



NORTH DEVON COUNCIL

**ANTI-FRAUD, CORRUPTION and BRIBERY
POLICY and STRATEGY**

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1. INTRODUCTION

- 1.1 This document sets out the non-tolerance position held by North Devon Council (the "Council") on fraud, corruption and bribery.
- 1.2 The objectives of an Anti-Fraud, Corruption and Bribery Policy and Strategy are to:
- Provide a clear statement of the Council's position on fraud, corruption and bribery;
 - Minimise the risk to the Council's good name and assets;
 - Promote a culture of integrity and accountability in Members, officers and all those with whom the council does business;
 - Enhance existing procedures aimed at preventing, discouraging and detecting fraud, corruption and bribery; and
 - Raise awareness of the risk of fraud, corruption and bribery being perpetrated against the Council.
- 1.3 The council is committed to discouraging, preventing and detecting fraud, corruption and bribery where attempted on, or from within, the Council's organisation.
- 1.4 The policy applies to all staff and Members of the Council. It should be noted that 'Members' include both elected and co-opted members who may be appointed from time to time to sit on panels or committees. Likewise 'staff' includes all full and part-time staff and permanent, temporary and agency staff.
- 1.5 The Council expects Members and staff at all levels to be aware of the standards of conduct expected of them and the procedures designed to reduce the risk of fraud, corruption and bribery occurring.
- 1.6 Members and staff are responsible for their own conduct and compliance with this strategy is required to comply with their respective codes of conduct.
- 1.7 There is an expectation and requirement that individuals, suppliers and organisations associated in whatever way with the council will act with integrity, and that Members and staff will lead by example in these matters.
- 1.8 The policy and strategy is designed to protect the Council through:
- Encouraging prevention;
 - Promoting detection; and
 - Identifying clear pathways for investigation
- 1.9 To combat fraud and corruption the Council's strategy is based on a series of comprehensive procedures. These cover:

- Risk management (section 3);
- External scrutiny (section 4);
- Reporting and action (section 5);
- Prevention and controls (section 6);
- Detection and investigation; (section 7);
- Reporting process (section 8);
- Sanctions and redress (section 9);
- Training (section 10) and
- Publicity (section 11)

1.10 There is an inter-relationship between the strategy and other existing Council policy documents. These include:

- Financial Procedure Rules;
- Contract Procedure Rules;
- Hospitality Registers;
- Codes of Conduct for members and officers (see Constitution);
- The Disciplinary Procedure; and
- Whistle-blowing Code of Practice.

1.11 Whilst the general principles outlined in this strategy apply to all areas of the Council's operations, it should be noted that more specific procedures are already in place in respect of the prevention, detection and investigation of benefit fraud.

2. DEFINITION OF FRAUD, CORRUPTION and BRIBERY

2.1 The Council is committed to an efficient and effective Anti-Fraud, Corruption and Bribery Policy designed on prevention, facilitating its detection and identifying means of investigation and remedial measures.

2.2 The Fraud Act 2006 came into force on 15 January 2007 and introduces a general offence of fraud, which may be committed in three ways (see sections 2-4 of the Act):

(a) Fraud by false representation

A person is guilty of an offence if he/she dishonestly makes a false representation with the intention of making a gain or causing a loss or risk of loss to another.

A representation is false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading. Representation means any representation as to fact or law, including a representation as to a person's state of mind. A representation may be expressed or implied, and can be stated in words or communicated by conduct; so it could be written, spoken or posted by electronic means.

(b) **Fraud by failing to disclose information**

A person commits an offence under this heading if they dishonestly fail to disclose to another person information which he/she is under a legal duty to disclose, and they intend, by failing to disclose the information to make a gain for themselves or another, or to cause a loss to another or, expose another to a risk of loss.

(c) **Fraud by abuse of position**

A person commits an offence if he/she occupies a position in which they are expected to safeguard, or not to act against, the financial interests of another person, dishonestly abuses that position and intends, by means of abuse of that position, to make a gain for themselves or another, or to cause the loss to another or to expose another to a risk of loss.

2.3 There is some overlap with existing offences such as theft, and forgery and counterfeiting, but the Fraud Act sets out to outlaw activities which previously may not have been the subject of criminal sanction.

2.4 The Serious Fraud Office has defined “fraud” as “abuse of position, or false representation, or prejudicing someone’s rights for personal gain.”

CORRUPTION

2.5 The concept of ‘corruption’ is not now a legal one, and the expression is not used or defined in current legislation. In general, however, it is commonly understood to mean the abuse of entrusted power for personal gain.

BRIBERY

2.6 Bribery is not specifically defined within UK law. Black’s Law Dictionary defines it as the offering, giving, receiving or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty.

2.7 The Bribery Act 2010, which came into force on 1 July 2011, replaced and expanded upon earlier legislation. The Act does not attempt a specific definition of bribery but instead sets out a number of scenarios where offences will arise.

2.8 By their very nature, offences of bribery will often involve or occur within public sector organisations.

SECTION 1

2.9 A person commits an offence in the following cases:

Case 1 is where the person offers, promises or gives a financial advantage to another person, and intends the advantage to induce a person to perform improperly a relevant function or activity or to reward such improper performance.

Case 2 is where the person offering, promising or giving the financial or other advantage to another person knows or believes that the acceptance of the advantage itself constitutes the improper performance of a relevant function or activity.

SECTION 2

2.10 A person is guilty of an offence in the following cases:

Case 3 is where a person requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity is performed improperly

Case 4 is where a person requests, agrees to receive or accepts a financial or other advantage and the request, agreement or acceptance itself constitutes the improper performance by that person of a relevant function or activity.

Case 5 is where a person requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance, whether by that person or another, of a relevant function or activity

Case 6 is where, in anticipation of or in consequence of a person requesting, agreeing to receive or accepting financial or other advantage, a relevant function is performed improperly by that person, or by another person at that person's request or with that person's assent or acquiescence

SECTION 6

2.11 This section of the Act deals specifically with bribery of foreign public officials who are involved with decision making in publicly funded business transactions. An offence could be committed in much the same manner as in Sections 1 and 2 above, except that the inducements will be aimed at the improper performance of the functions of the foreign public official.

IMPROPER PERFORMANCE

- 2.12 Improper performance is essentially defined as performance which breaches a relevant expectation that a person will act in good faith, impartially, or in accordance with a position of trust. A failure to perform a function or activity may constitute improper performance where the failure itself is a breach of a relevant expectation.

3. RISK AREAS

- 3.1 Risk, in the context of fraud, corruption and bribery is the vulnerability to which an organisation may be exposed. It combines the probability of occurrence and the corresponding impact usually in monetary terms. Whilst in theory it is desirable to eliminate risk, in practice the aim is to minimise the probability and to reduce the size of any consequential losses. Preventative controls and the creation of the right type of corporate culture tend to reduce the likelihood occurring while detective controls and effective contingency planning can reduce the size of any losses.
- 3.2 Areas, which most commonly encounter fraud, include those involving the handling of any asset of an attractive and portable nature. The high risk areas include, but are not limited to:

• Cash / cheques	• Housing and council tax benefits and discounts
• Car loans	• Loans and investments
• Income	• Payroll
• Contracts / procurement	• Grants
• Payments	• Stores
• Travel and expense claims	• Credit cards
• Recruitment	• Sickness and working elsewhere
• Time sheets / working hours	• Overtime claims

- 3.3 Areas where corrupt practices or bribery may be found may include, but are not limited to:

• Award of permission, planning consents and licenses	• Canvassing for appointments
• Hospitality	• Interests of Members and Officers
• Secondary employment of staff, which may influence their work at the authority	• Tendering and award of contracts
• Settlement of contractors' final accounts and claims	• Disposal of assets
• Disposal of assets	• Award of grants and benefits

4. EXTERNAL SCRUTINY

4.1 The Council is aware of the high level of external scrutiny of its affairs by a variety of bodies and including:

- Local tax payers;
- Pressure groups;
- Service users;
- Local press;
- The Council's external auditors
- Government Departments and Agencies;
- HM Revenue and Customs;
- Local Government Ombudsman.

4.2 The adoption of a formal anti-fraud, corruption and bribery strategy will provide a degree of assurance to those external bodies and individuals interested in the Council's functions and activities.

5. REPORTING AND ACTION

5.1 Members and officers are positively encouraged to report or, raise any concerns they may have regarding actual or suspected fraud, corruption or bribery whether it relates to dishonest behaviour by members, staff or others.

5.2 Staff should normally raise their concerns with their Line Manager, or Head of Service who will ensure that such concerns will be treated seriously, in confidence and properly investigated. If necessary a route via the Chief Executive, Chief Finance Officer, Monitoring Officer and Internal Audit is also possible.

5.3 Members should raise their concerns with the Chief Executive, Monitoring Officer or Chief Finance Officer.

5.4 The Council has a separate policy and procedure the ***Council's Whistleblowing Policy 2019***, which is a further route where Members and staff can bring areas of concern to the attention of management.

5.5 If a "tip off" is received from a member of the public by any member or officer it must be reported to the Chief Finance Officer.

5.6 Once a manager has been made aware of a suspected or alleged incident of fraud, corruption or bribery they must act promptly, impartially and adopt defined procedures.

5.6.1 Protection of the identity of individual(s) – both those reporting the incident and those suspected

5.6.2 Record accurately and secure all evidence received

5.6.3 Ensure that evidence is sound and adequately supported

- 5.6.4 Notify the Chief Finance Officer, Monitoring Officer or Chief Executive
- 5.6.5 Implement the Council's ***Disciplinary Procedure*** where appropriate.
- 5.7 The Chief Executive, Monitoring Officer or Chief Finance Officer shall make complaint to the Council's Ethics Committee in the event of allegations of fraud, corruption or bribery against a Member.
- 5.8 Where investigation reveals evidence of suspected criminal activity with regard to fraud, corruption or bribery the Chief Finance Officer in consultation with the Chief Executive and Monitoring Officer may refer the matter to the police or other relevant enforcement authority. Contact with the police or other enforcement authority will be co-ordinated by the Chief Finance Officer.
- 5.9 If a case involves action against any individual this will be agreed between the Chief Executive, Chief Finance Officer and Monitoring Officer. The Council will use all reasonable endeavours to recover money or assets misappropriated.
- 5.10 Any member or officer raising malicious allegations knowing them to be unfounded will, in the case of a member, reported be to the ***Ethics Committee*** or, in the case of an officer, be dealt with via the ***Council's Disciplinary Procedure***.

6. PREVENTION AND CONTROLS

- 6.1 The Council's Chief Finance Officer appointed under S.151 of the Local Government Act 1972 has the responsibility for the proper administration of the Council's financial affairs. This includes all aspects of the arrangements for the anti-fraud, corruption and bribery. The Chief Finance Officer will on a risk basis make informed judgements about the levels of budgetary investment in work to counter fraud, corruption and bribery.
- 6.2 It is the responsibility of the Chief Finance Officer to maintain an effective system of internal audit.
- 6.3 The Audit Committee is responsible for measuring the adequacy of the Council's risk management framework and the associated control environment. It is also charged with ensuring that Council's arrangements for Corporate Governance are robust and comply with best practice.
- 6.4 The Council is audited externally, which includes a review of the Council's arrangements for preventing and detecting fraud, corruption and bribery.

- 6.5 Other means of preventing fraud, corruption and bribery occurring include the following:
- (i) The Council's Recruitment and Selection process requires that written references should be obtained when recruiting staff externally so as to prevent those with any history of dishonesty being employed in positions of trust. There is also a requirement for DBS disclosures for specific posts.
 - (ii) Officers are required to follow the Officer Code of Conduct as set out in the Council's Constitution and the standards set by professional bodies or qualifications, and additionally their conduct is expected to be of the highest possible standard.
 - (iii) The Members Code of Conduct, as set out in the Council's Constitution, specifies the recommended standards of conduct for Members.
 - (iv) **The Council's Whistleblowing Policy 2019** protects persons with genuine concerns which they wish to report but feel that they cannot follow "normal" channels.
 - (v) **Contracts Procedure Rules and Financial Procedure Rules** as set out in the Council's Constitution prescribe the processes to be followed to ensure adequate financial controls are in place.
 - (vi) Access to Information Rules provide for member decisions to be made in an open and accountable manner.
- 6.6 Chief Officers, Heads of Service and all Managers have responsibility for ensuring that sound financial controls exist within their areas of responsibility and that staff are suitably supervised to ensure that the controls are adhered to. Individual officers and members are responsible for observing these rules and procedures.

7. DETECTION AND INVESTIGATION

- 7.1 Preventative systems, particularly internal control systems, within the Council have been designed to provide indicators of any fraudulent activity. Generally, they should be sufficient in themselves to deter fraud.
- 7.2 It is often the alertness of members, employees and the public to such indicators that enable detection to occur and the appropriate action to take place when there is evidence that fraud or corruption may be in progress.

- 7.3 Other methods of detection will be employed, on a risk basis, by those officers of the Council authorised to do so e.g. internal audit.
- 7.4 These methods will include analytical techniques and the sharing of information, within data protection rules, with other agencies both locally and nationally. Examples of bodies involved in sharing such intelligence and data are the Audit Commission, National Fraud Initiative and Benefits Agency.
- 7.5 Where it is considered that further investigation may be required the position must be discussed with the Chief Finance Officer and/or the Monitoring Officer. It will be these officers' decision as to whether full investigation is required and, if so, by whom (see below).
- 7.6 If a member or a member of the public raises the concern then the manager receiving the concern must immediately report the concern to the Chief Finance Officer or (in his absence) the Monitoring Officer. Either of these officers will undertake initial enquiries to ascertain whether further investigation is needed and, if so, the format it will take. The enquiries will be dealt with promptly, impartially and confidentially.

Subsequent Steps

- 7.7 Once the initial assessments of the situation are completed and the Chief Finance Officer or Monitoring Officer aware of the concerns and the results of the initial enquiries then they will decide whether a full investigation is necessary. If so, then the Chief Finance Officer or Monitoring Officer may choose one or more of the following avenues:-
- initially assess whether there is a need for any employee to be suspended in accordance with the ***Council's disciplinary procedure***
 - if a member is involved to decide whether the ***Ethics Committee*** should be informed;
 - identify a course of action ie. whether, the matter will be investigated by:
 - management
 - audit
 - through the disciplinary process; or
 - be referred to the Police; or
 - be referred to External Audit; or
 - be subject to an independent inquiry; or
 - other.
 - if relevant, identify the reporting process; and

- bring the matter to the attention of the Leader of the Council when fraud or corruption is evident and, if appropriate, to the Chairman of Overview and Scrutiny Committee.
- 7.8 Depending on the nature and anticipated extent of the allegations, the Internal Audit service will normally work closely with senior management and other agencies such as the police and ensure that all allegations and evidence is properly investigated and reported upon.
- 7.9 There is a duty to report all frauds over £10,000 to the external auditors. The Chief Finance Officer or Monitoring Officer will carry this out, at the earliest opportunity.
- 7.10 The experts at investigating fraud are the Police, who may also advise on the likely outcome of any intended prosecution. The Chief Finance Officer or Monitoring Officer following discussion with the investigator and the Chief Executive will make initial contact with the Police. It is the policy of the Police to welcome early notification of suspected fraud.
- 7.11 If the Police decide that formal investigation is necessary, all staff should co-operate fully with any subsequent requests or recommendations. All contact with the Police following their initial involvement will usually be via the Chief Finance Officer or Chief Executive or Monitoring Officer.
- 7.12 The Authority will normally wish the police or other enforcement authority to independently prosecute offenders where financial impropriety is discovered. The Council will also reserve the right to undertake civil action when appropriate.
- 7.13 Where the Police decide to formally investigate, this may prejudice any internal disciplinary procedures; the way forward in these circumstances should be discussed with the Police to ensure a mutually acceptable procedure is followed.
- 7.14 Officers or members may use the ***Council's Whistleblowing Policy 2019*** to raise any concerns they may have in confidence and anonymously should they so wish.

8 REPORTING PROCESS

Interim Report

- 8.1 As soon as any initial 'detection' stage of an investigation within the control of the Council has been completed, an interim confidential report, which may be verbal, but is more likely to be in a written format, should be made by the Investigator to the Chief Finance Officer and/or Monitoring Officer. The Interim Report should set out:-

- the findings to date;
- the interim conclusions drawn from those findings; and
- should seek approval either to:

- (a) continue the investigation if this is appropriate;
- (b) refer the matter to the Police or External Auditor; or
- (c) discontinue the investigation due to insufficient evidence.

8.2 If it is decided to continue the investigation then any changes to the reporting arrangements or the planned action should be confirmed.

Final Report

8.3 This report will supersede all other reports and be the definitive document on which management (in a disciplinary situation) and, possibly, the Police or External Auditor (in the event that the matter has not been referred to them earlier) will base their decisions.

8.4 The format of the Final Report will not always be the same as each case is unique, but will frequently set out:-

- how the investigations arose;
- who the suspects are/were;
- their position in the Council and their responsibilities;
- how the investigation was undertaken;
- the facts and evidence which were identified; and
- summary of findings and recommendations, both regarding the fraud or corruption itself and any additional work required on the system weaknesses identified during the investigation.

Outcomes

8.5 Likely outcomes following any Council, Police or External Auditor investigation under this procedure are:-

- Criminal Prosecution;
- Civil Action;
- Implementation of Disciplinary Proceedings (under Disciplinary Procedure);
- Action by the Ethics Committee
- Exonerate person(s) concerned; or
- Take no further action.

Confidentiality

8.6 All proceedings under this procedure shall, as far as possible, remain confidential.

Defamation

- 8.7 All reports must be substantiated by relevant evidence and avoid contents that could be considered to be defamatory in the event of the report being made public.
- 8.8 Defamatory statements are those which comprise imputations likely to lower a person in the estimation of right-thinking persons, or which injure a person's reputation by exposing them to hatred, contempt or ridicule, or are intended to make a person be shunned or avoided.

9 SANCTIONS and REDRESS

- 9.1 The ***Council's Disciplinary Procedures*** will be used where the outcome of the investigation indicates the improper behaviour of staff.
- 9.2 Sanctions recommended by the ***Ethics Committee*** for members would follow a breach of the Members Code of Conduct
- 9.3 For both staff and Members in cases where financial impropriety is discovered, the Council will normally wish the police and Crown Prosecution Service to assess the evidence and make the decision to prosecute or not.
- 9.4 The Council will always seek to recover any losses incurred as a result of fraud, corruption or bribery, wherever this is practical, including use of civil law if appropriate. Losses will be calculated using a professional statistical methodology for making accurate estimates, building in a proper level of independent valuation as required.
- 9.5 The Insurance Unit should be informed of any losses at the earliest possible stage, together with details of the position appertaining and any anticipated recovery action. However, the Chief Finance Officer must approve any claim upon the Council's insurance.
- 9.6 Acceptance of any offered settlement of any loss from a person under investigation should only be accepted upon the following terms:
- the Council reserve the right to take any further action it may wish in respect of the situation;
 - acceptance relates only to losses identified at the time of any acceptance;
 - the Council reserves the right to seek recovery of further losses which may be revealed at a later date.

10 TRAINING

- 10.1 The Council recognises that the continuing success of its Anti Fraud, Corruption and Bribery Strategy and its general credibility will depend largely on the effectiveness of programmed training and responsiveness of staff throughout the organisation.
- 10.2 To facilitate this, the Council supports the concept of induction and training, including for staff involved in internal control systems to ensure that their responsibilities and duties are regularly highlighted and reinforced.
- 10.3 The possibility of disciplinary action against staff, who wilfully ignore such training and guidance is clear.
- 10.4 Investigation of fraud and corruption centres on the Council's Internal Audit Service. It is, therefore, apparent that staff involved in this work should also be properly and regularly trained in all aspects of it. The training plans of audit staff should therefore reflect this requirement.

11 PUBLICITY

- 11.1 Methods of publication of this strategy will be sought with the clear goal of ensuring that all staff and Members are aware of the zero tolerance culture and targeting those officers in areas of high risk of fraud loss. Some examples of where this will be achieved are via:
 - The Council's website;
 - Externally through the Council's publications;
 - The Council's intranet;
 - Staff and Members' newsletters
 - Promoted through team meetings
 - Notice boards
 - Occasional reminders to staff and Members

12 POLICY REVIEW

- 12.1 The council has in place a clear network of systems and procedures to assist in the fight against fraud and corruption. It is determined that these arrangements will keep pace with any future developments in both preventative and detection techniques regarding fraudulent or corrupt activity that may affect its operation.
- 12.2 To this end, the Council maintains a continuous overview of such arrangements; through, in particular, its Chief Finance Officer, and its Internal and External Auditors.