

# Counter Fraud & Investigation



See it.



Report it.



Stop it.

# Counter Fraud, Bribery & Corruption Policy



castlepoint

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Version control sheet

Title	Counter-fraud, bribery and corruption Policy
Purpose	To advise council workers and suppliers on what fraud, bribery and corruption is how to identify and report its and our response.
Owner	Counter Fraud and Investigation Team
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# 1. Introduction

- 1.1. Castle Point Borough Council is responsible for delivering key frontline services such as keeping our borough clean and green or supporting our residents in housing needs as well as ensuring our communities receive the standard of service that they expect, and we want to deliver. We do this every year with approximately £15M of public money. Criminals do and will continue to seek to take that money from the council. Criminals come in all forms, from service users to suppliers, grant applicants and in rare cases, can unfortunately include colleagues sitting next to us.
- 1.3. The way to beat those who seek to take the public's money is to make sure our systems and controls in place are strong and we follow them. This means all of the procedures we have as a team are robust and auditable so we can prevent fraud and identify possible concerns.
- 1.4. This policy sets out to council workers what fraud, bribery and corruption is, how to spot it and what to do if you do suspect it.
- 1.5. Every council worker, from full-time/part-time employees, Agency workers to contractors are responsible for following this policy and reporting their suspicions to the Counter Fraud and Investigation (CFI) team.

# 2. Fraud

- 2.1. In this policy 'fraud' is used as shorthand to any criminal offence where money or assets belonging to the council can be lost. It includes theft, fraud, burglary and other deception offences such as corrupt practices by workers or suppliers.
- 2.2. Fraud is where a person is dishonest in their actions in order to cause a loss to the council or expose the council to a potential loss. It also includes where a person causes a chain of events by doing or not doing something that causes or exposes the council to a loss.
- 2.3. Any of the actions described above are criminal offences and can result in imprisonment.

### 3. How can the council become a victim of fraud?

#### Applying for services / making a declaration

- 3.1. The council provides hundreds of different services to the public we serve. Unfortunately, there is a small minority of those who seek to take advantage of those services. This could be by someone exaggerating their circumstances, making something up completely or purposefully not declaring something.
- 3.2. In the council's support services such as Housing, Homelessness Teams and Essential Living Fund this could be a person not being honest about their needs, their financial status or what they will be using the services for. It may be a person acting on the service user's behalf that is being dishonest in order to benefit themselves. In each of these examples the fraud is denying the legitimate use of council funds by those who are in need.

#### Suppliers / providers

- 3.4. The highest risk of fraud to the public sector is in its supply chain. A council is just like a business, making regular and sometimes large financial transactions with our suppliers and providers in order to deliver its services.
- 3.5. Some unscrupulous suppliers or staff working in supplier companies, may seek to take advantage of our payment systems and processes.
- 3.6. Fraud in this area can be committed where suppliers submit false or 'erroneous' invoices or other requests for payment. Suppliers may also be dishonest in how they are delivering the services or goods we are contracted for; they may be poor quality or not supplied at all.
- 3.7. Staff that deal with our suppliers and providers must ensure that the council is getting what it has paid for. The council's Procurement Team and Internal Audit Service are experienced in contract management and applying the right controls when sourcing goods, works and services, if in doubt, speak to one of these teams. Even if not dishonest, failure to provide the works, goods or services that have been contracted to be provided should be raised with the supplier as a breach of contract.

## Council worker fraud

- 3.8. Castle Point Council, like any large employer we will always have a very small minority of people who seek to commit, allow or facilitate fraud to take place.
- 3.9. Fraud in this area can be workers (definition of workers can be found in the glossary) who take unauthorised absences, such as claim 'flexi time' when they haven't accrued any, claim to be working from home when they are not or even claim to be working in the field but going home early/starting later.
- 3.10. Payroll or expenses fraud can also be committed by council workers such as staff that falsely claim overtime, allowances, mileage expenses and even steal from 'cash floats'.
- 3.11. It is important for all staff to follow the council's procedures particularly those in management positions as well as colleagues who may notice irregularities.

## 4. Bribery and corruption

- 4.1. As public servants all workers in the council are in a privileged position to serve the people of Castle Point. That responsibility comes with a significant amount of trust in how we conduct ourselves.
- 4.2. It has always been a criminal offence for any council worker to receive gifts or hospitality where the person giving the gift or hospitality is seeking to induce, or reward us to doing something for their, or somebody else's benefit – that is, to use a particular supplier instead of another one.
- 4.3. This type of corruption has been depicted in many different films and fictional stories, where criminals were seeking to build a house that would be normally rejected by planners, or the criminal who wants the council to 'look the other way' for parking fines or other enforcement action.
- 4.4. All of this conduct is a criminal offence, punishable by imprisonment. It is the most serious type of dishonesty, which brings the council and colleagues into disrepute.

## 5. What to do if fraud, bribery or corruption is suspected

- 5.1. All workers are responsible for reporting bribery and corruption with workers raising the issue with the Counter Fraud and Investigation team (CFI) in the first instance. Where appropriate the CFI will then engage with others, including stakeholders such as the police.
- 5.3. If you see any of the suspicious activity linked to fraud, against the council, or in any council building you should:
- not tell the person that you have any suspicions about them.
  - take copies of any records that could help to a secure location, which secures evidence.
  - telephone a member of the CFI team right away on 01375 652 157 or send an email to [reportfraud@castlepoint.gov.uk](mailto:reportfraud@castlepoint.gov.uk)
  - follow the instructions given by the CFI manager or team member.

## 6. How the Council tackles fraud

- 6.1. The council has a dedicated team of professionally trained and accredited investigation officers who fully investigate instances of suspected fraud. The CFI team works in partnership with other local authorities & law enforcement agencies to ensure suspects are pursued for their involvement in criminal activity, and when appropriate, their assets can be seized/frozen to take back what the council has lost.
- 6.2. Castle Point Council's Legal Services have criminal lawyers who apply tests whilst reviewing the evidence that is found and take the decision to either instigate legal proceedings or not. These decisions will align to the Councils 'Enforcement Policy' and their decision will include whether there is sufficient evidence of a crime and whether it is in the public interest to prosecute those suspected of it.
- 6.3. CFI has a Criminal Finances Unit that is accredited by the National Crime Agency to restrain and seize a person's assets, investigate their lifestyle and present cases to a Judge to confiscate any criminal proceeds.

- 6.4. The council will always publicise case of proven fraud in the media to act as a deterrent and encourage people to come forward to report fraud.

## 7. Whistleblowing

- 7.1. The council is committed to providing the highest quality service to our residents, businesses and visitors to Castle Point. Maintaining the full trust and confidence in the way the council manages our services and resources and making sure that all those who are vulnerable such as children, the elderly and people with learning disabilities are provided for safely, effectively and in accordance with best practice.
- 7.2. The council's Whistleblowing Policy is intended to encourage and enable workers to raise serious concerns. Council workers reporting concerns in this way are afforded certain rights and protection through legislation enacted under the Public Interest Disclosure Act 1998.
- 7.3. Workers who report concerns will be supported and protected from reprisals. Everything possible will be done to protect their confidentiality. They will be advised of the action that has been taken by the person to whom they reported their concerns.
- 7.4. Management is responsible for reporting all allegations received from a whistleblowing declaration to the Monitoring Officer. The Monitoring Officer will refer the allegations to relevant departments, you do not have to do that. All such cases are recorded in a register maintained by the Monitoring Officer.

### Concerns of non-workers

- 7.5. The Council would encourage anyone to report any issues or concerns that they have and the details within our Whistleblowing Policy may help those who are not workers, but do hold concerns over processes or procedures that Council workers are partaking in. However, this policy also explains the process for non-workers to report concerns.

## 8. Information sharing

- 8.1. The council always ensures that personal data we hold is safeguarded and used properly with the Data Protection Act 2018 (General Data Protection Regulations) and the guidance of the ICO.

- 8.2. The council will use data we hold to prevent and detect criminality and identify those responsible.
- 8.3. Any staff contacted by the Counter Fraud and Investigation, Internal Audit or Legal Services teams as part of a criminal investigation must provide any council data held in any form (paper or electronically). Council workers must not tell anyone that they have been asked for any material for an investigation, unless permitted to by the CFI, Internal Audit or Legal Services.
- 8.4. Any concerns workers may have about releasing information should be directed to the information management team at Castle Point Council.

## 9. Monitoring delivery

- 9.1. The Counter Fraud and Investigation team leads the council's fight against fraud and economic crime, including bribery and corruption. The team reports twice a year to the Standards and Audit Committee.

# Appendix A – Roles & Responsibilities and Key Contacts

## Expected behaviour

The council requires all workers and elected Members to conduct themselves adhering to what are known as the 'Nolan Principals', which are.

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

**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 to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

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

**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.

**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.

**Honesty** – Holders of public office should be truthful.

**Leadership** – Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

Fraud is an ever-present threat to the Council and must remain a concern to all workers and elected Members. With regards to the roles and responsibilities of specific Officers for the prevention of fraud are set out below

### Section 151 Officer (Chief Finance Officer) is responsible for:

- Proper administration of the authority's financial affairs and system of internal checks
- Duty to report if the council, or one of its representatives makes, or is about to make a decision which is unlawful, or involves illegal expenditure or potential financial loss (Local Government Finance Act 1988 s.114)

### Monitoring Officer is responsible for:

- reporting on contraventions or likely contraventions of any enactment or rule of law

- report on any maladministration or injustice where the Ombudsman has carried out an investigation to the SLT.
- promoting and maintaining high standards of conduct through and with the support of the Standards Committee
- advice on vires (legality) issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members

Senior Managers are responsible for:

- maintaining internal control systems and ensuring that the authority's resources and activities are properly applied in the manner intended
- identifying the risks to which systems and procedures are exposed
- developing and maintaining effective controls to prevent and detect fraud
- ensuring that controls are being complied with, including making sure their staff are performing well and meeting council policies and procedures
- Compliance with financial and contractual procedures and regulations
- Reporting fraud

Council workers are responsible for:

- their own conduct and for contributing towards the safeguarding of corporate standards, including declarations of interest, gifts and hospitality, private working, whistleblowing, and so on
- acting with propriety in the use of official resources and in the handling and use of corporate funds, such as when dealing with contractors and suppliers
- reporting details immediately to the Counter Fraud and Investigation team if they suspect that fraud, theft, bribery, corruption and money laundering has been committed or see any suspicious acts or events

Internal Audit is responsible for:

- the independent appraisal of control systems
- reporting to the Directors Board and the Standards and Audit Committee on the council's governance framework
- the implementation of an annual audit plan to include identification of fraud risks to the Counter Fraud and Investigation team

Counter Fraud and Investigation team is responsible for:

- the receipt and investigation into allegations of any fraud, bribery, theft, corruption and money laundering committed against the Council.
- Assist Legal Services in the prosecution (or the application of an alternative sanction) of offenders.
- all action under the Proceeds of Crime Act 2002 in respect of financial investigation, restraint, detention, forfeiture and confiscation.
- the co-ordination of participation in the National Fraud Initiative (NFI).
- providing counter-fraud, money laundering, theft, bribery and corruption awareness training.
- taking redress from offenders under criminal and civil law.
- referring any matters to and receiving information and intelligence from all law enforcement agencies – such as Police, HMRC, Home Office – where appropriate

External Audit are a statutory requirement and have specific responsibilities for:

- reviewing the stewardship of public money
- considering whether the council has adequate arrangements in place to prevent fraud and corruption
- signing-off the annual accounts of the authority

Elected members are each responsible for:

- their own conduct
- contributing towards the safeguarding of corporate standards, as detailed in the Members' Code of Conduct
- Oversight & Scrutiny Committees, as well as the Audit Committee and Standards Committee

## Appendix B – Fraud legislation

### 1. Fraud

1.1. The Fraud Act 2006 introduced the first statutory definition of fraud whereby,

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

(2) The sections are—

- (a) section 2 (fraud by false representation),
- (b) section 3 (fraud by failing to disclose information), and
- (c) section 4 (fraud by abuse of position).

(3) A person who is guilty of fraud is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding or to a fine not exceeding the statutory maximum (or to both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

#### Fraud by false representation

A fraud will be committed if a person dishonestly makes a false representation and when doing so intends to make a gain or cause loss (or a risk of loss) to another.

#### Fraud by failing to disclose information

A fraud will be committed if a person dishonestly fails to disclose information where there is a legal obligation to do so and when doing so intends to make a gain or cause loss (or a risk of loss) to another.

#### Fraud by abuse of position

A person will commit fraud if he occupies a position in which he is expected to safeguard, or not act against, the financial interests of another person and he dishonestly abuses that position; and in doing so intends to make a gain or cause loss (or a risk of loss) to another.

## 2. Theft, burglary and robbery

- 2.1. A person is guilty of theft if they dishonestly appropriate property, belonging to another, with the intention of permanently depriving the other of it.
- 2.2. Theft includes where someone takes something "and uses it as their own".
- 2.3. A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.
- 2.4. A person is guilty of burglary if he enters any building or part of a building as a trespasser and with intent to steal anything in the building or that part of it or inflicts or attempts to inflict on any person any grievous bodily harm or doing unlawful damage to the building or anything therein.

## 3. Misconduct in a Public Office

- 3.1 Misconduct in public office ("MiPO") is a common law offence that can be tried only on indictment. It carries a maximum sentence of life imprisonment. The offence concerns serious wilful abuse or neglect of the power or responsibilities of the public office held. There must be a direct link between the misconduct and an abuse of those powers or responsibilities. The Court of Appeal has made it clear that the offence should be strictly confined, and it can raise complex and sometimes sensitive issues.
- 3.2 The elements of the offence were summarised in Attorney General's Reference No 3 of 2003 [2004] EWCA Crim 868. The offence is committed when:
  - a public officer acting as such,
  - wilfully neglects to perform their duty and/or wilfully misconducts themselves,
  - to such a degree as to amount to an abuse of the public's trust in the office holder,
  - without reasonable excuse or justification
- 3.3 "Acting as such" needs to be distinguished from circumstances in which the officer was merely "acting whilst" a public officer. There must be a close nexus between the wilful neglect/breach of duty or wilful misconduct and the power, authority, responsibilities and/or duties vested in the suspect by virtue of their office.
- 3.4 "Wilful" means "deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not".

3.5 Not every 'wilful' neglect of duty or misconduct will suffice to constitute the offence. There is a high bar of seriousness. In Attorney General's Reference No 3 of 2003 [2004] EWCA Crim 868 the court said that the misconduct must amount to:

"... an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder."

Whether the threshold is met in a particular case is a matter for a jury.

3.6 When investigating this offence, the Council will consider the following factors

- Did the conduct involve the exploitation or attempted exploitation of vulnerable people? (see for example Amar Iqbal [2008] EWCA Crim 2066).
- Did the conduct have an operational impact that harmed the public interest or undermined public trust either in the role held by the suspect or the relevant public service or institution? (Norman [2016] EWCA Crim 1564; Collins & Ors [2022] EWCA Crim 742). This might include conduct where the objectivity of the suspect in the exercise of their powers and authority was compromised or that exposed them to conflicts of interest or exploitation (whether or not any actual harm was caused): Cosford [2013] EWCA Crim 466.
- What was the suspect's motive? Was it personal gain (either financial or otherwise)? At its highest the motive may be malice or bad faith, but they are not prerequisites.
- What was the severity of the actual or likely consequences? Was there a risk of death or serious injury?
- How egregious was the abuse of power? Did the wilful misconduct or breach of a duty have the effect of benefitting the wider public interest rather than being injurious to it (see Chapman [2015] EWCA Crim 539).

## Appendix C – Bribery and corruption legislation

### 1. Bribery

1.1. A bribe is "a financial or other advantage that is offered or requested with the intention of inducing or rewarding the improper performance of a relevant function or activity, or with the knowledge or belief that the acceptance of such an advantage would constitute the improper performance of such a function or activity."

1.2. The types of offending relating to Bribery are:

1.2.1. Bribery – giving or receiving something of value to influence a transaction dishonestly makes a false representation

1.2.2. Illegal gratuity – giving or receiving something of value after a transaction is completed, in acknowledgment of some influence over the transaction

1.2.3. Extortion – demanding a sum of money (or goods) with a threat of harm (physical or business) if demands are not met

1.2.4. Conflict of interest – where a worker has an economic or personal interest in a transaction

1.2.5. Kickback – a portion of the value of the contract demanded/ provided as a bribe by an official for securing the contract.

1.3. The Bribery Act 2010, which came into force on 1st July 2011, introduced four primary offences in a single piece of legislation with all previous statutes being repealed.

1.3.1. Section 1 – Offences of bribing another person, where:

(a) a person offers, promises or gives a financial or other advantage to another person, and

(b) intends the advantage –

i. to induce a person to perform improperly a relevant function or activity, or

ii. to reward a person for the improper performance of such a function or activity.

- 1.3.2. Section 2 – Offence relating to being bribed
- 1.3.3. Section 6 – Bribery of foreign public officials
- 1.3.4. Section 7 – Failure by a commercial organisation to prevent bribery
- 1.4. Under the Bribery Act, an organisation has a defence if it can show that it has adequate bribery prevention procedures in place. The Ministry of Justice guidance<sup>1</sup> on the Bribery Act 2010, explains what needs to be in place to rely on this defence:
  - Proportionality
  - Top Level Commitment
  - Due Diligence
  - Communication
  - Monitoring & Review
- 1.5. Prior to 2011, under Common Law, a person commits an offence where a person "Offering, giving or receiving, any undue reward, by or to any person whatsoever in a public office, in order to influence his behaviour in office and incline him to act contrary to the known rules of honesty and integrity."

## Corruption

- 1.6. Corruption can be committed in many ways but normally involves "two or more people entering into a secret agreement."
- 1.7. Indicators showing this type of offending can include the following:
  - i. Abnormal cash payments
  - ii. Pressure exerted for payments to be made urgently or ahead of schedule
  - iii. Private meetings with public contractors or companies hoping to tender for contracts
  - iv. Lavish gifts being offered or received
  - v. An individual who never takes time off even if ill, or holidays, or insists on dealing with specific contractors himself or herself
  - vi. Making unexpected or illogical decisions accepting projects or contracts

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<sup>1</sup> <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-quick-start-guide.pdf>

- vii. Abuse of the decision process or delegated powers in specific cases
- viii. Agreeing contracts not favourable to the organisation either because of the terms or the time period
- ix. Unexplained preference for certain contractors during tendering period
- x. Avoidance of independent checks on the tendering or contracting processes
- xi. The council's or its suppliers'/partners' procedures or guidelines not being followed

The Local Government Act 1972 requires, under section 117(2), that employees must disclose any personal interest in contracts that have been, or are proposed to be, entered into by the council. Failure to do so is a criminal offence.