



MIDLOTHIAN COUNCIL

COUNTER FRAUD AND CORRUPTION POLICY AND STRATEGY

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1.0 INTRODUCTION

- 1.1 In accordance with the principles of good corporate governance in administering public funds, Midlothian Council is fully committed to an effective Counter Fraud and Corruption Policy.
- 1.2 The Council's Counter Fraud and Corruption Policy is designed to:-
- promote an anti-fraud and anti-corruption culture among elected members, employees and the public;
 - deter and prevent fraud and corruption;
 - robustly detect and investigate fraud and corruption, if it does occur;
 - install robust recovery and criminal proceedings;
 - cover the specifics of Housing and Council Tax benefit fraud.

2.0 POLICY STATEMENT

- 2.1 The Council has adopted a local Code of Corporate Governance. The adoption of the Code demonstrates a commitment to the fundamental principles of good corporate governance, namely openness and inclusivity, integrity and accountability. The Code is updated regularly, reviewed annually by Internal Audit, and can be viewed on the Council's website or on the intranet.
- 2.2 The Council is determined that all necessary steps will be taken to ensure that the prevailing culture is one of honesty and integrity and is opposed to all aspects of fraud and corruption.
- 2.3 There is an expectation and obligation 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.
- 2.4 Elected Members 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. Elected Members are made fully aware of the terms of the Code as part of the initial induction process. Breaches of the Code by any Elected Member may give rise to a complaint to the Standards Commission for Scotland.
- 2.5 The Council has a Code of Conduct for Employees which provides employees with clear advice and guidance about their obligations at work. The Disciplinary Code details examples of behaviour considered gross misconduct, and this includes theft, fraud and misrepresentation.
- 2.6 In accordance with the Bribery Act 2010, which came into effect on 1st July 2011, the Corporate Management Team has approved a risk assessment which assists in the compliance with the Act and confirmed appropriate controls. This specific risk assessment is reviewed on a quarterly basis by management.
- 2.7 Employees
- Council employees are important elements in the stance against fraud and

corruption and are positively encouraged to raise any concerns they may have on these issues which impact on the Council's activities. This may be achieved by reporting through Heads of Service, Divisional Directors, Chief Executive or directly to Internal Audit. The Council's Public Interest Disclosure Policy makes specific provision for 'whistle blowing' ie the right to raise concerns by employees within the terms of the Public Disclosure Interest Act 1998 without fear of victimisation for doing so (as long as they are acting in good faith).

2.8 Members of the public

Members of the public are positively encouraged to raise any concerns they may have on fraud and corruption issues which impact on the Council's activities. This may be achieved by reporting concerns via the Council's website under 'Report It, Fraud, Corruption and Whistle Blowing' or directly to Internal Audit (see contact details under 4.2).

2.9 The types of allegations or suspicions, which should be reported for investigation fall into the following broad categories (the list below is for guidance and is not exhaustive and further advice on any matter can be sought from Internal Audit):

Allegations or suspicions in relation to theft, misappropriation or misuse of:

- assets, cash, stores, other property or contracts of the Council or any body where there is a funding relationship with the Council;
- cash, property or other belongings of an employee, where suspicion falls on another Council employee;

and also:

- a criminal offence (eg fraud, stealing from the Council, fraudulently claiming wages, theft from clients);
- failure to comply with any legal obligation (eg the statutory obligation to provide a certain level of care is deliberately ignored);
- miscarriage of justice;
- any theft related to a break-in to Council property;
- conduct by officers of the Council or Members which is unlawful or in breach of the Council's Standing Orders, Financial Regulations, Employee Code of Conduct or other policies;
- corruption or bribery;
- concerns over child protection / the protection of vulnerable adults;
- danger to the health and safety of an individual;
- danger to the environment; or
- deliberate concealment of any of the above.

3.0 **STRATEGY - DETERRENCE AND PREVENTION**

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 and Financial Directives which provide the framework for managing its financial affairs.

3.2 The Act provides that each Council must appoint a 'Proper Officer' with

responsibility for the administration of its financial affairs (ie the s95 Officer). The Council has resolved that the 'Proper Officer' is the Head of Finance and Human Resources and he/she works with other senior managers and Internal Audit in developing the anti-fraud and corruption culture. The Head of Finance and Human Resources is also the Council's nominated Anti-Money Laundering Officer.

- 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 contracts (Standing Order 20) which ensure that uniform contracting procedures of the highest standard are laid down for use throughout the Council.
- 3.4 The Council has a Procurement Policy and Procedures Manual which standardises the methods of procurement within the Council. These are mandatory for all Council employees involved in procurement. A central record of activity across the Council (Tenders, Quotations and Contracts Registers) is held by the Procurement Manager.
- 3.5 The Council has established an Audit Committee which reviews and monitors the following areas of corporate governance:
 - reviewing and promoting the Council's system of internal control, aimed at ensuring that the Council's activities are carried out in an efficient and controlled manner, and that its assets are safeguarded;
 - evaluation of the Council's control environment, including measures to prevent and detect fraud;
 - evaluation of the Council's risk management framework including regular reviews of the Council's high risks and corporate risk register; and
 - scrutiny of the Counter Fraud and Corruption Policy.
- 3.6 It is important to stress that the responsibility for the prevention and detection of fraud and corruption rests with management, and to this end the Council's managers have developed systems and procedures which incorporate efficient and effective internal controls. These systems contribute towards the prevention of fraud and corruption 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; and
 - compliance with statutory requirements including the Bribery Act 2010.
- 3.7 Each Head of Service has registered in the performance management system a risk of fraud, waste and error and these risks are reviewed under quarterly performance reporting.
- 3.8 The Corporate Risk Management Group has created a Fraud Risk Working Group to regularly assess risk in key areas.
- 3.9 The existence, appropriateness and effectiveness of these internal controls are independently monitored on a planned basis by Internal Audit which undertakes

a series of systems and risk based audits on the basis of a predetermined annual audit plan which is approved by the Audit Committee.

- 3.10 The Corporate Management Team regularly assesses the risk in relation to compliance with the Bribery Act 2010.
- 3.11 Internal and External Audit liaise regularly in terms of 'Fighting Fraud Locally - The Local Government Fraud Strategy'. This entails developing partnerships with other bodies and accessing various fraud alerts.

4.0 FRAUD RESPONSE PLAN

- 4.1 Where any matter arises which involves, or is thought to involve, a fraud, corruption or financial irregularity, the relevant Head of Service / Divisional Director must immediately notify the Internal Audit Manager for consideration of appropriate action. Managers must only establish the basic facts of the suspicion and should not attempt to carry out any detailed investigation themselves.
- 4.2 Good advice at an early stage is the key step to achieving a successful outcome when fraud is suspected. Investigations that are badly handled can lead to potential prosecutions failing. The Council provides mechanisms for members of the public and employees to contact the Internal Audit Manager to report any suspected frauds, corruption and irregularities.

This can be done in a number of ways, including:

- Use of the e-mail link InternalAudit@midlothian.gov.uk;
 - Telephone the Internal Audit team on 0131 271 3284 or 3285;
 - Write a confidential letter to the Internal Audit Manager, Corporate Resources Division, Midlothian House, Buccleuch Street, Dalkeith, EH22 1DN;
 - Fill out a report (anonymously if desired) via the Council's website under 'Report It, Fraud, Corruption and Whistle Blowing';
 - Book a confidential appointment with the Internal Audit Manager on 0131 271 3284; and
 - If the concern is about an elected member of the Council, the individual may wish instead to exercise their right to contact the Standards Commission for Scotland website: www.standardscommissionscotland.org.uk. The individual may wish to inform the Internal Audit Manager of this course of action.
- 4.3 Where Internal Audit is satisfied that a matter will be investigated appropriately, the responsibility can be discharged to the Service.
 - 4.4 Where the nature of the investigation requires specialist skills which are not available in the Service or an element of independence for the investigator or the investigation is of a scale which cannot be managed by the Service, Internal Audit will reserve the right to carry out the investigation. This will include investigations where initially it has been agreed to allow the Service to do the preliminary work. It may on occasion be appropriate for Internal Audit not to pass information and evidence of fraud to the Service at an early stage.

- 4.5 Suspected fraudulent claims in relation to Housing and Council Tax Benefit are investigated by the Revenues Manager, Security and Systems.
- 4.6 The investigation, undertaken by Internal Audit, will:-
- establish the facts as far as possible;
 - identify any control weaknesses;
 - recommend control improvements, where required;
 - provide management with a written, factual report into the incident; and
 - record information for fraud statistics.
- 4.7 A summary of all reported suspicions will be presented to the Audit Committee and External Audit on an annual basis by the Internal Audit Manager. Significant matters will be reported to the Audit Committee as soon as is reasonably practicable.
- 4.8 Investigations into suspected wrongdoing of employees will be investigated within the standards and provisions set out in the relevant Disciplinary Procedure. Advice can be sought from Human Resources.
- 4.9 The Revenues Manager, Security and Systems is responsible for planning and coordinating the Council's participation in the National Fraud Initiative which is a comprehensive data matching exercise between public sector bodies to highlight potential frauds in respect of: Housing and Council Tax Benefits, Payroll, Social Care, Blue Badge, Housing and Insurance etc.
- 4.10 Where appropriate, the Council co-operates with other local authorities and public sector bodies in the prevention, detection and investigation of fraud and corruption.

5.0 RECOVERY AND CRIMINAL PROCEEDINGS

- 5.1 Where the investigation reveals that criminal activity appears to have taken place, the Internal Audit Manager, in consultation with the relevant Divisional Director, will determine whether the matter should be referred to the Police.
- 5.2 Where an incident involves a break-in or theft, staff should automatically report the incident to the Police for investigation and without delay.
- 5.3 Where a fraud, corrupt act or irregularity is material, consideration is also given to recovering losses in a civil court. The relevant Divisional Director, in consultation with the Internal Audit Manager and the Head of Customer Services will determine whether action should be taken to recover any monies lost. In determining whether such action shall be taken, due account will be taken of all the salient factors, such as:
- the amount of the loss;
 - the costs of any recovery action; and
 - the prospects of successful recovery of the sums lost.
- 5.4 The Council will consider publicising successful fraud and corruption

prosecutions as a deterrent to potential fraudsters and to demonstrate its commitment to protect public monies. This decision is made by the Chief Executive, in liaison with the relevant Divisional Director. Any publicity will be progressed through the Communications Manager.

Any potential criminal proceedings need to take account of Article 6 of the European Convention of Human Rights which states 'Essentially there should be no undue delay in carrying out investigations as this may leave the case open to challenge in a Criminal court.'

6.0 HOUSING AND COUNCIL TAX BENEFIT FRAUD

- 6.1 Midlothian Council provides facilities for members of the public and employees to contact the Benefit Fraud Team to report anyone who is thought to be committing benefit fraud. This facility can be found on the Council's website, under 'Report It' and 'Benefits and Council Tax' and 'Report Benefit Fraud'.
- 6.2 Where it is clear that an offence has been committed against Midlothian Council by a customer or third party and there is sufficient grounds and corroborative evidence in support of this, the Council will consider applying an appropriate sanction against that person.
- 6.3 Where the offence is committed by a Midlothian Council employee, the Revenues Manager, Security and Systems, will make a recommendation to the employee's Head of Service that a disciplinary investigation is carried out.
- 6.4 Whilst investigating allegations into Housing Benefit and Council Tax Benefit, Midlothian Council will also investigate possible offences relating to some Department for Work and Pensions (DWP) benefits. Investigations may take place jointly with the DWP or solely by Midlothian Council.
- 6.5 There are two options available to Midlothian Council as an alternative to Referral to the Procurator Fiscal, as summarised below:
- **Administrative Caution** - An Administrative Caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed and admitted an offence. A caution will only be considered where there is sufficient evidence to justify institution of criminal proceedings. In order to offer an Administrative Caution, the customer accused must have admitted the offence during an Interview under Caution. An Administrative Caution is likely to be offered for less serious offences where there is a small overpayment.
 - **Administrative Penalty** - An Administrative Penalty is offered to someone as an alternative to prosecution. The penalty is calculated at 30% of the total overpayment amount. The guidelines for Administrative Penalties are set out in Section 115A of the Social Security Administration (Fraud) Act 1997.
- 6.6 In determining what sanction to apply, the Council will make reference to the Crown Office Guidelines for Specialist Reporting Agencies and the Crown Office and Procurator Fiscal Service Prosecution Code. These detail what

Specialist Reporting Agencies should consider before referring a case to the Procurator Fiscal.

6.7 The following list of factors will be considered when deciding to refer a case to the Procurator Fiscal:

A fraud:

- has continued over a long period of time;
- was calculated and deliberate;
- was perpetrated with conspiracy between parties;
- was committed by an employee from Midlothian Council; and
- was committed by a Landlord or Employer.

6.8 The above list is not exhaustive or exclusive and each case would be judged on its own merits, which will involve considering all aspects of the case over a range of criteria with no single factor being decisive.

6.9 In considering whether referral to the Procurator Fiscal is appropriate, consideration will also be given to other factors that may include:

- exceptional mitigating circumstances;
- that it is not in the public interest to prosecute;
- the person involved is terminally ill.

6.10 Decisions regarding which sanction to apply are the responsibility of the Revenues Manager, Security and Systems in conjunction with the Head of Customer Services. They will consider which, if any, sanction should be applied and make their decision in accordance with this policy. Cases which are jointly investigated with the DWP will also involve the Fraud Manager from the DWP.

6.11 Any potential criminal proceedings need to take account of Article 6 of the European Convention of Human Rights which states 'Essentially there should be no undue delay in carrying out investigations as this may leave the case open to challenge in a Criminal court.'

6.12 As a rule, the Council will always seek to publicise successful fraud prosecutions as a deterrent to potential fraudsters and to demonstrate its commitment to protect public monies. In all cases, full details will be publicised of the offender.

6.13 Details of successful prosecutions, Administrative Cautions and Administrative Penalties will be reported to the DWP for the purpose of maintaining "one strike" and "two strikes" data.

7.0 CONCLUSION

7.1 The Council has in place a clear set of systems and procedures to assist it in combating the 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 and corruption prevention and detection.

7.2 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.