

Prevention of the Facilitation of Tax Evasion Policy

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1 Introduction

Torbay Council has adopted a zero tolerance to all forms of tax evasion, whether under UK law or the law of a foreign country, and is committed to prevent the facilitation of tax evasion. This Policy has the support of Senior Officers and Members of the Council.

Tax evasion and its facilitation are already a criminal offence, but it had been difficult to attribute criminal liability to a corporation where an offence has occurred. The Corporate Criminal Offence (CCO) legislation came into effect in 2017 with the aim of overcoming difficulties of attributing criminal liability to relevant bodies for the criminal acts of employees, agents or those that provide services on their behalf. Under the Criminal Finances Act 2017 (hereinafter referred to as 'the Act') a "Relevant body" means a body corporate or partnership (wherever incorporated or formed), local authorities fall into this definition.

The CCO legislation does not radically alter what is criminal but focuses on who is held to account for acts contrary to law. This is by focussing on the failure to prevent the crimes of those who act on behalf of the Council. An offence may be committed where a 'relevant body' fails to prevent an 'associated person' criminally facilitating the evasion of a tax, whether the tax evaded is owed in the UK or in a foreign country.

The CCO legislation is aimed at offences committed by those who act for or on behalf of the Council, the legislation does not hold the Council to account for offences by its customers.

The penalties for this offence will include:-

- Unlimited financial penalties
- Ancillary orders e.g., confiscation orders

The Council would also suffer reputational damage, were it to be found guilty of such an offence.

If the Council can demonstrate that it has put in place a system of reasonable procedures that identifies and mitigates the risk of facilitating tax evasion, then prosecution is unlikely, as it may be able to raise a defence.

All subsidiary companies of Torbay Council should adopt a similar Policy.

2 The Criminal Finances Act 2017

Criminal Finances Act 2017 Part 3 created the Corporate Offences of Failure to Prevent Facilitation of Tax Evasion.

Tax Evasion

Tax evasion is the illegal non-payment or under-payment of taxes, usually as the result of making a false declaration (or an omission of declaration) of taxes due to the relevant tax authorities.

By contrast tax avoidance as described by * HM Revenue and Customs (HMRC) is:

Tax avoidance involves bending the rules of the tax system to gain a tax advantage that Parliament never intended. It often involves contrived, artificial transactions that serve little or no purpose other than to produce this advantage. It involves operating within the letter, but not the spirit, of the law.

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

Examples of Tax Evasion

- *You become aware, in the course of your work, that a third party has made or intends to make a false statement relating to tax; has failed to disclose income or gains to, or to register with, HMRC; has delivered or intends to deliver a false document relating to tax; or has set up or intends to set up a structure to try to hide income, gains or assets from a tax authority.*
- *You become aware, in the course of your work that a third party has deliberately failed to register for VAT (or the equivalent tax in any relevant non-UK jurisdiction) or failed to account for VAT.*
- *A third party requests payment in cash and/or refuses to provide an invoice or receipt for a payment made.*
- *You become aware, in the course of your work that a third party working for the Council as an employee asks to be treated as a self-employed contractor, but without any material changes to their working conditions.*

Acting in the Capacity of a Person Associated with the Council

The Council can only be guilty of an offence in this regard, if an

- employee,
- agent
- or other person who performs services for or on behalf of the Council,

facilitates a tax evasion offence.

*Tax avoidance: an introduction - GOV.UK (www.gov.uk)

The associated person can be an individual or a legal entity.

Where an employee criminally facilitates tax evasion in their private capacity they commit a tax evasion facilitation offence. In these circumstances, the Council would not be liable as an employer.

Similarly, a third party could be acting for multiple organisations. The offence is only committed where a tax evasion facilitation offence is committed by the person acting in the capacity of a person associated to the Council, that is undertaken 'for or on behalf of' the Council. Any activity of the associated person beyond that relationship, for example on behalf of another relevant body or carried out in their private capacity, as mentioned above, would not lead to liability for the Council.

3 Prevention

To mitigate the risk of prosecution for the corporate criminal offence of the facilitation of tax evasion, the Council would have to prove that it had in place, reasonable prevention procedures. This would enable the Council to raise a defence.

HM Revenue and Customs have produced guidance to help the Council put in place preventative processes and procedures. The guidance contains six guiding principles:

- Risk assessment
- Proportionality of risk-based prevention procedures
- Top level commitment
- Due diligence
- Communication (including training)
- Monitor and review

Risk assessment

The Council adopts and is committed to a strong anti-fraud and anti-tax evasion culture. Members and Senior Officers should consider risks from the 'Failure to prevent the facilitation of Tax Evasion' within the established risk assessment procedures and add this to the Council's risk register.

Proportionality of risk-based prevention procedures

Members and Senior Officers provide a high-level commitment to risk-based prevention procedures. The Council has governance and internal control procedures in place to meet the Council's statutory requirements and duties. This Policy adds to the Council's existing policies including the 'Whistle Blowing Policy' and 'Counter Fraud & Corruption Policy'.

Top level commitment

This Policy has been approved by the Council's Senior Leadership Team and the Council's Audit committee.

Due Diligence

Reasonable care and caution is exercised when processing all transactions, particularly high value/ high risk area payments.

Communication and training

All staff, especially those involved in processing and approving financial transactions, will be made aware of this Policy. The Policy will be available on the Council's website and the Council's intranet. On-line training will be incorporated into the Council's Fraud Awareness training. This training is mandatory for all staff. Further training will be developed for employees with the highest risk of exposure e.g., procurement, invoice processing, property transactions, BACS payments, payroll etc.

By the Council putting in place reasonable procedures that identifies and mitigates the risk of facilitating tax evasion, then prosecution is unlikely as it will be able to raise a defence.

4 Policy Statement

Tax Evasion

Torbay Council has a zero tolerance approach to all forms of tax evasion whether under UK law or under the law of any foreign country. Employees of the Council, its agents and contractual associates must not undertake any transactions which:

- Causes the Council to commit a tax evasion offence; or
- Facilitate a tax evasion offence by a third party.

Objective of the Policy

The Council aims to conduct its financial affairs in a law abiding way and will not tolerate either the commitment or facilitation of tax evasion. This Policy provides a framework for employees and associates to understand and implement arrangements to ensure compliance, identify potential breach and report as outlined in Section 6 below.

The Council requires that all relevant persons:

- Act honestly and with integrity at all times and to safeguard the Council's resources for which they are responsible
- Comply with the spirit, as well as the letter, of the law and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities.

Scope of the Policy

This Policy applies to all Council's activities. Responsibility to control the risk of tax evasion occurring resides at all levels of the Council. It does not rest solely within Finance, but in all business services and corporate functions.

This Policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Members, volunteers, and consultants.

Staff responsibilities

The prevention, detection, and reporting of all forms of financial irregularity, including suspected tax evasion, are the responsibility of all those employed by the Council or under its control ("associated persons"). All staff are required to avoid activity that breaches this Policy.

As individuals you must:

- Ensure that you read, understand, and comply with this Policy
- Raise concerns as soon as practicable, if you believe or suspect that a conflict with this Policy has occurred or may occur in the future.

Failure to comply with the obligations detailed in this Policy, may result in disciplinary action for employees and the termination of arrangements with associates.

Should employees or associates be concerned that another employee or associate is facilitating a third party's tax evasion whilst acting 'for and on behalf of the Council', they should report this as shown in Section 6 below.

5 Torbay Council's Commitment

The Council commits to:

- Setting out a clear anti-tax evasion facilitation Policy and keeping it up to date
- Making all employees aware of their responsibilities to adhere strictly to this Policy.
- Raising awareness of the risks of tax evasion with employees so that they can recognise and avoid occurrences of potential tax evasion by themselves and others
- Undertaking a risk assessment to identify those areas of the Council's business where risk is considered to be highest
- Targeted training of services where the perceived risk is higher
- Promoting good ethical behaviour by employees in all of its forms
- Encouraging its employees to be vigilant and to report any suspicions of tax evasion, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately
- Investigating instances of alleged tax evasion
- Referring investigations to the appropriate authorities where it is appropriate to do so
- Taking firm and vigorous action against any individual(s) involved in tax evasion, or the facilitation of it
- Providing information to all employees on how to report breaches and suspected breaches of this policy
- Including appropriate clauses in contracts to prevent tax evasion.

The Council seeks to maintain relevant procedures, including top-level commitment to tackling tax evasion and effective communication, including training.

6 Reporting a breach or raising a concern

Within Torbay Council everyone has a responsibility to help detect, prevent and report instances of tax evasion. If you have a concern regarding a suspected instance of the facilitation of tax evasion, you can:

- Engage the Council's Whistleblowing Policy:-
[Whistleblowing \(torbay.gov.uk\)](https://www.torbay.gov.uk/whistleblowing)
- Alternatively, use the Council's Fraud Reporting process:-
[Fraud within or against the council - Torbay Council](#)

This information is also available on the Council's [Fraud](#) intranet site.

Anonymous concerns can be submitted, although if you have missed vital information in your submission remaining anonymous may prevent an investigation commencing or continuing.

7 Policy Review

The Director of Finance (s.151 Officer) and the Council's Audit Committee will ensure the continuous review and amendment of this Policy, to ensure that it remains compliant with good practice and legislative requirements.

Useful links:

[Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion \(publishing.service.gov.uk\)](#)

[Criminal Finances Act 2017, Part 3 – Corporate Offences of Failure to Prevent Facilitation of Tax Evasion](#)