

**Review of Key Policies**

**Introduction**

In agreement with the ABC’s HR Director and Director of Finance, the Counter Fraud Specialist (CFS) has carried out a review of a selection of policies in order to consider whether they;

1. Are adequately robust to challenge should a fraud be committed in the area covered, and;
2. Make appropriate reference to the role of the CFS, ABC’s Counter Fraud Strategy, ABC’s Fraud Policy & Response Plan and the Whistle Blowing Policy.

Policies were selected for review taking account of risk areas identified in the Fraud Risk Assessment, which was produced by the CFS for ABC in March 2016. This Risk Assessment took account of intelligence received from Internal Audit, Internal Risk, Complince, an analysis of local and regional referrals for investigation and nationally publicised cases.

The following ABC policies have recently been reviewed by the CFS:

* Standards of Business Conduct Policy which incorporates Declarations of Interest, and the Acceptance and Provision of Gifts, Sponsorship and Hospitality;

**Findings & Recommendations**

Standards of Business Conduct and Conflict of Interest Policy

The version of the policy provided to the CFS is dated 4 February 2014 and states that it is due for general review in August 2015. The recommendations below should hopefully inform that review which is now overdue.

Section 3.6 correctly references the Prevention of Corruption Acts 1906. It should be noted that the Bribery Act 2010 has replaced this Act.

The CFS recommends therefore that this is referenced in the revised policy and that the policy be reviewed to include a specific reference to the relevant provisions of the Bribery Act.

Section 3.7 states: ‘All ABC Staff are expected to……..Understand that failure to follow this policy may damage ABC…..and so may be viewed as a disciplinary matter……..’.

The above wording gives the impression that it will only be considered as a disciplinary process and not as a criminal matter. A key part of ABC’s Fraud Policy (which includes bribery and corruption) is the application of ‘parallel sanctions’ i.e. applying civil, criminal and disciplinary penalties. The pursuit of civil or disciplinary sanctions is not therefore dependent on successful prosecution but staff should be aware that breaches of the policy could lead to criminal sanctions against them.

The CFS therefore recommends that the wording of paragraph 3.7 is changed to:

* Understand that not only is a breach of the bribery legislation a criminal offence for which they could be prosecuted, it is also a breach of their employment contract with ABC and as such leaves them liable to disciplinary proceedings.

Section 4 deals with Declarations of Interest.

* The CFS recommends that this paragraph be extended to clarify what is meant by conflict of interest i.e.

A ‘conflict of interest’ involves a conflict between the public duty and the private interest of a public official, in which a public official’s private interest could improperly influence the performance of their official duties and responsibilities.

Situations can arise in which there appears to be a conflict of interest, but this is not in fact the case, or may not be the case. This situation is regarded as an “*apparent* conflict of interest”. Having an “apparent conflict of interests” as a public official can be as serious as having an actual conflict, because of the potential for suspicion of the official’s integrity, and that of his/her organisation.

An employee may have private interests which may be such as to cause a conflict of interests to arise in the future; this is called a “*potential* conflict of interest”.

Paragraph 4.3 would need subsequent amendment to commence: ‘ Staff must declare any actual, apparent or potential conflicts of interest………..’

Section 5.1 implies that only gifts that are accepted need to be declared and recorded. Section 5.8 correctly states that it is important to record all offers of gifts and hospitality, even if they have been declined.

The CFS therefore recommends that:

* Paragraph 5.1 final sentence should be amended to state that the register covers the offer of both gifts and hospitality even if they have been refused.

Paragraph 3.4 states that managers are responsible for ensuring that the gifts and hospitality register has been completed. However the act of registering the declaration of interests does not in itself resolve or manage the conflict. Additional measures to resolve or manage the conflict positively must be considered.

The CFS therefore recommends:

* An additional requirement for the manager to consider how the conflict will be managed including consideration of one or more of the following options for positive resolution:
  + Divestment or liquidation of the interest;
  + Removal of the employee from involvement in an affected decision-making process;
  + Restriction of access by the employee to particular information;
  + Transfer of the employee to duties in a non-conflicting function.
  + Re-arrangement of the employee’s duties and responsibilities;
  + Assignment of the conflicting interest in a genuinely ‘blind trust’ arrangement;
  + Resignation of the employee from the conflicting private-capacity function; and/or
  + Resignation of the employee from their role with ABC

Section 5 sets out the guiding principles of the policy. Paragraph 5.1.3 sets out the situations where a declaration of interests is required.

It is considered that paragraph 5.1.3.1 regarding financial interests is too narrowly defined and it may not be clear what a ‘financial interest’ is.

The CFS therefore recommends that this be expanded to state:

* a private interest which is of such a *value* that it could improperly influence the employees performance of their official duties for example, a business interest, or an opportunity to make a financial profit or avoid a loss.

It is also recommended that an additional situation be added as a new paragraph:

* a private interest which is of such a *kind* that it could improperly influence an employee’s performance of their official dutiesfor example, family responsibilities, religious belief, professional affiliation or political alignment, personal assets or investments, debts, etc.

Paragraph 5.1.4 sets out the policy on outside employment. This has been an issue from a counter fraud perspective, particularly with employees working for a secondary employer even when they are off sick and claiming sick pay for their main ABC job.

The CFS therefore recommends the following additional paragraphs:

* This includes any work in or on behalf of a business owned by the employee or a member of his/her family.
* Employees must not undertake work for an outside employer whilst on sick leave from ABC unless prior permission has been obtained in writing from the line manager on the advice of Occupational Health. Failure to observe this policy could lead to summary dismissal for making fraudulent claims upon ABC’s sick pay scheme.

Paragraph 5.1.6 states that candidates for any staff appointments must disclose if they are related to any employee of ABC. This is a narrow construction which would not for example include partners.

The CFS therefore recommends that:

* Paragraph 5.1.6. be extended to also include: partners and anyone with whom the candidate has a close personal relationship, or anyone whose affairs are so closely connected with the affairs of the candidate that a benefit derived by the other person, or a substantial part of it, could pass to the candidate.

Paragraph 5.5 sets out the policy with regard to private practice and paragraph 5.5.2 states that such work should not take place during their contracted hours with ABC. As stated above there has been an issue from a counter fraud perspective, with employees working elsewhere even when they are off sick and claiming sick pay for their main ABC job.

The CFS therefore recommends the following additional paragraph:

* Employees must not undertake private practice work whilst on sick leave from ABC unless prior permission has been obtained in writing from the line manager on the advice of Occupational Health. Failure to observe this policy could lead to summary dismissal for making fraudulent claims upon ABC’s sick pay scheme.

Standing Orders and Standing Financial Instructions (SFIs)

SFI 11.5 deals with arrangements for Fraud and Corruption. Paragraph 11.5.3 states that the CFS should work with the Internal Audit Team. The reference should be amended to read:

* The CFS…… shall work with staff in the Internal Audit Team, HR, Compliance, Risk and Legal in accordance with the Fraud and Corruption Policy.

Paragraph 11.5.4 states that the CFS should report annually on counter fraud work within ABC. This paragraph should be extended to also read:

* The CFS should also provide the Head of Audit with quarterly reports covering the work undertaken to counter fraud as well as details of any allegations received and progress with investigations.

SFI 16.3 deals with Debt Recovery but does not refer to debts arising from fraud and corruption. An additional paragraph should specify that:

* Overpayments or shortfalls arising from fraud and corruption should be recovered in accordance with ABC’s Fraud Policy.

SFI 25.2 deals with Losses and Special Payments. Paragraph 25.2.2 states that in cases of suspected fraud and corruption the Director of Finance must inform the relevant CFS and the Operational Fraud Team. This needs a slight amendment and should read as follows:

* All suspicions of fraud or corruption against ABC must be referred to the nominated Counter Fraud Specialist who will liaise with the relevant teams before any action is taken and agreement reached as to how the case is to be investigated in accordance with ABC’s Fraud Response Plan.

Paragraph 25.2.3 states that the Director of Finance must notify the External Auditor of all frauds. This needs a slight amendment and should read as follows:

* The Director of Finance, through the Counter Fraud Specialist, must notify the External Auditor of all frauds.

Action to recover losses due to fraud is undertaken in accordance with ABC’s Fraud Policy. The CFS therefore recommends a new paragraph be inserted after 25.2.3 to state:

* Action to recover losses due to fraud will be undertaken in accordance with ABC’s Fraud Policy.

The corresponding references in the scheme of delegation at Section C will also need to be amended to reflect these changes.

**Further reviews of these Policies**

The CFS recommends that:

* Following any amendments to the above policies to take account of the above risks a review of the new policies should be undertaken by the CFS after 6 months to establish whether the new controls:
  + meet the counter fraud needs;
  + inhibit the smooth operation of ABC’s procedures;
  + achieve sufficient levels of compliance by managers and staff;
  + are agreed and understood by managers and staff.
* ABC should consult the CFS in any future reviews of these policies to determine whether additional risks call for further counter-fraud controls or policy revision.

**Conclusion**

The CFS requests that the HR Director gives consideration to adopting the above recommendations in order to ensure that the policies reviewed are adequately robust to challenge, make appropriate reference to the role of the CFS and ABC Counter Fraud Strategy and is appropriately linked to the Fraud & Corruption and Whistleblowing Policies.

The CFS would be happy to attend a Policy Review Group meeting in order to discuss the recommended changes if required.

I would be grateful if you could advise me of the action taken in considering and adopting the recommendations that I have made.