

# REPORT TO GOVERNANCE AND AUDIT COMMITTEE

**REPORT OF: HEAD OF FINANCE**

**REPORT NO: HOF251**

**DATE: 26 September 2013**

<b>TITLE:</b>	<b>Counter Fraud, Corruption &amp; Bribery Framework</b>	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	None	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	Councillor Paul Carpenter Governance & Communication Portfolio Holder	
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<b>INITIAL IMPACT ASSESSMENT:</b>	Carried out and Referred to in paragraph (7) below:	Full impact assessment Required:
<b>Equality and Diversity</b>	N/A	No
<b>FREEDOM OF INFORMATION ACT:</b>	This report is publicly available via the Your Council and Democracy link on the Council's website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>BACKGROUND PAPERS</b>	HOF155 – Counter Fraud and Corruption Framework HOF188 – Governance and Risk Update  The above reports can be located by putting their reference number in the search section of the committee website via the link below: <a href="http://moderngov.southkesteven.gov.uk/ieDocSearch.aspx?bcr=1">http://moderngov.southkesteven.gov.uk/ieDocSearch.aspx?bcr=1</a>	

## 1. RECOMMENDATION

The Governance & Audit Committee is requested to approve the contents of this report.

## 2. PURPOSE OF THE REPORT

In accordance with the terms of reference of the Committee it is a requirement to review and update the Counter Fraud, Bribery & Corruption Framework every two years.

## 3. DETAILS OF REPORT

### Background

The Counter Fraud, Corruption and Bribery Framework was last reviewed in March 2011. Minor changes have been made to the framework generally and in particular the following annexes have been amended:

- Annex 2 – Whistleblowing Policy
- Annex 3 – Housing Benefit/Council Tax Support and/or Universal Credit – Counter Fraud Policy

**Annex 2 – Whistleblowing Policy:** The policy has been amended to include changes as brought about by the introduction of the Enterprise and Regulatory Reform Act 2013, which is further explained below.

Legal protection for whistleblowers was introduced by the Public Interest Disclosure Act in 1998. Since then the legislation has been subject to serious scrutiny and wide interpretation by the Employment Tribunals. Case law has highlighted the lack of protection for whistleblowers that, as a result of making a protected disclosure, are victimised and harassed by their colleagues, but not their employer.

The Enterprise and Regulatory Reform Act 2013, which came into force on 25 June 2013, seeks to limit the abuses of the whistleblowing legislation by self-interested claimants but also to protect genuine whistleblowers from abusive colleagues.

The following changes have been captured within the Whistleblowing Policy of the Counter Fraud, Bribery and Corruption Framework:

- **Introducing the public interest requirement**  
Despite its title (Public Interest Disclosure Act 1998), there has, until now, been no specific requirement that a protected disclosure be made in the “public interest”. This has enabled workers who complain about their individual employment contracts or make the most minor grumbles to claim protection under the whistleblowing rules. The Government has said this was not what the whistleblowing legislation was intended to achieve and that “this loophole” should be closed.
- **Removing the good faith requirement**  
The requirement that protected disclosures are made “in good faith” has been removed.

- **Personal liability of employees and vicarious liability of employers**

Recent case law shows that employers could not be held vicariously liable in cases where an employee victimises a whistleblower colleague. This, however, has left whistleblowers who are bullied by other colleagues with little remedy. As a result, the law introduces both personal liability on employees who victimise their whistleblowing colleagues, and vicarious liability on the employer for the same.

Whistleblowers will now have the right:

- Not to be subjected to any detriment by any fellow worker or agent of their employer as a result of their whistleblowing
- To bring a claim in a tribunal against such person as well as their employer
- To treat any such act as done also by the employer, whether done with or without the employer's knowledge or approval

To protect employees, they won't be personally liable for their actions if they have reasonably acted in reliance on a statement by the employer. Most importantly for employers, there is a new defence that they took all reasonable steps to prevent the other worker from victimising the whistleblower.

**Annex 3 – Housing Benefit/Council Tax Support and/or Universal Credit – Counter Fraud Policy:** The policy has been updated to reflect current legislation and definitions, namely the localisation of Council Tax Support. Specifically the main changes relate to the recovery of overpayments and prosecution policy in relation to the calculation of administrative penalties.

#### **4. OTHER OPTIONS CONSIDERED**

None

#### **5. RESOURCE IMPLICATIONS**

This report has no direct impact on the Council's resources, including finance/budget, people, land/property etc.

#### **6. RISK AND MITIGATION (INCLUDING HEALTH AND SAFETY AND DATA QUALITY)**

None

#### **7. ISSUES ARISING FROM EQUALITY IMPACT ASSESSMENT**

None

#### **8. CRIME AND DISORDER IMPLICATIONS**

None

#### **9. COMMENT OF FINANCIAL SERVICES**

These are contained within the report.

## **10. COMMENT OF LEGAL AND DEMOCRATIC SERVICES**

As part of a robust corporate governance framework it is important that the Council's Counter Fraud and Corruption Framework is reviewed on a regular basis to monitor the outcomes of the Policy and to review its effectiveness. As such the framework is reviewed via a report to the Council's Governance and Audit Committee on a bi-annual basis.

## **11. COMMENTS OF OTHER RELEVANT SERVICE MANAGER**

None

## **12. APPENDICES:**

Appendix A – Counter Fraud, Corruption & Bribery Framework incorporating:

Annex 1 – Seven Principles of Public Life

**Annex 2 – Whistleblowing Policy**

**Annex 3 – Housing Benefit / Council Tax Support and/or Universal Credit  
Counter Fraud Policy**

Annex 4 – Fraud Response Plan

Annex 5 – Anti-money Laundering Policy