

DATA LABEL: PUBLIC



West Lothian  
Council

# **WEST LOTHIAN COUNCIL**

## **ANTI FRAUD AND CORRUPTION POLICY**

June 2012

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## **1.0 INTRODUCTION**

- 1.1 West Lothian Council is a major public sector organisation. In accordance with the principles of good corporate governance, in administering public funds the council is fully committed to an effective Anti Fraud and Corruption Policy which is designed to encourage fraud prevention and promote the detection of fraud and its effective investigation.
- 1.2 This policy is designed to frustrate any attempted fraudulent or corrupt act and to reduce losses to fraud and corruption to an absolute minimum. It is based on a number of other policies which can be classified into the following categories:
- culture;
  - prevention;
  - detection, investigation and recovery.
- 1.3 This policy applies to elected members and officers.
- 1.4 This policy applies to all alleged frauds and irregularities, including allegations of fraud perpetrated by customers, except for Housing Benefit and Council Tax Benefit Fraud which are investigated by the Revenues and Benefits Manager in accordance with the council's Benefit Fraud Strategy.
- 1.5 The Bribery Act 2010 repeals previous anti-corruption legislation and makes it an offence to either give or receive a bribe. Members and senior officers of the council will be liable for bribery offences committed if such offences are committed with their consent or connivance. The Bribery Act also contains a new corporate offence where a bribe is given by a "relevant commercial organisation". It is a defence to show that an organisation has adequate procedures to prevent such conduct.
- 1.6 References to fraud in this Policy include where appropriate theft, corruption, and embezzlement. These terms are defined in the appendix. References to fraud in this text also include the appropriate offences in relation to the Bribery Act 2010.

## **2.0 CULTURE**

- 2.1 The council is determined that all necessary steps will be taken to ensure that the prevailing culture is one of honesty and opposition to all aspects of fraud and corruption.
- 2.2 There is an expectation and requirement that all individuals and organisations associated with the council will act with integrity, and that in this context elected members and employees will lead by example.
- 2.3 Councillors are subject to the Councillors Code of Conduct as issued by the Scottish Ministers under the Ethical Standards in Public Life etc (Scotland) Act 2000. Councillors are made fully aware of the terms of the Code as part of the initial induction process. Breaches of the Code by any councillor may give rise to a complaint to the Standards Commission for Scotland.
- 2.4 The council's employees are an important element in its stance against fraud. The council has adopted a Code of Conduct for Employees which provides employees with clear advice and guidance about their rights and their duties at work. The Code

incorporates “the seven principles of public life” identified by the Nolan Committee on Standards in Public Life, which include selflessness, integrity and honesty.

2.5 The council has in place documented Disciplinary Procedures and a Disciplinary Code which details the types of misconduct which are considered to be in breach of the council’s rules and will normally result in disciplinary action. The Disciplinary Code details examples of behaviour considered to be gross misconduct, and this includes theft, fraud and misrepresentation.

2.6 A Disclosure of Information by Employees (Whistle-blowing) procedure has been developed to implement the Public Interest Disclosure Act 1998 and to complement the provisions of the Code of Conduct for Employees as agreed by the council. Employees are encouraged to raise any concerns they may have in the knowledge that such concerns will be properly investigated and fairly dealt with. The procedure sets out in precise terms the process to be followed by staff for reporting matters of concern. The procedure aims to:

- encourage employees to raise concerns;
- give everyone confidence that genuine concerns will be investigated properly;
- provide an opportunity for problems to be corrected at an early stage;
- deter malpractice throughout the council.

2.7 In March 2002 the council adopted a Local Code of Corporate Governance. The adoption of the Code demonstrated a commitment to the fundamental principles of good corporate governance, namely openness and inclusivity, integrity and accountability.

### **3.0 PREVENTION AND DETECTION**

3.1 The Local Government (Scotland) Act 1973 specifies that every local authority must make proper arrangements for the administration of its financial affairs. Accordingly, the council has adopted Financial Regulations which provide the framework for managing its affairs.

3.2 The Act provides that each council must appoint a proper officer with responsibility for the administration of its financial affairs. The council has resolved that the proper officer is the Head of Finance and Estates.

3.3 The Act also specifies that local authorities must make standing orders with respect to contracts for the supply of goods or materials and the execution of works. The council has adopted Standing Orders for the Regulation of Contracts and Corporate Procurement Procedures to ensure that uniform contracting procedures of the highest standard are laid down for use throughout the council.

3.4 The council has established an Audit and Governance Committee which meets at least four times a year. Its role is to:

- develop a culture within the council of good corporate governance;
- review the council’s systems of internal control, both financial and otherwise, aimed at ensuring that the council’s activities are carried out in an efficient and controlled manner, and that its assets are safeguarded;
- evaluate the council’s control environment, including measures to prevent and detect fraud;
- monitor the independence and effectiveness of internal and external audit.

- 3.5 Fraud and corruption risks are considered as part of the council's corporate risk management arrangements. Key fraud, corruption and bribery risks and controls are entered in the council's corporate risk register and these are monitored on a regular basis.
- 3.6 It is important to stress that the responsibility for the prevention and detection of fraud rests with management, and to this end the council's managers are required to develop systems which incorporate efficient and effective internal controls. These systems contribute towards the prevention of fraud by ensuring that there are sound arrangements to control the following:
- the legitimacy of expenditure;
  - the security of assets and income;
  - the reliability of management information;
  - the accuracy of financial and other records;
  - compliance with statutory requirements.
- 3.7 As part of the council's corporate governance arrangements, heads of service are required to sign an annual anti-fraud and corruption compliance statement affirming that they comply with relevant council policies and that systems and procedures have been developed in their service area which incorporate effective controls which ensure that the risk of fraud and corruption is minimised.
- 3.8 The existence, appropriateness and effectiveness of the council's internal controls is independently monitored on a planned basis by the Audit and Risk Management Unit which undertakes a series of risk based audits on the basis of an Annual Audit Plan which is approved by the Audit and Governance Committee.
- 3.9 The council participates in the National Fraud Initiative (NFI), which is a data matching exercise which matches electronic data between the participating bodies. The aim of the process is to prevent and detect fraud. The council has appointed a senior officer as NFI key contact and uses a risk assessment as the basis for prioritising the investigation of data matches.

#### **4.0 INVESTIGATION AND RECOVERY**

- 4.1 The council's Financial Regulations provide that where any matter arises which involves, or is thought to involve, a fraud or irregularity that affects the affairs of the council, the relevant Head of Service must immediately notify the Head of Finance and Estates.
- 4.2 The Head of Finance and Estates shall ensure that allegations of serious fraud, whether in relation to members or officers, are passed to the Chief Executive who shall consider whether it is appropriate to refer such allegations directly to the police. The Chief Executive may also receive allegations directly. The Chief Executive shall take advice from the Chief Legal Officer and the Head of Finance and Estates as necessary. Relevant considerations are set out in paragraph 4.6.
- 4.3 The Chief Executive has the right to refer any matter to the police, and has sole responsibility for any decision taken.

- 4.4 In the event that it is considered inappropriate to involve the police, the Chief Executive shall consider whether it is appropriate to ask Audit Scotland, the Audit and Risk Manager, or any other appropriate person, to commence an investigation.
- 4.5 Where the Head of Finance and Estates considers that allegations do not warrant the attention of the Chief Executive, he/she shall consider whether it is appropriate to instruct the Audit and Risk Manager to commence an investigation. The Head of Finance and Estates shall take advice from the Chief Legal Officer as necessary.
- 4.6 In deciding whether an allegation is serious, whether an allegation shall be referred to the police, or whether an allegation shall be investigated by the Audit and Risk Manager or any other person, the Head of Finance and Estates or Chief Executive as appropriate, shall consider the following factors. They shall consider whether in the individual circumstances of each case the proposed action is in the public interest, taking into account:
- the nature of the alleged wrongdoing;
  - the scale of the alleged wrongdoing;
  - the duration of the alleged wrongdoing;
  - any evidence provided;
  - whether police action would serve as a deterrent, or whether the non-involvement of the police would send the wrong message to others.
- 4.7 Under certain circumstances the council's insurance policies may require the immediate reporting of a loss to the police. This is delegated to the relevant Head of Service. Under the terms of the council's Financial Regulations, these must also be reported to the Head of Finance and Estates who shall ask the Audit and Risk Manager to consider whether any Audit and Risk Management involvement is required, for example in relation to a review of internal controls.
- 4.8 Investigations by the Audit and Risk Manager are conducted in accordance with the procedures for the investigation of suspected frauds and irregularities issued by the Head of Finance and Estates.
- 4.9 Such investigations are of a fact finding nature and are separate from the disciplinary process which may be invoked by the relevant Head of Service at a later stage.
- 4.10 Officers are required to co-operate fully with an Audit and Risk Management investigation. Any failure to co-operate shall result in the Head of Service considering disciplinary action under the council's disciplinary procedure.
- 4.11 Where an investigation conducted by Audit Scotland, the Audit and Risk Manager, or any other appropriate person, identifies evidence of a criminal offence, either by a member or officer, the Chief Executive shall take advice from the Chief Legal Officer, the Head of Finance and Estates, and Depute Chief Executive where applicable, and shall determine whether the matter should be referred to the police.

In deciding whether police involvement is warranted, the Chief Executive shall consider whether in the individual circumstances of each case a referral to the police is in the public interest, taking into account factors such as:

- the nature of the alleged wrongdoing;
- the scale of the alleged wrongdoing;
- the duration of the alleged wrongdoing;

- the evidence provided;
  - whether police action would serve as a deterrent, or whether the non-involvement of the police would send the wrong message to others.
- 4.12 Where an investigation results in evidence of wrongdoing by an officer of the council, the relevant Head of Service shall consider whether the disciplinary process should be invoked, taking advice from the Head of Corporate Services, and in conjunction with any consideration by the Chief Executive of referral to the police.
- 4.13 Where an investigation results in evidence of a breach of the Councillor's Code of Conduct the Chief Executive shall take advice from the Chief Legal Officer and the Head of Finance and Estates as to whether a referral to the Standards Commission is appropriate.
- 4.14 Where a fraud is material, consideration shall be given to recovering losses in a civil court. The Chief Executive in consultation with the Chief Legal Officer, Head of Finance and Estates and the Head of Service shall determine whether action should be taken to recover any monies lost. In determining whether such action shall be taken, the Chief Executive shall take account of factors such as:
- the amount of the loss;
  - the costs of any recovery action;
  - the prospects of successful recovery of the sums lost.
- 4.15 Under certain circumstances, for example where an officer has left the council's employment as a result of a negligent act or a misappropriation of funds, it may be possible to recover losses by deduction from the pension benefits of that person. The Chief Executive, in consultation with the Chief Legal Officer, Head of Finance and Estates and Head of Service shall determine whether such recovery action shall be taken.
- 4.16 In the event of any member of a professional body leaving the council's service as a result of a fraud investigation, consideration shall be given to informing their professional body. In order to ensure that the employee's rights are fully protected, the Head of Service shall take advice from Human Resources and Legal Services as necessary before any decision is made. The advice provided shall take into account all of the relevant factors as well as the reporting requirements of the professional body.

## **5.0 CONCLUSION**

- 5.1 The council has in place a clear set of systems and procedures to assist it in combating the constant threat of fraud and corruption. The council is determined that these arrangements will be regularly reviewed to ensure that they keep pace with best practice in relation to fraud prevention and detection.
- 5.2 To this end the council maintains a continuous overview of existing systems of control, as well as reviewing on a regular basis all relevant policies, procedures and regulations.

**APPENDIX**  
**DEFINITIONS**

Fraud	The use of deception to obtain a financial gain. Includes the intentional distortion of financial or other records with a view to concealing the theft of assets.
Theft	The taking of property without the consent of the rightful owner.
Corruption	Abuse of office for private gain. Includes the acceptance of a reward to influence the action of any person.
Bribery	The offences under the Bribery Act 2010 of bribing another person or being bribed.
Embezzlement	Fraud or theft committed in relation to money or property which have been entrusted to someone's care.