#### ***Financial***

Although the ICO has a number of enforcement options available to it, the maximum monetary penalty that can be issued against the Council is at the 'tier 2 level' of up to £17.5 million. These penalties are payable by the data controller, regardless of their sector or organisation type, and cannot be paid from insurance funds.

## ***Policy Framework***

This report has no effect on the Policy Framework.

## ***Equality and Diversity***

This report does not raise any new matters in relation to Equality and Diversity.

## ***Risk***

The Council has recorded a risk (reference O5-022) 'Legal Non Compliance with Subject Access Requests' which was reviewed by the Director of Children's Care on 24 August 2021 and the risk score reduced with specific reference to the number of outstanding requests reducing due to the impact of the new resource. The Data Protection Officer agrees with this assessment and is assured that the risk is being managed in the right direction.

## **Actions to be taken to implement the decision(s)**

The Data Protection Officer will reflect the reporting of the update to the Committee within their records and notify the relevant Directorate Management Teams.

## **Appendices**

None.

## **Background papers**

No background papers were used in the preparation of this report.

**Contact:** Michael Brearley, Data Protection Officer  
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