



mental welfare
commission for scotland

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1. INTRODUCTION

- 1.1 One of the basic principles of public sector organisations is that they must demonstrate the proper use of public funds. It is therefore important that all those who work in the Commission are aware of the risk of fraud and the means of enforcing the rules against fraud and other illegal acts involving dishonesty or damage to property. This policy applies to Board members and all staff
- 1.2 The Commission has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions, documented procedures, a system of internal control and a system of risk assessment.
- 1.3 The Public Interest Disclosure Act 1988 Act is to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation; and for connected purposes. (Refer to Policy 016: Public Interest Disclosure)

2. DEFINITION OF FRAUD

- 2.1 The term “fraud” is commonly used to describe a wide variety of dishonest behaviours such as deception, bribery, forgery, extortion, corruption, misappropriation, false representation and concealment of material facts. In practical terms it can be described as the use of intentional deception made for personal gain, which may involve the misuse of funds or other resources, or the supply of false information. Theft is a type of Fraud.
- 2.2 Computer fraud covers the use of information technology equipment to manipulate programmes or data dishonestly (e.g. by altering, substituting or destroying records, or creating spurious records), or where the use of an IT system was a material factor in the perpetration of fraud. The fraudulent use of computer time and resources is included in this definition. This definition covers financial systems only. Other systems are covered under the IT Code of Conduct.

3. BRIBERY

- 3.1 The Bribery Act 2010 is UK-wide legislation that:
 - makes it a criminal offence to give, promise or offer a bribe and to request, agree or accept a bribe either at home or abroad;
 - increases the maximum penalty for bribery from 7 to 10 years imprisonment, with an unlimited fine; and
 - introduces a corporate offence of failure to prevent bribery by persons working on behalf of a business.

The Bribery Act 2010 was brought in to pull together various antiquated and piecemeal legislation to ensure organisations and staff are aware of their responsibilities.

4. PUBLIC SERVICE VALUES

- 4.1 Holders of public office should observe the 9 key principles within the Code of <https://www.gov.scot/publications/model-code-conduct-members-devolved-public-bodies-2/ish>ed by the Scottish Government when spending public money.

5. THE COMMISSION'S POLICY

- 5.1 The Commission is committed to maintaining an honest, open and well-intentioned atmosphere within the Commission. It is also committed to the prevention of any fraud within the Commission and to the rigorous investigation of any such cases that may occur. The control systems for the prevention of fraud are detailed in the Standing Financial Instructions and Financial Operating Procedures.
- 5.2 The Commission wishes to encourage anyone having reasonable suspicions of fraud to report them by establishing a climate that enables staff to have confidence in the fairness of procedures for registering their concerns (refer 6.3 below). No employee will suffer in any way as a result of reporting reasonably held suspicions. For these purposes 'reasonably held suspicions' shall mean any suspicions other than those which are raised maliciously.
- 5.3 Board Members and staff must always be alert to the risk of fraud, theft and corruption. Danger signs of internal fraud include evidence of excessive spending by staff engaged in cash/contract work, inappropriate relationships with suppliers, reluctance of staff to take leave, requests for unusual patterns of overtime and where there seems undue possessiveness of records. Staff should resist any undue pressure from staff in positions of seniority/Board Members to circumvent internal controls or to over-ride control mechanisms. Such action could be indicative of fraudulent activity and should be reported in accordance as per paragraph 6.3 of this policy.

6. REPORTING OF FRAUD, THEFT AND CORRUPTION

- 6.1 As Accountable Officer, the Chief Executive has the responsibility for countering and investigating fraud in its broadest terms. The Chief Executive may delegate the day-to-day responsibility for the management of individual cases to the Internal Audit. The Chief Executive is also responsible for informing third parties such as The Scottish Government, External Audit or the police where appropriate.
- 6.2 All members of staff share a responsibility to help safeguard the Commission's assets and have a duty if they suspect that fraud, theft or corruption may be occurring, to report it so that action may be taken.
- 6.3 Ordinarily, staff should report concerns to their immediate line manager. However, in those circumstances where this would not be appropriate, e.g. where the manager may also be suspected of involvement, it should be reported to the Chief Executive. If the Chief Executive is suspected of involvement, it should be reported to the Chair. In this situation all other references to the Chief Executive will be to the Chair.
- 6.4 Where managers have been informed of such a matter they must report it to the Chief Executive who will inform the Internal Auditors and the Chair of the Commission at the earliest opportunity and may delegate to a member of Internal Audit staff responsibility for leading any investigation. At the very early stages of a

case of suspected fraud, the police should be contacted to seek their advice on steps that might be taken.

- 6.5 Staff who raise genuine concerns will be protected, regardless of whether the subsequent investigation substantiates those concerns. (refer also to Policy 016 : Public Interest Disclosure)

7. INVESTIGATIONS

- 7.1 Clear arrangements are needed where suspicions or allegations of fraud, theft or corruption arise. These arrangements need to be designed to ensure:-
- (a) Full investigation of the facts/allegations;
 - (b) Fairness and justice for those involved;
 - (c) Appropriate sanctions are applied where, following investigation, there is good reason to believe that fraud, theft or corruption have occurred, taking into account the Commission's disciplinary procedures.
- 7.2 Except in those circumstances where the police are called in to investigate immediately, fraud, theft and corruption investigations will normally be undertaken by Internal Audit, in accordance with their investigation procedures. An Assignment Plan, agreed with the Chief Executive, will be required prior to the start of the investigation to outline its scope and likely duration.
- 7.3 Where the Chief Executive after consulting with Internal Audit decides that their involvement would not be appropriate, investigations undertaken by Commission staff should also be conducted in line with Internal Audit investigation procedures, including the production of concise notes of all meetings and conversations and including an observer wherever possible.
- 7.4 During any formal fraud investigation the following will apply:-
- (a) All staff have a duty to co-operate with audit enquiries and may need to be interviewed. Staff may be accompanied at any such interview by an accredited representative of a trade union or work colleague.
 - (b) Staff who are interviewed during the course of an investigation will be informed of the purpose of the interview. A record of the interview will be made and staff (and their representatives, if appropriate) will be asked to agree and certify a record of it. Where specific allegations have been made, these will be made known to the individual at the start of the interview.
 - (c) The role of the staff representative or friend is to support the member of staff and not to answer questions on the staff member's behalf.
 - (d) In cases of serious allegations it may be necessary to suspend a staff member at the outset. Where this occurs the arrangements set out in the Policy 007 Disciplinary Policy.

(e) Staff members are not automatically entitled to receive a copy of the Internal Audit report unless the document is to be used in subsequent disciplinary proceedings. In this case, it is possible that certain information may be withheld from the report, to protect the anonymity of staff who have given information in confidence.

7.5 Following the investigation the Chief Executive will:-

- In the case of Board members, refer the facts to the Chair for appropriate action.
- In the case of staff, decide whether disciplinary proceedings will be undertaken

8. RECOVERY OF LOSSES

8.1 The Commission will attempt to recover all losses arising from fraud, corruption or theft, except in those circumstances where, in the opinion of the Chief Executive, such action would not be cost effective.

8.2 The Chief Executive shall consider the recovery of any losses through The Scottish Public Pensions Agency (SPPA) Regulations which state that “where a loss to public funds occurs as a result of the following:

- a) Fraud
- b) Theft
- c) Misconduct

which has been committed by a member of the scheme in connection with their employment, the First Minister can, within the limits set out in the Regulations, withhold up to the amount of the loss from superannuation benefits due.

Where termination of employment (including voluntary resignation) is in consequence of fraud, theft or misconduct and the Employing Authority is recommending recovery of loss from the member’s benefits they should immediately inform the Division.”

8.3 Referees are required to take extreme care when providing references for employees or ex-employees. For this reason, as well as the public duty to protect other employers, when an employee has been dismissed or has resigned in connection with fraud, theft or corruption, this will be stated on the reference or no reference will be given. Under these circumstances, advice will be sought from the Chief Executive.

8.4 Where appropriate, instances of fraud, theft or corruption will be reported to any professional body to which the employee belongs. This will occur even in the situation when an employee resigns prior to a disciplinary hearing.

9. LIAISON WITH EXTERNAL AUDITORS, THE POLICE AND SCOTTISH GOVERNMENT

- 9.1 The Chief Executive will inform the External Auditors of all proven fraud, theft or corruption using the form provided by them for that purpose, and will notify them immediately where losses exceed £5,000
- 9.2 Where preliminary investigations suggest that *prima facie* grounds exist for thinking that a criminal offence has been committed, the procurator fiscal must be informed and given all material assistance. This notification would normally occur in conjunction with informing the police officially. The Chief Executive has responsibility for informing the Procurator Fiscal.
- 9.3 Except in emergency situations, notification of the police will normally be the responsibility of the Chief Executive who shall ensure the proper procedures are followed.
- 9.4 Under normal circumstances, fraud and corruption will be reported to the Fraud Squad via Internal Audit. Instances of money laundering will be reported to the Auditor General via the Commission's external auditor as specified in The Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017.
- 9.5 Thefts should be reported to the local police.
- 9.6 There may be occasions where the nature or scale of the alleged offence, or the position of the person or persons involved, could give rise to national or local controversy or publicity or where the alleged fraud appears to have been of a particularly ingenious nature. In all such cases, the Scottish Government Directorate for Health, Finance, Corporate Governance and Value, Director of Finance should be notified of the circumstances of the case at the same time as an approach is made to the Procurator Fiscal.

10. PUBLICITY

- 10.1 All publicity regarding fraud investigations will be controlled through the Chief Executive who will ensure that any information dissemination does not prejudice any criminal proceedings which may arise.
- 10.2 Under no circumstances should a member of staff speak or write to representatives of the press, TV or radio, about a suspected fraud without the express authority of the Chief Executive.

11. FOLLOW UP TO INVESTIGATIONS

- 11.1 The Chief Executive will ensure that, following completion of an investigation, the Executive Leadership Team review the circumstances and make any appropriate changes to the internal control procedures. A report will be tabled at the next available Audit, Performance and Risk Committee for approval.