

**REVIEW OF THE ANTI FRAUD & CORRUPTION STRATEGY
(Report by the Audit & Risk Manager)**

1. INTRODUCTION

- 1.1 This report details the outcome of the annual review of the Anti-Fraud and Corruption Strategy. It explains the reasons for the changes to the Strategy and outlines the legislative changes proposed in dealing with bribery.

The Strategy incorporating the changes proposed below is attached as Annex A.

2. THE BRIBERY ACT 2010

- 2.1 The Bribery Act 2010 received Royal Assent on 8 April 2010 and is expected to be enacted in April 2011.

- 2.2 The Act simplifies the existing law of bribery by replacing the offences at common law and under the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts of 1906 and 1916 with two general offences which apply to both public and private organisations:

1. Bribing another person - offering, promising or giving a financial or other "advantage" to another; and
2. Being bribed - requesting, agreeing to receive or accept financial or other "advantage".

- 2.3 An offence is committed under the Act where the "advantage" is intended as an inducement to improper performance of a function or as a reward for such improper action. The maximum penalty for bribery is 10 years imprisonment. Fines are unlimited.

The full scope of the offences is set out in the form of six specific cases where an offence of bribery is deemed to have occurred. These are listed in Annex B for information purposes.

- 2.4 The Act also creates an offence of bribery of a foreign public official and a new corporate offence which exposes commercial organisations to criminal liability for failing to prevent bribery.

Local authorities per se are not regarded by the Act to be a commercial organisation. However the Act has the potential to apply to local authorities if they have an interest in a commercial organisation whether wholly owned by the local authority, in partnership with private companies or within PFI arrangements.

Implications for the Council

- 2.5 The Bribery Act should not require significant changes to the Council's current procedures or the approach it takes to inform its employees of the importance of good conduct and ethical behaviour. The Council should not be complacent however and it would be appropriate for a review to be conducted by all Heads of Service to identify potential service areas that may be more susceptible to bribery than others (e.g. procurement and tendering, planning permissions, granting of licences) and consider the

controls in place to eradicate/minimise the opportunity for an offence to take place.

- 2.6 The Employees Code of Conduct already contains a number of provisions that clearly explain how the receipt of gifts and hospitality shall be treated. It is suggested that it be reviewed (then publicised) once guidance has been issued by the Government to commercial organisations (see 2.4) as to the steps they can take to prevent bribery.

Employees Code of Conduct

- 14.6 Employees should not accept significant personal gifts from contractors and outside suppliers, although gifts of a token value (such as pens, diaries, etc) may be kept. In the event of an employee receiving a gift without notice or warning, the matter should be reported to the Monitoring Officer, who will be responsible for deciding what action should be taken.
- 14.7 Employees must be aware that it is a serious criminal offence to corruptly receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity.
- 14.8 An employee in receipt of any hospitality or gift in excess of £25 must notify the Monitoring Officer who will maintain a register of hospitality and gifts accepted by employees.

- 2.7 The Government made it clear, in a letter issued in January 2010, that corporate hospitality will not be exempt from the provisions of the Act. It has recognised however that "routine and inexpensive hospitality" is an accepted part of business practice and would be unlikely to lead to a reasonable expectation of improper conduct. "Lavish or extraordinary hospitality" however could be construed as being intended to influence a person to act improperly. The letter does not state a minimum amount or provide any further guidance as to when "routine and inexpensive hospitality" becomes "lavish or extraordinary".

The Employees Code of Conduct requires hospitality in excess of £25 to be recorded. It does not currently differentiate between "routine and inexpensive" and "lavish or extraordinary" hospitality. Whilst some may argue that para.14.7 of the Code deals with this matter sufficiently, it is suggested that further explanation be provided by amending para.14.8 along the following lines

- 14.8 An employee in receipt of any hospitality or gift in excess of £25 must notify the Monitoring Officer who will maintain a register of hospitality and gifts accepted by employees. An employee shall not accept any hospitality or gift that could be thought by a reasonable person to be lavish or extraordinary for an employee of the Council to receive.

3. MONEY LAUNDERING

- 3.1 The Panel at its June meeting agreed that the Money Laundering Policy should be included in the Anti-fraud and Corruption Strategy. These changes are highlighted.

- 3.2 The Money Laundering Policy included information as to the maximum limit for the receipt of cash payments, currently £1000. It is not considered appropriate for this information to be included in the Anti Fraud and Corruption Strategy. It is proposed that it be included in the Code of Financial Management.

4. DEFINITIONS

- 4.1 The definitions of fraud and corruption within the Strategy have also been reviewed and compared to current best practice.
- 4.2 Changes are proposed to the fraud definition to take account of the Fraud Act 2006 and also the advice provided by Cipfa. The Strategy also contains no definition of theft although it is regularly referred to in the Strategy. The changes proposed are highlighted in the Strategy attached.

5. RECOMMENDATION

- 5.1 It is recommended that:
- (1) Heads of Service should review and identify those service areas that may be susceptible to bribery and introduce controls to minimise the opportunity for offences;
 - (2) paragraph 14.8 of the Employees Code of Conduct be amended as outlined in 2.7 above;
 - (3) the Code of Financial Management details the maximum limit for the receipt of cash payments; and
 - (3) the changes proposed to the Anti-Fraud and Corruption Strategy are agreed.

BACKGROUND INFORMATION

Bribery Act 2010

Letter from Lord Henley, dated 14 January 2010

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HUNTINGDONSHIRE DISTRICT COUNCIL

Anti Fraud and Corruption Strategy

1. Introduction

- 1.1 Huntingdonshire District Council is determined that a culture of honesty, openness and accountability will always be promoted, and as such is wholly opposed to all forms of fraud, corruption or theft. The Council is committed to making sure that the risk of fraud, corruption and theft is reduced to a level that is proportionate to the resources required to achieve that reduction. The Council also recognises that all dishonest acts undermine the high standards of public service that it is aiming to achieve.
- 1.2 This Anti-Fraud and Corruption Strategy provides details of our approach to tackling fraud, corruption and theft. It gathers together, under the heading of one overall document, all of the Authority's policies and guidance that deal with this area.

2. Anti-Fraud and Corruption Statement

- 2.1 The Council is committed to the highest possible standards of honesty, openness and accountability. The Council will not tolerate any fraud, corruption or theft by Members, employees, consultants, contractors or service users. It will ensure that internal procedures are in place to deter and prevent the risk of fraud, corruption or theft and maintain clear and well publicised arrangements for receiving and investigating complaints.
- 2.2 The Council will pursue appropriate action in all instances where fraud, corruption and theft are found.

3. Definitions

- 3.1 The Council defines fraud, corruption and theft in the following ways.

Fraud is the intentional distortion of financial statements or other records by persons internal or external to the Council which is carried out to conceal the misappropriation of assets or otherwise for gain.

Corruption covers the offering, giving, soliciting or acceptance of an inducement, rewards or bribe which may improperly influence the action of any person.

Theft is the intentional dishonest appropriation of property or assets of any kind with the intent to deprive the Council temporarily or permanently of it.

4. The Principles of Conduct

- 4.1 Each individual Member and employee is responsible for playing a part in ensuring that public confidence in the services provided by the Council is maintained. They will lead by example in ensuring compliance with all legal requirements, rules, procedures and practices, and conduct themselves in accordance with both the spirit and letter of their respective Codes of Conduct.

5. Reducing the risk of fraud, corruption and theft

5.1 The Council has a number of procedures and rules to make sure that the risks associated with financial, administrative and organisational procedures are properly managed and controlled. The most important of these procedures and rules are the:

- Code of Financial Management
- Code of Procurement
- Code of Conduct for Members
- Code of Conduct for Employees
- Members' Planning Code of Good Practice
- Members' Licensing Code of Good Practice
- Staff Recruitment & Selection Process
- Risk Management Strategy

5.2 The Code of Financial Management makes it clear that Directors and Heads of Service are responsible for the prevention of fraud and corruption within the services and functions under their control. They are required to establish, maintain and document the systems of internal control and ensure that relevant employees or Members are familiar with such systems.

Directors shall ensure that their staff have a general awareness of the money laundering regulations as required by the Proceeds of Crime Act 2002 and the notification process to be followed if money laundering is suspected. The Internal Audit & Risk Manager shall be the nominated Officer to deal with money laundering notifications to the Serious Organised Crime Agency.

6. Disclosure, investigation and prosecution policies

6.1 The Anti-Fraud and Corruption Strategy shall be supported by specific policies or procedures that deal with the issues of disclosure, investigation and prosecution. These policies and procedures are:

- The Whistle-blowing Policy
- The Whistle-blowing Guidance
- The Housing & Council Tax Benefit Anti-Fraud Strategy
- The Housing & Council Tax Benefit Prosecution Policy
- The Disciplinary Procedures

In addition to the above, detailed guidance notes have been written to assist staff who are required to undertake specific investigations.

6.2 The policies and procedures aim to ensure that the Council's commitment to the prevention of fraud, corruption and theft:

- is clearly defined
- actively encourages and promotes the prevention and detection of fraud, corruption and theft
- identifies clear reporting lines for those having knowledge or suspicion of irregularity
- establishes uniform procedures for handling allegations, ensuring consistent treatment
- ensures fair treatment for those against whom allegations are made
- encourages individuals and organisations that come into contact with the Council in the course of their business, joint working or partnerships, to recognise and where necessary, demonstrate

appropriate mechanisms for the prevention and detection of fraud and corruption.

- 6.3 Irrespective of who is involved, all matters of significant fraud and corruption identified against the Council, where its investigation is not covered by another policy or procedure will be referred to the Police or any other regulatory body authorised to investigate such matters. The decision as to whether a matter is significant shall be determined by the relevant Director.
- 6.4 The Chairman of the Corporate Governance Panel and the Council's external auditors shall also be informed of all matters of significant fraud and corruption.
- 6.5 Irrespective of the decision reached as to any criminal prosecution, the Council shall, in the case of an employee or employees, apply the disciplinary procedure and where the allegation of an offence is proven, take appropriate disciplinary action against the employee(s) involved.
- 6.6 The Council will aim to recover from the perpetrators any losses that it sustains as a result of fraud and corruption.

7. Corrective Action

- 7.1 The Director of Commerce & Technology will be responsible for ensuring that lessons learnt from the investigation are evaluated and result in the strengthening of the systems involved. He/she shall also consider whether it would be of benefit to the Council to publicise the outcome of the investigation as a deterrent to other potential perpetrators.

8. Publicising the Strategy

- 8.1 The Council will publicise the Anti-Fraud and Corruption Strategy and supporting policies to all Members and employees. Copies of documents referred to in this strategy shall be made available on the intranet.
- 8.2 Action will be taken to make the public and members of outside bodies aware of the Council's Anti-Fraud and Corruption Strategy.

9. Monitoring

- 9.1 A Framework document will be prepared and completed to demonstrate how effectively this Strategy is being delivered.

10. Conclusion

- 10.1 The Council is committed to tackling fraud, corruption and theft whenever it happens and any allegations received will be responded to in an effective and organised manner, following the principles and procedures within this document.
- 10.2 To ensure they remain effective the S151 Officer and the Monitoring Officer will annually review this Strategy, propose any changes to the Corporate Governance Panel and update the supporting Framework.

**BRIBERY ACT 2010
THE SIX CASES**

Section 1 Offences of bribing another person

- (1) A person (“P”) is guilty of an offence if either of the following cases applies.
- (2) Case 1 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) P intends the advantage—
 - (i) to induce a person to perform improperly a relevant function or activity, or
 - (ii) to reward a person for the improper performance of such a function or activity.
- (3) Case 2 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

Section 2 Offences relating to being bribed

- (1) A person (“R”) is guilty of an offence if any of the following cases applies.
- (2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).
- (3) Case 4 is where—
 - (a) R requests, agrees to receive or accepts a financial or other advantage, and
 - (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.
- (4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.
- (5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—
 - (a) by R, or
 - (b) by another person at R's request or with R's assent or acquiescence.