

Title	HEFCW Fraud and Bribery Policy Statement
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0.1	Sept 09	First draft
0.2	Nov 09	Updated post Management Board Oct 09
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1.1	June 12	Updated with Bribery Act 2010 implications
1.2	June 13	Updated to reflect changes in HEFCW organisational structure

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## **1. Introduction**

- 1.1 HEFCW requires all staff at all times to act honestly and with integrity and to safeguard the public resources for which HEFCW is responsible.
- 1.2 Fraud and bribery are ever-present threats to these resources and hence must be a concern to all members of staff, whether full-time, part-time, fixed term or temporary. Fraud or bribery may occur internally or externally and may be perpetrated by staff, consultants, suppliers, contractors or other stakeholders, individually or in collusion with others.
- 1.3 HEFCW views fraud and bribery very seriously. All suspected cases will be investigated rigorously and promptly and appropriate legal and/or disciplinary action will be taken in all proven cases of fraud or bribery.
- 1.4 HEFCW is committed to the prevention of fraud and bribery and has implemented a system of internal controls to counter these risks.
- 1.5 The purpose of this document is to set out your responsibilities with regard to fraud and bribery prevention. NB This document also applies to Council Members, although reference should also be made to the Code of Practice of Members.

## **2. Definitions of fraud**

- 2.1 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.
- 2.2 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.
- 2.3 Fraud can be committed both internally and externally in respect of HEFCW as an organisation.
- 2.4 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.

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

2.6 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.

2.7 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.

### **3. Definitions of bribery**

3.1 The Bribery Act 2010, which is not concerned with fraud, theft or other such offences, came into force in July 2011. It 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.

3.2 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.

### **4. HEFCW's responsibilities**

4.1 Irrespective of the amount involved, the Framework Document requires that all cases of fraud must be reported to the Welsh Government annually.

4.2 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 is usually measured by the probability of it occurring and its impact in monetary and reputational terms should it occur.

4.3 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.

4.4 Annex 4.7 of 'Managing Public Money' states that 'an organisation's response to fraud risk should be customised to the risks it faces'. In accordance with its recommendations HEFCW has:

- developed an Fraud and Bribery Policy Statement and Fraud and Bribery Response Plan;
- developed an anti-fraud and anti-bribery culture;
- allocated responsibilities for the overall management of fraud and bribery risk;
- established well-publicised avenues for staff to report their suspicions of fraud or bribery;
- measured the effectiveness of the fraud and bribery risk strategy;
- committed to reporting internal fraud or bribery to the Welsh Government.

4.5 Overall responsibility for managing the risk of fraud or bribery has been delegated to the Head of Corporate Services. His/her 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 Statement and Fraud and Bribery Response Plan, 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 fraud and bribery prevention policies to support the Governance Statement ;
- liaising with the Audit and Risk Committee;
- making sure that all staff are aware of HEFCW's Fraud and Bribery Policy Statement and Fraud and Bribery Response Plan and know what their responsibilities are in relation to combating fraud and bribery;
- 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 supervisors 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.

## **5. Head of Teams' responsibilities**

5.1 The day to day responsibility for the prevention and detection of fraud or bribery rests with heads of teams 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.

## **6. Internal audit's responsibilities**

6.1 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.

## **7 Staff responsibilities**

7.1 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 set out in the first report of the Nolan Committee 'Standards in Public Life'. They are selflessness, integrity, objectivity, accountability, openness, honesty and leadership (see Annex A for more details);
- 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');
- cooperating fully with whoever is conducting internal checks or reviews or fraud investigations;
- complying with this Fraud and Bribery Policy Statement in full. Any breach will be treated as a disciplinary offence.

## **8 Fraud and Bribery Response Plan**

8.1 HEFCW has prepared a Fraud and Bribery Response Plan (see separate policy on intranet) which should act as 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.

## **9 Disciplinary action**

9.1 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.

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

## **10 Personal conduct**

10.1 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.

## **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**

### **Glossary**

#### **Accounting Officer**

HEFCW's Chief Executive is designated by the Permanent Secretary of the Welsh Government as Accounting Officer, who is responsible for proper stewardship and the expenditure of public funds and the day-to-day operation and management of HEFCW.

#### **Audit and Risk Committee**

This Committee advises and supports the Council and HEFCW's Accounting Officer by giving them independent assurance on the effectiveness of internal control, corporate governance and risk management.

#### **Framework Document**

This contains the financial framework set by the Welsh Government within which HEFCW must operate.

#### **Managing Welsh Public Money**

This is published by H M Treasury and it sets out the main principles for dealing with resources used by public sector organisations in the UK.

#### **Nolan Committee**

This Committee was set up in 1994 to investigate standards of behaviour in public life.

#### **Governance Statement**

The Accounting Officer has the responsibility to maintain sound systems of governance, risk management and internal control. These systems support the achievement of HEFCW's policies and strategic objectives, whilst safeguarding the public funds and assets for which the Accounting Officer is personally responsible. The Governance Statement is given each year in the annual report.

## 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.