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**South Dublin County Council**

**Anti Fraud and Corruption Policy 2019**

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1. Purpose
	1. South Dublin County Council is committed to the highest possible standards of openness, transparency and accountability in all its affairs. We wish to promote a culture of honesty and opposition to fraud in all its forms.
	2. This document updates the corporate policy document ‘Anti-Fraud and Corruption’ published in October 2015 and takes into account legislative changes in the Criminal justice (Corruption Offences) Act 2018. This document details South Dublin County Council’s policy towards detected or suspected acts of fraud or corruption, relating to members, employees and / or other persons in a position designated by the Chief Executive (for example consultants or others providing a service to a local authority).
	3. The Council is firmly committed to dealing with fraud and corruption and will deal equally with perpetrators internally and externally. It should be noted that there will be no distinction made in an investigation and action between cases that generate financial benefits and those that do not.
2. Scope
	1. For the purposes of this policy document, stakeholders are defined as employees both current and past whether permanent or of a temporary nature, elected members, committee members, contractors and consultants engaged by the Council or others providing a service to the local authority. Beneficiaries of the Council’s services, agencies with whom the Council engages, and members of the public to whom the Council provides a service are also included.
	2. All stakeholders should ensure that they are familiar with other relevant Council policies, procedures and regulations, including:
3. Code of Conduct for Local Government Employees
4. Code of Conduct for Councillors
5. SDCC Information Systems / Electronic Communications Security Policy
6. SDCC Attendance Management Policy and Procedures
7. SDCC Dignity at Work Policy
8. SDCC Financial Policies and Procedures
9. SDCC Interim Protected Disclosures Policy and Procedures
10. Definition of Fraud and Corruption
	1. Fraud can encompass a wide range of irregularities and civil wrongs such as deception or misrepresentation, or criminal acts such as false pretences, false accounting, forgery, embezzlement, fraudulent conversion or, under the Electronic Commerce Act 2000, electronic fraud. The following non-exhaustive list indicates some types of fraudulent behaviour:
* Theft, misappropriation or unauthorised use of Council property.
* Knowingly creating false or misleading financial reports.
* Submitting false or exaggerated claims for reimbursement of expenses.
* Forging or altering documents.
* Claiming payment for time not worked.
* Claiming payment for goods not received or services not performed.
* Creation of false invoices
* Recording of transactions without substance.
* False or exaggerated compensation claims.
* Purchasing items for personal use with council funds.
	1. Corruption arises when a person directly and indirectly, corruptly gives or receives a “gift, consideration or advantage” as an inducement to or reward for doing an act in relation to an office, employment or business or trading in influence. It is a civil wrong and a criminal offence. It can include creating or using a false or misleading document for an improper purpose.

In addition, it is an offence to fail without reasonable excuse to report as soon as is practicable to the Gardaí information which might be of material assistance in preventing the commission of relevant offence or in apprehending, prosecuting, or convicting a person for such an offence.

Of particular relevance to Local Authority members and officers, are the following provisions:

Section 7 of the Criminal Justice (Corruption Offences) Act 2018 makes it an offence for a local authority employee and persons acting on behalf of local authorities, who either directly or indirectly, by himself or herself with another person to do an act in relation to his or her office employment or position of business for the purpose of corruptly obtaining a gift, consideration or advantage for himself or herself or any other person. In addition, any person who uses confidential information obtained in the course of their employment office, employment, position, or business for the purpose of corruptly obtaining a gift, consideration, or advantage for himself or herself or for any other person will be guilty of an offence.

Section 170 of the Local Government Act 2001 provides that an employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office.

* 1. There are three main areas of concern in relation to corruption. These are: tendering and awarding of contracts; appointments of consultants; and planning consents and licences. It is not possible to give an exhaustive list of the activities and behaviours which constitute corruption. The following are some examples of corruption:
* Accept or solicit a bribe.
* Leaking confidential information that may directly or indirectly influence the action of any person.
* Improper or unauthorised use of funds and / or assets
* Wrongful acts by a Local government employee in an official capacity for his or her own personal gain or for the gain of others
1. General Principles
	1. Accountability

Actions of local government employees, members and other persons working on behalf of the Council must be capable of withstanding comprehensive scrutiny. In other words, an individual is held responsible for any action or inaction by him / her, in his / her line of duty to the Council.

* 1. Integrity

Integrity implies not merely honesty but fair dealing and truthfulness. Each individual must demonstrate honest and ethical conduct in fulfilling his / her duties, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.

* 1. Value

All members, employees and others in positions designated by the Chief Executive should be seen to be serving the common good. Therefore, it is the role of all Council staff and members to work solely in the public interest and within the law in order to provide services efficiently, effectively and economically.

* 1. In accordance with these principles, it is Council policy to investigate all cases of suspected fraud, to pursue legal remedies under the law where appropriate and to notify the Gardaí in accordance with **Section 19 of the Criminal Justice Act 2011** (see Appendix One).
1. Fraud and Corruption Prevention
	1. Prevention is the key to ensuring an environment free from fraud and corruption. South Dublin County Council employs a range of actions to reduce the potential for fraudulent activity including written policies and procedures requiring transactions to be properly authorised and providing for sufficient segregation of duties. The following sets out the role of all stakeholders of SDCC in ensuring fraud prevention:
	2. **The Role of Elected Members of the Local Authority**

As elected representatives, all members of the Council have a duty to the public to protect the Council and public money from fraud and corruption. The **Local Government Act 2001** sets out an ethical framework and imposes a statutory duty on all Councillors to maintain proper standards of integrity, conduct and concern for the public interest. Members must not use their official position or resources of the Council for personal gain and are prohibited from accepting gifts other than tokens of modest intrinsic value.

* 1. **The Role of Management**

It is the responsibility of Management to take such steps as are reasonably available to them to prevent and detect fraud and corruption. This includes:

* Communicating and implementing this policy and all other SDCC policies, rules and regulations.
* Ensuring staff understand their responsibilities, through adequate training, supervision, written procedures and job descriptions.
* Creating an environment in which they may be easily approached by staff with any concerns relating to suspected irregularities.
* Taking steps to provide reasonable assurance that the activities of the organisation are conducted honestly and that its assets are safeguarded.
* Establishing control environments designed to deter fraudulent or other dishonest conduct and to detect any that occur.
* Frequently reviewing and updating the Risk Register by examining risks within their remit. Such risk assessment / assessments are an integral part of identifying areas vulnerable to fraud and corruption including the likelihood and impact of its occurrence.
* Ensuring that, to the best of their knowledge and belief, financial information, whether used in the Council or for financial reporting, is reliable.

Management are also responsible for the preparation of financial statements that give a true and fair view of the state of the affairs of the organisation and of its surplus or deficit for the financial year.

In addition, management and officers have responsibility to provide information required by the auditors. It is a criminal offence to give an auditor information or explanations which they require, which are misleading, false or deceptive.

* 1. **The Role of Employees**

Every employee has a role to play in the prevention and detection of fraud and is governed in their work by the Code of Conduct for Employees and other policies on conduct and communications. Included in the Council policies, are guidelines on gifts and hospitality and codes of conduct associated with professional and personal conduct and conflict of interest. These are issued to all employees when they commence employment with the Council. In addition, employees are responsible for ensuring that instructions and procedures set out by management, especially relating to the safeguarding of assets are abided by.

All relevant staff and elected members are required to complete a “declaration of interest” on an annual basis in line with **Part 15 Local Government Act 2001***.*

**Paragraph 3.2 above sets out the provisions of Section 170, Part 15 Local Government Act 2001** and **Section 7 of the Criminal Justice (Corruption Offences) Act 2018** relating to employees, members of the local authority or of a committee of the local authority.

**The Protected Disclosures Act 2014** offers legal protections to employees who report concerns about wrongdoing. The legislation aims to protect workers who disclose information that, in their reasonable belief, tends to show a relevant wrongdoing. There is a broad definition of “worker” in the legislation and this includes employees, contractors, consultants, agency staff, former employees, temporary employees, and interns / trainees. The scope of “relevant wrongdoing” is defined in the legislation and is set out in [**Appendix**](#_APPENDIX_III_) **One.** Procedures for staff are in place under the legislation and a designated person has been appointed for workers to report concerns about wrongdoing.

* 1. **The Role of Internal Audit**

Internal Audit supports management in the prevention and detection of fraud by reviewing fraud risks as part of an audit engagement and evaluating the internal control environment to mitigate or detect fraud. Internal Audit can play a number of roles in the organisation’s fraud management process through providing assurance, making recommendations, advisory and investigative roles. However they are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud.

* 1. **The Role of the Audit Committee**

The statutory functions of the Audit Committee that assist the organisation in the prevention and detection of fraud are as follows:

* Seek management assurance regarding issues raised by the Local Government Auditor during the course of the audit of the annual financial statement.
* Review implementation of internal audit / external audit / National Oversight and Audit Commission (NOAC) recommendations as a result of findings in reviews carried out.
* Review risk management framework in organisation.

These functions will be carried out as part of the Committee’s work programme as agreed by the Council.

* 1. **The Role of External Audit**

It is the responsibility of the Local Government Auditor (LGA) to audit and report their opinion on the organisation’s annual financial statement. The LGA conducts their audit in accordance with the principles and practice of Local Government Audit.

 The LGA’s work involves the review of only those systems and controls upon which they rely in determining audit procedures. Accordingly the nature of the audit should not be relied upon to disclose all irregularities or control weaknesses that may exist or which are not considered material in relation to the annual financial statement.

Where weaknesses are found the LGA will make recommendations to Management to strengthen the control environment.

* 1. **The Role of the Public**

This policy, although mainly related to parties within or associated with the Council, enables concerns raised by the public to be investigated appropriately.

* 1. **Conflicts of Interest**

Elected members, audit committee members and employees must ensure that they avoid situations where there is a potential for a conflict of interest. Such situations can arise with externalisation of services, internal tendering, planning and land issues and so on. Individuals must never seek to use their official position to benefit improperly themselves or others with whom they have business, personal, family or other ties. Similarly members and staff must not use or disclose confidential information acquired during their term of office or employment to their advantage or for the advantage of third parties.

1. Fraud and Corruption Contingency Plan
	1. **Reporting Procedures**
		1. Where an individual becomes aware of, or suspects that there may be, instances of fraudulent conduct, they should discuss it with their Director of Services or Head of Function without delay. On receipt of such a report, the person receiving the report should report the matter to the Director of Corporate Performance and Change Management.
		2. In circumstances where members of staff are unable to report the matter to their Director of Services or Head of Function, they should themselves report the matter to the Director of Corporate Performance and Change Management.
		3. When discussing findings that indicate the possibility of fraud with Management, it is imperative that as far as possible there is no communicationwith any other person in order to protect the anonymity of those suspected until an investigation has been completed.
		4. Anonymous reporting is discouraged but, where supported by evidence, may form the basis of an investigation.
	2. **Detection and Investigation**
		1. On receipt of a report relating to fraud or suspected fraud, the Director of Corporate Performance and Change Management (CPCM) will convene a group which will comprise the Director of Corporate Performance and Change Management (or nominee), the relevant Director or Head of Function, the Internal Auditor and any other relevant staff, external specialists and legal counsel which the Director of CPCM considers necessary in the deliberations.
		2. The above group will ensure the following is considered and addressed:
* Document the information reported.
* Obtain an understanding of the nature of the event and the circumstances in which it occurred.
* Examine the likelihood of the occurrence of fraud or corruption.
* Evaluate the possible effect in terms of money and reputation as well as the possibility of including the prior year’s financial statements.
* Identify the type of fraud or corruption in question.
* Identify the person / persons involved.
* Maintain utmost confidentiality.
* Ensure that the rights of all parties involved are respected.
* Take steps to minimise any immediate further losses if possible without alerting the suspect / suspects.
* Consider legal implications.
* Initiate investigation to establish substance of allegation.
* Determine the extent to which it is realistic to expect that further investigation is likely to clarify the position.
* Ensure that the investigating team has adequate resources.
	+ 1. Preliminary investigation of the facts shall normally be led by the Internal Auditor, supported, where deemed necessary, by specialist external experts. On completion of the preliminary investigation, the Internal Auditor shall present a written report to the Director of CPCM and the group convened to initiate the investigation.
		2. The carrying out of an Investigation will ensure the following is addressed:
* Secure all evidence; safeguard chain of evidence should it be required for legal proceedings.
* Identify all internal and external sources of information and evidence.
* Prepare for interviews.
* Do not interview one to one – all interviewees must be given the opportunity to have a witness / representative present. Ensure there are at least two interviewers and that the rights of the interviewee are protected. Allow the interviewee adequate notice for each interview as deemed fair and reasonable but generally not less than one working day.
* Keep detailed minutes of meetings and conversations with all those involved.
	1. **Disciplinary Procedures and Further Action**
		1. Following completion of the preliminary investigation and where the facts established by the preliminary investigation warrant further attention, the matter may be referred for investigation to Human Resources in accordance with the Council’s established Grievance and Disciplinary Policies and Procedures. Persons who are judged guilty of fraud have committed serious misconduct and may result in dismissal.
		2. Where appropriate, the Council will refer significant theft, fraud or corruption to An Garda Síochána. The final decision to report should be taken by the Chief Executive where possible but the requirements of Section 19 of the Criminal Justice Act 2011 should be borne in mind.
	2. **Recovery of Loss**
		1. Where the Council has suffered loss, full restitution will be sought of any benefit or advantage obtained and the recovery of costs will be sought from individual / individuals or organisations responsible for the loss. If the individual or organisation cannot or will not make good the loss, consideration will be given to taking civil legal action to recover losses. This is in addition to any criminal proceedings which may result.
	3. **Changes to Systems of Controls**
		1. The fraud investigation is likely to highlight where there has been a failure of supervision and / or a breakdown or absence of control. The course of action required to improve systems should be documented in the investigation report and implemented when this report is finalised.

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## Appendix One - Relevant Legislation (Non Exhaustive)

**Local Government Act 2001:**

Part 15 - Ethical Framework for the Local Government Service

Code of Conduct for Employees (January 2007)

[http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownLoad,8776,en.pdf](http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownLoad%2C8776%2Cen.pdf)

Code of Conduct for Councillors (June 2004)

[http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownLoad,1956,en.pdf](http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownLoad%2C1956%2Cen.pdf)

**Protected Disclosures Act 2014:**

“Relevant Wrongdoing” as defined in the Protected Disclosures Act, 2014

Section 5(3)

The following matters are relevant wrongdoings for the purposes of this Act—

1. that an offence has been, is being or is likely to be committed,
2. that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
3. that a miscarriage of justice has occurred, is occurring or is likely to occur,
4. that the health or safety of any individual has been, is being or is likely to be endangered,
5. that the environment has been, is being or is likely to be damaged,
6. that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
7. that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
8. that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

**Criminal Justice Act 2011:**

Section 19

(1) A person shall be guilty of an offence if he or she has information which he or she knows or believes might be of material assistance in—

* 1. preventing the commission by any other person of a relevant offence, or
	2. securing the apprehension, prosecution or conviction of any other person for a relevant offence and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.

(2) A person guilty of an offence under this section shall be liable—

1. on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
2. on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

Schedule 1 of the Criminal Justice Act 2011 gives a list of Relevant Offences which includes theft and fraud offences.