

Introduction

1 These procedures detail HEFCW's management of the risk of either fraud or of bribery and it develops and promotes an anti-fraud, anti-bribery culture in the organisation.

Definitions of fraud

2. In addition to the common law offence of conspiracy to defraud, The Fraud Act 2006 identifies three types of fraud. These are fraud by false representation, fraud by wrongfully failing to disclose information and fraud by abuse of position. Further details are provided at **Annex B**.

Definitions of bribery

3. The Bribery Act 2010, introduced a new corporate offence of failure by commercial organisations to prevent bribery by anyone working on behalf of organisations, including third party contractors and agents. While HEFCW is not a 'commercial organisation', the general view is that public sector organisations should still work on the assumption this part of the Act applies to them. Further details of Bribery Act offences and penalties are provided at **Annex C**.

4. Generally, bribery is defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. This could include seeking to influence a decision-maker by giving some kind of extra benefit to that decision-maker rather than by what can legitimately be offered as part of a tender process.

HEFCW's responsibilities

5. The Chief Executive, as Accounting Officer, is personally accountable for managing HEFCW's risks and must ensure that HEFCW adopts and implements policies and practices to safeguard itself against bribery and fraud. Each organisation faces a range of fraud and bribery risks specific to its business, from internal and external sources. The risk of a given fraud or instance of bribery will be measured by the probability of it occurring and its impact in monetary and reputational terms should it occur.

6. In broad terms, managing the risk of fraud or bribery involves:

- assessing the organisation's overall vulnerability to fraud or bribery;
- identifying the areas most vulnerable to fraud or bribery risk;
- evaluating the scale of fraud or bribery risk;
- responding to the fraud or bribery risk;
- measuring the effectiveness of the fraud or bribery risk strategy; and
- reporting the fraud or bribery to the Welsh Government.

7. HEFCW will comply with the requirements of 'Managing Welsh Public Money.'

8. Overall responsibility for managing the risk of fraud or bribery has been delegated to the Head of Corporate Services (HoCS). Their responsibilities include:

- developing a fraud and bribery risk profile and undertaking a regular review of the fraud and bribery risks associated with each of the key organisational objectives in order to keep the profile current;
- establishing an effective Fraud and Bribery Policy and Procedures, commensurate with the fraud and bribery risk profile;
- designing an effective control environment to prevent fraud and bribery commensurate with the fraud and bribery risk profile;
- establishing appropriate mechanisms for reporting fraud and bribery risk issues, reporting significant incidents of fraud or bribery to the Accounting Officer and coordinating assurances about the effectiveness of the Fraud and Bribery Policy and Procedure to support the Governance Statement;
- liaising with and reporting to the Audit and Risk Assurance Committee;
- making sure that all parties listed in paragraph 1 of the Fraud and Bribery Policy are aware of HEFCW's Fraud and Bribery Policy and Procedure and the supporting policies and procedures listed in the Fraud and Bribery Policy and know what their responsibilities are in relation to combating fraud and bribery;
- ensuring that the policies and procedures referred to above are covered by the induction process for all parties listed in paragraph 1 of the Fraud and Bribery Policy;
- developing skill and experience competency frameworks;
- ensuring that appropriate anti-fraud and anti-bribery training and development opportunities are available to appropriate staff in order to meet the defined competency levels;
- ensuring that vigorous and prompt investigations are carried out if fraud or bribery occurs or is suspected;
- taking appropriate legal and/or disciplinary action against perpetrators of fraud or bribery;
- taking appropriate disciplinary action against staff where supervisory failures have contributed to the commission of fraud or bribery;
- taking appropriate disciplinary action against staff who fail to report fraud or bribery;
- taking appropriate action to recover assets;
- ensuring that appropriate action is taken to minimise the risk of similar frauds or bribery occurring in future.

Directors'/ Head of Team's responsibilities

9. The day to day responsibility for the prevention and detection of fraud or bribery rests with the Directors/Head of Team who are responsible for:

- ensuring that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively;
- preventing and detecting fraud or bribery;
- assessing the types of risk involved in the operations for which they are responsible;
- reviewing and testing the control systems for which they are responsible regularly;

- ensuring that controls are being complied with and their systems continue to operate effectively;
- implementing new controls to reduce the risk of similar fraud or bribery occurring where such cases have taken place.

Internal audit's responsibilities

10. Internal audit is responsible for providing the Accounting Officer with an objective evaluation of, and opinion on, the overall adequacy and effectiveness of the organisation's framework of governance, risk management and control.

Staff responsibilities

11. Every member of staff is responsible for:

- acting with propriety in the use of official resources and the handling and use of public funds whether they are involved with cash or payments systems, receipts or dealing with suppliers;
 - following HEFCW's procedures without circumventing controls;
 - conducting themselves in accordance with the seven principles of public life
 - adhering to HEFCW's Policy on 'Gifts, Hospitality, Fees and Awards' offered or received from external parties (see intranet). Any gifts or hospitality received should be promptly registered in the 'gift register'. Doing so should help to reduce the risk of an accusation of bribery and/or fraud;
 - being alert to the possibility that unusual events or transactions could be indicators of fraud or bribery;
 - reporting details immediately through the appropriate channel if they suspect that a case of fraud or bribery has been committed or see any suspicious acts or events (see Fraud and Bribery Response Plan below);
 - cooperating fully with whoever is conducting internal checks or reviews or fraud investigations;
- complying with the Fraud and Bribery Policy and Procedures in full. Any

breach will be treated as a disciplinary offence.

12. As stewards of public funds all staff must have, and be seen to have, high standards of honesty, propriety and personal integrity. Staff are required to report any potential conflict of interest via the annual completion of the Declaration of Interest form. Staff should not accept gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement and integrity. Further guidance on all aspects of personal conduct can be found on the intranet.

Council member's responsibilities

13. In addition to the responsibilities as outlined above for staff, Council members should refer to the Code of Practice for Members.

Disciplinary action

14. In the case of proven fraud or bribery, or suspected fraud or bribery of a serious nature, HEFCW reserves the right to refer the matter to the police at the earliest possible juncture.

15. Notwithstanding this, and following appropriate investigations, the Chief Executive will determine whether to invoke action in accordance with established disciplinary procedures.

Fraud and Bribery Response Plan

16. The Fraud and Bribery Response Plan provides a checklist of actions and a guide to follow in the event that fraud is suspected. It covers:

- notifying suspected fraud or bribery;
- the investigation process;
- liaison with police and external audit;
- initiation of recovery action;
- reporting process;
- communication with the Welsh Government.

Its purpose is to define authority levels, responsibilities for action and reporting lines in the event of suspected fraud, bribery, theft or other irregularity.

Notifying suspected fraud

17. It is important that all staff are able to report their genuine concerns without fear of reprisal or victimisation and are aware of the means to do so. (HEFCW's Whistleblowing Policy and Procedures which are available on the intranet provide the guidance on reporting concerns).

18. In the first instance, any suspicion of fraud, bribery, theft or other irregularity should be reported, as a matter of urgency, to your line manager. If such action would be inappropriate, your concerns should be reported upwards to one of the following:

- Directors;
- Head of Team;
- Council Secretary;
- Chair of the HR Committee;
- Chief Executive.

19. Any matters reported to the above should be passed onto one of the officers identified in para 24.

20. Additionally, all concerns must be reported to the Head of Internal Audit.

21. Every effort will be made to protect an informant's anonymity if requested. However, HEFCW will always encourage individuals to be identified to add more validity to the accusations and allow further investigations to be more effective. In

certain circumstances, anonymity cannot be maintained. This will be advised to the informant prior to release of information.

22. **Annex D** attached is a list of 'Dos and Don'ts' for staff to refer to when they suspect fraud or bribery.

The investigation process (for internal fraud only)

23. Suspected fraud or bribery must be investigated in an independent, open-minded and professional manner with the aim of protecting the interests of both HEFCW and the suspected individual(s). Suspicion must not be seen as guilt to be proven.

24. The investigation process will vary according to the circumstances of each case and will be determined by either, the Director of Strategic Development (DoSD) or the Director of Institutional Engagement (DoIE) in consultation with the HoCS. Should any one of these three be the subject of any investigation, the other two will determine the investigation process. An Investigating Officer (IO) will be appointed to take charge of the investigation on a day-to-day basis. This will be another independent officer (either the Head of Internal Audit or an individual or individuals with specialist knowledge of the area in question).

25. Where initial investigations reveal that there are reasonable grounds for suspicion, and to facilitate the ongoing investigation, it may be appropriate to suspend an employee against whom an accusation has been made. This decision will be taken by the investigating staff members in consultation with the appointed director. Suspension should not be regarded as disciplinary action nor should it imply guilt. The process will follow the guidelines set out in HEFCW's Disciplinary Procedures relating to such action which is available on the intranet.

26. It is important, from the outset, to ensure that evidence is not contaminated, lost or destroyed. The IO will therefore take immediate steps to secure physical assets, including computers and any records thereon, and all other potentially evidential documents. They will also ensure, in consultation with management, that appropriate controls are introduced to prevent further loss.

27. The IO 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 (with whom, who else was present and who said what), details of documents reviewed, test and analyses undertaken, the results and their significance. Everything should be recorded, irrespective of the apparent significance at the time.

28. All interviews will be conducted in a fair and proper manner (following guidelines set out in the Disciplinary Procedures, referred to above). Where there is a possibility of subsequent criminal action, the police will be consulted and interviews may be conducted by the police under caution in compliance with the Police and Criminal Evidence Act (PACE), which governs the admissibility of evidence in criminal proceedings.

29. The findings of the investigation will be reported by the IO to the appointed director who will determine, in consultation with the Chief Executive, what further action (if any) should be taken.

30. Reference should also be made to Appendix 9 'Example of a Fraud Response Plan' to the Chartered Institute of Management Accountants (CIMA)'s publication 'Fraud Risk Management: A Guide to Good Practice' in respect of investigation procedures. Refer to the CIMS website for further details.

Liaison with Police and external audit

31. The police generally welcome early notification of suspected fraud or bribery, particularly that of a serious nature. Some fraud or bribery cases will lend themselves to automatic reporting to the police (such as theft by a third party). For less clear cut cases, the Chief Executive, following consultation with the appointed director and the IO will decide if and when to contact the police. The HoCS will report cases of suspected fraud or bribery to the external auditors at an appropriate time.

32. All staff will be required to cooperate fully with any police or external audit enquiries, which may have to take precedence over any internal investigation or disciplinary process. However, where possible, teams will coordinate their enquiries to maximise the effective and efficient use of resources and information.

Initiation of recovery action

33. HEFCW will take appropriate steps, including legal action if necessary, to recover any losses arising from fraud, bribery, theft or misconduct. This may include action against third parties involved in the case of fraud or bribery or whose negligent actions contributed to the case of fraud or bribery.

Reporting process

34. Throughout any investigation, the IO will keep the appointed director informed of progress and any developments. These reports may be oral or in writing.

35. On completion of the investigation, the IO will prepare a full written report setting out:

- background as to how the investigation arose;
- what action was taken in response to the allegations;
- the conduct of the investigation;
- the facts that came to light and the evidence in support;
- action taken against any party where the allegations were proved;
- action taken to recover any losses;
- recommendations and/or action taken by management to reduce further exposure and to minimise any recurrence.

36. Staff will be provided with a brief and anonymised summary of the circumstances via the intranet.

37. Reports on fraud or bribery investigations and follow up reports on systems and controls shall be considered by the Audit and Risk Assurance Committee. The reports on fraud or bribery investigations should also be submitted to the Welsh Government.

Communication with the Welsh Government

38. The Framework Document requires an annual report of all cases of fraud and theft to which HEFCW has been exposed together with details of all items written off.

39. The HoCS is responsible for the preparation and submission of such reports referred to above to the Welsh Government.

ANNEX A

The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their public duties.

Objectivity

In carrying out public business, including making public appointments or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and action that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.

Honesty

Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

ANNEX B**Definitions of fraud**

1. In addition to the common law offence of conspiracy to defraud, The Fraud Act 2006 identifies three types of fraud. These are:

- fraud by false representation; where an individual dishonestly and knowingly makes a representation that is untrue or misleading;
- fraud by wrongfully failing to disclose information; where an individual wrongfully and dishonestly fails to disclose information to another person when they have a legal duty to disclose it, or where the information is of a kind that they are trusted to disclose it, or they would be reasonably expected to disclose it;
- fraud by abuse of position; where an individual who has been given a position in which they are expected to safeguard another person's financial interests dishonestly and secretly abuses that position of trust without the other person's knowledge.

2. For fraud to be committed under this legislation there will need to be identifiable intent by the individual to make a gain or cause a loss or to expose another to the risk of loss.

3. Fraud can be committed both internally and externally in respect of HEFCW as an organisation.

4. Internal fraud is fraud committed within HEFCW by an employee of HEFCW and includes:

- the direct or indirect misappropriation of cash by means of theft, the use of HEFCW funds or the Wales Purchasing Card for meeting personal expenses or settling personal indebtedness, making unauthorised payments, making false wage or overtime claims, misrecording flexi time or claiming reimbursement of expenses not incurred;
- the theft of non-monetary assets for own use or re-sale and unauthorised personal use of the assets, facilities or contracts of HEFCW.

5. External fraud is fraud committed by an outside party or parties upon HEFCW.

6. For the purpose of reporting fraud to the Welsh Government the following are included in the fraud report: Theft, false accounting, bribery and corruption, deception and collusion.

7. Computer fraud is where information technology equipment has been used to manipulate programs or data dishonestly (for example, by altering, substituting or destroying records, or creating spurious records), or where the use of an IT system was a material factor in the perpetration of fraud. Theft or fraudulent use of computer time and resources, including improper use of the internet, is included in this definition.

ANNEX C

Bribery Act 2010 offences and penalties

There are four distinct offences contained within the act:

- *The offence of bribing another person.* This can occur where a person offers, promises or gives financial or other advantage to another individual to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity. It is not an issue whether the person given the bribe is the same person who will perform the function or activity concerned.
- *The offence of being bribed.* This is where a person receives or accepts a financial or other advantage to perform a function or activity improperly. It does not matter whether the recipient of the bribe receives it directly or through a third party, or whether it is for the recipient's ultimate benefit or not.
- *Bribery of a foreign public official.* This is where a person directly or through a third party offers, promises or gives any financial or other advantage to a foreign public official in an attempt to influence them as a public servant and to obtain or retain business, or any other related advantage in the conduct of business.
- *A corporate offence of failure to prevent bribery.* A commercial organisation could be guilty of bribery where a person associated with the organisation, such as an employee, agent or even a sub-contractor, 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.

The penalties that individuals and the organisation may face in contravention of the Act are as follows.

Individuals found guilty under the Bribery Act 2010 of bribing another person, being bribed or bribing foreign public officials could face the following penalties:

- on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or both
- on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or both.

Any other person guilty of an offence under these sections of the Act is liable:

- on summary conviction, to a fine not exceeding the statutory maximum
- on conviction on indictment, to a fine.

Finally, both the person and the organisation guilty of an offence relating to failure of commercial organisations to prevent bribery are liable on conviction on indictment to a fine.

It should be noted that no limit has been set for the level of fines involved in relation to any of these offences.

ANNEX D**Fraud and Bribery Response Plan Dos and Don'ts****Do**

Make a note of your concerns:

- record all relevant details, such as the nature of your concern, the names of parties you believe to be involved, details of any telephone or other conversations with names, dates and times and any witnesses;
- notes do not need to be overly formal, but should be timed, signed and dated;
- timeliness is most important. The longer you delay writing up, the greater the chances of recollections becoming distorted and the case being weakened.

Retain any evidence you may have:

- the quality of evidence is crucial and the more direct and tangible the evidence, the better the chances of an effective investigation.

Report your suspicions promptly:

- in the first instance, report your suspicions to your line manager. If this action would be inappropriate, further guidance on disclosure can be found in the Fraud and Bribery Procedures (above) and HEFCW's Whistleblowing Policy and Procedures (on intranet);
- in addition all concerns must be reported to the Head of Internal Audit .

Don't

Be afraid of raising your concerns:

- the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013 provide protection for employees who raise reasonably held concerns through the appropriate channels (Whistleblowing);
- you will not suffer discrimination or victimisation as a result of following these procedures and the matter will be treated sensitively and confidentially.

Convey your concerns to anyone other than authorised persons:

- there may be a perfectly reasonable explanation for the events that give rise to your suspicion. Spreading unsubstantiated concerns may harm innocent persons.

Approach the person you suspect or try to investigate the matter yourself:

- there are special rules relating to the gathering of evidence for use in criminal cases. Any attempt to gather evidence by persons who are unfamiliar with these rules may destroy the case.