



Review of the Anti-Fraud, Bribery and Corruption Policy

Audit & Risk Committee

Date of committee meeting: 18 September 2019

Lead director: Alison Greenhill

Useful information

- Report author: Stuart Limb (Corporate Investigations Manager)
- Author contact details: 0116 454 2615 / 37 2615 stuart.limb@leicester.gov.uk
- Report version 3

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to request the Audit and Risk Committee to review and approve the Council's Anti- Fraud, Bribery and Corruption Policy.

2. RECOMMENDATIONS

- 2.1 The Audit and Risk Committee is recommended to:
- a) note and comment on the report; and
 - b) approve the Anti-Fraud, Bribery and Corruption Policy.

3. BACKGROUND

- 3.1 The Council has had an Anti-Fraud, Bribery and Corruption Policy for a number of years which demonstrates its commitment to addressing fraud and corruption. The purpose of the policy is to ensure that members and officers take the necessary steps to prevent, deter, detect and investigate fraud and that the Council has in place proper procedures to prevent corruption including bribery.
- 3.2 The policy was last significantly updated following the introduction of the Bribery Act 2011 in July 2011. No further updates are proposed at this time.
- 3.3 The Anti-Fraud, Bribery and Corruption Policy for approval is included as Appendix 1.

4. REVIEW OF THE CURRENT POLICY

- 4.1 The forthcoming review of the Committee's Terms of Reference is expected to recommend that the Committee formally reviews the policy every two years, rather than annually. This is because a significant revision has not been required for over eight years and the governance of the policy can be as robust over a longer review period. Any relevant legislative changes or circumstances which warrant any earlier review between the formal review periods would mean the policy would return to the Committee for review outside of this timeframe.

5. THE POLICY IN PRACTICE

- 5.1 The policy identifies the need to embed combatting the risk of fraud and corruption, including bribery, into the culture of the organisation. Managers and employees are provided with advice and training to ensure that they consider ways to minimise the risks of fraud, bribery and corruption as part of their day- to-day duties. Guidance on this and further advice for managers is provided in documentation supporting the Policy as well as from the Corporate Investigations Team.
- 5.2 The policy also identifies the need to provide adequate investigative resources to support managers in deterring, detecting and preventing fraud, bribery and corruption. The Corporate Fraud Team is dedicated in proactively placing this policy at the heart of service delivery and enforcing a stance of zero tolerance to such behaviour.
- 5.3 The prevention, detection and investigation of financial irregularities including fraud and corruption (which may involve bribery) are an important activity for local authorities. The Corporate Investigations Team considers cases of suspected fraud and irregularity other than Council Tax and Housing Benefit. There are no direct comparisons with staffing levels of other local authorities.
- 5.4 In addition to undertaking specific investigations, the team co-ordinates the National Fraud Initiative (NFI) data matching exercise and measures and assess the risk of fraud and corruption and exception reporting using council systems, e.g. exception reporting of payroll data may identify individuals who regularly receive amounts more than their contracted salary, indicating potential excessive amounts of overtime. Such reports may also reveal excessive expense claims or processing errors.
- 5.5 The team support managers by providing advice, fraud awareness training and carrying out proactive work. Over the past 12 months we have delivered fraud awareness training to various sections including new starters, Housing staff and the Income Management Team. Work has also been undertaken to proactively check School Admissions, Right to Buy applications and Tenancies to minimise the risk of fraud.
- 5.6 The Corporate Investigations Team has produced an e-learning package which will provide online training to assist staff in understanding the risk of Fraud, Corruption and Bribery. It is awaiting approval from the Head of Revenues & Customer Support before being rolled across the authority in the very near future. The training will be mandatory for all members of staff, both existing and new starters, and will be supported by annual refresher training.

6 Financial, legal and other implications

6.1 Financial implications

There are no direct financial implications arising from this report. However, theft, fraud and corruption, including bribery, are all offences of a financial nature and can cause significant financial loss to the Council.

Colin Sharpe, Head of Finance

6.2 Legal implications

The Bribery Act 2010 applies to the Council and/or senior Council personnel (Officers and/or Members) to the extent that it is covered by the offences of bribing another person, being bribed and bribing a foreign public official. Council Officers could be liable for offences committed with their 'consent or connivance'

In addition, to the extent that it engages in commercial activities, the Council (and any company established by it) is also covered by an offence of failure to prevent bribery (subject to the defence that is available). A defence is available in respect of the offence of failing to prevent bribery if the Council (or company) can show that it had in place adequate procedures designed to prevent persons associated with the Council from undertaking such conduct (bribery).

When reviewing the Policy and the procedures underpinning it, Committee should satisfy itself that the Council is complying with the 6 Key Principles set out in the Policy and that it is doing all it can to prevent persons associated with it from committing acts of fraud, bribery or corruption

The Report recommends undertaking further reviews of the Policy on 2 yearly cycles, however this should be subject to any changes in legislation or guidance. A review may also be appropriate in response to a major incident or an adverse risk assessment.

Kamal Adatia, City Barrister & Head of Standards.

6.3 Climate Change and Carbon Reduction implications

There are no significant climate change implications arising from the attached report.

Aidan Davis, Sustainability Officer

7. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

http://www.legislation.gov.uk/ukpga/1972/70/pdfs/ukpga_19720070_en.pdf

APPENDIX 1

Leicester City Council Anti-Fraud, Bribery and Corruption Policy

Content

Policy Statement

Aims of the Policy

Who this policy applies to

Introduction

Six Principles of Bribery Act 2010

Definitions

Summary of Bribery Act 2010

Role of Human Resources

Role of Employees (Individuals)

Role of Management

Regulatory framework

Reporting & Whistleblowing Detecting

Receiving of reports and preventing, fraud, bribery and corruption

Courses of action

- Disciplinary action
- Prosecution
- Consequences

Awareness and training

Monitoring of this policy

Appendix 1 Measuring Success

Appendix 2 Internal Policy Links

- Gifts & Hospitality
- Discipline
- Employees Handbook

Policy statement

Preventing fraud is an integral part of ensuring that tax-payers money is used to protect resources for our services. The cost of fraud to local government is estimated at £2.2 billion a year. This is money that can be better used to support the delivery of our front-line services and make savings for our tax payers.

Leicester City Council is totally committed to maintaining a zero tolerance towards fraud, bribery and corruption and to the prevention, deterrence, detection and the investigation of all forms of fraud, bribery and corruption affecting its activities.

Aims of the policy

This policy sets the standard and makes clear the council's zero tolerance against fraud, bribery and corruption and that ALL cases will be investigated thoroughly and dealt with in the appropriate manner.

Who this policy applies to

This policy applies equally to the City Mayor, Members and officers, agency staff, consultants, those contracted to deliver services for or on behalf of the Council and agents of the Council as well as to third parties including members of the public and third-party organisations.

Introduction

Leicester City Council has a responsibility for the provision of effective and efficient services to clients and to ensure the protection of the public purse. The Council recognises that failure to implement effective anti-fraud measures can undermine the standards of our public services.

The council does not, and will not, engage indirectly in or otherwise encourage bribery, nor does it wish to be associated with any organisations that does or has done so. This extends to all third parties whether such conduct is associated with business on behalf of the Council or not.

The Council will not commit the offence of failing to prevent bribery, providing that we can show that we have adequate procedures in place to prevent bribery. We provide adequate investigative resources to support managers to deter detect and prevent fraud, bribery and corruption.

In an effort to establish and promote a culture of integrity, openness and honesty in the conduct of the Council's business, thereby reducing levels of fraud, bribery, corruption and financial irregularity, the council follows the key six principles as set out in the Bribery Act 2010.

Proportionality

Adequate bribery prevention procedures are proportionate to the bribery risks that the council faces.

The procedures & policies of the council are put in place to prevent bribery and are designed to mitigate identified risks as well as to prevent deliberate unethical conduct on the part of associated persons.

Top Level Commitment

Continued support from the Senior Managers fosters a culture of integrity where bribery is unacceptable. With this support from members and directors we can promote a zero-tolerance culture and ensure that we make sure that our staff understand that bribery is not tolerated and to take the necessary action to address any risks.

Risk Assessment

Risk management is all about managing the council's threats and opportunities. By managing the council's threats effectively, we will be in a stronger position to deliver the council's objectives. It is acknowledged that risk is a feature of all business activity and is an attribute of the more creative of its strategic developments. The council accepts the need to take proportionate risk to achieve its strategic obligations but expects that these are properly identified and managed. By managing these opportunities in a structured process, the council will be in a better position to provide improved services and better value for money.

The council will undertake to: -

1. Identify, manage and act on opportunities as well as risks to enable the council to achieve its objectives and integrate risk management into the culture and day to day working of the council.
2. Manage risks in accordance with best practices and comply with statutory requirements.
3. Ensure that a systematic approach to risk management is adopted as part of Service Planning and Performance Management.
4. Anticipate and respond to changing social, environmental and legislative requirements.
5. Keep up to date and develop our processes for the identification/management of risk.
6. Have in place a defined outline of individual roles and responsibilities.
7. Raise awareness of the need for risk management to those involved in developing the council's policies and delivering services.
8. Demonstrate the benefits of effective risk management by:
 - Cohesive leadership and improved management controls;
 - Improved resource management – people, time, and assets;
 - Improved efficiency and effectiveness in service and project delivery;
 - Better protection of employees, residents and others from harm;
 - Reduction in losses leading to lower insurance premiums; and,
 - Improved reputation for the council;
9. Ensure risk assessments (identification of, and plans to manage, risk) are an integral part of all plans and proposals to the Executive; Corporate Management Board and Strategic Directors.

10. Recognise that it is not always possible, nor desirable, to eliminate risk entirely, and so have a comprehensive insurance programme that protects the council from significant financial loss following damage or loss of its assets.

Due Diligence

We need to know exactly who we deal within the council and to protect our organisation from taking on people who are less trustworthy.

The council conducts Due Diligence on all third parties that they form a partnership with. It is encouraged that if there are any material changes to the business or relationship, Due Diligence is re-evaluated to ascertain if the relationship and its risk level have changed.

Communication (including training)

The council seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal, including training, that is proportionate to the risks it faces.

The council will ensure that all levels of employees are aware of this policy via the internal processes.

We ensure that fraud and bribery and awareness training is conducted with new staff, existing and members.

Monitor and Review

We face the risk of the effectiveness of our procedures and these may change over time. We will measure the level of fraud and corruption across the Council and introduce and maintain measures ensuring that policies and procedures are kept up to date with any changes in the bribery risk by utilising the full range of integrated actions available to prevent, detect, sanction and seek redress for fraud, bribery and corruption.

We ensure that policies and procedures designed to prevent and deter fraud; bribery and corruption are adopted and consistently implemented across the Council.

For the purposes of this policy fraud, bribery and corruption are defined as follows:

Fraud – dishonestly making a false representation, failing to disclose information which there is a legal duty to disclose or abuse of position to make a gain for their self or another, or to cause loss to another or to expose another to a risk of loss.

Bribery - giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so.

Corruption - Forms of corruption vary, but include bribery, extortion, patronage and embezzlement. By its nature corruption can be difficult to detect as it usually involves two or more people entering into a secret agreement.

The Fraud Act 2006

The act defines fraud as being committed in three main ways:

Fraud by false representation

A person commits an offence when they dishonestly make a false representation and intends by making:

- A gain for himself or another
- Cause loss to another person
- Expose another to a risk

Fraud by failing to disclose information

The offence is committed where a person is dishonestly fails to disclose information where there is a legal duty and intends to do this by making:

- A gain for himself or another person
- To cause a loss or expose another to the risk of a loss

Fraud by abuse of position

This offence is intended to prevent the dishonest abuse of those in a position who are considered being in a role of trust and safeguarding and not acting against the council financial interests and intends to abuse the position by:

- Making a gain for himself or another
- To cause a loss or expose another to the risk of a loss

The following actions could constitute a fraud or corruption may include and is not limited to:

- Forging or altering council documents or accounts
- Forging or altering cheques, bank drafts or any other financial documents
- Misappropriation of funds or other assets
- Receiving a financial gain from releasing inside knowledge or council activities
- Disclosing confidential information to outside parties
- Failure to declare an interest
- Giving and receiving of high-end Gifts and Hospitality during tenders or new business ventures and contracts

The Bribery Act 2010

Criminal

The introduction of this new corporate criminal offence places a burden of proof on companies to show they have adequate procedures in place to prevent bribery. The Bribery Act also provides strict penalties for active and passive bribery by individuals as well as companies.

Individuals found guilty can face an unlimited fine and imprisonment up to ten years. Where Leicester City Council itself is found guilty of any of the key offence then the penalty is an unlimited fine.

An employee of the council who performs the function or activity and is in a position of trust, even if it has no connection with the United Kingdom and is performed in a country or territory outside the United Kingdom can still be prosecuted under this legislation.

Basic Definitions of Bribery:

- To secure or keep a contract
- To secure an order
- Gain an advantage over a competitor
- Giving of facilitation payments to government officials

Section 1 of Bribery Act 2010

General Offence of offering, promising and giving

Section 2 of Bribery Act 2010

Agreeing, Receiving and Accepting

Function or activity to which bribe relates

Any function of a public nature,
Any activity connected with a business,
Any activity performed during a person's employment
Any activity that is expected to perform in good faith.
Performing a function or activity that is expected to perform it impartially.

Section 6 creates an offence relating to the bribery of a *foreign public official*. The definition applies to individuals who hold a position or exercise a public function.

Common examples include:

- Government ministers and civil servants
- Local government members and officials
- Police
- Security agencies such as immigration and border controls

Facilitation Payment

The definition of a facilitation payment is one where a payment is made to a public official intended to secure an official action. These types of payments are a form of bribery that may also be referred to as 'kickbacks' and 'backhanders'

Section 7

This section creates the corporate liability for failing to prevent bribery on behalf of the organisation. The council will be liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation. The council will have a full defence if it can show that despite a case of bribery it nevertheless had adequate procedures in place to prevent persons associated with it from bribing.

Please note: **The timing of gifts & hospitality is most relevant shortly before, after or during a tendering process and is inappropriate as this can be construed as a bribe, offered with the intention to 'close a deal'. Therefore, staff should not accept any during this process.**

Summary of Gifts & Hospitality

All employees must not receive any reward or fee other than their proper remuneration. As a rule, you should tactfully refuse offers of gifts, hospitality or services from organisations or persons who do, or might, provide work, goods or services to the City Council or who require a decision from the City Council and/or within the tender process.

The full guidance can be found at 7.7 in the Code of Conduct for council employees.

The giving and receiving of cash are prohibited.

It is of vital importance that the possibility of you being deemed by others to have been influenced in making a business decision, because of accepting such hospitality, should be avoided at all costs, for your own protection.

All interests you may have must be declared to your line manager by recording them on MyView. If you are unable to access My View a 'Register of Interests form' can be obtained from your line manager and returned to the Employment Services Centre.

Responsibilities

Human Resources

Whilst most individuals appointed into positions within the council are on their own merit and experience, HR are responsible for ensure that all staff are screened and made aware of their responsibility and contractual obligations in relation to anti-fraud, bribery and corruption policies and procedures.

The council has in place a Contra Indicator Risk Assessment Process – Criminal Record Information policy that must be adhered to.

All applicants are required to complete an application form and must declare any criminal convictions. It is a requirement that the council conducts a police check under the Disclosure and Barring Service (DBS).

Further information can be found on this policy under HR Policies.

All Staff

Failing to prevent bribery is an offence on its own, so ALL staff have a requirement to report any suspicious fraud, theft, bribery or corruption. The penalties for not reporting a bribe are of the same level of receiving and giving of a bribe.

It is important that employees do not try to handle the issue themselves.

Poorly managed investigations or improper interference could potentially disrupt prospective criminal investigations/prosecutions. There are several procedures which must be followed.

The council encourages all staff to report any suspicious activities and will be treated seriously and in confidence and will protect those who have done so (even if the suspicion is unfounded and not made maliciously.) This is set out in the Whistleblowing policy.

Management

Managers are in the best position to promote and encourage the reporting of all suspicious activity and provide support to employees.

Managers are responsible for maintaining their own internal controls and identify risks that are exposed and conduct risk assessments where required and all controls are being complied with.

Internal Audit

The function of Internal Audit has been delegated to Leicestershire County Council and as an independent and objective service is there to help the city council achieve its objectives by providing assurance on the management of its risks.

They see how well the procedures and controls in place within the system or process prevent the risk occurring or lessen its potential impact. They do this by testing to see whether the procedures are operating effectively. They report to managers and Members on whether risks have been identified and whether they are being well managed.

Corporate Investigation Team

The Corporate Investigation Team can and will conduct criminal investigations of any internal and external allegation when it is deemed applicable. This is achieved through criminal and/or civil courts. The council will also look to take the appropriate actions of the retrieval of any goods or money.

Avenues for reporting any suspicious activity.

You can report your concerns in several ways:

- Contacting Corporate Investigations directly by means of email to the Investigation mailbox or contacting us directly on 0116 454 6490
- Using the Whistleblowing line. This procedure is set out in the council policy.
- Reporting to their line manager or the most appropriate employee.

Detecting

The council has in place numerous measures in detecting and preventing fraud, bribery and corruption. The CIT coordinates the National Fraud Initiative (NFI) data matching exercise which is a mandatory exercise as required by the Cabinet Office. The NFI measures and assesses the risk of fraud and corruption using council systems, e.g. exception reporting of payroll data may identify individuals who regularly receive amounts more than their contracted salary, indicating potential excessive amounts of overtime and expenses.

The council is currently leading a group of 10 Local Authorities in a project funded by the Department for Communities and Local Government (DCLG) to identify, isolate multiple potential frauds being committed against members in other Local Authorities by verifying applications and to identify potential irregularities. This project looks to share best practice and create a single intelligence hub which will hold hundreds of thousands of records which can be interrogated.

All other irregularities, including those reported via the Whistleblowing process will be investigated by the Corporate Investigation Team.

Whistleblowing

Leicester City Council is committed to conducting its business with honesty and integrity and it expects all staff to maintain high standards of conduct. All organisations, however, face the risk of things going wrong from time to time, or of unknowingly harbouring illegal or unethical conduct. A culture of openness and accountability is essential to prevent such situations occurring or to address them when they do occur.

The whistleblowing policy sets out the parameters of reporting any illegal and unethical conduct

The staff is encouraged to report suspected wrongdoing as soon as possible, in the knowledge that their concerns will be taken seriously and investigated as appropriate and that their confidentiality will be respected.

Management are to reassure staff that they should be able to raise genuine concerns without fear of reprisals, even if they turn out to be mistaken.

The whistleblowing policy however is NOT to be used to raise concerns with personal circumstances, such as the way staff member is treated at work or if they have a grievance against another member of staff.

If a member of staff prefers not to approach their manager, staff can report their concerns directly with the Monitoring Officer.

- External disclosure – The law recognises that in some circumstances it may be appropriate for you to report your concerns to an external body such as a regulator. It will very rarely if ever appropriate to alert the media.

Courses of Action

Under their work section 7.4 of the City Council's Finance Procedure Rules, the Corporate Investigation Team always have authority and access to:

- Any City Council property
- Access to all data, records, documents and correspondence relating to any financial or any other activity of the City Council.
- Access to any assets of the City Council
- Require from any member, employee, agent, partner, contractor or persons engaged in City Council business any necessary information and explanation.

Disciplinary

The CIT will make recommendations of disciplinary action as and when it is required to do so.

Prosecution

The Corporate Investigation Team can and will conduct criminal investigations of any internal and external allegation when it is deemed applicable. This is achieved through criminal and/or civil courts

Consequences

Failing to comply and prevent under the Bribery Act 2010 could result in an unlimited fine or imprisonment for an individual and for the council, an unlimited fine.

Failure to adhere to the internal policies and procedures may lead to gross misconduct and the dismissal of the employee.

Desired outcomes of the policy

- A high profile and awareness of fraud, bribery and corruption throughout the Council.
- Greater management awareness of the risk of fraud, bribery and corruption.
- Improved management controls arising from better risk assessments.
- Improved compliance with Council policy, procedures and practices, for example Finance Procedure Rules and Contract Procedure Rules as evidenced by on-going management monitoring, Internal Audit reviews and the level identified fraud and irregularity.

Measuring success

The following indicators will be used to monitor the effectiveness of the Anti- Fraud and Corruption Policy and Strategy:

- The number of suspicions of fraud identified by, or referred to, the Corporate Investigations Team.
- The number of cases investigated in which fraud or corruption is proven.

- The value of amounts misappropriated (of all kinds including employee time), both in absolute terms and as a proportion of the Council's annual budget.
- Periodic surveys by the Corporate Investigations Team to ascertain the level of management's awareness of fraud, bribery and corruption.
- The number of employees disciplined for offences involving fraud, bribery or corruption

Review & monitoring of the Policy

The revisions to the anti-fraud, bribery and corruption policy and the guidance on managing this policy are held with the Audit and Risk Committee.

However, the onus lies with Managers to ensure that they have in place processes that place sufficient measures to ensure compliance with the Bribery Act.

Conclusion

The council is committed to the high profile and awareness of fraud, bribery and corruption. Improved compliance within Council policies and practices, for example Finance Procedure Rules and Contract Procedure Rules, as evidenced by on-going management monitoring, Internal Audit reviews and the level of identified fraud and irregularity and promote its zero tolerance on fraud, bribery and corruption.

Appendix 1

Managing the Risk of Fraud and Bribery

Comprehensive advice on managing risk is available on INSITE. This guidance is intended to help Directors and managers manage the risk of fraud and bribery so avoiding the loss of public funds, the risk of prosecution and reputational damage.

1. Identify the risk

- Do you or your team handle cash?
- Do you or your team award contracts, procure goods or services, approve grants, deal with schools' admissions, grant licenses, allocate tenancies, approve planning applications, have access to payroll, Housing Benefit and other payment systems?
- Are there any areas within your work area that may face the risk of bribery?

2. Assess the risk

- What is the likelihood of fraud or bribery occurring?
- What would be the impact if it did happen – what losses would the Authority suffer and what consequences might the Authority face?

3. Manage the risk

There are four options available to you once you have completed the steps above.

- Tolerate the risk, in other words accept it
- Treat the risk, take steps to introduce controls to prevent or deter fraud or bribery, and measures to ensure that any fraud or bribery committed is swiftly identified, including those responsible
- Transfer the risk
- Terminate the risk

4. Monitor the Risk

- Have you implemented the chosen control measures? Are the controls working?
- Are there any new problems?

5. Reviewing and Reporting

- All information relating to the identified risk should be recorded on a risk assessment form or risk register and a named individual should be identified who will be responsible for introducing, implementing and managing the effectiveness of each control measure.

Appendix 2

Gifts and Hospitality

<https://leicestercitycouncil.sharepoint.com/sites/sec003/Shared%20Documents/Conditions/V-%20Code%20of%20Conduct%20for%20Employees.pdf>

Disciplinary

<https://leicestercitycouncil.sharepoint.com/sites/sec003/Shared%20Documents/Conditions/X%20-%20Disciplinary%20Procedure.pdf>