

Arts Council of Northern Ireland

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1.0 Fraud Response Group (FRG)

1.1 The FRG, in accordance with the recommendations of DAO/DFP 12/06 will comprise:

ACNI FRG

- Director of Finance and Corporate Services - **Responsible Officer**
- HR Officer - **Secretariat to the FRG**
- Internal Audit
- Line Manager of business area concerned
- DARD's Head of Central Investigative Services (CIS)

1.2 Introduction

1.2.1 The Arts Council has prepared this Fraud Response Plan as a **procedural guide** for staff where a fraud has been detected or is suspected. The objective of this plan is to ensure that timely and effective action is taken when fraud is suspected. This plan is in addition to the Arts Council's Anti-Fraud & Bribery Policy, in which fraud is defined and roles and responsibilities are outlined.

2.0 Initial Reporting of Suspected Fraud and Irregularities

2.1 There are four main ways in which theft, fraud or corruption may come to light:

- i. Discoveries by management, usually arising from controls not being adhered to and/or management suspicions;
- ii. A "tip off" from a staff member. All staff should report any suspicions of fraud to their line manager who will immediately inform the functional area Director. If a member of staff feels unable, for whatever reason, to raise a concern about suspected fraud with a line manager and/or the Director, then they may report their suspicions directly to the Director of Finance and Corporate Services or the Internal Auditor;
- iii. Routine systems audit checks or specific audit checks on high risk areas, and/or;
- iv. A "tip off" from a third party.

2.1.1 On discovery of evidence that may indicate suspected theft, fraud or corruption, confidentiality will be maintained at all times as the initial suspicions may prove to be subsequently unfounded or the perpetrators may be alerted.

2.1.2 Where there is a "tip off", this initial prompt will be treated with caution and discretion, as apparently suspicious circumstances may turn out to have a reasonable explanation or the prompt could originate from a malicious source.

2.1.3 For the purposes of reporting a suspected fraud, the point of contact will be the Director of Finance and Corporate Services in his capacity as the responsible officer of the FRG.

- 2.1.4** If the tip-off comes from a third party, the third party may wish to approach a body independent of the management of the Arts Council. In this case, the issue should be referred to the Chair of the Audit and Risk Committee who, in turn, will ensure the responsible officer is informed.
- 2.1.5** Should the suspected fraud appear to involve the Director of Finance and Corporate Services, it should be brought to the attention of the Principal Accounting Officer of the Council, in this case, the Chief Executive. The Chief Executive will then replace the Director of Finance and Corporate Services on the FRG.
- 2.1.6** Should the suspected fraud appear to involve both the Director of Finance and Corporate Services and the Principal Accounting Officer, the suspected fraud should be brought to the attention of one of the remaining members of the FRG. In turn, they will contact the Chair of the Audit and Risk Committee, who will then be asked to serve on the FRG for the full duration of that particular investigation.
- 2.1.7** Should the suspected fraud appear to involve the Chair of the Audit and Risk Committee, the matter should be raised directly with the Chairman of the Board by writing directly to:

Mr Bob Collins
Chairman
Arts Council of Northern Ireland
MacNeice House
77 Malone Road
Belfast BT9 6AQ

- 2.1.8** The overarching theme of this plan is “IF IN DOUBT, ASK FOR ADVICE”. This applies at any point of the investigation. Details of contacts are provided in Appendix (TBC).

2.2 Initial Action

- 2.2.1** The Responsible Officer, notwithstanding the exceptions noted above, will consider the following aspects when a suspected fraud is reported:
- The source of discovery of the suspected fraud;
 - The authenticity of the information initially received; and
 - The line management’s initial assessment of the circumstances involved.
- 2.2.2** It is for line management to undertake an initial fact-finding exercise. This discreet preliminary enquiry should be carried out immediately. The purpose of the initial fact-finding exercise is to determine the factors that gave rise to suspicion and to clarify whether a genuine mistake has been made or it is likely that a fraud has been attempted or occurred. This may involve discreet enquiries with staff or the examination of documents. It is imperative that such enquiries should not prejudice subsequent investigations or corrupt evidence, therefore IF IN DOUBT, ASK FOR ADVICE.

2.2.3 If the preliminary enquiry confirms that a fraud has not been attempted nor perpetrated, but, internal controls are deficient, management should review their controls systems with a view to ensuring they are adequate and effective, and where relevant the Risk Framework should be updated and, where appropriate, the Branch and Corporate Risk Register(s).

2.3 Seek Advice

2.3.1 If suspicions appear well founded and fraud is a possibility or still suspected, the Responsible Officer will then convene a meeting of the FRG to determine and record the action to be taken.

2.3.2 If the FRG deem it appropriate, the line management of the business area concerned, may be invited to attend and sit on the FRG.

2.3.3 The FRG will decide on the appropriate course of action including the full formal investigation arrangements. The scope of the investigation should be determined by the Head of CIS, in line with the terms of the SLA. Should the Head of CIS advise that further expertise is required, e.g. Solicitors, Forensic Accountants/Engineers, the FRG will engage the appropriate assistance.

2.3.4 If the FRG agrees that the Head of CIS is not required to investigate it is important to ensure that there is segregation between any further investigatory work and any potential disciplinary action.

2.3.5 FRG should agree the Terms of Reference for the investigation with the Head of CIS and an oversight/checkpoint plan for the various stages of the investigation. The level of detail relayed to the FRG on the progress of an investigation will be such as not to compromise or prejudice the outcome. The Terms of Reference will include appropriate and realistic timelines and progress against these will be monitored by FRG.

2.3.6 The FRG should ensure the following best practice guidance is applied during the investigation:

- Seek Advice from a counter fraud specialist within the Council or from another organisation if experience is not available internally
- Following considerations of the advice received and the circumstances of the case, the Fraud Response Group should decide whether to liaise with the PSNI Fraud unit.

2.4 Notify

2.4.1 The FRG should ensure that the officer responsible for notifying DCAL¹ and the C&AG² makes an immediate notification of all frauds (proven or suspected), including attempted

¹ Report to DCAL Director of Finance Deborah Brown Deborah.Brown@dcalni.gov.uk copied to DCAL Head of Internal Audit* and Governance Support Unit Sinead McCartan Email: sinead.mcartan@dcalni.gov.uk Tel: 028 9051 5070 & to Head of CIS Thomas McCauley email: Thomas.McCauley@dardni.gov.uk Tel:028 90 524084.

fraud, which affect the Council to the DCAL appointed liaison. Frauds (proven or suspected) including attempted fraud affecting public funds disbursed by clients of the Arts Council and other agents such as Intermediary Funding Bodies should also be reported (MPMNI Annex 4.7.8 refers). The suspected or proven fraud should initially be reported using DCALs pro forma Fraud Report. However completion of the proforma should not delay advising the Department of concerns. Other reporting obligations such as money laundering regulations should also be considered as relevant.

- 2.4.2** Managing Public Money NI requires ACNI to submit an annual return to DFP in respect of each financial year, giving details of all discovered cases of suspected and proven fraud (including attempted fraud). DFP will send an annual commissioning letter to ACNI which will set out guidance on the reporting and administrative arrangements for the annual return (MPMNI annex 4.7.9 refers).
- 2.4.3** The Arts Council will ensure that their Board, and the Audit and Risk Committee and Internal Audit are informed of the issue as appropriate.
- 2.4.4** As an ALB, ACNI will also formally notify NIAO of the suspected fraud and keep them updated as the case progresses. (Where it is the case that NIAO are not the ALB auditors the Department will notify NIAO).
- 2.4.5** ACNI will also formally notify the Head of CIS of the suspected fraud and seek advice as to how the investigation of the suspected fraud investigation should proceed. (DCAL will formally notify DFP of the suspected fraud and keep them updated as the case progresses).
- 2.4.6** If the Head of CIS advises that the investigation has criminal implications, then he will attend ACNI's FRG and lead on the investigation.
- 2.4.7** ACNI must provide a monthly update on the progress of the case to DCAL with more frequent updates depending on the significance of the case.
- 2.4.8** ACNI will complete an internal audit review of the system weaknesses in all cases of suspected fraud and lessons learned prepared.

2.5 Pre-Investigation Fraud Response Actions

- 2.5.1** If the evidence strongly suggests a fraud may have occurred and the if the FRG agree that the Head of CIS is not required to investigate, some or all of the following actions must be completed:
 - Secure the evidence and ensure the preservation of records both paper and electronic;

² Denver Lynn NIAO Director with responsibility for ACNI Email: Denver.Lynn@niauditoffice.gov.uk Tel: 028 90251127

* note that the Head of Internal Audit of the Department of Education, based at Rathgael House, Balloo Road, Bangor; acts on behalf of DCAL

- Ensure the procedures are strengthened and action has been taken to end the loss;
- Remove the suspect's access to computer systems;
- Relocate the suspect in another building if suspension is not warranted initially.

2.6 The Fraud Investigation

2.6.1 The FRG should set up a Fraud Investigation Team (FIT) independent from the business area where the suspected fraud took place. FIT should have appropriate financial and audit skills which is expected to include knowledge and experience of the provisions of Police and Criminal Evidence (NI) Order 1989 (PACE). Ideally the investigation should be informed by an experienced counter-fraud specialist. Organisations that do not have counter-fraud expertise in-house should seek advice from another organisation's counter-fraud specialists/PSNI at the outset and during the investigation.

2.6.2 The FRG should agree the terms of reference for FIT and an oversight/checkpoint plan for the various stages of the investigation. The plan will include:

- Facts to be Established;
- Evidence Required;
- Interview Plan;
- Relevant Timeframes; and
- Evaluation and Analysis.

2.6.3 The investigation may involve interviews. Interviewing is a specialist skill, which will be carried out by suitably trained and appropriate professionals. It should be borne in mind that when criminality is suspected, interviewers must comply with the conditions of the PACE to ensure that evidence will be admissible in Court. Prior to a formal interview being carried out, the Investigation Officer will ensure that adequate preparation has been made. Preparation ensures that:

- the interviewer has an adequate knowledge of the subject i.e. ascertained what happened, who was involved and the sequence of events;
- all documents that may be required at the interview have been obtained.

2.7 Purpose of the Internal Investigation

2.7.1 The purpose of an internal fraud investigation is to:

- Establish whether there is evidence that a fraud has occurred;
- Collect sufficient evidence to support any complaint to the police; and

- Provide sufficient evidence for disciplinary or legal action.

2.8 Best Practice

2.8.1 The FRG should ensure the following best practice guidance is applied during the investigation.

- **All aspects** of the suspected officer's work should be investigated, not just the area where the fraud was discovered.
- The investigation will obviously cover the period the officer was responsible for the processes under investigation but consideration should also be given to **investigating earlier periods of employment**.
- Potential evidence, including computer files and record of amendments relevant to the case **should be retained securely** (in compliance with PACE requirements) and not disposed of per the normal routine procedures for disposal.
- Control weaknesses discovered in procedures during the investigation should be **strengthened immediately**.
- The extent, if any, of **supervisory failures** should be examined.

2.9 Protecting the Evidence

2.9.1 From the first time suspicions are raised, it is important that evidence is preserved and protected. Wherever possible the gathering of evidence relevant to the case prior to reporting to the police should be carried out by persons with investigation experience and who are familiar with the The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (PACE) and Rules of Evidence.

2.9.2 If the evidence strongly suggests a fraud may have occurred, the expert advice from the Counter Fraud Unit/PSNI Fraud Unit is likely to include some/all of the following actions:

- Secure the evidence and ensure the preservation of records both paper and electronic
- Ensure the procedures are strengthened and action has been taken to end the loss
- Remove the suspect's access to computer systems
- Relocate the suspect in another building if suspension is not warranted initially.
- Lack of knowledge or expertise may lead to insufficient or unusable evidence being collected.

2.9.3 Where there is no one within the organisation with this knowledge, the Internal Auditor should consult the police at an early stage for advice and guidance.

2.10 Reporting to the Police

- 2.10.1** A Memorandum of Understanding (MOU), setting out a basic framework for the working relationship between the PSNI and the Public Sector in respect of the investigation and prosecution of fraud cases, was introduced on 30 October 2006. The MOU sets out a framework to ensure appropriate action is taken by public sector organisations, in line with DFP guidelines to deal with cases of suspected fraud as set out in Annex 4.7 MPMNI (June 2008) and other guidance issued by DFP. It also aims to ensure that actions throughout the investigative process are conducted in accordance with the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) where appropriate.
- 2.10.2** If FIT is satisfied that there is prima facie evidence of fraud, then they must report the matter to the police in accordance with the operating protocols set out in Para 6 of the MOU. Appendix VI of this Section sets out Acceptance Criteria necessary for a suspected fraud to be referred to the PSNI. Appendix VII sets out the PSNI Agreed Format of Evidence Pack to be used when cases are referred to PSNI.
- 2.10.3** Consultation with the police at an early stage is beneficial allowing the police to examine the evidence available at that time and make decisions on whether there is sufficient evidence to support a criminal prosecution or if a police investigation is appropriate. Alternatively, the police may recommend that the Department conducts further investigations and, generally, they will provide useful advice and guidance on how the case should be taken forward.
- 2.10.4** If the police decide to investigate then it may be necessary for the FIT to postpone further internal action and make suitable adjustments to the action plan. However, the FIT should continue to liaise with the police at regular intervals and report on progress made. In line with the Arts Council's anti-fraud and bribery policy, the police will be consulted in all cases of suspected fraud.
- 2.10.5** The police encourage organisations to consult with them at an early stage of the investigation and initial reports to the police, or requests for advice and guidance, can be made orally or in writing. Formal Complaints should be made in writing and supported by evidential information.
- 2.10.6** When lodging a formal complaint, the Arts Council will present information on alleged frauds to the police as an 'Evidential Pack'. An outline of the information to be provided in an Evidential Pack is contained in Appendix VII.
- 2.10.7** The police will inform the Arts Council in writing of their decision to proceed with an investigation. Where it is decided not to proceed, the Arts Council will seek the reasons for the decision.
- 2.10.8** The Public Prosecution Service will make the final decision as to whether or not a criminal prosecution will be undertaken.

2.11 Communication

2.11.1 The following steps should be taken:

- Arrangements should be in place to ensure the Audit and Risk Committee is kept informed of developments during the investigation by convening an extraordinary meeting(s) of the Audit and Risk Committee if necessary.
- If appropriate, a lessons-learned document should be circulated throughout the organisation, in due course.
- Identify whether the organisation's Fraud Response Plan needs to be updated and circulate any changes throughout the organisation.
- If appropriate, consideration should be given to informing other public sector organisations.
- The NICS Fraud Forum should be informed at the appropriate time including lessons learned.

2.12 Sanction and Redress

2.12.1 There are three main actions the Council may pursue as part of its fraud investigation:

- Conduct the investigation to a criminal standard to maximise the opportunities for a criminal prosecution. This course of action may include the preparation and submission to the PSNI Fraud Unit of an evidential pack. Alternatively, where in-house expertise is available, the investigation can be taken forward with a view to presenting a file to the Public Prosecution Service for direction.
- Seek redress of any outstanding financial loss through the Civil Courts, if necessary.
- Pursue the Arts Council's own disciplinary process which may, if there is clear evidence of supervisory failures, include other officials. Disciplinary action may result in dismissal. Further guidance is detailed in the Staff Handbook. It should be noted that any external investigation into suspected offences is totally separate from internal disciplinary proceedings.

2.12.2 The Council should carefully consider the options available to it and decide the most appropriate course of action/actions to take in each case. It is important that any civil/disciplinary action does not impair a criminal investigation and vice versa.

2.13 Conducting the Internal Investigation

- The FIT is responsible for gathering all relevant evidence that may relate to the suspected fraud.
- The progress and nature of the investigation will be determined by the scope, value and nature of the suspected fraud.

- The FIT will complete the Evidential Pack and will present it to the appropriate Head of Division, Director of Finance and Corporate Services and Finance Manager.
- Where the Arts Council considers there are sufficient grounds for a formal complaint of alleged fraud to be reported to the police, the Department will do so, and, request that a police investigation be performed.

2.13.1 Where the case does not provide sufficient grounds for a formal complaint and investigation by the police, the FIT will outline the reasons why in a report which will accompany the Evidential Pack.

2.13.2 At this stage, the FIT will also complete the pro forma Fraud Report and send to the Internal Auditor.

2.14 Disciplinary Action

- At the completion of the internal investigation, the Director of Division, Director of Finance and Corporate Services and the Accounting Officer will decide any further disciplinary action to be taken.
- Where a police investigation is to be conducted, the Arts Council will seek the advice of the police to determine how to proceed with any internal disciplinary action.
- It is also worth bearing in mind that the measure of proof used for a criminal conviction is 'beyond reasonable doubt' whereas for internal disciplinary action, it is more based on the balance of probabilities.
- It is possible, therefore for an officer to be found innocent of criminal charges by a court of law (or for the police to decide not to prosecute) but for that officer to still face a disciplinary penalty under the internal disciplinary process.
- If an allegation is made frivolously, in bad faith, maliciously or for personal gain, disciplinary action may be taken against the person making the allegation.

2.15 Recovery of Loss

- The recovery of losses should be a major objective of any fraud investigation. To this end the quantification of losses is important. Repayment of losses should be sought in all cases. Where necessary legal advice should be sought on the most effective actions to secure recovery of losses. This may include seeking advice on the freezing of assets.
- Where the investigation identifies that some or all of the loss incurred is recoverable, the responsible officer will make adequate arrangements to ensure that the maximum recovery is achieved.

2.16 Follow-up Action

2.16.1 Following on from any fraud investigation, Internal Audit will review the systems in operation and make recommendations to prevent a reoccurrence. The review will examine the current guidance and risk management arrangements to determine if there is any action needed to strengthen future responses to fraud.

2.17 Public Interest Disclosure - 'Whistleblowing'

- The Public Interest Disclosure (NI) Order 1998 gives legal protection to employees against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns provided that they are disclosed under procedures identified in the Act.
- Normally, any concern about a workplace situation should be raised with the line manager or Director of Finance and Corporate Services, however, it is recognised that because of the seriousness and sensitivity of some issues, together with the knowledge of who may be involved in the suspected wrong-doing, this may be difficult.
- The Comptroller and Auditor General has been prescribed as a person to whom protected disclosures can be made under the Order. He is prescribed as having a role in relation to the proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally funded public services.
- Prescribed persons are responsible for investigating allegations that fall under their prescribed role and for protecting the whistleblower and their interests whilst conducting an investigation.
- The NIAO Whistleblower's telephone number is (028) 90 251023 or you can write to:

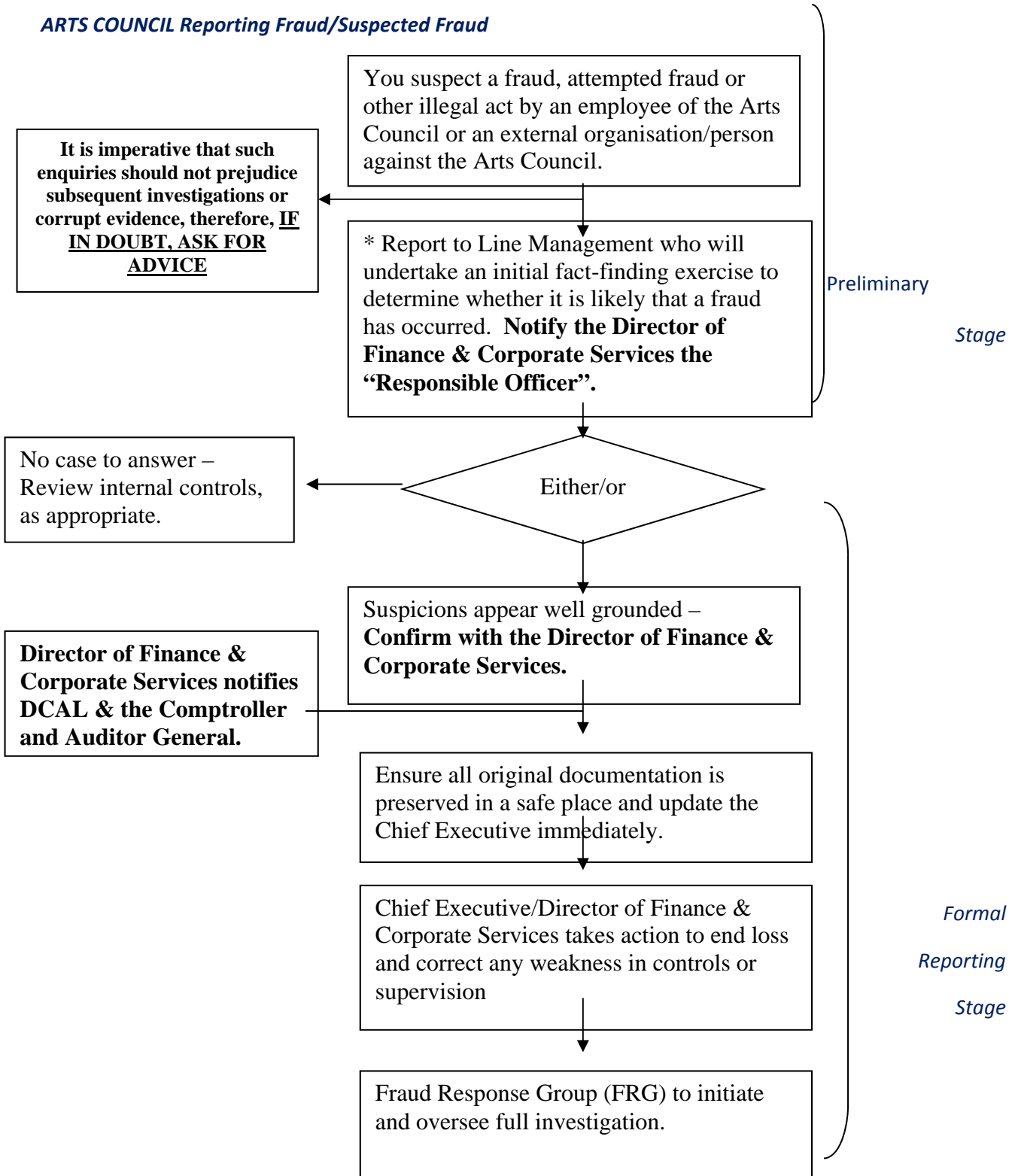
The Comptroller and Auditor General
Northern Ireland Audit Office
106 University Street
BELFAST
BT7 1EU

Further information about Public Interest Disclosure can be found in the Arts Council's Whistleblowing Policy Statement available on the Council's intranet and also on the website of the FRG Public Concern at Work: www.pcaw.co.uk

3.0 TABLE OF APPENDICES

APPENDIX 1 ACNI REPORTING FRAUD/SUSPECTED FRAUD

ARTS COUNCIL Reporting Fraud/Suspected Fraud



If you are concerned that line management may be involved in the suspected fraud, you should report it to the next appropriate level – Fraud Response Plan (see paras 2.3.4-2.3.6).