

REPORT TO: Audit and Governance Committee

MEETING DATE: 26 September 2017

BY: Depute Chief Executive (Resources & People Services)

SUBJECT: Strategy for the Prevention and Detection of Fraud and Corruption

1 PURPOSE

- 1.1 The Council has in place a Strategy for the Prevention and Detection of Fraud and Corruption, which forms part of the Council's counter fraud arrangements. A review was recently undertaken to update the existing Strategy to ensure that it accurately reflects the current arrangements within the Council.
- 1.2 The purpose of this report is to inform the Committee of the updated Strategy.

2 RECOMMENDATION

- 2.1 That the Audit and Governance Committee note the contents of the updated Strategy for the Prevention and Detection of Fraud and Corruption.

3 BACKGROUND

- 3.1 The Audit and Governance Committee's remit covers the development of an anti-fraud culture within the Council to promote the highest standards of probity and public accountability.
- 3.2 East Lothian Council is committed to ensuring that the risk of fraud and corruption is minimised and that where fraud and corruption does occur the Council will deal with it in an appropriate manner.
- 3.3 The introduction of the Strategy for the Prevention and Detection of Fraud and Corruption has played an important part in formalising the Council's approach to dealing with fraud and corruption and its expectations of Councillors and employees in this regard.

3.4 The Strategy contains a Statement of Intent and includes coverage of the Operating Culture, Deterrent and Preventative Measures, Fraud Response Policy and Detection and Investigation Procedures.

3.5 The updated Strategy is outlined in the attached report.

4 POLICY IMPLICATIONS

4.1 None

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial - None

6.2 Personnel - None

6.3 Other - None

7 BACKGROUND PAPERS

7.1 Policy and Resources Committee, 6 February 2001 – Strategy for the Prevention and Detection of Fraud and Corruption.

7.2 Audit Committee, 15 December 2009 – Strategy for the Prevention and Detection of Fraud and Corruption.

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EAST LoTHIAN COUNCIL

STRATEGY FOR THE PREVENTION AND DETECTION OF FRAUD AND CORRUPTION

1. Statement of Intent

- 1.1 The Council aims to provide excellent public service and needs to ensure propriety and accountability in all matters. The Council is determined to protect itself and the public from fraud and corruption and is committed to the rigorous maintenance of a strategy for the prevention and detection of fraud and corruption, which will provide a framework for:
- Encouraging fraud deterrence and prevention.
 - Raising awareness of fraud and corruption and promoting their detection.
 - Performing investigations and facilitating recovery.
 - Invoking disciplinary proceedings and referral to the Police and/or the Procurator Fiscal.
 - Monitoring, publishing and updating the policy and its related procedures and performance.

2. Definitions

- 2.1 The Council regards “fraud” as being any intentional distortion of financial statements or other records whether to conceal the misappropriation of assets or otherwise for gain.
- 2.2 In relation to Housing Benefit and Council Tax Reduction, knowingly obtaining benefit to which there is no, or lesser, entitlement is regarded as fraud.
- 2.3 The Council regards “corruption” as the offer or acceptance by a Councillor or employee (or any member of such a person’s family) of a payment, favour or gift as a reward or an incentive for actions (or inactions) contrary to the proper conduct of their duties.
- 2.4 Bribery can be described as the offering or receiving of an inducement for an action which is illegal, unethical or in breach of trust. Inducements can take the form of gifts, fees, rewards or other advantages.
- 2.5 A more detailed set of definitions is given in Appendix A to this strategy document.

3. Prevention and Detection of Fraud and Corruption

3.1 The Council's Strategy for the Prevention and Detection of Fraud and Corruption is based on a series of comprehensive and related elements designed to deter any fraudulent or corrupt act. These elements are:

- Operating Culture
- Deterrent and Preventative Measures
- Fraud Response Policy
- Detection and Investigation Procedures

3.2 Operating Culture

3.2.1 The Council is determined that the culture and tone of the organisation meets the expectations of the Nolan Committee on Standards of Public Life, and is committed to the Nolan Principles of objectivity, accountability, honesty, selflessness, leadership, openness and integrity.

3.2.2 The Council expects Councillors and employees to lead by example ensuring opposition to fraud and corruption, adherence to rules and regulations and compliance with National and Local Codes of Conduct. Councillors and employees are expected to conduct themselves in a manner which is beyond reproach at all times.

3.2.3 The Council requires all individuals and organisations with whom it deals in any capacity to behave towards the Council with integrity and without intent or actions involving fraud or corruption.

3.2.4 Council employees and members of the public are important elements in the stance against fraud and corruption and are positively encouraged to raise any concerns they may have using the Council's Whistleblowing Policy. Employees reporting concerns under the Whistleblowing Policy are afforded certain rights and protection through legislation enacted under the Public Interest Disclosure Act 1998. The Council will support employees who report concerns and will make every effort to protect their confidentiality and to protect them from reprisals. Concerns from members of the public may also be raised using the Council's Complaints Procedure.

3.2.5 Training and guidance are vital in maintaining the effectiveness of the Strategy for the Prevention and Detection of Fraud and Corruption and its general credibility. The Council supports work related training, particularly for employees involved in internal control systems, to ensure that best practice is followed across all Council services.

- 3.2.6 As part of its responsibilities, the Council's Internal Audit Unit is required to investigate all instances of suspected fraud, financial irregularity or corruption. Audit plans are required to provide adequate coverage of the risk of fraud and corruption and also to reflect the requirement for audit staff to be properly and regularly trained.
- 3.2.7 Where appropriate, the Council co-operates with other local authorities and public sector bodies in the prevention, detection and investigation of fraud and corruption.
- 3.2.8 The Council, along with other local authorities and public sector bodies, participates in the National Fraud Initiative (NFI) data matching exercise. NFI seeks to help participating bodies identify possible cases of fraud and detect and correct any over or under payments. The data for NFI in Scotland is processed by the Cabinet Office on behalf of Audit Scotland.

3.3 Deterrent and Preventative Measures

- 3.3.1 The Council's Standing Orders and Financial Regulations set out a framework for dealing with the affairs of the Council and all employees have a duty to comply with their provisions.
- 3.3.2 Key documentation, including working manuals and operating procedures, should be available for all financial and operating systems and issued to relevant staff. Every effort must be made to continually review and develop these systems in line with best practice to ensure efficient and effective internal controls, including the effective segregation of duties to detect error and deter fraudulent activity.
- 3.3.3 The adequacy and appropriateness of the Council's financial systems are independently monitored and assessed by External Audit, while the control and operating systems are reviewed by Internal Audit. Senior Management is committed to continuously improving the systems for which it is responsible, both through its own self-assessments and by positive response to audit recommendations.
- 3.3.4 It is the responsibility of all Councillors to make sure that they are familiar with the Councillors' Code of Conduct and to ensure that their actions comply with the provisions of the Code.
- 3.3.5 Employee recruitment is required to be in accordance with procedures laid down by the Head of Council Resources in consultation with other appropriate senior officers and, in particular, written references must be obtained, and other appropriate checks made, to confirm the honesty and integrity of potential employees before appointments are made.

- 3.3.6 Council employees are required to follow the National Code of Conduct for Local Government Employees, the Council's Disciplinary Code and any other Code of Conduct related to their personal professional qualifications.
- 3.3.7 Council employees are required to follow the Policy on Acceptance by Employees of Gifts and Hospitality. Any employee in breach of this policy may be liable to investigation under the appropriate Disciplinary Procedure.
- 3.3.8 Council employees must declare any possible conflicts of interest, which they may have, whether in contracts entered into by the Council or otherwise, and these must be noted in a register maintained for that purpose.
- 3.3.9 A separate Policy on Registration of Interests is in place for Chief Officers. The policy covers remuneration, related undertakings, contracts and non-financial interests. All Chief Officers are required to comply with this policy, which is intended to underpin and assist in the achievement of transparency, openness and honesty.

3.4 Fraud Response Policy

- 3.4.1 The Council will be robust in dealing with any financial malpractice and can be expected to deal timeously and thoroughly with any person who attempts to defraud the Council or who engages in corrupt practices, whether they are Councillors, employees, consultants, contractors or other suppliers, tenants or unrelated third parties.
- 3.4.2 All suspicions of impropriety must be reported to the Internal Audit Manager in the first instance and these will be investigated.
- 3.4.3 The Internal Audit Manager will ensure that matters are reported to the Police if there are reasonable grounds for believing that a criminal offence has been committed.
- 3.4.4 The Council's Disciplinary Procedures will be used where the outcome of investigation indicates improper behaviour on the part of employees.
- 3.4.5 Where loss has been suffered through fraudulent activity, the Council will pursue the perpetrator for recovery, including taking appropriate legal action.

3.5 Detection and Investigation Procedures

- 3.5.1 In the majority of cases, it is the diligence of employees and the alertness and good citizenship of the public at large that enables detection to occur.
- 3.5.2 All instances of fraud or financial irregularity in the Council are investigated by Internal Audit on behalf of the Chief Executive.
- 3.5.3 Depending on the nature and anticipated extent of the allegations, the Internal Audit Unit will normally work closely with Management and other agencies, such as the Police and the Procurator Fiscal, to ensure that all allegations and evidence are properly investigated and reported upon.

4. Review

- 4.1 The Council has in place a clear framework of systems and procedures to deter, detect and investigate fraud and corruption. It will ensure that these arrangements are fair and confidential and are monitored and updated to keep pace with future developments in preventing, deterring and detecting fraudulent or corrupt activity that may affect its operation.
- 4.2 A continuous overview of these arrangements will be maintained through the Audit and Governance Committee, the Chief Executive, the Depute Chief Executives and Internal Audit.
- 4.3 The Council will ensure that the existence of this policy, and its application, are well publicised.

September 2017

APPENDIX A

Strategy for the Prevention and Detection of Fraud and Corruption

Fraud, Corruption, Bribery, Irregularity and Error – Definitions

Preamble

There is no formal legal definition of “fraud” or “corruption”, and although there is general agreement that “fraud” and “corruption” would be recognised, there have been many different attempts to define these terms.

Many people refer to “irregularity” or “suspected fraud” in their definitions because investigations will often reveal error, misconduct or misunderstandings and it is important not to pre-judge whether there has been criminal intent.

The following alternative definitions are presently in use:

FRAUD

A precise legal definition of fraud does not exist, but fraud can be defined as being any intentional distortion of financial statements or other records. This may involve:

- falsification or alteration of accounting records or other documents;
- misappropriation of assets or theft;
- suppression or omission of the effects of transactions from records or documents;
- recording transactions which have no substance;
- intentional misrepresentations of transactions or of the body’s state of affairs.

The term “fraud” in its widest sense can also be defined as “those intentional distortions of financial statements or other records which are carried out to conceal the misappropriation of assets or otherwise for personal gain”. Specifically in relation to Housing Benefit and Council Tax Reduction, fraud is defined as “knowingly obtaining benefit to which there is no entitlement, thus incurring a fraudulent overpayment”.

Fraud is any act of deception, which acts or is intended to act to the financial detriment of the Council.

Fraud generally occurs where there is a deliberate intent by a person to obtain property or financial advantage by deception and includes a wide variety of offences including intentional deceit, falsification of accounts, theft, corrupt practices, embezzlement, bribery, etc.

Areas particularly susceptible to fraud, bribery or corruption are set out below with examples of fraudulent activity (the list is not exhaustive).

Area	Example of fraudulent activity
Contracts	<ul style="list-style-type: none"> • Collusion with others during the tendering process • Awarding work to specific suppliers in return for some form of benefit
Council Tax	<ul style="list-style-type: none"> • Claiming single person discount or other exemptions where there is no entitlement
Housing Benefit	<ul style="list-style-type: none"> • Obtaining benefit to which there is no, or lesser, entitlement
Recruitment	<ul style="list-style-type: none"> • Fictitious work history and/or references • Abuse of the recruitment process – showing favouritism and bias to specific individuals for financial gain
Abuse of Position	<ul style="list-style-type: none"> • Falsification of records to cover up fraudulent activity such as stolen cash
Travel Claims	<ul style="list-style-type: none"> • False journeys claimed • Inflated mileage • Two employees claiming separately for a journey taken together
Expense Claims	<ul style="list-style-type: none"> • Claims submitted to the Council and to a third party
Cash Receipts/Petty Cash	<ul style="list-style-type: none"> • Accepting and retaining cash for personal use • Seeking reimbursements for non-Council expenditure
Payroll	<ul style="list-style-type: none"> • Hours worked being overstated to take advantage of overtime for financial gain • Undertaking personal work during Council time and seeking to conceal this by falsifying records
Ordering and Payments	<ul style="list-style-type: none"> • Goods ordered for personal use • Goods ordered from a specific supplier in return for some form of benefit
Stocks and Assets	<ul style="list-style-type: none"> • Using Council assets for personal use such as running a private business • Theft of Council supplies and equipment
Timesheets	<ul style="list-style-type: none"> • Falsifying records of hours worked e.g. timesheets and flexi sheets • Claiming to be sick but carrying out paid work elsewhere

CORRUPTION

Corruption may be defined as the offering, giving, soliciting or accepting of any inducement or reward, which could influence the actions taken by the body, its members or officers. Main areas of activity (but not exclusive or exhaustive) which are susceptible to corruption include:

- contracts;
- asset disposal;
- planning consents and licences.

In the sense in which corruption is related to fraud, corruption may be defined as “a payment, favour or gift given to an officer or member of the Council (or any member of such a person’s family) as a reward or an incentive to that person for actions (or inactions) contrary to the proper conduct of his/her duties”.

Corruption may also describe a situation where a person, alone or acting with another person(s), carries out, or fails to carry out, an action as a result of an inducement or bribe.

BRIBERY

The Bribery Act 2010 was introduced to update and enhance UK law on bribery including foreign bribery. Notably, it introduces a new strict liability offence for companies and partnerships of failing to prevent bribery. The introduction of this new corporate criminal offence places a burden of proof on local authorities to show they have adequate procedures in place to prevent bribery. The Council could be guilty of an offence if an ‘associated person’ carries out an act of bribery in connection with its business. A person will be ‘associated’ with the Council where that person performs services for or on behalf of the Council. The Bribery Act also provides for strict penalties for active and passive bribery by individuals as well as companies.

The Bribery Act creates four prime offences:

- two general offences covering the offering, promising or giving of a bribe (active bribery) and the requesting, agreeing to receive or accepting of a bribe (passive bribery);
- two further offences which specifically address commercial bribery. The Act creates an offence relating to bribery of a foreign public official in order to obtain or retain business or an advantage in the conduct of business, and creates a new form of corporate liability for failing to prevent bribery on behalf of a commercial organisation.

Bribery can be described as the offering or receiving of an inducement for an action which is illegal, unethical or in breach of trust. Inducements can take the form of gifts, fees, rewards or other advantages.

IRREGULARITY

Irregularity is used here to describe any suspected wrongful act by a Councillor or employee that may result in a financial loss to the Council, for example, suspicions of corruption or theft from “inside” the Council. This includes, but is not restricted to, the intentional distortion of financial records, either to conceal the misappropriation of assets or for some other purpose.

ERROR

Error refers to unintentional mistakes such as:

- arithmetic or clerical mistakes in the underlying records;
- unintentional misrepresentation of facts;
- unintentional misapplication of accounting policies.