

South Lakeland District Council
Council
Tuesday, 14 December 2021
Audit Committee Update: Fraud

Portfolio: Not applicable
Report from: Section 151 Officer
Report Author: Helen Smith – Finance Lead Specialist (Section 151 Officer)
Wards: (All Wards)
Forward Plan: Not applicable

Links to Council Plan Priorities:

Working across boundaries – Officers work nationally to identify and combat fraud and other economic crimes.

Delivering a balanced community –N/A

A fairer South Lakeland – Deterring and identifying fraud will help provide a fairer South Lakeland

Addressing the climate emergency –N/A

1.0 Expected Outcome and Measures of Success

1.1 As part of the Audit Committee review of the Council’s arrangements preventing fraud, bribery and corruption it is necessary to update the Counter Fraud Strategy. It is also recommended that the Council introduces an Anti-Tax Evasion Policy. These strengthen the Council’s arrangements to prevent fraud, bribery and corruption.

2.0 Recommendation

2.1 It is recommended that Council:-

- (1) approve the Counter Fraud Strategy 2021-2024; and**
- (2) approve the Anti-Tax Evasion Policy, Procedures and Reporting Arrangements.**

3.0 Background and Proposals

3.1 In June 2019 the Government published its first Economic Crime Plan and included fraud and corruption in the definition: “economic crime refers to a broad category of activity involving money, finance or assets, the purpose of which is to unlawfully obtain a profit or advantage for the perpetrator or cause loss to others.” It includes criminal activity which:

- allows criminals to benefit from the proceeds of their crimes or fund further criminality
- damages the UK financial system and harms the interests of legitimate business
- undermines the integrity of the UK’s position as an international financial centre
- poses a risk to the UK’s prosperity, national security and reputation

However, the terms 'fraud' and 'corruption' have been retained while recognising that they are part of a wider agenda.

- 3.2 The Audit Committee Work Programme for 2021/22 includes an annual review of the Anti-Bribery, Fraud and Corruption Policy. The Council has an Anti-Bribery, Fraud and Corruption Policy, which forms part of the Council's Policy Framework. Although no amendments are required to this policy, the review identified that it is good practice to also have a policy on anti-tax evasion.
- 3.3 Part 3 of the Criminal Finances Act 2017 took effect on the 30 September 2017. It created two corporate offences, one relating to the evasion of UK tax and one relating to the evasion of foreign tax. The legislation is very widely drawn and can apply to the evasion of any tax, including indirect and employment taxes, anywhere in the world. Any UK business, be it a UK corporate or a foreign corporate doing business in the UK, will be within the scope of both offences, including Local Authorities. The corporate entity will have a strict liability under criminal law for failing to prevent the facilitation of tax evasion by one of its 'associates'. If the corporate entity fails to prevent its employees, workers, agents, or service providers facilitating tax evasion, the corporate entity can face prosecution and could lead to an unlimited fine; public record of the conviction and significant reputational damage and adverse publicity.
- 3.4 This legislation is very similar to the Bribery Act 2010, where a corporate offence exists when a corporate entity has failed to prevent bribery. The corporate entity can defend its position, if it can prove that 'reasonable prevention procedures' are in place. Following the Act coming into effect, the Government provided guidance suggesting six guiding principles can form a defence, namely:
 - 1) Risk assessment;
 - 2) Proportionality of risk-based prevention procedures;
 - 3) Top level commitment;
 - 4) Due diligence;
 - 5) Communication (including training);
 - 6) Monitoring and review
- 3.5 The Council has controls in place within its processes and systems to prevent and identify tax evasion. In addition, Internal Audit periodically undertake audits of areas which are at risk of tax evasion. There is no suggestion that the Council tolerates tax evasion, or that staff have engaged in such behaviour; however, in recent times the corporate criminal offence of facilitating tax evasion has featured more highly on the agenda of corporate entities, including Local Authorities, as HMRC have stated they have started investigating offences (believed to be in the private sector). Therefore, to strengthen the Council's defence, and in line with best practice advise and other Local Authorities agreeing a formal policy, work has been carried out to assess the risk to the Council and formalise the Council's stance in a formal policy (**Appendix 1**). Although not explicitly part of the Budget and Policy Framework it is of similar importance as the other fraud policies which are part of the Budget and Policy Framework.
- 3.6 The Council follows good practice in fraud prevention, including the CIPFA Code of Practice on Managing the Risk of Fraud and Corruption and Guidance and Counter-Fraud Assessment. Fraud and corruption risk assessments have been prepared with operational managers which were used to inform the production of a draft Counter Fraud Strategy, incorporating an action plan, which was approved by Audit Committee in December 2017. This strategy has now been updated to reflect new job roles and completion of tasks and is attached at **Appendix 2**.

Appendices Attached to this Report

Appendix No.	Name of Appendix
1	Anti-Tax Evasion Policy Procedures and Reporting Arrangements
2	Counter Fraud Strategy 2021-2024

5.0 Consultation

5.1 Officers have reviewed best practice relating to anti-bribery, fraud and corruption. Audit Committee considered the draft strategy and policy at their meeting on 8 December 2021.

6.0 Alternative Options

6.1 The strategy and policy represent good practice.

7.0 Implications

Financial, Resources and Procurement

7.1 This report has no direct financial implications. Effective anti-fraud procedures minimise the likelihood of financial losses through fraud.

Human Resources

7.2 There are no direct human resources implications of this report.

Legal

7.3.1 There is a criminal offence of failing to prevent bribery under the Bribery Act 2010 and if convicted an organisation can be liable to an unlimited fine. Therefore the review of this has an important role in minimising the risks to the Council arising from this legislation.

7.3.2 As set out in paragraphs 3.3 to 3.5, Part 3 of the Criminal Finances Act 2017 took effect on the 30 September 2017. It created two corporate offences, one relating to the evasion of UK tax and one relating to the evasion of foreign tax. The legislation is very widely drawn and can apply to the evasion of any tax, including indirect and employment taxes, anywhere in the world. Any UK business, be it a UK corporate or a foreign corporate doing policy and compliance business in the UK, will be within the scope of both offences, including Local Authorities. The corporate entity will have a strict liability under criminal law for failing to prevent the facilitation of tax evasion by one of its 'associates'.

Health and Sustainability Impact Assessment

7.4 Have you completed a Health and Sustainability Impact Assessment? No

7.5 If you have not completed an Impact Assessment, please explain your reasons: The review of the anti-fraud policy has no direct HSEE implications. ***

7.6 Summary of Health and Sustainability Impacts

		Positive	Neutral	Negative	Unknown
Environment and Health	Greenhouse gases emissions				X
	Air Quality				X
	Biodiversity				X
	Impacts of Climate Change				X

	Reduced or zero requirement for energy, building space, materials or travel				X
	Active Travel				X
Economy and Culture	Inclusive and sustainable development				X
	Jobs and levels of pay				X
	Healthier high streets				X
	Culture, creativity and heritage				X
Housing and Communities	Standard of housing				X
	Access to housing				X
	Crime				X
	Social connectedness				X

Equality and Diversity

7.7 Have you completed an Equality Impact Analysis? No

7.8 If you have not completed an Impact Analysis, please explain your reasons: The review of the anti-fraud policy has no direct Equality and Diversity implications.

7.9 Summary of Equality and Diversity impacts

Please indicate: P = Positive impact; 0 = Neutral; N = Negative; Enter "X"					
Age	P		0	X	N
Disability	P		0	X	N
Gender reassignment (transgender)	P		0	X	N
Marriage & civil partnership	P		0	X	N
Pregnancy & maternity	P		0	X	N
Race/ethnicity	P		0	X	N
Religion or belief	P		0	X	N
Sex/gender	P		0	X	N
Sexual orientation	P		0	X	N
Armed forces families	P		0	X	N
Rurality	P		0	X	N
Socio-economic disadvantage	P		0	X	N

x

Risk Management	Consequence	Controls required
Failure to have an Anti-Fraud and Corruption Policy in place.	There will be no high level direction to the way in which fraudulent or corrupt	A policy that clearly reflects the Council's stance on fraud and

Risk Management	Consequence	Controls required
	acts are reported, investigated or dealt with. Fraud and corruption will not be detected resulting in significant losses in council finances and bad publicity. Lack of procedures to prevent bribery may lead to prosecution	corruption which acts as a deterrent to potential fraudsters. A policy that clearly defines responsibilities and the introduction of monitoring arrangements to highlight high risk areas. A policy that clearly defines bribery and defines responsibilities for ensuring 'adequate procedures' to prevent bribery.
Failure to have effective Anti-fraud monitoring in place	Fraud and corruption will not be detected resulting in significant losses in Council finances and bad publicity	A Policy that clearly identifies responsibilities and monitoring arrangements to highlight high risk areas.
Failure to have effective Anti-Tax Evasion Policy Procedures and Reporting Arrangements in place	Failure to prevent the facilitation of tax evasion by an associated person could lead to the Council facing criminal sanctions including an unlimited fine and associated reputational damage.	The Council has policies, processes and controls in place to prevent and identify tax evasion by an associated person.

Contact Officers

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Background Documents Available

Name of Background document	Where it is available
Fighting Fraud and Corruption Locally A strategy for the 2020s A reponse to economic crime and fraud	FFCL - Strategy for the 2020s.pdf (local.gov.uk)

Tracking Information

Signed off by	Date sent	Date Signed off
Section 151 Officer	29/11/2021	Report of the S151 Officer
Monitoring Officer	29/11/2021	30/11/2021
CMT	29/11/2021 (Email)	30/11/2021

Circulated to	Date sent
Lead Specialist	N/A
Human Resources Lead Specialist	29/11/2021
Communications Team	N/A
Leader	N/A

Circulated to	Date sent
Committee Chairman	N/A
Portfolio Holder	N/A
Ward Councillor(s)	N/A
Committee	08/12/2021
Executive (Cabinet)	N/A
Council	14/12/2021