

1. Background

Under the Criminal Finances Act 2017, the Council, if found to be facilitating tax evasion, could face an unlimited fine and consequent damage to its reputation. The Council will be guilty of the offence where a third party commits tax evasion, which a member of staff (or a contractual associate) has in some way assisted unless the Council can establish a defence by demonstrating that it has put suitable procedures in place.

The Council aims to conduct its financial affairs in a law abiding manner and does not tolerate either the commissioning or facilitation of tax evasion.

The Council already has a range of policies, procedures and guidance that underpin its financial activities.

To prevent tax evasion, Council staff (and contracted associates) should:

- always follow Council policies, procedures and guidance;
- tell management if any criminal activity is suspected;
- attend any appropriate training offered.

Specifically, staff and associates must not knowingly do anything that helps someone else evade tax.

Note in this context though that the Council is only responsible for the actions of associates in respect of things they do for, or on behalf of, the Council. Other than this the Council is not responsible for the way contractors manage their business.

2. The Law

Part 3 of the Act entered into force on 30 September 2017, and creates the corporate criminal offence of failure to prevent the facilitation of tax evasion.

Tax evasion is the illegal non-payment or under-payment of taxes, usually as the result of making a false declaration (or no declaration) of taxes due to the relevant tax authorities, which results in legal penalties if the perpetrator is caught.

Tax avoidance, by contrast, is seeking to minimise the payment of taxes without deliberate deception. This is often legitimate but is sometimes contrary to the spirit of the law, e.g. involving the exploitation of loopholes.

Importantly the corporate criminal offence of facilitation only applies to tax evasion. The third party must be found guilty of tax evasion before the Council can be found to have facilitated it.

3. Defences

It is a defence to the corporate criminal offence of facilitating tax evasion if the Council can prove that it has in place such prevention procedures as it is reasonable to expect in the circumstances.

Government guidance suggests an appropriate set of prevention measures which gives due recognition to the following:

- risk assessment;
- the proportionality of risk-based prevention procedures;
- top level commitment;
- due diligence;
- communication (including training);
- monitoring and review.

The Council must ensure a policy on prevention is brought to the attention of all staff. This policy is, therefore, published on the Council's Intranet.

4. Obligations of Staff and Associates

Staff and associates are reminded that they are required at all times to abide by the Council's policies, procedures and guidance. Failure to comply with these policies, procedures and guidance, including in particular failure to comply with the obligations detailed in this policy, may result in disciplinary action for staff and the termination of arrangements with associates.

Should staff or associates be concerned that another employee or associate is facilitating a third party's tax evasion, they should report this to their line manager. The whistle-blowing policy can also be engaged.

5. Risk Assessment

The Council's systems of control are designed to ensure regularity. Management should consider risks from the 'Failure to prevent the facilitation of Tax Evasion within the established risk assessment procedures. Internal Audit conducts periodic compliance checks on the completion of corporate and departmental risk registers, paying specific attention to areas of high risk.

6. Proportionality of risk-based prevention procedures

The Council has governance processes and procedures to address specific counter fraud risks. These processes include this policy and the whistle-blowing policy which are part of the counter fraud and corruption strategy. The Council also has procedures in place for segregation of duties where appropriate and to counter fraud. Members and senior officers provide the high level commitment to such risk based prevention procedures with are supported by service directors' commitment to the counter fraud agenda. The S151 officer promotes this agenda through work undertaken by the Head of Internal Audit who has a role to promote compliance with counter fraud arrangements and raise awareness amongst staff. The council operate an established Fraud Response Plan and actively promote prevention procedures through the Annual Fraud Report and active e-learning. Management assurance is provided through the assurance mapping identified in **Table 1**.

Table 1 – Tax Evasion – Assurance Mapping

KLOE	1st Line	2nd Line	3rd Line
<i>Tax Evasion</i>			
Corporate arrangements to prevent the facilitation of tax evasion	System procedures to prevent the facilitation of tax evasion	Management monitoring of systems and reporting	Internal Audit Review

7. Due Diligence

Reasonable care and caution is exercised when processing all financial transactions, particularly high value/high risk payments. Regular monitoring takes place and particular caution is exercised when making payments to new suppliers. Specific controls are maintained in relation to payments being processed through the Business Service Centre who undertake checks on vendors prior to payments.

8. Communication and Training

All staff, especially those identified through the Criminal Finance Act exposure assessment will be made aware of this policy via on-line training. Other staff will receive awareness training through the induction process. Training will be developed for staff with the highest risk of exposure, this may include staff involved with procurement; invoice processing; property transactions; BACS payments; Payroll & Pensions etc. Training will be provided through general awareness and the completion of specific on-line training modules. Awareness Information will also be made available to all staff on the Council's Intranet.

9. Monitoring and Review

The Chief Executive's Department, through the S151 Officer will consider risks associated with the 'Failure to prevent the facilitation of Tax Evasion' through its Departmental Risk register. Internal Audit will routinely review the compilation and assessment of risks that drive the risk register. The Group Manager – Financial Services will review compliance to guidance materials through the processing of payments. Internal audit will periodically review compliance with such processes. This Policy will be subject to review every two years by the S151 Officer and revisions will be reported to the Governance and Ethics Committee and the Policy Committee.

10. Top Level Commitment

This policy has been endorsed by the Corporate Leadership Team.

11. Further Information

Further information can be obtained from the Group Manager Financial Services.