

Anti Bribery Policy

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Essex County Council

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Introduction

The Bribery Act 2010 became law on 1st July 2011 and has been enacted to enable robust action to be taken against such activity. Essex County Council is committed to protecting the public purse and the services it provides from being abused. We have a zero-tolerance approach towards bribery and promote the prevention, deterrence and detection of bribery.

What is bribery?

Bribery is defined 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. The act of bribery is the intention to gain a personal, commercial, regulatory or contractual advantage.

Facilitation payments

Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions. These are not tolerated and are illegal.

Policy statement

Essex County Council is committed to the prevention, deterrence and detection of bribery.

Essex County Council commits to:

- Making all employees aware of their responsibilities to adhere strictly to this policy at all times
- Training all employees so that they know what the council expects
- Encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.
- Rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution.
- Taking firm and vigorous action against any individual(s) involved in bribery.
- Provide information to all employees to report breaches and suspected breaches of this policy.
- Include appropriate clauses in contracts to prevent bribery and deal with the consequences if it occurs.

Objective of this policy

This policy provides a clear and consistent framework for employees of Essex County Council to ensure compliance with the law. This policy details the types of offences within the Bribery Act 2010 and in conjunction with related policies and key documents provides guidance to staff and members should they identify a potential offence.

This policy is not meant to change the requirements of our Gifts and Hospitality policy or the ECC Member Code of Conduct. All staff must comply with the Officer Gifts and Hospitality Policy. All Members must comply with the ECC Member Code of Conduct.

Scope of this policy

This policy applies to all of Essex County Council's activities and all personnel (permanent and temporary employees, agency staff, volunteers, consultants and Members including independent members).

HM Government published the UK Anti-Corruption Plan in December 2014, putting in place new arrangements requiring local authorities in England to adopt a Code of Conduct compliant with the seven 'Nolan' principles of standards of public life; selflessness, integrity, objectivity, accountability, openness, honesty and leadership. All local authorities are also required by the Localism Act 2011 to put in place arrangements for investigating allegations that Members have failed to comply with the ECC Member Code. Failure to comply with the code could lead to the Member being censured.

In response to this requirement, ECC have established a Joint Standards Committee with the Essex Fire Authority. The Committee have put in place procedures and approved processes for investigating allegations relating to Members.

For partners, joint ventures and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for Essex County Council or under its control. All staff are required to avoid activity that breaches this policy.

We require that all employees and members:

- read, understand and comply with this policy
- raise concerns as soon as possible if it is believed or suspected that a conflict with this policy has occurred, or may occur in the future.
- act honestly and with integrity at all times and safeguard Essex County Council's resources for which they are responsible
- comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Essex County Council operates, in respect of the lawful and responsible conduct of activities

As well as the possibility of civil and criminal prosecution, employees breaching this policy will face disciplinary action, which could result in dismissal in cases of gross misconduct.

Key points of the Bribery Act 2010

There are four key offences under the Act:

Section 1 Offence of bribing another person:

This section makes it an offence when a person:

- Offers, promises or gives a financial or other advantage to another person and intends the advantage to induce a person to perform improperly a relevant function or activity or to reward a person for the improper performance of such a function or activity or
- Offers, promises or gives a financial or other advantage to another person and knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity

Section 2 Being bribed

This section makes it an offence when a person:

- Requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly
- Requests, agrees to receive or accepts a financial or other advantage and the request, agreement or acceptance itself constitutes the improper performance of the person of a relevant function or activity
- Requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance of a relevant function or activity; or
- In anticipation of or in consequence of the person requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly

Section 6 Bribery of foreign public officials

Under this section an offence is committed where a person:

- Intends to influence a foreign official in their official capacity and intends to obtain or retain business or an advantage in the conduct of business; or
- Offers, promises or gives any financial or other advantage to a foreign public official

Section 7 Failure of commercial organisation to prevent bribery

A relevant commercial organisation is guilty of an offence:

- If a person associated with the organisation bribes another person intending to obtain or retain business for the organisation or to obtain or retain an advantage in the conduct of business for the organisation and the organisation fails to take reasonable steps to implement adequate procedures to prevent such activity

Are we a “commercial organisation”?

Essex County Council is a commercial organisation for the purposes of the Bribery Act 2010.

What are ‘adequate procedures’?

In the first instance it is for each organisation to determine procedures which it considers proportionate. Ultimately, if bribery occurs, a court will decide whether the procedures are adequate

In determining procedures we need to have regard to the following six principles which are set out in guidance produced by the Department of Justice:

Proportionate procedures

An organisation’s procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation’s activities. They are also clear, practical, accessible, effectively implemented and enforced.

Top level commitment

The top-level management (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

Risk assessment

The organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.

Due diligence

The organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

Communication (including training)

The organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

Monitoring and review

The organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

Essex County Council is committed to proportional implementation of these principles.

Public contracts and failure to prevent bribery

Under the Public Contracts Regulations 2015 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. However, Essex County Council has the discretion to exclude organisations convicted of this offence.

Penalties

An individual guilty of an offence under sections 1, 2 or 6 is liable:

- On conviction in a magistrates court, to imprisonment for a maximum term of 12 months (six months in Northern Ireland), or to a fine not exceeding £5,000, or to both
- On conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both

A person guilty of an offence under section 7 is liable on conviction on indictment to a fine.

How do I raise a concern?

Essex County Council ensures that all of us have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff to know how they can raise concerns.

We all have a responsibility to help detect, prevent and report instances of bribery. If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

Employees who raise concerns or report wrongdoing (eg that they have been offered a bribe or who have been asked to bribe a third party) can understandably be worried about whether there will be repercussions. We aim to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if those concerns turn out to be mistaken.

We are committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith.

There are multiple channels to help you raise concerns. These are set out in Appendix A to the Council's Whistleblowing policy:

http://intranet.essex.gov.uk/Documents/Whistleblowing_policy.pdf

In the rare event that internal disclosure proves inappropriate, concerns can be raised with the Police. Raising concerns in these ways may be more likely to be considered reasonable than making disclosures publicly (e.g. to the media).

Concerns can be anonymous. In the event that an incident of bribery, corruption, or wrongdoing is reported, we will act as soon as possible to evaluate the situation. We have

clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind. This is easier and quicker if concerns raised are not anonymous as enquiries can be made to ensure the allegation is correctly interpreted.

What should you do if someone reports a concern to you?

Senior officers in the service that has been affected by suspected fraud or corruption are responsible for the initial enquiries, in such circumstances it is imperative that they refer to the guidance '*Fraud Response Plan for Managers*'.

http://intranet.essex.gov.uk/Documents/GUIDE_Fraud_Response_Plan_for_Managers.pdf

They may choose to request the assistance of Internal Audit, who have a dedicated Counter Fraud Team with specialist skills and experience in investigating fraud or corruption. In any event, **the Head of Internal Audit and Counter Fraud must be told about any suspected irregularities immediately when they become apparent** and may instruct the Counter Fraud Team to investigate further if necessary.

Peter Tanton – Head of Internal Audit and Counter Fraud (phone: 03330 138445) or e-mail peter.tanton@essex.gov.uk

Alternatively, referrals may be made via Expolink - an external agency that operates a Whistleblowing hotline on behalf of the Council - contact telephone number 0800 374199 or via e-mail – essexcc@expolink.co.uk. It is answered by trained personnel. Anonymous referrals may be made via this route.

If you have any questions about these procedures, please contact Karen Bellamy (Counter Fraud Manager) on 03330 138420.

Useful links

The Bribery Act
[Bribery Act 2010](#)

Bribery Act statutory guidance
<http://www.cipfanetworks.net/fileupload/upload/briberyact2010guidance142011261754.pdf>

Guidance published by Public Concern at Work, a charity which aims to provide support in this area:

[Public Concern at Work - Making Whistleblowing Work - 0207 404 6609](#)

Department for Business Innovation and Skills (Blowing the whistle to a prescribed person)
http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/@employ/documents/digitalasset/dg_177605.pdf

HM Government UK Anti- Corruption Plan
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf

Appendix A – Extract from ECC's Whistleblowing Policy

Whistle blowing

We expect all our employees, councillors, partners and associates to give us information if they suspect fraud or corruption. This is often known as whistle blowing. Our Whistle blowing Policy can be found on the council's intranet site.

We will treat all information or concerns seriously and in strict confidence. If anyone feels unable to speak to their line manager or the officer directly responsible for the area they are concerned about, they can contact any of the following:

- Peter Tanton – Head of Internal Audit and Counter Fraud
(phone: 03330 138445) or e-mail peter.tanton@essex.gov.uk
- Margaret Lee – Executive Director for Corporate and Customer Services
(phone: 03330 134558) or e-mail margaret.lee@essex.gov.uk
- Paul Turner – Monitoring Officer
(phone: 03330 1334591) or e-mail paul.turner@essex.gov.uk
- Counter Fraud Team – phone 03330 138917 or
e-mail counterfraud.team@essex.gov.uk
- Philip King – Ernst & Young as our appointed external auditors
(phone 01223 394600 or email pking@uk.ey.com)
- Expolink - 0800 374199 or via e-mail – essexcc@expolink.co.uk

Members of the public can also get in touch with us via the above contacts if they suspect theft, fraud or corruption. The Head of Internal Audit and Counter Fraud should be advised of any such referrals received via the service area complaints procedure.

If anyone feels unable to raise their concerns in any of the above ways, they may want to phone Public Concern at Work on 020 7404 6609 (web site www.pcaw.co.uk), who are a registered charity whose services are free and strictly confidential.

