

Criminal Finances Act Policy

Responsibility for Policy:

Finance Director

Relevant to:

All LJMU Staff, Governors,
Contractors

Approved by:

Audit & Risk Committee, June
2023

Responsibility for Document Review:

Finance Director

Date introduced:

June 2022

Date(s) modified:

Reviewed on annual basis

Next Review Date:

June 2024

RELEVANT DOCUMENTS

- Criminal Finances Act 2017 (CFA 2017)

RELATED POLICIES & DOCUMENTS

- Staff Handbook
- Code of Conduct for Staff
- Staff Disciplinary Procedures
- Financial Regulations
- Financial Due Diligence Process
- Counter Fraud Policy & Fraud Response Plan
- Anti-Money Laundering & Terrorist Financing Policy
- Tax Strategy
- Anti-Bribery & Corruption Policy including Gifts & Hospitality
- Whistleblowing Policy (Disclosure under the Public Interest Disclosure Act 1998)

LJMU Training modules

- Criminal Finances Act e-learning module

CRIMINAL FINANCES ACT POLICY

1. Purpose

- 1.1 The purpose of this document is to make all staff of the University aware of the Criminal Finances Act Policy that Liverpool John Moores (The University) follows.
- 1.2 The University operates to the highest legal and ethical standards and will not tolerate acts of criminal facilitation of tax evasion by its associates anywhere in the world. The purpose of this policy is to set out the responsibilities of the University and of those working for it, whether as an officer, employee, worker, intern, secondee, subcontractor, Governor, agent or in any other capacity (for the purposes of this Policy, collectively referred to as "Staff").
- 1.3 This policy sets out the respective obligations of LJMU and its staff. It also sets out the procedure to be followed if tax evasion is suspected and defines the responsibility of individual staff in the process.

2. Scope

- 2.1 This policy applies to the University and all its subsidiary undertakings and all those working for it, whether as an officer, employee, worker, intern, secondee, subcontractor, Governor, agent or in any other capacity (for the purposes of this Policy, collectively referred to as "Staff").

3. Criminal Finances Act 2017 (CFA 2017)

- 3.1 The Criminal Finances Act 2017 (CFA 2017) came into effect from 30th September 2017. Part 3 of the CFA 2017 introduces a new Corporate Criminal Offence (CCO) of failure to prevent the facilitation of tax evasion.
- 3.2 The Criminal Finances Act 2017 has parallels with the UK Bribery Act and this policy should be read in conjunction with the university's anti-bribery and corruption policy and related governance documents.
- 3.3 It is a criminal offence for anyone to evade paying tax of any kind, or to help anyone to do so. Any individual found to be guilty of this could be subject to criminal proceedings under existing legislation.
- 3.4 Under the CFA 2017 in the event of there being both:
 - Criminal tax evasion by either a UK or overseas taxpayer (as an individual or an entity) under existing law, and,
 - Criminal facilitation of this offence by an 'associated person' of the university

then the university will automatically be charged with the corporate offence of failing to prevent its representatives from committing the criminal act of facilitation

unless it can demonstrate that it had 'adequate' or 'reasonable procedures' in place to prevent that facilitation.

If found guilty, the typical consequences for the university could be an unlimited fine, reputational damage and the potential disbarment from public/governmental contracts.

4. University Commitment

- 4.1 At the Liverpool John Moores University, we do not condone and have a zero-tolerance approach to the facilitation of tax evasion. Tax evasion occurs where employees, agents or businesses providing services for or on behalf of the University omit, conceal, or misrepresent information to reduce their tax liabilities.
- 4.2 As part of our commitment to comply with the Criminal Finances Act 2017 the University, including subsidiary companies, will maintain reasonable and proportionate processes and procedures to prevent fraudulent activity by its staff and anyone acting on its behalf from criminally facilitating tax evasion in the UK and/or overseas.'
- 4.3 All employees of the University and its subsidiaries have a duty and responsibility to support this approach.

5. Examples of facilitating tax evasion in a university context

- 5.1 The following are common university risks that could be expected to feature in a typical risk assessment document and/or risk register:
- Making a payment overseas e.g. to an overseas agent in the knowledge that the agent intends to use the method of payment to evade tax. Typically, this could apply where a payment is made into a bank account which is not in the name of the agent or their company but in the name of a different individual or company, or to a jurisdiction where the individual does not live or work.
 - Categorisation of a payment to an individual - who should be deemed an employee or treated as such under IR35 - as self-employed knowing that the individual will use the gross payment to evade tax.
 - Assisting an academic to facilitate his/her personal use of department research accounts (or 'personal earning accounts') or the backdating of a waiver, resulting in a loss of income tax to HMRC.
 - Making a royalty payment e.g. to an overseas academic/former academic in the knowledge that the academic intends to use the method of payment to evade tax. Again, this could be where a payment is made into a bank account which is not in the name of the academic but in the name of a different individual or company, or to a jurisdiction where the individual does not live or work.

- Employee colludes with another university/third-party to mis-describe services as outside the scope, pass through or grant funding rather than a taxable supply of research services where VAT cannot be recovered.
- Employee agrees to mis-describe services provided to a third-party in order to facilitate a VAT reclaim by them.
- Employee agrees to mis-describe goods being exported so that a lower rate of Customs duty becomes payable on import by customer.
- Employee accepts request to pay one entity knowing that the goods/services have been provided by another entity and that the purpose of the change is to evade tax.
- Employee allows a payment for goods/services to be described as a donation so that the donor can claim tax relief.
- Employee authorises a VAT invoice from a supplier knowing that they are not VAT registered.
- Employee authorises an expense claim with photocopied receipts knowing that the claimant will use the original receipts to support a tax reclaim.
- Employee agrees to mis-description of an income stream to take the payment outside a with-holding tax obligation.
- Employee buys goods for personal use through a university account and issues a certificate for charitable relief.
- Academics not employed by the university perform work in return for a payment in kind e.g. travel to a conference or use of facilities, knowing that no tax will be paid on the payment.
- Overseas agents mis-describe services to facilitate the evasion of local indirect taxes.
- Using a third-party to pay in-country workers on the university's behalf, where you know that there is a withholding obligation, and that the third-party will not comply with that obligation.

6. How to Report a Suspected Facilitation of Tax Evasion

- 6.1 The University has a **Whistleblowing Policy** in place to ensure that all breaches or suspected breaches of this policy are fully investigated
- 6.2 Members of staff are key to ensuring that the University's stance on facilitation of tax evasion is effective. All staff are positively encouraged to raise any concerns that they may have. All such concerns will be treated in confidence, wherever possible, and will be impartially investigated.

6.3 The response to suspected facilitations of tax evasion will be as per the **Counter Fraud Policy & Fraud Response Plan**.

7. Roles and Responsibilities

7.1 Board of Governors

The Board, via the Audit and Risk Committee, are ultimately responsible for:

- Adopting and approving a formal policy for the Criminal Finances Act and a response plan for alleged breaches.
- Ensuring that an adequate and effective control environment is in place.
- Ensuring that adequate audit arrangements are in place to investigate suspected concerns

7.2 Line Managers

Line managers are responsible for implementing this Policy. This involves ensuring that the zero-tolerance approach to the facilitation of tax evasion is adhered to in their School or Professional Service area. The practical requirements of line managers are to:

- Understand the potential risks in their areas and to consider whether processes under their control might be at risk.
- Ensuring that agents and associated persons are aware of their responsibilities under the CFA.
- Have adequate processes and controls in place to prevent, deter and detect breaches of policy
- Be diligent in their responsibilities as managers,
- Provide support / resource as required to investigations

7.3 All Staff

- Being aware of the University policies and procedures to the extent they are applicable to their role
- Adhering to the policies and procedures of the University including having a zero-tolerance approach to the facilitation of tax evasion.
- Alerting management and / or other contacts should they have concerns or suspect that the possibility of a breach exists via the **Whistleblowing Policy**

7.4 Failure to comply with these policies and the obligations detailed in this policy may result in disciplinary action for staff (up to and including dismissal) and termination of contract for associated persons.

8. Key Roles - The Criminal Finances Act 2017, including training

- 8.1 Liverpool John Moores has nominated the Finance Director as the Responsible Officer for queries on CFA. The Responsible Officer will be responsible for questions, information, training, and tax evasion reports in relation to CFA 2017.
- 8.2 The University's Procurement Manager is responsible for supply chain transparency and initiatives
- 8.3 Training and awareness sessions will be undertaken for all Finance staff and where the University identifies CFA2017 specific risks it will undertake bespoke training/awareness-raising session