



KWADUKUZA LOCAL MUNICIPALITY

FRAUD AND ETHICS POLICY

FINANCIAL YEAR 2020/2021

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1. INTRODUCTION

The Ethics policy institutes the presentation of ethical rules within its structures or offices; it covers a spectrum of issues that deal with honesty, courtesy, openness and transparency

KwaDukuza Municipality is committed to stopping dishonest behaviour in all business units in the workplace and is committed in protecting its revenue, expenditure and property from any attempt, either by members of the public, contractors, subcontractors, agents, intermediaries or its own employees, to gain by deceit financial or other benefits. It seeks to encourage an environment that is free from fraud and any criminal activity.

The Municipality cannot discharge these responsibilities effectively without the support, confidence and respect of Councillors, its employees, and the many other people and organisations with which it comes into daily contact. It is therefore of vital importance that the Municipality's staff meet the highest possible standards of ethical and professional behaviour always and are seen to be doing so.

2. POLICY STATEMENT

KwaDukuza Municipality subscribes to ethical values and legal principles. This requires that KwaDukuza Municipalities, its executive directors, employees, customers and supplies, act with integrity and create public confidence by conducting business in a fair, impartial and transparent manner. For this reason KwaDukuza Municipality makes every effort to ensure that conflict of interest does not compromise or are not perceived to compromise its business decisions and actions

3. LEGAL MANADATE

In terms of 3.2.1 of the Treasury Regulations, "the accounting officer must ensure that a risk assessment is conducted regularly to identify emerging risks of the institution. A risk management strategy, which must include a fraud prevention plan, must be used to direct internal audit effort and priority, and to determine the skills required of managers and staff to improve controls and to manage these risks."

4. SCOPE AND APPLICATION

This Policy shall apply to the following persons within and outside KwaDukuza Municipality:

- employees of the Municipality at all levels;
- temporary employees at all levels;
- prospective employees at all levels;
- independent contractors;
- Service providers and business partners prospective service providers and business partners.
- other stakeholders

Any agreement entered with any person referred to in above must contain an express reference to this Policy.

This Policy applies to all persons who are involved in and/or assist with the commission of an Unlawful Conduct.

This Policy further applies to all persons who are aware of the Commission of an Unlawful Conduct by another person but fail to report such an act in terms of this Policy or act against Unlawful Conduct in breach of this Policy.

5. POLICY PRINCIPLES

The Policy of KwaDukuza Municipality is Zero Tolerance to any form of unethical behavior and Unlawful Conduct. All incidents and allegations of any unethical behavior and Unlawful Conduct will be investigated and followed up by the application of all remedies available within the full extent of the law as well as the application of appropriate prevention and detection controls. The said controls include the existing financial and other controls and checking mechanisms as prescribed in the policies and procedures relevant to the activities of the Municipality.

It is the responsibility of all persons to report all incidents of unethical behavior and Unlawful Conduct to the following persons at the Municipality, Business unit Head, the Municipal Manager, and or the Anti-Fraud and Corruption Hotline.

All employees are responsible for the detection and/or reporting and/or prevention of unethical behavior and Unlawful Conduct.

6. POLICY PURPOSE

This Policy is part of the KwaDukuza Municipalities Code of Ethics, Disciplinary Codes and is also part of good Corporate Governance.

The aim of this Policy is to protect the Municipalities integrity and brand. Furthermore it is intended to combat Unlawful Conduct by providing a framework for measures aimed at prevention, detection, reporting and investigation of Unlawful Conduct, where such conduct exists.

KwaDukuza Municipality recognizes that financial crime poses a threat to its business and strategic objectives. The Municipality further recognizes that unethical behavior and Unlawful Conduct extends beyond financial crime but also includes other conducts or omissions which have severe negative repercussions on its ability to achieve its objectives.

The Municipality supports the Government of South Africa's efforts to combat financial crime at all levels. The Municipality in its endeavour to combat financial crime shall comply with all relevant legislation and regulations.

The spirit of this Policy is to support and foster a culture of Zero Tolerance to financial crime and / or Unlawful Conduct.

7. POLICY OBJECTIVES

The policy is intended to set down KwaDukuza Municipalities stance on ethics, fraud and corruption, to re-enforce the existing policies, procedures, rules and regulations aimed at minimising or eliminating the risk of fraud and corruption and unethical behaviour.

8. LEGISLATIVE FRAMEWORK

- Public Service Anti – Corruption Strategy,
- The Code of Ethics for Public Service,
- MFMA and Treasury Regulations,
- Prevention and Combating of Corruption Activities Act, 12 of 2004,
- Prevention of Organised Crime, 121 of 1998,
- Financial Intelligence Centre Act, 38 of 2001 and
- Protected Disclosures Act, 26 of 2000.

9. DEFINITIONS AND TERMS

9.1 FRAUD

For the purpose of this policy, fraud against KwaDukuza Municipality is described as:

“Introducing a course of action by deceit or other dishonest conduct, involving acts or omissions of the making of false statements, orally or in writing with the object of obtaining money or other benefit from or evading a liability to the Municipality.”

This definition includes monetary gain and any benefit that could be gained from the Municipality including intangibles, such as information. Fraud is not restricted to monetary or material benefits.

OR

“The unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.”

Fraud comprises of the following elements:

- **UNLAWFULNESS** – Illegal in the eyes of the law or society.
- **MISREPRESENTATION** – a false statement made by one person to another. The misrepresentation may take the form of words; words & conduct; or just conduct. A misrepresentation may also be a failure to disclose certain information in circumstances where there is a duty to do so.

- **INTENT** – the person making the misrepresentation must have intended, or foreseen that the victim would be deceived.
- **PREJUDICE** – the victim would have suffered prejudice by reason of altering his position to his detriment after relying upon the misrepresentation. Potential prejudice is also sufficient if it is reasonably possible that the victim, relying on the misrepresentation, would have suffered harm.

It is important to remember that white-collar fraudsters do not act like gangsters – they are charming, respectable people, able to seduce colleagues into believing in their integrity.

9.2 CORRUPTION

Corruption is generally described as the offering, giving, soliciting or acceptance of an inducement or reward which makes the person act inappropriately.

Corruption comprises one or more of the following elements:

- **BRIBERY** – involves a promise, offering or giving of a benefit that improperly affects the actions or decisions of public servant.
- **EMBEZZLEMENT** – involves theft of resources by persons entrusted with the authority and control of such resources.
- **EXTORTION** – involves coercing person or entity to provide the benefit to public servant, another person or any entity in exchange for acting or failing to act in a particular manner.
- **ABUSE OF POWER** – involves a public servant using his/her vested authority to improperly benefit another public servant, person or entity, or to improperly discriminate against another.
- **CONFLICT OF INTEREST** – involves public servant acting or failing to act on a matter where the public servant or another person or entity that stands in a relationship with the public servant, has an interest.
- **FAVOURITISM** – involves the provision of services or resources by the public servant according to personal affiliations.
- **NEPOTISM** – involves giving preferential consideration by a public servant to his/her relative ahead of the more deserving persons.

- **ABUSE OF PRIVILEGED INFORMATION** – involves the use of privileged information and knowledge the public service possesses as a result of his/her office to provide unfair advantage to another person or entity.

10. FRAUD PROCEDURES

The municipality's procedure for fraud prevention, detection and reporting is set out below.

- The objectives of the procedure are to:
- Encourage staff to be aware of fraud;
- Provide a framework response plan for reporting of fraud; and
- Ensure both alleged and proven fraud are dealt with in a consistent and timely manner.

10.1 FRAUD PREVENTION

- Successful fraud preventions involves creating an environment which inhibits fraud. Taking immediate and vigorous action if fraud is detected is not only necessary to prevent future losses, but also helps deter frauds.
- Staff should be aware that gifts, including hospitality, offered by contractors, suppliers and service providers may place employees in a vulnerable position.

10.2 FRAUD DETECTION

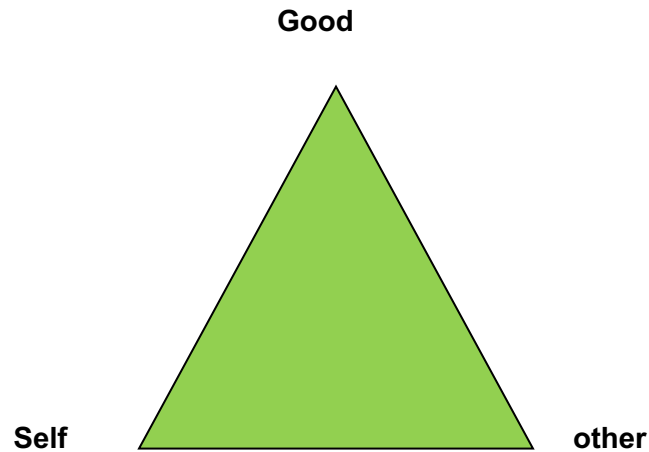
- The primary responsibility for detecting fraud lies with management through the implementation, documentation and operation of adequate and effective systems of internal control. The municipality's Internal Audit through their evaluation of the control framework also have a role to play in preventing and detecting fraud.

10.3 FRAUD REPORTING

- It is the responsibility of all the officials of the municipality to immediately report all allegations, incidents of fraud and corruption or similar conducts relating to actual or potential financial losses.
- In respect of all reported incidents of fraud and corruption, senior management is required to immediately review, and improve the effectiveness of the control environment to prevent similar occurrences in the future.
- All reported allegations of fraud shall be investigated in line with the municipality's Fraud Response Plan/ Forensic Investigation Methodology.

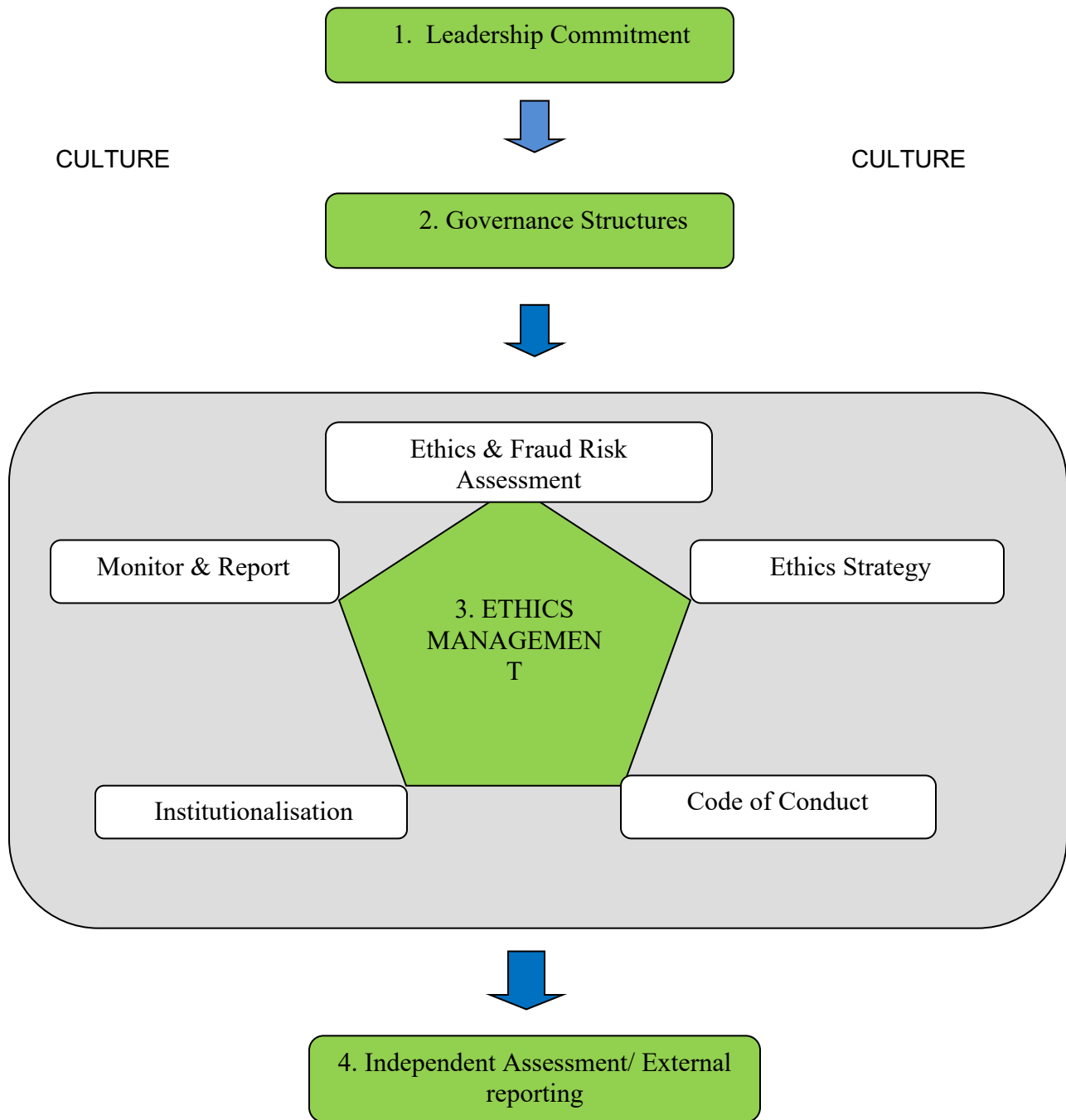
11. ETHICS MANAGEMENT

The definition of **ethics** is that ethics concerns itself with what is good or right in human interaction. It revolves around three central concepts: *self*, *good*, and *other*, as depicted in the figure below.



Ethical behaviour results when one does not merely consider what is good for oneself, but also what is good for others. Both the self and the other can refer to an individual, a group, or an organisation. Organisational ethics is about a conception of what good (values and standards) guides the organisation (self) in its interaction with the other (stakeholders) in a sustainable way.

Governance of Ethics Framework



Each of the dimensions of the framework is discussed below:

11.1 LEADERSHIP COMMITMENT

No ethics management initiative can be successful unless the organisation's leadership:

- understands the value of ethics in ensuring the organisation's sustainable development
- is fully committed to ethics and has ethics management competence
- acts ethically ('walks the talk')
- acts as an ethical role model for employees and other stakeholders
- sponsors ethics management interventions
- Corporate governance best practice guidelines in this regard are the following:
 - The organisation's executive committee should provide effective leadership based on an ethical foundation.
 - The executive committee should ensure that it builds and sustains an ethical corporate culture in the organisation.

Best-practice guidelines for the ethical leadership roles of a number of specific ethics management role players are:

The accounting officer should set the ethical tone for the organisation and provide ethical leadership and create an ethical culture in the organisation.

11.2 GOVERNANCE STRUCTURES

Since ethics needs to be managed in a structured manner, ethics governance structures dedicated to the ethics-related dimensions of the organisation need to be designed and implemented. KwaDukuza governance structures are Council, MANCO, Fraud Ethics and Risk Management Committee and Audit Committee.

The Ethics, Fraud and Risk Management committee must provide strategic direction and oversight of the ethics management of the Municipality regarding material ethics issues that have been identified.

11.3 ETHICS MANAGEMENT

The philosophy of managing ethics is to apply the belief that ethics can indeed be managed in an organisation.

The role of the Risk Management office and its practitioners:

- Actively manage ethics.
- Provide ethical guidance to the Council, executive directors, senior management, and staff on ethics-related issues.
- Co-ordinate Fraud and ethics risk assessments.
- Promote integrity and ethical behaviour in the Municipality.
- Advise employees on ethical matters.
- Ensure organisational integrity of policies, procedures, and practices.
- Manage conflicts of interests, including:
 - I. financial disclosures related to employees
 - II. applications for external remunerative work
 - III. maintaining gift registers

- Develop and implement Fraud and ethics awareness and other ethics training programmes, coupled with sound ethics management- and anti-corruption measures.
- Identify (through the anti-fraud and corruption hotline and other channels) and report on unethical behaviour and corrupt activities.
- Keep a register of all employees under investigation and those disciplined for unethical conduct.
- Provide regular feedback to the council and executive management on ethics performance and challenges.

11.4 ETHICS AND FRAUD RISK ASSESSMENT

A Fraud and Ethics risk assessment is the indispensable first step in addressing the challenges of determining the good and striving for an optimal balance between the self and the other. KwaDukuza Municipality should assess (in a structured way) what its Fraud and ethics risks are, how often the Municipality intends doing its Ethics and Fraud Risk assessment, and how the register is going to be kept. A Fraud and ethics risk assessment, culminating in an Fraud and ethics risk profile, provides the organisation with a clear understanding of unethical behaviours and organisational practices that could put the organisation at risk. At the same time, a Fraud and ethics risk assessment identifies the opportunities related to ethics that can be used by the organisation.

11.5 ETHICS STRATEGY

Once the fraud and ethics risk assessment has been conducted, the organisation needs to decide on a fraud and ethics management strategy. This would, amongst others, depend on the perceived purpose of bringing fraud and ethics into the organisational domain, the current state of the ethics of the organisation, previous reputational damage that was incurred, the magnitude of identified risks, and the desired end state at a point in the future. Once an organisation has determined its optimal fraud and ethics management strategy, it could design a fraud and ethics management plan that contains measurable objectives; assigns specific responsibilities, timeframes, and target dates; and allocates the human, financial, and other resources required to implement that strategy.

11.6 CODE OF CONDUCT

Best practice corporate governance recommends that the accounting officer in the organisation should:

- (i) ensure that the ethical values to which the organisation will adhere are expressed in its code of ethics (or conduct) and,
- (ii) ensure that the code of ethics (or conduct) and ethics-related policies are implemented.

11.7 INSTITUTIONALISING ETHICS

A corporate governance directive for the institutionalisation of ethics is that the Accounting officer should ensure that compliance with the code of ethics (conduct) is integrated into the operations of the organisation. Formulating a code of ethics and supporting policies is, however, a necessary but insufficient step in making ethics an

integral component of the organisation. Ethics needs to be institutionalised in the organisation – merely being able to demonstrate the existence of the code is not enough. Ethics management systems that complement the formation of an ethical culture, together with an ethics management strategy, need to be designed and implemented. Such systems are usually aimed at making ethics manifest throughout the organisation. Typical ethics management systems, among others, are:

- communication systems (ethics awareness campaigns, ethics help-desks, and safe reporting/whistle-blowing facilities)
- ethics training initiatives (training on ethical standards and decision-making, providing line managers with the ethics competence they require to effectively manage the ethics of their subordinates)
- orientation/induction programmes containing fraud and ethics as an important component
- performance assessments including fraud and ethics as an indicator
- Human resource management systems that recruit, select, and retain employees with integrity
- disciplinary processes

11.8 MONITORING AND REPORTING

Best practice governance guidelines include a directive that the Accounting officer should ensure that adherence to ethical standards is monitored and measured. The Risk Management office should monitor the implementation of the ethics management plan, and report to the Ethics Fraud and Risk Management committee on progress in this regard, as well as on the state of ethics in the organisation.

11.9 INDEPENDENT ASSESSMENT AND EXTERNAL REPORTING

The governance prescript in this regard is that the Accounting officer should ensure that the organisation's ethics performance is assessed, monitored, reported, and disclosed. There should be independent assessment of the ethics management processes (e.g., through an internal audit) and of the ethics management reports (e.g., by external auditors). This should then be reported to external stakeholders in integrated sustainability or annual reports.

11.10 ETHICS CULTURE

The desired outcome of any ethics governance and management initiative is a strong ethical culture. Although organisations may survive for many years on laissez-faire approaches to ethics, truly sustainable organisations pro-actively build an organisational culture marked by ethical leadership, ethics awareness, ethical decision-making, and sustained ethical behaviour. A truly ethical culture cannot be achieved in the short term, but requires sustained leadership commitment to ensure an ethical culture over time.

12 ROLES AND RESPONSIBILITIES

12.1 Management

The Accounting Officer is responsible for communicating relevant sections of this Policy to the members of the public and other stakeholders of the Municipality.

The prevention, detection, investigation and resolving fraud and corruption are part of the management function of every Business Unit head. None of the suggested strategies limits or lessens this responsibility and line managers are made, fully aware that it is the **non-negotiable** responsibility to line managers to:

- Establish and maintain an ethical culture in their management unit.
- Assess the risk for fraud and corruption in their areas of work.
- Put in place policies, strategies, processes and procedures to prevent possible fraud and corruption.
- Put the necessary controls in place to ensure compliance with these policies, strategies, processes and procedures.
- Prevent and detect fraud and corruption
- Ensure that all persons who are supposed to be made aware of this Policy including the employees are made aware of same and are also given appropriate training and education with regard to this Policy.
- Avoiding situations of conflict of interest in the recruitment and contracting processes.
- Instituting discipline for violations of the code of conduct.

12.2 Risk Management Committee

The Risk Management Committee is appointed by the Accounting Officer to assist him to discharge fraud risk management responsibilities.

- Review the fraud risk management progress of KwaDukuza Municipality;
- Monitor the effectiveness of fraud risk management activities;
- Review the effectiveness of fraud policy; and
- Ascertain that all fraud risks associated with municipalities' objectives are effectively managed.

12.3 Internal Audit Activity

- Internal auditors must have sufficient knowledge to evaluate the risk of fraud and the manner in which it is managed by the organization, but are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud.

- The internal audit activity must evaluate the potential for the occurrence of fraud and how the organization manages fraud risk.
- Internal auditors must consider the probability of significant errors, fraud, noncompliance, and other exposures when developing the engagement objectives

12.4 Internal Control Unit shall also undertake random audit checks:

- As part of their ordinary working procedures
- In response to a tip-off or whistleblowing report.
- At the request of Business Unit heads

12.5 Risk Management Unit

The Risk Management Unit shall consider various means of communicating this policy to all employees of the Municipality, including the following:

- Conducting workshops and creating awareness of the policy.
- Developing a poster campaign at all stakeholders to advertise the Municipalities stance to Unlawful Conduct and its expectations with regard to the ethics and integrity of all stakeholders
- Using specially designed posters, flyers and other promotional material in places where employees have access, to communicate issues relating to the prevention and detection of fraud.
- Giving copies of the Code of Conduct and Business Ethics to suppliers of goods and services.
- Developing a fraud prevention allegation box where all employees could make suggestions on how to prevent fraud and corruption and further improve the Plan.
- Using KwaDukuza Municipalities newsletters, magazines, or electronic communication networks, to communicate issues relating to the prevention and detection of fraud, including matters reported and action taken.

12.6 Labour Relations

Labour relations shall be responsible for the following:

- Contribute to the resolution pillar of the plan by managing the disciplinary process of all officials implicated in fraud related misconduct,
- Promote an ethical culture by conducting code of conduct awareness programs, and
- Make available fraud information to Risk Management to be utilized for fraud prevention program and compilation of the fraud risk profile.

12.7 Legal Services

Legal services shall be responsible for the following:

- Contribute to the resolution pillar of the plan through the management of the litigation process to ensure recovery of losses from fraud related act(s),
- Make available fraud information relating to all litigation claims linked to fraudulent activities for the compilation of the fraud risk profile,
- Contribute to the investigation pillar of the plan by providing legal advice during investigations, where necessary.

12.8 Other Officials

It is the responsibility of all employees of the municipality to prevent and report all incidents of fraud, corruption, theft, maladministration and any other dishonest activity.

The Municipality expects a high standard of honesty and integrity from its entire staff, both in their official duties and their lives in general. This means that they are expected:

- To obey the law;
- To be polite, considerate, impartial and fair to the public and their colleagues;
- To be honest in their dealings with the public and their colleagues;
- To safeguard all confidential information, and not disclose any information that they may have unless allowed and there is a valid reason for doing so ;
- Never to seek to frustrate the policies, decisions or actions of the Municipality;
- Never to use their official positions to promote their own private interests;
- To make sure their behaviour at work and in their lives in general does not bring the Municipality into disrepute;
- To refuse to accept - directly or indirectly - any gifts;
- To make sure that they complete all official documents honestly and accurately.

13. REVIEW OF THE ETHICS POLICY

The Ethics, Fraud and Risk committee shall review the Ethics policy annually or when the need arises to ensure that it remains relevant for the approval of the Accounting Officer.

14. FORMAL APPROVAL

The Fraud and Ethics policy is formally approved by Municipal Council and implemented by KwaDukuza Municipality with effect from date of signature.

Fraud and Ethics policy Approval by:	
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N.J Mdakane	
Accounting Officer	Date
Fraud and Ethics policy adopted KDM Council:	
C428	04/08/2020
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Resolution No	Date

National Anti-Corruption Hotline number: 0800 701-701