

**HR Guidance**

**Legal and Procedural Issues**

Note by the Monitoring Officer

#### This Note revises and updates advice given in 1997 and 2006 by the then County Secretary/Head of Legal Services/Monitoring Officer on the subject of misappropriation of funds and other matters giving rise to Police investigations or legal proceedings. This further revision takes account of recent organisational and legislative changes. It is emphasised that this advice is of a general nature and a pointer to some of the problems; the detailed provisions of the particular Conditions of Service/Disciplinary Procedures, the Council’s Constitution and Financial Regulations, and the Anti-Fraud Strategy document need always to be borne in mind.

[Misappropriate of Funds: Financial Irregularities](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc)

#### In any circumstances where there is any question of misappropriation by a Council employee of funds or property belonging to the County Council or in the County Council’s control, or other financial irregularity, or the improper use of such property, or where circumstances give rise to suspicion that such event may have occurred, it should be remembered that a criminal offence may have been or is being committed.

If the question of misappropriation has been reported under the *“Whistleblowing: Procedure and* *Guidance”* policy, then the guidelines in that policy should be followed. Where anonymity is requested, every effort will be made to meet the request, but that might not always be possible.

There are circumstances in which the Police should be involved, either because the matter needs their assistance to secure detection, or because criminal charges should be brought. The purpose of the procedure set out below is to secure a proper investigation and consistency of treatment of such cases.

The procedure to be adopted is as follows:-

1. A Corporate Director, on receiving information which raises any suspicion of misappropriation of funds, should immediately notify the Group Audit Manager.
2. Steps should be taken to prevent further loss, and to secure records and documentation.
3. An employee, in respect of whom any suspicion might arise, should **NOT** be interviewed at that stage. (The provisions of the Criminal Procedure and Investigations Act 1996 imposes important procedural safeguards). In addition, The Regulation of Investigatory Powers Act 2000 imposes certain conditions should surveillance be necessary. Surveillance should not be carried out unless authorised by a nominated Senior Officer in the Directorate. Audit, without necessarily interviewing the employee, will carry out, as a matter of urgency, an investigation into the circumstances, and prepare a report which, with the Corporate Director’s own report (if appropriate), will be considered by the Assistant Director - Finance.
4. The report will be passed, with a joint recommendation as to the action proposed, to the Senior Manager Legal and Democratic Services who will consider the legal implications.
5. The Senior Manager Legal and Democratic Services will, in consultation with the Corporate Director - Resources decide in each case whether the circumstances are such as to justify the matter being placed in the hands of the Police. The Senior Manager Legal Services may, at this stage, also consult the Chief Constable informally.
6. The Police should **NOT** be called in without the above procedure being followed.
7. No statement should be made to the media except with the approval of the Senior Manger Legal and Democratic Services, the Group Audit Manager and the Senior Manager Communication and Media.

An employee under investigation shall not be interviewed except in conjunction with Audit during their investigation, if they consider this to be necessary to ascertain the facts or to obtain information essential to their inquiries. The employee may be suspended as soon as Audit is satisfied that a prima facie case exists. Suspension should be in accordance with the Council’s disciplinary procedures after taking the advice from a Senior HR Manager, and, where appropriate, legal advice.

It is emphasised that speed is of the essence if this procedure is to operate smoothly.

Audit should not continue to question an individual beyond the point where it becomes evident that there are grounds to suspect him/her of a Criminal offence. At that stage advice should be sought from the Senior Manager Legal and Democratic Services.

It may, in some circumstances, be preferable to pursue the inquiries further in a formal disciplinary setting or by means of a Police investigation (subject to the procedure previously outlined).

A factor that needs to be taken into account is whether it is appropriate to complete disciplinary procedures pending the conclusion of criminal proceedings, during which time the officer will usually be suspended on full pay. Delay can mean that the Authority pays far more in salary during the period of suspension than the amount of money at stake - given the length of time involved in bringing the matter to trial. This may not always be a proper use of funds or in the public interest. It also needs to be borne in mind that an inconclusive Police investigation can make subsequent disciplinary action more difficult.

There may be circumstances in which disciplinary procedures can be commenced before the conclusion of Police investigations, but Corporate Directors should be aware that there may be procedural difficulties in this. Further disciplinary proceedings should therefore only be undertaken in these circumstances after taking appropriate advice from a Senior HR Manager and the Senior Manager Legal and Democratic Services.

N.B. Corporate Directors need to bear in mind the possibility that conduct has occurred which may raise issues under the Bribery Act 2010. Bribery involves a gift or consideration being offered or received as an inducement or reward for services in relation to official duties. Such matters would normally be reported to the Police for investigation.

[Other Police Matters](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc)

The Police may from time to time need to be brought in, e.g. theft of County Council or staff property, malicious damage to property, outbreak of violence, etc., where persons other than employees are suspected. In such circumstances, the Head of the Office, School, or Establishment concerned shall so act, but the circumstances should be brought to the attention of the Corporate Director as soon as possible. It is important to emphasise that no attempt should be made to interview staff who may be under suspicion.

[Allegations of Sexual Misconduct](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc)

The way allegations of sexual misconduct are handled needs special consideration. Such conduct may amount to a criminal offence, such as indecent assault, harassment or something more serious; it may, on the other hand, be some impropriety, e.g. offensive language or behaviour. If allegations are made to the Police, they would investigate, whether or not they are brought in by the County Council. The question arises as to whether, if such allegations come to the notice of Corporate Directors or senior managerial staff, they should take any investigatory action themselves or refer the matter to the Police for investigation. This can often be a difficult judgment, and the views of the complainant are clearly an important factor. It is appropriate to seek HR or legal advice in such cases.

If Criminal proceedings are not pursued then allegations of sexual harassment which do not constitute a criminal offence under the Harassment Act 1997 should also be treated seriously and investigated in accordance with the established procedures *[see the ‘Harassment Policy]*.

[Child Protection](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc)

Corporate Directors and Senior Managers should take account of the Child Protection Procedures produced by the Cumbria Local Safeguarding Children Board in respect of allegations of abuse made by or in connection with children. A particular difficulty arises when the Police have investigated allegations against employees and find insufficient evidence to justify criminal charges. It may, nevertheless, be felt that action under the disciplinary procedures would be appropriate. Such cases are invariably difficult, and HR and legal advice should always be sought at an early stage.

A child protection investigation takes precedence over any disciplinary investigation, and therefore close liaison with Children’s Services Directorate or Police investigating an allegation of abuse of a child or young person is essential. The outcome of a child protection investigation may be used to inform the decision as to whether or not a disciplinary investigation or disciplinary hearing is necessary, and employees involved in the issues under investigation should be informed accordingly. Depending on the circumstances, it may be possible to proceed with a disciplinary process whilst child protection investigations are ongoing. Advice should be sought from HR and Legal.

[Other Criminal Offences](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc)

If it comes to a Corporate Director’s notice that criminal charges (excluding routine road traffic offences) are to be brought, or have been brought, against an employee, whether or not arising out of circumstances connected with his or her employment, the matter should be discussed with the Senior Manager Legal and Democratic Services.

**Legal Proceedings**

Both the Corporate Director and the Senior Manager Legal and Democratic Services should be informed in any case in which an employee is involved in Court proceedings, whether civil or criminal, in circumstances arising out of his or her employment, either as a party thereto or as a witness).

**Inquests**

The Senior Manager Legal and Democratic Services must be advised as soon as possible of any fatality when the attendance of any employee has been, or is likely to be, requested by a Coroner’s Inquest in circumstances connected with his or her employment or in which the Council are involved. The Senior Manager Legal and Democratic Services will determine assistance with and representation at the Inquest.

**Accidents**

Apart from the obligation to notify the Senior Health, Safety and Wellbeing, the Senior Manager Legal and Democratic Services and the Corporate Risk Manager should be informed of any accident involving death or serious injury, or which raises important issues of principle. Although claims against the Council for employers’ liability or third party risk are still handled through insurance arrangements, such cases should be considered in order that advice can be given to Departments in the light of full consideration of the circumstances. Arrangements made between the Corporate Director – Resources and the Insurers are that the Senior Manager Legal and Democratic Services is notified in all cases where the Council is actually involved in Court proceedings.

**Professional Liability**

The County Council has adopted the Model Resolution on Professional Liability as approved by the ACC Local Government Personnel Sub-Committee in February 1991. This limits the circumstances in which the Council would seek to recover from employees the costs of negligent work. But it does not preclude the possibility of action of a disciplinary nature or for capability if that is justified. The full text of the resolution is given here.

It has been agreed that subject to the conditions listed below the Council will indemnify and will not make any claim against any of its employees in respect of any expenses, liability, loss, claim or proceedings whatsoever, arising from their neglect, act, error or omission in the course of their employment (whether they were acting for the Council itself, or another person or body with the Council’s consent).

##### Conditions

##### This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

1. fraud, dishonesty or other deliberate wrongdoing or recklessness on the part of the member or officer
2. any act or failure to act by the member or officer otherwise than in their capacity as a member or officer of the Council.

No employee shall, without the written express permission of the authority, admit liability or negotiate or attempt to negotiate a settlement of any claim falling within the scope of this resolution.

That the above indemnity and undertaking shall be without prejudice to the right of the Council to take disciplinary action against an employee in respect of any neglect, act, error or omission.

That the above indemnity and undertaking apply:

a) Retrospectively to any neglect, act, error or omission which may have occurred before this date; and

b) After the retirement or resignation of the employee concerned, as well as during their employment with the Council.

**Employment Tribunal Proceedings**

There are very strict time limits in the Employment Tribunal procedures which are rigidly observed. In the event of notice of any proceedings being served on any officer (the ‘ETI’ or ACAS notice of pre-claim conciliation), a copy **MUST** be sent **FORTHWITH** to the Senior Manager, Legal and Democratic Services in order that a response can be made within the time limit.

Caroline Elwood – Interim Monitoring Officer.

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