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# Counter Fraud Policy and Response Plan

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# Counter Fraud Policy

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## Introduction and Scope

- 1 The Scottish Fiscal Commission has a zero tolerance approach to fraud. We will counter fraud by ensuring that a zero tolerance culture to fraud is maintained and that fraud is effectively managed at all levels in the organisation.
- 2 The Scottish Fiscal Commission's Counter-Fraud Policy, and Fraud Response Plan, are closely modelled on the Scottish Government Counter-Fraud Strategy and associated documents. They set out the Commission's approach for preventing, detecting, reporting and handling fraud, based on five strategic objectives: awareness, prevention, teamwork, investigation and enforcement.
- 3 This Policy covers both external and internal fraud, including collusion. It applies to all staff, including temporary staff, who are required to act honestly and with integrity at all times, and to safeguard the public resources for which they are responsible, in line with the Civil Service Code.

## Related Policies and Procedures

- Scottish Fiscal Commission Whistleblowing Policy
- Scottish Government Counter-Fraud Strategy, Policy and Plan
- Civil Service Code
- Civil Service Management Code
- HMT Guidance on Managing the Risk of Fraud
- Bribery Act 2010
- Scottish Public Finance Manual Rules and Guidance on Gifts

## Strategic Overview

- 4 The Scottish Fiscal Commission's Counter-Fraud Policy and Fraud Response Plan are closely modelled on the Scottish Government Counter-Fraud Strategy and associated documents. The Scottish Government Counter-Fraud Strategy, together with its Counter-Fraud Policy and Fraud Response Plan, outline the approach for the prevention, detection, reporting and handling of fraud.
- 5 The Scottish Government documentation is designed to be accessible not only to all of its staff but to staff in other public sector organisations to which the Scottish Public Finance Manual is directly applicable; these organisations include constituent parts of the Scottish Administration, including the Scottish Fiscal Commission, as well as public bodies sponsored by Scottish Government.
- 6 The policy has five strategic objectives which are closely based on those set out in the Scottish Government's Counter-Fraud Strategy, adapted to take account of the Commission's specific functions and remit:
  - **Awareness:** We will prevent fraud by raising awareness of fraud, and its safeguards, within the Commission, our partner organisations and our stakeholders. We will highlight appropriate danger signs to staff in any high-risk areas including finance and procurement.
  - **Prevention:** We will prevent fraud through improving our systems and controls to support our business services and our services to stakeholders and the general public. We will identify fraud risks and preventive measures when undertaking new work or reviewing processes.

- **Teamwork:** We will prevent fraud by working together across the organisation, and with our partners, to share information and to develop combined approaches to countering fraud. We will work with colleagues to create a counter-fraud culture where staff are supported to share knowledge, learn lessons and report problems.
- **Investigation:** We will handle fraud by being proactive in analysing data to identify areas at risk of fraud, by being effective and professional in our investigations of specific cases and by maintaining a robust whistleblowing procedure. We will use specialist services if necessary to ensure that allegations are investigated thoroughly, fairly and professionally.
- **Enforcement:** We will promote a zero tolerance approach to all external and internal fraud. There is no acceptable level of fraud. We will handle fraud by continuing to take a tough line on anyone committing fraud by ensuring that appropriate disciplinary action is taken. Police Scotland will also be informed where considered appropriate (see paragraphs 42, 55, and 58).

## Establishing and maintaining a Counter-Fraud Culture

7 The Commission has a zero tolerance approach to fraud. There is no acceptable level of fraud, and all members of staff have a role in establishing an effective counter-fraud culture by:

- engaging and being alert to the risk of external and internal fraud
- identifying suspicious activities and control weaknesses
- reporting any suspicions quickly and appropriately

8 Our approach to countering fraud is to ensure that this zero tolerance culture to fraud is maintained and that fraud is effectively managed at all levels, as follows:

- committing to clear ethical standards through this formal Counter-Fraud Policy and Response Plan
- communicating our attitude to fraud by raising awareness of our counter-fraud policy to all staff
- supporting all staff in their responsibilities in preventing and detecting fraud through guidance and training
- providing managers with specialist support in designing, operating and reviewing internal controls
- maintaining comprehensive procedures for preventing and detecting fraud and ensuring that these procedures are carefully followed and monitored
- protecting members of staff through a robust process for reporting suspicions of fraud
- responding to fraud effectively through a comprehensive Fraud Response Plan
- using data and technology efficiently in systems in place to combat fraud
- sharing knowledge of vulnerabilities and lessons learned through strong communication channels.

## Enforcement

9 All cases of actual or suspected fraud will be promptly and vigorously investigated and appropriate action will be taken.

- 10** Police Scotland will be informed where considered appropriate. In addition, disciplinary action will be considered not only against any members of staff found to have committed fraud but also against managers whose negligence is held to have facilitated fraud. Both categories of offence can be held to constitute gross misconduct, the penalty for which may include summary dismissal.

## Definition of Fraud

- 11** Fraud is the use of deception with the intention of obtaining personal gain, avoiding an obligation or causing loss to another party. The term “fraud” can be used to describe a wide variety of dishonest behaviour such as forgery, false representation and the concealment of material facts. It is normally used to describe the act of depriving a person of something by deceit, which may involve the misuse of funds or other resources, or the supply of false information.
- 12** The fraudulent use of IT resources is included in this definition, and it covers the use of IT equipment to manipulate systems, 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 a fraud.

## Reducing the Opportunity for Fraud: Separation of Duties

- 13** The opportunity for fraud must be reduced wherever possible. Allocating responsibility for too many functions to one person can constitute a high risk of fraud and should be avoided. The risk of fraud can be reduced by ensuring proper separation of duties so that, for example, more than one person has to be involved in ordering, receiving and authorising payments for goods or services; or making procurement decisions.
- 14** The separation of key functions in procurement and purchasing policies and procedures forms an integral part of systems control and is essential to minimise the potential scope for irregularity by staff acting on their own.
- 15** Without adequate separation of duties, the effectiveness of other control measures is undermined. Where resources are limited and separation of duties is not possible, alternative management controls, such as supervisory checking, must be employed.

## Robust Systems of Control

- 16** Appropriate preventive and detective controls should be put in place to counter the risk of fraud (both internal and external, as well as collusion). Procedures set up to prevent and detect fraud must be proportional to the risk involved and be carefully followed and monitored.
- 17** Additional information is provided in the Scottish Public Finance Manual sections on Checking Financial Transactions and on Risk Management. Guidance on the coverage of fraud response plans can be found in HMT guidance on Managing the Risk of Fraud.
- 18** Preventive controls are designed to limit the possibility of a fraud occurring. Separation of duties, effective procedures and checks should prevent or deter fraud. Opportunities to commit fraud will be reduced by ensuring that a sound system of internal control proportional to risk has been established and that it is functioning as intended. Some frauds arise because of systemic weaknesses; others are the result of failure to follow proper control procedures.
- 19** Fraud resulting from collusion may be more difficult to detect and prevent as these types of fraud tend to operate within the normal control environment. In respect of fraud risks, prevention is almost

always preferable to detection. Strong preventive controls should therefore be applied where ever possible. Controls may range across:

- physical security which controls and monitors access to assets, documentation and IT systems to ensure that there is no unauthorised use, loss or damage
- clear definition of responsibilities and levels of authority, clear reporting lines and effective spans of command, separation of duties to avoid conflicts of interest or opportunities for abuse
- supervision and monitoring, including random spot checks by managers
- budgetary and other financial controls, which both limit the scope for fraud and may assist detection

**20** Detective controls, e.g. supervisory checks and reconciliations, are designed to spot errors, omissions and fraud after the event. Well-designed and cost-effective internal controls, including those listed above, are an important tool for identifying actual or attempted frauds. Information from third parties or reporting by staff of suspicions of fraud (see paragraphs 47 to 50 below) can be an important detector and deterrent of fraud. Fraud indicators or “warning signs” (see paragraphs 25 to 26 below) may also point the way for further detailed investigation. Support for managers in establishing appropriate controls is provided by the Commissions Corporate Services team and by internal Audit provided by Scottish Government Directorate for Internal Audit and Assurance.

**21** Managers with responsibility for awarding contracts, making payments and other financial transactions must ensure that clear control procedures are in place. It is very important that:

- there is adequate separation of duties and that proper authorisation processes for such transactions, contract awards and payments are in place
- staff dealing with these procedures are familiar with them and abide by them
- accounting and other records, such as cash balances, bank balances, revenue accounts and physical stock counts, are reconciled with the actual position
- staff who are bankrupt or insolvent are not employed on duties which might permit the misappropriation of public funds

## Importance of Monitoring

**22** Managers have the prime responsibility for ensuring that their systems are sound and that they are operating as intended. Both internal and external Auditors have a role in carrying out independent reviews of systems and the adequacy of controls in place. Many frauds are due to failure to comply with existing controls. It is essential that good control systems are supported by supervisory checking and alertness to the risks of fraud. Additional guidance and procedures on monitoring are included in the HMT guidance on Managing the Risk of Fraud<sup>1</sup>.

**23** Additional information on conduct, discipline and management responsibilities is available in the Civil Service Management Code which sets out regulations and instructions regarding the terms and conditions of service of civil servants.

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<sup>1</sup> [A guide to managing fraud for public bodies - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## Identification of fraud

- 24** External or internal fraud is not always easy to identify. In many cases, suspicion may be raised but it is not acted on and reported. Fraud is often committed where there is:
- opportunity to commit fraud: for example, where internal controls are weak and access to information, data and assets allows fraud to occur
  - rationalisation that “justifies” fraudulent behaviour, however, the Commission has a zero tolerance approach to fraud
  - motivation or a need for committing fraud. This may be for reasons of financial advantage or as a result of some other motivating factor, for example, an intention to cause reputational damage to the Commission

## Warning Signs

- 25** Managers and staff must always be alert to the risk of fraud, theft and corruption. Warning signs of potential external fraud (including collusion with Commission staff) include:
- photocopies of documents when originals would be expected
  - discrepancies in information e.g. signatures and dates
  - key documents missing or lacking essential information
  - unexpected queries from stakeholders or suppliers e.g. bank account detail changes
  - requests for non-standard types of payment
  - unexpected trends or results e.g. from reconciliations
  - suppliers/ contractors who insist on dealing with one particular member of staff
  - reluctance to take leave
  - excessive hours worked; first to arrive in morning, last to leave at night
  - refusal of promotion
- 26** Warning signs of potential internal fraud (including collusion with externals) include:
- evidence of excessive spending by staff, sudden change of lifestyle
  - inappropriate relationships with suppliers or contractors
  - reluctance of staff to take leave
  - excessive hours worked; first to arrive in morning, last to leave at night
  - refusal of promotion
  - new staff resigning quickly
  - a supervisor insisting on opening all incoming mail

- undue possessiveness of, or anomalies between, work records
  - pressure from colleagues to avoid normal control procedures
  - abnormal Travel and Subsistence claims, overtime or Flexible Working Hours patterns
- 27** To spot fraud indicators in specific areas or activities it is important that accepted practices have been established for the area or activity under review and that the reviewer, or Auditor, is familiar with them. Further examples of possible fraud indicators and risk factors are:
- Inadequate or no segregation of duties
  - absence of controls and audit trails
  - inadequate monitoring to ensure that controls work as intended (periodic testing and evaluation)
  - crisis management coupled with a pressured business environment
  - lack of established code of ethical conduct
  - lack of senior management oversight
  - policies not being followed
  - high staff turnover or chronic understaffing in key control functions
  - low staff morale/ lack of career progression/ weak management
  - consistent failures to correct major weaknesses in internal controls
  - frequent overriding by management of internal controls

## Bribery

- 28** Fraud may be committed, or attempted, as a result of bribery. A bribe is an offer or promise of a financial or other advantage, designed to induce another person to perform improperly in their position of trust and responsibility. UK provisions in the Bribery Act 2010:
- make it a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad
  - increase the maximum penalty for bribery from seven to 10 years imprisonment, with an unlimited fine
  - introduce a corporate offence of failure to prevent bribery by persons working on behalf of a business

## Acceptance of Gifts or Hospitality

- 29** Bribery may take the form of offers of gifts or hospitality. Under the Civil Service Code<sup>2</sup>, which applies to Commission staff as civil servants in a non-Ministerial Office within the Scottish Administration, it is made clear that staff must not accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise their personal judgement or integrity.

<sup>2</sup> [The Civil Service code - GOV.UK \(www.gov.uk\)](http://www.gov.uk)



These ethical standards are described in more detail in the Scottish Government HR policies, procedures and guidance, to which Commission staff are subject. In respect of staff involved in purchasing and contracting, these standards are also laid down in the Scottish Government Procurement Policy Manual.

- 30** Scottish Fiscal Commission is also subject to the rules and guidance on gifts in the Scottish Public Finance Manual which sets out the procedures to follow where gifts of cash or other resources are either made or received. This guidance is directly applicable to the Scottish Fiscal Commission as a non-Ministerial Office within the Scottish Administration.

## Recording and Accounting

- 31** Losses due to fraud are subject to the guidance on losses and special payments set out in the Scottish Public Finance Manual. Details must therefore be brought to the attention of the Scottish Parliament through notes in the Scottish Fiscal Commission's Annual Report and Accounts. Details must also be reported to the Commission's Audit and Risk Committee.

## Roles and Responsibilities

- 32** Scottish Ministers are responsible for issuing relevant guidance in the Scottish Public Finance Manual, on which this Policy and accompanying Fraud Response Plan are based, on the prevention, detection, reporting and handling of fraud.
- 33** Overall responsibility for establishing and maintaining a framework for risk, control and governance, including managing the risk of fraud, rests with the Commission (i.e. the Commissioners). The Commission has delegated to its Audit and Risk Committee responsibility for scrutinising arrangements put in place by the Chief Executive, as Accountable Officer, and Commission staff for risk, control and governance, including the management of fraud risk and appropriate procedures to prevent, deter and detect fraud that are consistent with guidance in the Scottish Public Finance Manual.
- 34** The Chief Executive leads on the implementation of effective counter-fraud policy in the Scottish Fiscal Commission and is responsible for ensuring that necessary action is taken to handle all actual or suspected cases of fraud, or attempted fraud, that may occur. The Chief Executive leads in:
- promoting a strong anti-fraud culture throughout the Commission, deploying internal and external communications;
  - counter-fraud policy development in the Commission;
  - assessing, monitoring and mitigating risk of fraud in Commission policies and procedures;
  - ensuring that fraud investigations are carried out effectively;
  - considering, in consultation with Scottish Government Directorate for People and with line management, the sensitivity of the allegations in terms of public interest and briefing Commissioners appropriately; and
  - reporting fraud, and lessons learned; alerting Scottish Government, delivery partners and stakeholders as appropriate to fraud risks; and undertaking any appropriate communications.
- 35** In all these responsibilities, the Chief Executive is supported as necessary by the Head of Strategy, Change and Corporate Services, who is responsible for:

- safeguarding funds potentially at risk, rectifying any obvious gaps in financial controls;
- advising the Chief Executive on the case for recovery action and initiating action to recover funds as required;
- determining the financial impacts of fraud;
- supporting the Chief Executive in reporting details of any fraud to the Audit and Risk Committee and the Commissioners; and
- arranging, where necessary, for notation of the Scottish Fiscal Commission's Annual Report and Accounts.

**36** In consultation as necessary with the Scottish Government Security team and IT services, the Head of Strategy, Change and Corporate Services is also responsible for:

- protecting accounting and other relevant records;
- safeguarding relevant assets potentially at risk;
- restricting access to offices, workstations, devices and records of individuals involved by altering or withdrawing cards/ passwords;
- pursuing cases of straightforward theft; and
- leading on information assurance work.

**37** Scottish Government Directorate for Internal Audit and Assurance is responsible for:

- delivering an opinion to the Commission's Audit and Risk Committee and the Accountable Officer on the adequacy of counter-fraud arrangements in the Commission
- helping senior managers to review the organisation's risk exposure and to identify the possibility of fraud as a business risk
- in conjunction with any others as appropriate and at the request of the Chief Executive, co-ordinating and conducting effective fraud investigations (further details in the Fraud Response Plan, page 10 onwards)

**38** Managers are responsible for:

- ensuring that effective internal controls are operating both collectively and within their own areas of responsibility
- assessing the types of risk involved in the operations for which they are responsible and responding to minimise the opportunity for fraud

**39** All Commission staff are responsible for:

- with propriety in the use of official resources and the handling and use of public funds
- conducting themselves in accordance with the principles of the Civil Service Code
- being alert to the possibility that unusual events or transactions could be indicators of fraud

- reporting details immediately through the appropriate channel if they suspect that a fraud has been committed or if they see any suspicious acts or events
  - co-operating fully with whomever may be conducting internal checks, or reviews, or fraud investigations as the case may be
- 40** Scottish Government Directorate for People, as providers of the Commission's HR shared service, is responsible for provision of HR advice and assistance to the Chief Executive, including:
- advising on and as appropriate arranging the suspension of Commission staff members pending the outcome of any investigations (and reviewing the notice of suspension at regular intervals throughout the period of investigation);
  - appointing an Investigating Officer (see below);
  - liaising with Scottish Government Directorate for Legal Services on legal implications under employment legislation and Scottish Government Main terms and conditions;
  - implementing disciplinary procedures against perpetrators of frauds and other members of staff whose actions may have facilitated frauds; and
  - considering the action to be taken if lesser instances of misconduct have been identified during the investigation.
- 41** The Scottish Government Directorate for Legal Services is responsible for the provision of legal advice under a shared services agreement.
- 42** Scottish Government Directorate for Internal Audit and Assurance, who provide Internal Audit services to the Commission, are responsible as and when requested by the Chief Executive for:
- carrying out fraud investigations and liaising with the appropriate Police Scotland/ Procurator Fiscal Service contacts as required;
  - making recommendations for improvement where appropriate; and
  - advising on potential lessons to be learned.

## Enforcement

- 43** All cases of actual or suspected fraud will be vigorously and promptly investigated and appropriate action will be taken. Police Scotland will be informed where considered appropriate. In addition, disciplinary action will be considered not only against any members of staff found to have perpetrated frauds but also against managers whose negligence is held to have facilitated frauds. Both categories of offence can be held to constitute gross misconduct, the penalty for which may include summary dismissal.

# Fraud Response Plan

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## Purpose

- 44 This Fraud Response Plan sets out arrangements to ensure, in the event of a suspected fraud or attempted fraud against the Scottish Fiscal Commission being reported, that effective action is taken to:
- investigate the circumstances;
  - minimise the risk of subsequent loss;
  - ensure that appropriate recovery action is taken or, failing recovery, to initiate action to write off any losses;
  - remedy any weaknesses in internal control procedures;
  - initiate disciplinary and legal procedures, where appropriate; and
  - demonstrate that the Commission is not a soft target for attempted fraud.

## Application

- 45 The procedures set out in this Policy and Response Plan will also apply in respect of Scottish Fiscal Commission members of staff who are seconded or loaned to other bodies. In such cases, the body to which the member of staff is seconded or loaned will be consulted on the handling of the investigation. The procedures will also apply to individuals who are loaned or seconded to the Commission. In these cases the parent body will be consulted on the handling of the investigation.

## Reporting Fraud

- 46 The warning signs highlighted in this document are not exhaustive and any indication of fraudulent activity should be reported. Managers and staff must always be alert to the risk of fraud, theft, bribery or corruption. Managers and staff may also receive notification of suspected fraud from external sources including partner bodies, stakeholders and members of the public.
- 47 Fraud reporting procedures within the Scottish Fiscal Commission are as follows:
- in the first instance staff should report any suspicions of occurrence of fraud, or attempted fraud, to their line manager
  - if they feel unable, or it would not be appropriate, to raise the matter with their line manager, they should contact another line manager or a member of the Senior Management Team
  - if this does not resolve the issue, or if there is a good reason for not raising a concern within the line management chain, the matter should be reported direct to the Chief Executive
  - if staff have a particularly serious and urgent concern, which for whatever reason cannot be raised via the management chain or the Chief Executive, they should report the matter to the Chair of the Commission

- 48** Under the Commission's Whistleblowing Policy all matters will be dealt with in confidence and in strict accordance with the terms of the Public Interest Disclosure Act 1998. This statute protects the legitimate personal interests of staff.
- 49** In most cases it will be appropriate for suspicions of fraud reported in this way to be passed on to the Scottish Government Fraud Response Team for purposes of co-ordination under the Scottish Government Fraud Response Plan. Consideration may also be given as appropriate to reporting any identified cases of fraud to the Commission's liaison team in Scottish Government Directorate for Taxation and Fiscal Sustainability.
- 50** All discovered cases of actual or attempted fraud must be reported to:
- the Commission's Audit and Risk Committee
  - Scottish Government Directorate for Internal Audit and Assurance (as the Commission's internal Auditors) to inform risk assessment of both internal controls and the Internal Audit Plan;
  - the Commissioners
  - Audit Scotland

## Responding to Fraud

- 51** Thorough investigations must be undertaken where there is suspected fraud and the appropriate legal and/or disciplinary action should be taken in all cases. Appropriate disciplinary action should also be taken where supervisory or management failures have occurred (see paragraph 43).
- 52** Investigating fraud is a specialised area of expertise and those responsible for any investigation work must have received appropriate training, including on the gathering of evidence. Investigations must not be undertaken by untrained staff.
- 53** Specialist advice, including advice from Scottish Government Directorate for Internal Audit and Assurance, Directorate for People and Legal Directorate (or other sources of legal advice as appropriate), must be taken as early as possible. Further details are set out in the Fraud Response Plan.

## Roles and responsibilities

- 54** Specific roles and responsibilities, while listed separately within the policy, are inter-linked: close liaison and co-operation on developments in specific areas is essential, as is the involvement of line management at an appropriate level. It will often be necessary to act with extreme urgency in handling actual or suspected frauds. It may also be necessary to involve additional individuals with particular knowledge or expertise in consideration of a specific case, or to require individual members of staff to attend meetings, provide statements or otherwise assist.
- 55** At the Commission's discretion, the Chief Executive may arrange for suspicions of fraud to be reported to the Scottish Government Fraud Response Team for the purposes of co-ordination under the Scottish Government Fraud Response Plan. The Team, which receives and records information provided anonymously or otherwise about suspected frauds from individual members of the public, is well placed, as required, to:
- issue fraud alerts;
  - provide advice and co-ordination services on counter-fraud matters; and

- advise on what action, assistance and communication may be required from within Scottish Government and external sources (including Police Scotland).

## Investigations

- 56** Following the reporting of suspicions or allegations of fraud (see paragraphs 46 to 50 above), the Chief Executive or, if for whatever reason it is not considered appropriate for the Chief Executive to be involved in a particular investigation, the Chair of the Commission will seek specialist advice and/or a recommendation as appropriate from one or more of the following on whether the suspicions or allegations warrant further action or investigation:
- Scottish Government Directorate for People
  - Scottish Government Directorate for Internal Audit and Assurance
  - Scottish Government Directorate for Legal Services
- 57** The Chief Executive (or the Chair of the Commission) may also, at their discretion arrange for the information to be passed on to the Scottish Government Fraud Response Team for co-ordination purposes and other purposes set out in paragraph 55 above).
- 58** If further action or investigation is agreed, the Chief Executive (or, exceptionally, the Chair of the Commission) should initiate the following action, as appropriate for the particular case:
- Decide the level at which line management should be involved and bring the allegations to the notice of line management if it is not already aware of them, at the same time confirming the investigative arrangements and reporting lines.
  - Secure records and assets, including imposing restrictions on access to offices, computer terminals or devices.
  - Based on advice from Scottish Government Directorate for People and involving Scottish Government Directorate for Legal Services as required, consider the prima facie case for suspension of any Commission staff member(s) who is (are) the subject of suspicion or allegations.
  - Agree the scope and nature of any investigative work required to establish the facts of the particular case.
  - Decide whether the appropriate Police Scotland/ Procurator Fiscal Service contacts should be informed. This will normally be where there are reasonable grounds to suggest that an offence may have been committed.
  - Agree a timetable for completion of any agreed actions.
- 59** Fraud investigations may at the request of the Chief Executive (or the Chair of the Commission) be undertaken by Scottish Government Directorate for Internal Audit and Assurance, Scottish Government Directorate for People or an Independent Investigating Officer, depending on the circumstances.
- 60** Investigations will take account of any relevant work or recommendations by specialist areas, including Internal Audit and HR reports. The Scottish Government Fraud Response Team should also be kept informed about preliminary investigation findings.

- 61** The Chief Executive (or the Chair of the Commission), assisted as necessary by the Head of Strategy, Change and Corporate Services and other Senior Management Team members, will carefully consider the terms of reference for any investigative work. Investigations should not be restricted solely to suspicions or allegations against an individual that may lead to a charge of gross misconduct. If there is a possibility that instances of serious misconduct (e.g. misconduct other than fraud) may also have occurred, these should be investigated at the same time as the fraud allegations by Directorate for People under the Scottish Government Disciplinary Policy and Procedure to which Commission staff are subject.

## Selection of Investigating Officer

- 62** Scottish Government Directorate for People will where necessary, following prior consultation with and on behalf of the Chief Executive (or the Chair of the Commission), appoint the independent Investigating Officer. The Investigating Officer must have the appropriate skills to undertake an investigation and, if necessary, knowledge of the area of work under investigation. They should be a person who does not have, and has not had, close personal or work-related ties with the person under investigation.

## Action on Investigation Findings

- 63** As soon as possible after investigations have been completed and the Chief Executive (or the Chair of the Commission), in consultation as appropriate with Scottish Government Directorate for People, Directorate for Internal Audit and Assurance and Scottish Government Directorate for Legal Services or appointed legal advisers, is satisfied that no further investigations are required, the Chief Executive (or Chair) must ensure that:
- disciplinary action, if any, is being taken (in line with disciplinary policy and procedures)
  - disciplinary action, if any, is being taken if initial allegations appear to be malicious
  - the form and content of any report to the Audit and Risk Committee and the Commission is appropriate
  - Police Scotland and/or Procurator Fiscal is/are notified if required

## Case Closure, Follow-Up and Review

- 64** Where evidence of fraud or serious misconduct has been identified, the Chief Executive (or the Chair of the Commission) should consider whether any action needs to be taken to prevent a recurrence. In such cases an action plan should be drawn up setting out clear recommendations.
- 65** It may be helpful to consult Scottish Government Directorate for Internal Audit and Assurance and/or Scottish Government Directorate for People who have already drawn up their own cross-Scottish Government action plans.
- 66** Action plans will include the required steps to be taken in response to an investigation's findings. Any occurrence of fraud in the Scottish Fiscal Commission may hold lessons to be learned elsewhere in the Scottish Administration or in the core Scottish Government. Actions plans should therefore be shared with the Scottish Government Fraud Response Team who have a lead role in ensuring that appropriate action is taken forward effectively across Scottish Government.



- 67 The Chief Executive (or the Chair of the Commission) will be informed by Scottish Government Directorate for People of the outcome of cases where a charge of gross misconduct has been made.
- 68 In any case where such a charge has been brought but a disciplinary hearing does not uphold the charge or an appeal panel overturns the initial panel's decision, the Chief Executive (or the Chair of the Commission) will be informed of the reasons for the panel's decisions. It will then be for the Commissioners, advised by the Chief Executive (or the Head of Strategy, Change and Corporate Services), in consultation with Scottish Government Directorate for People and others as necessary, to consider whether in light of this information there are lessons to be learned for the handling of fraud cases and whether this Fraud Response Plan and related guidance, for example on disciplinary procedures, is operating effectively.
- 69 If appropriate, where an individual has, or individuals have, been dismissed or subject to other disciplinary action for matters other than fraud (e.g. abuse of IT systems), Scottish Government Directorate for People will inform the Chief Executive (or the Chair of the Commission) and Scottish Government Directorate for Internal Audit and Assurance of the circumstances of the case and consideration may be given to whether a further review (by Scottish Government Directorate for Internal Audit and Assurance) should be undertaken to establish whether or not there has been misuse of other systems by the same individual(s).

## Confidentiality

- 70 The Chief Executive (or the Chair of the Commission), the Head of Strategy, Change and Corporate Services and other Senior Management Team members, as necessary, will receive the appropriate information relating to individual cases.
- 71 They must treat all information relating to individual members of staff on an "Official - Sensitive - Personal" basis and should ensure that it is only passed on to colleagues on a strictly need to know basis. Scottish Government Directorate for People will place a record on the career folder of a member of staff only where disciplinary action has been taken. Under the Commission's Whistleblowing Policy all matters will be dealt with in confidence and in strict accordance with the terms of the Public Interest Disclosure Act 1998, which protect the legitimate personal interests of staff. Further information is provided in the Whistleblowing Policy.

## Reporting Cases of Fraud

- 72 Details of any cases of actual or suspected fraud dealt with under these arrangements must be reported at least quarterly to the Scottish Fiscal Commission's Audit and Risk Committee. Details of fraud where actual losses have been incurred must also be reported to the Scottish Parliament through notes in the Commission's Annual Report and Accounts, as well as to the Audit and Risk Committee.

## External Fraud

- 73 External fraud are frauds perpetrated by third parties against the Commission (e.g. contract, procurement and purchasing fraud). Cases of external fraud will be dealt with under this Counter Fraud Policy and Response Plan. As previously noted, the Scottish Government Fraud Response Team is also available to advise on arrangements for dealing with external fraud.
- 74 The Chief Executive may seek additional advice in cases of external fraud from Scottish Government DG Scottish Exchequer, Directorate for People and/ or Directorate for Legal Services.



Procedures for responding to suspected external fraud, as appropriate to any particular case, may include:

- a report by operational management on the circumstances;
- a formal assessment of whether the evidence tends to substantiate fraud; (any invalid claims or invoices that it could reasonably be argued were submitted in good faith should not normally be regarded as fraud);
- in consultation as appropriate with Scottish Government DG Scottish Exchequer and with the Scottish Government Directorate for Legal Services, consideration of any specific aspects requiring special handling;
- consideration of what actions, if any, need to be taken to raise awareness about wider effects of the alleged/ attempted fraud;
- notification of the alleged fraud to Police Scotland/ Procurator Fiscal where appropriate; consideration of what actions need to be taken for them to establish the facts; engagement of specialist advice as required;
- consideration of suspension of the project/ supplier payment, etc, and of whether recovery action is required;
- consideration of what support is required for any on-going investigations, e.g. availability of staff for statements;
- ensuring that the Commission's Audit and Risk Committee is kept fully apprised of the potential fraud, the potential risk and the actions to be taken;
- in consultation with Scottish Government DG Scottish Exchequer, consideration of losses and special payments implications, as set out in the Scottish Public Finance Manual;
- consideration of control procedures and lessons learned; and
- consideration of reporting requirements.

**75** It will normally be sufficient to alert all Commission staff, copying in Scottish Government's Cyber Security group, about any cases of internet scams. If fraud by a supplier is suspected, the Scottish Procurement and Property Directorate should be kept informed. Cases of straightforward theft (which does not qualify as fraud) should be notified to the Head of Corporate Services and Finance and, as appropriate, the Scottish Government Security team for action.

Scottish Fiscal Commission

