



POLICY: COMPLYING WITH CORPORATE CRIMINAL OFFENCE RULES

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Related documents:

- Grievances Procedure (Employee Handbook)
- Whistleblowing Policy (Employee Handbook)
- Anti-Corruption and Bribery, Gifts and Hospitality Policy (Employee Handbook)

Copies of this Policy may be made available in alternative formats on request.

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POLICY: COMPLYING WITH CORPORATE CRIMINAL OFFENCE RULES

All reference to 'we', 'our' or 'us' in this Policy should be read as meaning Sandbourne Housing Association.

1. Purpose and aim of the Policy

- 1.1 Sandbourne Housing Association (Sandbourne) takes a zero-tolerance approach to any activity which facilitates criminal tax evasion.
- 1.2 The government believes that relevant bodies, of which Sandbourne is one, should be held criminally liable where they fail to prevent those who act for them, or on their behalf, from carrying out tax evasion of any kind. The law concerning the corporate offences of failure to prevent the criminal facilitation of tax evasion can be found in the Criminal Finances Act 2017 (the Act).
- 1.3 The purpose of this Policy is to:
 - 1.3.1 Set out our responsibilities, and the responsibilities of those working for us, in observing and upholding our position on tax evasion.
 - 1.3.2 Provide information and guidance to those working for us on how to recognise and deal with any suspected tax evasion issues.

2. Statements

- 2.1 Corporate criminal offences will be committed where a relevant body fails to prevent an associated person criminally facilitating the evasion of tax, and this will be the case whether the tax is owed in the UK or in a foreign country. For the offences to be committed it is not necessary that any tax actually be successfully evaded.
- 2.2 Sandbourne is a relevant body within the definitions covered by the Act.
- 2.3 Associated persons include employees, agents and those who provide services to Sandbourne.
- 2.4 If a relevant body can demonstrate that it has put in place a system of reasonable procedures that identifies and mitigates its tax evasion facilitation risks, then prosecution is unlikely as it will be able to raise a defence.

3. When would a corporate criminal offence occur?

3.1 There are three key steps which must exist for a corporate criminal offence to be prosecuted.

3.1.1 Stage one

The attempted or actual criminal evasion of tax by a taxpayer (either an individual or a legal entity). This means any fraudulent activity that intends to divert funds from the public revenue.

3.1.2 Stage two

The criminal facilitation of the tax evasion in stage one by a person acting in the capacity of an associated person of the relevant body (ie Sandbourne). This facilitation must have been carried out deliberately and dishonestly. If the associated person is only proved to have accidentally or negligently facilitated the tax evasion, then the new offence is not committed by the relevant body (Sandbourne).

3.1.3 Stage three

The relevant body (Sandbourne) failed to prevent the facilitation of the tax evasion. If stages one and two are proved to have been committed, then Sandbourne's only defence would be that it had taken reasonable steps to prevent stage two.

3.2 Section 4 of this Policy sets out the reasonable steps which will need to be taken to minimise the risk of Sandbourne committing an offence under the Corporate Criminal Offence Rules.

4. Reasonable steps

4.1 Risk assessment

4.1.1 The Board will assess the likely nature and extent of Sandbourne's exposure to the risk of criminally facilitating tax evasion with any of its associated persons. This risk will be included in Sandbourne's Risk Register and reviewed at least annually.

4.1.2 The Senior Management Team will assess the likely risk in relation to all of Sandbourne's associated persons who provide a significant or material service to the Association. This risk will also be reviewed at least annually.

4.2 Reasonable procedures

4.2.1 Sandbourne will ensure that reasonable procedures are in place to minimise the risk of any person associated with it from criminally facilitating tax evasion. These reasonable procedures will be proportionate to the risks identified in 4.1.

4.2.2 Such procedures will include, but are not limited to:

- Contract terms which require associated persons to act lawfully at all times and within any rules or guidelines set out by our Regulator.
- Policies and Procedures which set out Sandbourne's principles, methods of working and payment authorisations and which are reviewed regularly. Training on these policies and procedures will be offered where appropriate.
- Use of a range of contractors to prevent over-reliance on any one contractor and to enable work to be moved quickly and efficiently where there is any suspicion of fraud. This should also reduce opportunities for over-familiarity between contractors and staff.
- Good payment terms to reduce the likelihood of fraudulent claims.
- A commitment to good working standards and compliance with all relevant laws and safety guidance over price and speed of work. Sandbourne will still look for value for money in all its contracts but will recognise that this is not always provided by the cheapest or fastest job.
- Clear guidelines for whistleblowing and assurance that all allegations will be treated fairly and without retribution.

4.3 Top level commitment

4.3.1 The Board and the senior management team are committed to ensuring that Sandbourne always works within the law and will have zero tolerance towards the criminal facilitation of any form of tax evasion. This applies to both Board and staff members of Sandbourne and to any contractors used by the Association.

4.3.2 Any Board or staff members found to have committed the offence would normally be subject to instant dismissal for gross misconduct.

4.3.3 Contractors who had been involved in tax evasion in any way would no longer be used by Sandbourne.

4.3.4 In all cases of suspected tax evasion or the facilitation of such tax evasion, Sandbourne reserves the right to report the matter to the relevant authorities including the Police and HMRC.

4.4 Due diligence

4.4.1 Sandbourne will assess the level of risk for all its associated persons and seek to apply the range of reasonable procedures accordingly.

4.4.2 The assessment of the risk level of each associated person will be reviewed at least annually and any changes will be reflected in the reasonable procedures applied to them.

4.5 Communication and training

4.5.1 The Senior Management Team will ensure that this Policy is adequately communicated to all Board and staff members.

4.5.2 Training on this Policy will be offered to those staff members deemed to be most impacted by it. Other staff and Board members may request training if they feel that they need it.

4.5.3 As soon as this policy is formally approved by the Board, all existing contractors, and any other associated persons who are assessed as being a risk, will be informed in writing of Sandbourne's commitment to prevent tax evasion of any kind and of the implications if we believe that any of them are committing such fraud. This communication will also be made to all new contractors as part of the introduction procedure.

4.6 Monitoring and review

4.6.1 The principles of this Policy will be reviewed by the Board at least once every three years.

4.6.2 They will also be reviewed if any offence of criminally facilitating tax evasion is identified or suspected.

5. Risk Assessment Guidelines

5.1 The Risk Assessment of the nature and extent of Sandbourne's exposure to the risk of associated persons engaging in activity to criminally facilitate tax evasion will cover the following areas at least.

5.1.1 Identification of all the key stakeholders and associated persons.

5.1.2 Identification of the key risks faced by Sandbourne, particularly focussing on the potential opportunities, motives or means of any associated persons.

5.1.3 Assessment of the likelihood of any of those risks arising and their impact on the business. The scoring of these risks will follow the same pattern as the Risk Register.

5.1.4 Once the key risk areas have been identified, document Sandbourne's existing procedures which would mitigate the risks and determine whether further procedures, controls and/or investigations will be required in higher risk areas.

5.1.5 Document all findings and the outcome of all procedures, controls and investigations.

5.2 Risk assessments should be reviewed at least annually and always in the following circumstances:

- When new associated persons are appointed.
- When Sandbourne changes the role or the contracted work of any associated person.

- When an associated person is suspected of any kind of fraud.
- When there is a significant change in the circumstances of an associated person.
- When there is a significant change in tax legislation.

6. Guidance for smaller entities

- 6.1 HM Revenue & Customs recognises that this new legislation could place a heavy burden on smaller businesses. In its guidance on the subject it suggests the following reasonable prevention procedures for lower risk smaller entities.
- 6.1.1 Identify any staff who refuse to take leave and do not allow anyone else to review their files or who are overtly defensive over client relationships. Also any staff who will not allow others to carry out their work or share information with others.
- 6.1.2 Ensure that Internal Audit and senior management routinely and randomly review work and records on a regular basis.
- 6.1.3 Ensure that all staff and Board members are aware that Sandbourne will not tolerate any illegal activities including tax evasion or the facilitation of tax evasion. This may be demonstrated by a prominent message from the Board.
- 6.1.4 Include terms in contracts with all staff, Board members and contractors requiring them not to engage in facilitating tax evasion and to report any concerns immediately.
- 6.1.5 Provide regular training for staff and Board members on preventing the facilitation of tax evasion. This may form part of wider training on complying with the legal and regulatory requirements of the business.
- 6.1.6 Have clear reporting procedures for whistleblowing of suspected facilitation of tax evasion offences and ensure that all staff and Board members are aware of these.
- 6.1.7 Ensure that the pay structure for staff and the payment arrangements for contractors encourage reporting and discourage pursuing profit to the point of condoning tax evasion.
- 6.1.8 Have regular reviews of the effectiveness of prevention procedures and refine them where necessary.
- 6.1.9 Monitor and enforce compliance with prevention procedures on a regular basis.

7. Who is responsible for this Policy?

- 7.1 The Board has overall responsibility for ensuring that this Policy complies with legal and ethical obligations, and that all under Sandbourne's control (including the Board itself) comply with it.
- 7.2 The Chief Executive and Director of Finance have day-to-day responsibility for implementing this Policy and for monitoring its use and effectiveness and dealing with any queries on its interpretation. They should also ensure that all staff and Board members are made aware of, and understand, this Policy and are given adequate and regular training on it.

8. Monitoring and review

- 8.1 The Chief Executive will monitor the effectiveness and review the implementation of this Policy, regularly considering its suitability, adequacy and effectiveness. Any improvements identified will be made as soon as possible. Internal control systems and procedures will be subject to regular audits to provide assurance that they are effective in countering the facilitation of tax evasion.
- 8.2 All staff are responsible for the success of this Policy and should ensure that they understand it and use it to avoid the facilitation of any tax evasion and to report any suspicions that they may have.
- 8.3 This Policy does not form part of any employee's contract of employment and may be amended at any time.

9. Equality impact assessment/Protected characteristics (as at 8 January 2019 or later amendments/additions)

- 9.1 Neutral

10. Consultation arrangements

- 10.1 Staff will be consulted on this Policy and any reasonable suggestions will be taken into account before the Policy is formally approved by the Board.

Other related policies

Reference should be made to the following policies:

- Grievances Procedure (Employee Handbook)
- Whistleblowing Policy (Employee Handbook)
- Anti-Corruption and Bribery, Gifts and Hospitality Policy (Employee Handbook)