

Policy and Procedure to Prevent and Respond to Fraud, Corruption and Bribery

TYPE: Policy

PURPOSE: To prevent and respond to fraud, corruption and bribery.

SCOPE: Staff and Governors

RESPONSIBILITY: Clerk to the Corporation and Vice Principal Finance

Legal context: Bribery Act 2010, Fraud Act 2006, Theft Acts 1968 and 1978, the Proceeds of Crime Act 2002, and the Computer Misuse Act 1990.

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Policy and Procedure to prevent and respond to Fraud, Corruption and Bribery

1. Introduction

- 1.1. The Corporation is committed to maintaining a culture of openness and accountability within the College, where all individuals operate the highest standards of honesty, propriety and integrity in the exercise of their duties.
- 1.2. It is the Corporation's policy to encourage anyone having reasonable suspicions of fraud, irregularity or impropriety to report them. Employees who raise legitimate concerns will not face any detrimental consequences. In particular, they will not be subject to harassment or victimisation. There is statutory protection (the Public Interest Disclosure Act, 1998) from dismissal or penalties imposed by employers for those who disclose information in the proper manner.
- 1.3. The Corporation's 'Whistle blowing' Policy sets out the arrangements under which an individual may confidentially raise concerns and bring these to the attention of the Corporation. A copy of this Policy is available on the intranet or from the Clerk to the Corporation.

2. Definitions

- 2.1. Bribery is a criminal offence. The 2010 Bribery Act makes organisations and their employees liable for acts of bribery committed in the UK and abroad.
- 2.2. The Act includes four offences:
 - Bribing a person to induce or reward them to perform a relevant function improperly
 - Requesting, accepting or receiving a bribe as a reward for performing a relevant function improperly
 - Using a bribe to influence a foreign official to gain a business advantage
 - Failure to prevent bribery – a corporate offence whereby an organisation will be liable to prosecution if it fails to stop individuals operating on its behalf from being involved in bribery (due to there being no adequate procedures in place to prevent such actions)
- 2.3. The Fraud Act 2006 states that a person is guilty of fraud 'if (s)he is in breach of any of the following:
 - Fraud by false representation
If someone 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 expose another to risk of loss;
 - Fraud by failing to disclose information
If someone dishonestly fails to disclose to another person information which he is under a legal duty to disclose and intends, by means of abuse of that position, to make a gain for himself or another, or to cause loss to another or expose another to risk of loss; and
 - Fraud by abuse of position
If someone occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, and he 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 to expose another to a risk of loss.
- 2.4. Computer fraud is where information technology (IT) equipment has been used to manipulate or destroy computer programmes or data or where the existence of an IT system was a material factor in the perpetration of fraud. – For example by creating, altering, substituting or destroying files or records. Inappropriate use of computer time, intellectual property or resources may also be fraudulent or involve theft.

- 2.5. Together such activities may include; Conspiracy; bribery; forgery; extortion; theft; misappropriation; collusion; false representation; concealment of facts; false accounting; embezzlement; failure to disclose information; abuse of position; supplying, making or possessing articles for use in fraudulent activities; obtaining services dishonestly.
- 2.6. In addition to the Bribery Act 2010 and the Fraud Act 2006 the legal framework includes the Theft Acts 1968 and 1978, the Proceeds of Crime Act 2002, and the Computer Misuse Act 1990 as well as common law law offences.

3. Arrangements for Prevention

3.1. In order to prevent fraud and corruption the College:

- a) Maintains and enforces Financial Regulations, Procedures and other policies and procedures, which are regularly reviewed, which set out the College's internal controls, with a view to ensuring the orderly and efficient conduct of the College's activities.
- b) Recruits staff in accordance with approved Recruitment and Selection policies and procedures and the Instruments and Articles of Government.
- c) Draws attention to the expectations of staff and governors as set out in the Codes of Conduct and Ethics during induction processes and makes these available on an ongoing basis via the College intranet.
- d) Highlights the responsibilities of staff and managers as set out in Financial Regulations and Procedures, during induction processes.
- e) Maintains a register, for staff and governors, which records financial and other interests, gifts and hospitality, which is annually updated.
- f) Requires its internal, financial and regulatory auditors to enquire about and obtain an understanding of the processes and controls in place to identify and respond to the risk of fraud.
- g) Works, in particular, with its internal auditors to review financial and other systems on a risk based cyclical basis, with a view to identifying and responding to any risk factors identified.
- h) Expects all its auditors to maintain an attitude of professional scepticism in carrying out audit activities, notwithstanding the auditors past experience of the conduct of the organisation and those charged with management and governance.
- i) Ensures all its auditors have access to all financial and other relevant documentation as well as reporting rights to the Audit Committee and the Corporation.
- j) Reviews the reports of the internal, financial and regulatory and other auditors through meetings of the Executive and Senior Management Teams, the Audit Committee and where, appropriate, the Corporation.
- k) Monitors the timely implementation of recommendations made by its auditors, through meetings of the Executive Management Team and the Audit Committee.
- l) Considers, when implementing new systems or reviewing policies, the risk of fraud and corruption and the safeguards to be included in procedures.

4. Responsibilities

4.1. Principal

As the accounting officer, the Principal is responsible for establishing a control environment and ensuring that an effective system of internal controls and risk management is maintained and operated by the College.

4.2. Management and staff

It is the responsibility of all managers and staff to

- a) maintain the control environment and comply with and develop policies and procedures to help ensure the orderly and efficient conduct of the College's business.
- b) ensure that controls in place operate effectively in their areas of responsibility.
- c) assess the types of risk involved in the operations for which they are responsible
- d) regularly review and test control systems for which they are responsible and satisfy themselves that controls in place are being complied with and that systems continue to operate effectively
- e) to follow financial regulations and procedures and to bring to the attention of management any control weaknesses or poor compliance with procedures

4.3. Financial Statements and Regularity Auditor (FSA)

The Financial Statements Auditor (FSA) has a duty to plan and conduct all audits so that there is a reasonable expectation of detecting material mis-statements in the accounts arising from irregularities, including fraud or breaches of regulations.

4.4. Internal Auditor (IAS)

The IAS reviews and evaluates risk management, control and governance processes in accordance with an agreed strategic plan, based on an assessment of risk. These processes include the operations, policies and procedures in place to safeguard the College's assets and interests from losses of all kinds, including those arising from fraud, irregularity and corruption.

4.5. Governors

The Corporation is ultimately responsible for the proper stewardship of public funds. Under its approved terms of reference, the Audit Committee has the authority to:

- a) consider and, if appropriate, investigate, or commission investigations into, any complaints relating to alleged fraud or other financial irregularity or malpractice at the College in accordance with the College's procedures
- b) consider, receive reports and, if appropriate, commission investigations into concerns raised in accordance with the Corporation's approved Public Interest Disclosure (Whistleblowing) Policy,
- c) ensure that all allegations of fraud and irregularity are properly followed up

5. Fraud and Corruption Response Procedure

Where there is suspicion of fraud or corruption the Procedure, outlined in appendix A should be followed.

Fraud, Corruption and Bribery Response Procedure

1. Reporting suspicions of fraud

- a) In accordance with Financial Regulations (para 14.5), it is the duty of all members of staff, managers and governors to notify the Principal immediately whenever any matter arises which involves, or is thought to involve, irregularity, including fraud, corruption, bribery or any other impropriety.
- b) If the concerns raised potentially involve the Principal, then the Clerk to the Corporation should be informed, who will immediately advise the Chair of the Corporation and the Chair of the Audit Committee.
- c) The Corporation's 'Whistle blowing' Policy sets out the arrangements under which an individual may confidentially raise concerns and bring these to the attention of the Corporation. A copy of this Policy is available on the intranet or from the Clerk to the Corporation.
- d) The Principal will inform the Chair of the Audit Committee, the Chair of the Corporation and the Vice Principal Finance without delay, in all cases of suspected or actual fraud or corruption, bribery and any significant irregularity.
- e) In accordance with the Financial Memorandum and the Audit Code of Practice, the College shall inform the internal auditors when evidence of potential irregularity, including fraud, corruption, bribery or any impropriety is discovered so that the Internal Auditor can consider the adequacy of the relevant controls, evaluate the implications of the fraud on the risk management, control and governance processes and consider making recommendations as appropriate. The Internal Auditor will not investigate the matter raised unless commissioned to do so.
- f) The College, and where appropriate, its Internal Auditor or its Financial Statements Auditor shall, without delay, report to the SFA's chief executive and copy to the Executive Director of the local SFA, serious weaknesses, significant frauds, major accounting and other controls breakdowns of which they are aware, subject to the requirements of the Proceeds of Crime Act 2003.
- g) A serious weakness would be one which may result in a significant fraud or irregularity and may include cases of irregularities in expenditure which could lead to suspicions of fraud. Significant fraud is usually where one or more of the following are involved:
 - Sums of money in excess of £10,000
 - Particulars of the fraud are novel, unusual or complex
 - There is likely to be great public interest because of the nature of the fraud or the people involved.

2. Appointment of an Investigating Officer

- a) In consultation with the Chair of the Audit Committee, the Principal will appoint a manager as Investigating Officer to oversee the investigation. The investigating officer should be independent of the area under investigation.
- b) Where the nature of the allegations or disclosures made is such that the services of specialists, internal or financial statements auditors should be appointed / commissioned to undertake an investigation, then the Principal will consult with the Chair of the Audit Committee, and make a recommendation. The Chair of the Audit Committee may wish to convene a special meeting of the Audit Committee to consider this recommendation. Such meetings will be arranged by the Clerk. In any event, any

such commissioning must be reported to the next scheduled meeting of the Audit Committee.

- c) The College will maintain a log, which will contain details of all reported suspicions, including those which appear to be minor or have not been investigated. It will also contain details of any actions taken and conclusions reached. Entries to this log will be reviewed by the Audit Committee annually and the Committee should bring any significant matters to the attention of the Corporation. The Investigating Officer will record details of the matters raised in this log, along with any conclusions reached and actions taken.

3. The Investigation

- a) The investigation should be conducted to determine the facts and should make, where appropriate, recommendations in respect of disciplinary or other processes, the recovery of losses and the improvement of internal controls and procedures to prevent re-occurrence. The investigation should also consider whether there has been a failure of adequate supervision or application of controls.
- b) The Investigating Officer should consider throughout the investigation if the information available suggests that a criminal act might have been committed.
- c) If a criminal act is suspected, it is essential that there is the earliest possible consultation with the police. However, prior to any contact with the police, the Investigating Officer must advise the Principal, who in turn will advise the Chair of the Audit Committee, the Chair of the Corporation and the Clerk without delay.
- d) In any event, if a criminal act is suspected, there must be no actions taken by the College or the Investigating Officer which may alert suspects and/or precipitate the destruction or removal of evidence, before the police have been contacted. This includes taking action to stop a loss or tighten controls or interviewing any individuals suspected of criminal activity.
- e) Broadly, where no criminal act has taken place, the investigation could lead to one of three outcomes. The most serious would be if there was evidence to sustain an allegation of gross misconduct under the disciplinary procedure. This might lead to dismissal if the allegation is proven. It would be less serious if there was evidence to sustain an allegation of negligence or error of judgement or other misconduct. This is unlikely to lead to dismissal, but might involve the disciplinary procedure. Alternatively, it may be concluded there is no case for an individual to answer. The Investigating Officer should take advice from the Vice Principal HR and Student Services where there are suspicions or evidence of misconduct.
- f) The Investigating Officer will ensure that a detailed record of the investigation is maintained. This should include a chronological file recording details of all telephone conversations, discussions, meetings and interviews, all documents and files and other records reviewed, tests and analyses undertaken, findings, outcomes and conclusions reached. It is important that everything is recorded, irrespective of apparent significance at the time of recording.
- g) Where evidence from witnesses is being sought, the Investigating Officer should make a chronological record using the witness's own words, which should be agreed by the witness. The witness must be prepared to sign the document as a true record.
- h) If the Investigating Officer takes possession of any physical evidence, it is important that a record is made of the time and place it is taken. If evidence consists of several items (eg many documents), each one should be tagged with a reference number corresponding to the written record.

- i) The Investigating Officer has authority to request and obtain information required in connection with the investigation and to meet with employees, contractors etc. Where there is no suspicion of criminal activity, any meetings involving employees will be conducted in consultation with the Director of HR. Where a criminal act is suspected, no interviews should be conducted without first having contacted the police and taking into account the requirements of the Police and Criminal Evidence Act (PACE).
- j) The Investigating Officer will report in writing at the conclusion of the investigation, to the Principal and to the Chair of the Audit Committee. Where an investigation is protracted, then interim reports should be produced, keeping the Principal and the Committee advised of progress. These reports will be considered by the Audit Committee and through the minutes of the Audit Committee to the Corporation. The final report should include recommendations in respect of disciplinary or other processes, the recovery of losses and the improvement of internal controls and procedures to prevent re-occurrence, and, where appropriate, lessons learned and an implementation action plan.

4. Timescale

Where possible, the investigation will be completed within 15 working days of the appointment of the Investigating Officer. However, it should be noted that investigations may take longer depending on the complexity of the issues being considered.

Where auditors are conducting the investigation, they must report back to the Audit Committee within a time scale agreed by the Audit Committee. The Clerk will arrange any meetings required in the usual way.

Where there is a criminal investigation, the Principal will keep the Audit Committee informed of progress, as appropriate.

5. Disciplinary and dismissal procedures

College disciplinary procedures must be followed if it is proposed to take any disciplinary action against an employee (including dismissal). This may involve the Investigating Officer giving evidence to a disciplinary hearing and reporting the results of the investigation.

6. Recovery of losses

The College will take appropriate steps to recover losses. If the cost of recovery outweighs the loss or there are other reasons for not taking steps to recover losses in full, these must be reported to the Audit Committee.

Where recovering a loss is likely to require a civil action, the Clerk to the Corporation should be consulted and will consider seeking legal advice. Where external legal advisors are used, the Clerk should ensure that there is co-ordination between the various parties involved.

Where any loss is potentially covered by the College's insurance arrangements, advice will be sought from the College's insurers and where appropriate, a claim will be prepared.

The Audit Committee should be kept informed of the progress of any recovery of losses.