

Counter Fraud & Anti-Bribery Strategy

Revised September 2019



Essex County Council

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Introduction

The Local Government Counter Fraud and Corruption Strategy, Fighting Fraud and Corruption Locally 2016-19 outlines that fraud has cost local government in excess of £2.1 billion per annum. Preventing and detecting fraud is essential in ensuring that we protect the public purse, and that the funds used to provide the services to our community within Essex are used for their intended purpose.

Fraud

Fraud can be broadly described as acting dishonestly with the intention of making a gain for themselves or another, or inflicting a loss (or a risk of loss) on another; including:

- Dishonestly making a false representation
- Dishonestly failing to disclose to another person, information which they are under a legal duty to disclose
- Committing fraud by abuse of position, including any offence as defined in the Fraud Act 2006.

Appendix A includes a summary of the Fraud Act 2006.

Bribery

The Bribery Act 2010 defines bribery as “the inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages whether monetary or otherwise”.

Corruption is the abuse of entrusted power for private gain. It affects everyone who depends on the integrity of people in a position of authority. The Bribery Act 2010 repealed all Corruption Acts in whole and therefore there is now no offence of corruption; therefore whilst corruption exists as a term, it no longer exists as an offence.

Section 7 of the Act created a new offence of failure by an organisation to prevent a bribe being paid for or on its behalf. It is possible to provide a defence by implementing adequate procedures to prevent bribery occurring within the organisation as outlined by the Ministry of Justice. If these cannot be demonstrated and an offence of bribery is committed within the organisation senior officers of the County Council could be held accountable.

Appendix B is an extract from our Anti-Bribery Policy.

Aims

The Council has a duty to reduce fraud and bribery to an absolute minimum in order to protect its residents and customers. This Strategy sets out the Council’s commitment to preventing, detecting and deterring fraud, corruption, bribery or other irregularity and takes into consideration the Council’s key strategic aims. These are:

- Enable inclusive economic growth
- Help people get the best start and age well
- Help create great places to grow up, live and work
- Transform the council to achieve more with less.

This strategy aims to:

- Instill an anti-fraud culture and demonstrate a zero-tolerance approach;
- Actively prevent, deter and promote detection of fraudulent and corrupt acts, including bribery;
- Provide a clear direction in relation to the roles and responsibilities of Council staff, management and councillors; and
- Identify a clear pathway for investigation and remedial action.

The effectiveness of this strategy will be subject to regular review, by the Head of Assurance and the Audit, Governance and Standards Committee.

This strategy is supplemented with more detailed documents:

Appendix A: Summary of the Fraud Act 2006;

Appendix B: Extract from ECC Anti-Bribery Policy;

Appendix C: Nolan Principles and Stakeholder Responsibilities; and,

Appendix D: Fraud Response Plan.

Our Approach

Statement of Commitment

“We have a responsibility to be transparent and accountable to our residents.

Taking responsibility for fraud means being honest about the level of fraud and acknowledging that fraud risk will exist in all large organisations. We are committed to tackling fraud, in both prevention and the delivery of robust action where fraud or bribery does occur. This strategy outlines our approach and demonstrates our commitment to ensuring good governance.”

Margaret Lee

Executive Director for Corporate and Customer Services

Approach

The Council takes the threat of fraud and bribery seriously, in that it has the necessary dedicated and specialist resource, comprising of the Counter Fraud and Internal Audit team. These teams are focused on coordinating the approach that Essex County Council takes in protecting its assets and finances from fraud and bribery.

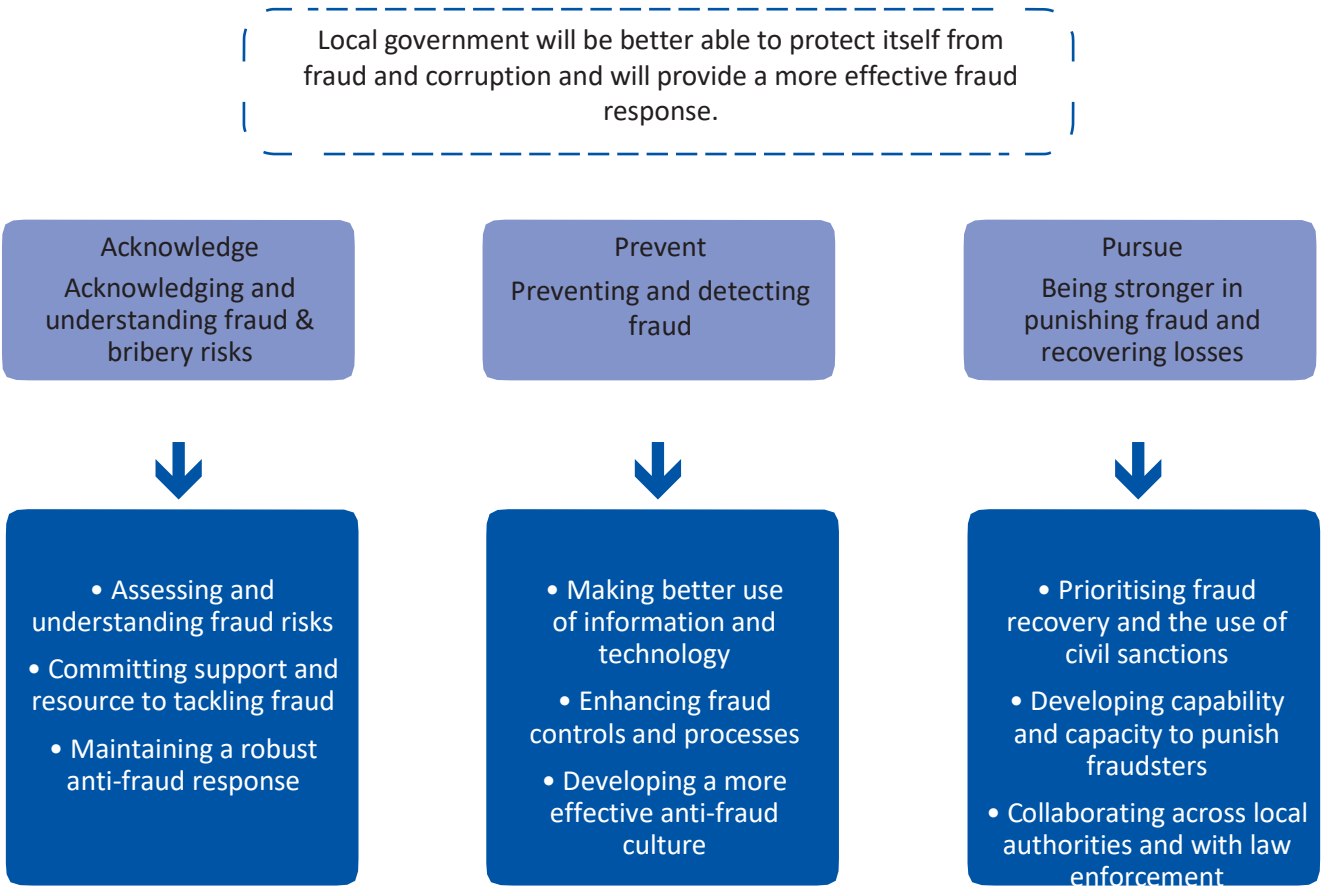
Fraud, by its very nature is hidden, and conducted in such a manner that fraudulent actions are actively concealed. It is therefore vital to provide a strong anti-fraud culture, and advocating a zero tolerance approach. If done effectively this will not only provide a deterrence effect to potential fraudsters, but also encourage an environment where individuals feel comfortable coming forward to raise concerns.



In compiling the strategy, we have considered the Councils objectives and have also incorporated guidance and best practice of combatting fraud within local government, including:

- The National Crime Agency / Cabinet Office
- The Local Government Counter Fraud & Corruption Strategy 2016-19 (Fighting Fraud and Corruption Locally)

The diagram below describes our approach which is in line with the Fighting Fraud and Corruption Locally strategy.



Acknowledge

Essex County Council accepts that no authority is immune from the risk of fraud or bribery. It is for this reason that we have implemented a specific strategy, inclusive of a bespoke work programme based on an assessment of risk, to undertake proactive work to protect the assets and finances of the Council.

The Council is also committed to providing all employees with sufficient training to enable them to identify and report fraud in a timely manner. This is achieved via e-learning modules offered as a suite of training and guidance modules at the induction stage. The Counter Fraud Team also offer bespoke training packages for staff within the Council.

The Council will also inform councillors of their responsibilities as part of the induction programme for new councillors and remind them of their responsibilities and update them on developments regularly. Detailed requirements are also included within the documents published on the Members' portal. The details include rules on declaring and registering any possible areas of conflict between an elected councillor's County Council duties and responsibilities and any other area of their personal or professional life.

The Council will regularly review its approach to tackling fraud, with a focus on emerging risks and current themes and trends which occur across the Council, or wider across other local government areas.

The Counter Fraud Team will liaise with colleagues from other authorities to keep abreast of new challenges and emerging risk areas. The Team will also work closely with service areas to understand fraud risks in their operational areas. A fraud risk register will be updated on an annual basis and used to inform a schedule of proactive work.

Prevent

Prevention is the best and most efficient way to tackle fraud and prevent losses to the Council. The Counter Fraud Team will ensure that our resources are used in preventing fraud from happening in the first place.

The Counter Fraud Team will work closely with Internal Audit colleagues to ensure that a robust control framework is in place within the Council, and recommendations to rectify any system weaknesses will be recorded and monitored via our centralised tracking system.

A collaborative approach will be adopted, working with colleagues in other authorities on data matching initiatives to help prevent fraud throughout Essex. National initiatives, for example the National Fraud initiative (NFI) will be co-ordinated by the Counter Fraud Team on a biennial basis.

The Counter Fraud Team will also complete proactive work including a programme of internal data matching initiatives to help to identify erroneous or fraudulent transactions and take remedial action as necessary. The programme of internal data matching will be compliant with the Data Protection Act 2018 and General Data Protection Regulation.

A robust enforcement response will be established to pursue fraudsters and deter others.

One of our main preventative measures is to make sure that appropriate checks are made before we take on new members of staff. Heads of Service must follow the procedures in our recruitment and selection guidelines and code of practice. We will always undertake appropriate pre-employment checks (e.g. written references) before we can confirm any employment offers. We will treat temporary, contract and voluntary staff in the same way as permanent staff.

Staff must adhere to section 117 of the Local Government Act 1972 and our Constitution, which says that they must tell us about any interests they have in any contracts relating to our affairs, similarly

they must disclose any close personal relationships with both colleagues and external contractors (refer to the Code of Conduct for guidance). Staff must tell us about any fees or rewards that they are offered in their official capacity, other than their normal salary. In any event, fees or rewards should not be accepted without first ensuring compliance with the Code of Conduct for ECC Employees.

Councillors are reminded of their responsibilities with details included in the Members' portal. The details include rules on declaring and registering any possible areas of conflict between an elected councillor's County Council duties and responsibilities and any other area of their personal or professional life.

Where an employee or councillor is suspected of fraudulent behaviour, they will be subjected to investigation, potential disciplinary and criminal sanctions as appropriate.

Pursue

We will commit to making efforts to proactively seek out instances of fraud and take effective action once it is identified. The Council will make best use of its communications strategy to highlight instances of fraud, for the purposes of seeking the maximum deterrence effect.

The Counter Fraud Team will investigate allegations of fraud and will seek to achieve the most appropriate sanction in accordance with the Counter Fraud Sanction Policy . See separate Counter Fraud Sanction Policy.

We will enhance our provision further by making best use of existing legislation, for example the Proceeds of Crime Act 2002, to ensure that funds are recovered, where possible by the Council.

Staff & Stakeholders

Our staff are our first line of defence against most acts of attempts of fraud, corruption or bribery. We expect and encourage them to be alert to the possibility of acts of fraud, corruption or bribery and to raise any such concerns at the earliest opportunity.

Staff have a duty to protect the assets of the Council, including information, as well as property. When an employee suspects that there has been fraud or corruption, they must report the matter to the Head of Assurance/Counter Fraud Team.

Culture

The Council is committed to the highest ethical standards; high standards of corporate and personal conduct are a requirement throughout the Council. The three fundamental public service values are:



We believe the best defence against fraud, corruption and bribery is to create a strong anti-fraud culture within the organisation. We promote the 'seven principles of public life' put forward by the Nolan Committee and expect all our staff, including contractors, and councillors to make themselves aware of and to follow these principles and all legal rules, procedures and practices, and to protect our legitimate interests at all times.

These principles are:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership.

Appendix C provides further details of these principles and responsibilities of stakeholders.

Reporting Lines

Reporting a Fraud

There are a number of ways that individuals may raise a concern or report suspected fraud or bribery (see below). Employees are urged to consider the nature of the concern, whether it involves immediate management and the seriousness and sensitivity of the issues involved. Our Fraud Response Plan is included at Appendix D.

Dedicated Fraud Hotline

The Council also has a dedicated fraud hotline - contact telephone number 033301 38917 which is answered by fraud investigators within the Counter Fraud Team and staffed during normal office hours (an answering service operates at all other times).

You can also email:

Counter Fraud Team - counterfraud.team@essex.gov.uk

Karen Bellamy (Counter Fraud Manager) – karen.bellamy@essex.gov.uk

Expolink

Expolink is 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.

Whistleblowing

The Council's Whistleblowing Policy encourages employees (and those of contractor and partner organisations) to report concerns that are in the public interest. The Policy outlines the process for raising concerns and the types of conduct that should be reported. For example:

- criminal offences;
- failure to comply with legal obligations;
- actions which endanger the health or safety of any individual;
- actions which cause damage to the environment;
- actions which are intended to conceal any of the above.

It is encouraged that any persons with suspicions of any activity relating to fraud or bribery come forward to raise concerns.

The Council does not tolerate the victimisation or harassment of anyone raising a genuine concern.

Employees are afforded protection from such by the Public Interest Disclosures Act 1998, which aims to reassure employees with concerns over coming forward that they can do so in the knowledge that they have protection to do so. Any harassment or victimisation of a whistleblower is treated as a serious disciplinary offence, which will be dealt with under the Disciplinary Policy.

Where allegations are found to be malicious, they will also be considered for further investigation and subject to appropriate disciplinary action. All referrals are treated in the strictest confidence and callers who wish to may remain anonymous.

Appendix A - Summary of the Fraud Act 2006

Key areas of the Fraud Act 2006

There are a number of other areas that are not included within this summary. This summary focuses on those issues that are more likely to affect fraud investigations in the public sector.

Section 1 - Fraud

A person is guilty of fraud if he/she is in breach of any of the Sections listed in subsection (2) (which provide for different ways of committing the offence).

The Sections are:

- Section 2 - Fraud by false representation
- Section 3 - Fraud by failing to disclose information
- Section 4 - Fraud by abuse of position
- Section 7 – Making or supplying articles for use in fraud.

Maximum penalty is imprisonment for a term up to 10 years (note: this was previously 7 years).

Section 2 - Fraud by false representation

A person is in breach of this Section if he/she:

- Dishonestly makes a false representation; and
- Intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

Explanatory notes

- Note a gain need not have taken place, intent suffices
- 'Gain' includes keeping what one has, as well as a gain by getting what one does not have
- 'Loss' means not getting what one might get, as well as losing something that one has
- Importantly the loss can be permanent or temporary (previously the onus was on intention to permanently deprive)
- 'Dishonest' is defined in case law (*Ivey v Genting Casinos* 2017), and is based upon the test of whether an individuals' behaviour is regarded as being dishonest by the ordinary standards of reasonable and honest people.

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
- The term 'representation' is defined under s.2 (3) of the Act as
- Any representation as to fact or law, including a representation as to the state of mind of the person making it, or any other person.

Subsection (4) states the representation may be expressed or implied.

Examples of this would be misusing a credit card or obtaining bank details by phishing.

Subsection (5) states a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

Example of this would be the illicit capture of a chip and pin number entered into a machine.

Section 3 - Fraud by failing to disclose information

A person is in breach of this Section if he/she:

- Dishonestly fails to disclose to another person information which he is under a legal duty to disclose; and
- Intends, by failing to disclose the information, to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

Explanatory notes

This section applies to all parties where a person is under a duty to disclose something and by not doing so could create some gain (e.g. not disclosing an illness for medical insurance) or where the failure to disclose causes a loss or puts another at a risk of a loss.

This may include verbal or written contracts. The Law Commission's Report of Fraud on the concept of 'legal duty' is as follows:

'Such a duty may derive from statute (such as the provisions governing a company prospectus), from the fact that the transaction in question is one of utmost good faith (such as a contract of insurance), for the express or implied terms of a contract, from the customer of a particular trade or market, or from the existence of a fiduciary relationship between the parties (such as that of agent and principle).'

For this purpose there is a legal duty to disclose information not only if the defendant's failure to disclose it gives the victim a cause of action for damages, but also if the law gives the victim a right to set aside any change in his or her legal position to which he or she may consent as a result of the non-disclosures. For example, a person in fiduciary position has a duty to disclose material information when entering into a contract with his or her beneficiary, in the sense that a failure to make such a disclosure will entitle the beneficiary to rescind the contract and to reclaim and property transferred under it.

Section 4 - Fraud by abuse of position

A person is in breach of this Section if he/she:

- Occupies a position, in which he is expected to safeguard, or not act against, the financial interests of another person
- Dishonestly abuses that position; and
- Intends, by means of the abuse of that position to make a gain for himself or another, or to cause loss to another or expose another to a risk of loss.

Explanatory notes

S.4 (2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

This offence focuses on those persons who are in positions of financial trust and have insight and possibly control of another's financial situation. There will be some form of relationship or agreement between both parties for the offence to operate: the relationship can be one of

client, employee, family, trustee and beneficiary or simple trust. Although the offence focuses on the area of finance of the victim, it appears by the wording of the section that the actual gain to the offender may not be monetary, although it invariably will be.

It is not clear what is meant by the term 'abuse' and the Act does not seek to define the meaning. It is therefore designed to give the word a broad meaning, allowing for numerous interpretations for various situations.

The following examples are given:

- Where an employee fails to take up a contract to allow a rival company to obtain the contract at the expense of the employee's company
- Where someone is looking after elderly or vulnerable persons and has access to their bank account and abuses their position by removing money from the account.

Section 7 – Making or supplying articles* for use in frauds

Under section (1) a person is guilty of an offence if he makes, adapts, supplies or offers to supply any article:

- Knowing that it is designed or adapted for use in the course of or in connection with fraud:
or
- Intending it to be used to commit, assist in the commission of, fraud.

*An article includes any program or data held in electronic form, and can also include anything that can be used to make, alter, remove, supply or store something by electronic means in connection with fraud.

Fraud under this section may be manipulating or amending the date on a Blue Badge, or photocopying a badge and supplying to another.

Appendix B – Extract from our Anti-Bribery Policy

ECC will not tolerate bribery.

It is unacceptable to:

- Give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given
- Give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to “facilitate” or expedite a routine procedure
- Accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them
- Accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return
- Retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy
- Engage in activity in breach of this policy.

Facilitation payments

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

Gifts and Hospitality

This policy does not change the requirements of our Gifts and Hospitality guidance. All staff should ensure that they are in compliance with the Officer Gifts and Hospitality Policy. Similarly Members should ensure they comply with requirements of the Code of Member Conduct which forms part of the Council’s Constitution.

Public contracts and failure to prevent bribery

Under the Public Contracts Regulations 2015 (which give effect to EU law in the UK), a company is normally debarred from competing for public contracts where it is convicted of a corruption offence. This does not include the crime of failure to prevent bribery. 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.

Appendix C- Nolan Principles

The Committee on Standards in Public Life sets the 7 principles of public life, which are:

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The table on the following page sets out the responsibilities for each stakeholder.

Group/Stakeholder	Responsibility
Audit, Governance and Standards Committee	<ul style="list-style-type: none"> Approve the Counter Fraud Strategy and receive reports of the Counter Fraud activity Approve the internal audit and counter fraud plan. Promotes the strategy and ensures that resources are focussed to the Councils high risk areas.
Councillors	<ul style="list-style-type: none"> Cabinet Member for Finance Councillors must work within: <ul style="list-style-type: none"> The rules around disclosable pecuniary interests in the Localism Act 2011 and associated regulations. The ECC Code of Member Conduct Interest Regulations; and our regulatory framework, including the Constitution, Financial Regulations and Procurement Rules and Procedures.
Section 151 Officer	<ul style="list-style-type: none"> Has a statutory duty, under Section 151 of the Local Government Act 1972 and Section 73 of the Local Government Act 1985, to ensure that there are proper arrangements in place to administer the Council's financial affairs.
Head of Assurance	<ul style="list-style-type: none"> Responsible for the Internal Audit & Counter Fraud Team Report the results of any fraud or bribery cases to the Audit, Governance and Standards Committee through the Internal Audit and Counter Fraud reporting process Act as the Bribery Act Compliance Officer
Senior Managers	<ul style="list-style-type: none"> Establish an anti-fraud culture in their functional area(s) Ensure staff are aware of and promotion of all relevant policies and procedures relating to anti-fraud and bribery, Code of Conduct etc Adopting a robust control environment, ensuring all internal recommendations are implemented promptly.
Counter Fraud Team	<ul style="list-style-type: none"> Deliver a quality investigative service with the objective of preventing, detecting and deterring fraud throughout the Council, thereby securing the "public purse". <p>The Counter Fraud Team will:</p> <ul style="list-style-type: none"> Regularly report to the Audit, Governance and Standards Committee on the progress of proactive work undertaken across the Council and on the investigation of actual or suspected bribery; In consultation with the Head of Assurance, the relevant Head of Service & Legal Services, will decide when/if to report cases of fraud or bribery to the Police. Further, they will ensure that other relevant parties are informed where necessary e.g. Organisational Design and People; Ensure that the Council incident and losses reporting systems are followed; Ensure that system weaknesses identified as part of any investigation are followed up with management or Internal Audit and recommendations made to improve the control framework.
Internal Audit	<ul style="list-style-type: none"> Developing an annual risk based approach to internal audit coverage (with consideration of fraud risk) Reviewing and appraising the adequacy, reliability and effectiveness of the Council's systems of internal control and reporting to Senior Managers Following up internal audit recommendations to confirm that these have been implemented by Senior Managers in accordance with agreed timescales Ensure fraud risks are adequately considered in all internal audit assignments
Staff	<p>Staff must work within:</p> <ul style="list-style-type: none"> the Code of Conduct for ECC Employees; ECC regulatory framework including Financial Regulations and Procurement Rules and Procedures (for buying any item or service); and relevant codes of conduct including the standards of appropriate professional organisations and associations.
Contractors	<p>Must ensure they have adequate systems and controls to ensure the prevention and detection of fraud and corruption.</p>

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