



Kildare County Council
Comhairle Contae Chill Dara

KILDARE COUNTY COUNCIL

ANTI-FRAUD

AND

ANTI-CORRUPTION POLICY

DOCUMENT

Approved by Management Team 3rd May 2019

1. INTRODUCTION

This document details Kildare County Council's policy on suspected or detected acts of fraud or corruption. It updates Kildare County Council's previous anti-fraud and corruption policy dated February 2005, taking into account relevant legislative changes.

The purpose of this policy is to set out the Council's responsibilities in observing and upholding its position on fraud and corruption and applies to all Kildare County Council employees, elected members, contractors and consultants engaged by the Council and other third parties working on behalf of the Council.

Kildare County Council is committed to the highest possible standards of openness, transparency and accountability in all its affairs and promotes a culture of honesty and opposition to fraud in all its forms.

2. DEFINITIONS

Fraud is defined as "The intentional distortion of financial statements or other records by persons internal or external to the organisation which is carried out to conceal the misappropriation of assets or otherwise for gain." It can be seen from this definition that fraud is a deliberate act by an individual or group of individuals and is, therefore, always intentional and dishonest.

The following are some examples of fraudulent behaviour:

- Theft, misappropriation or unauthorised use of Council property.
- Knowingly creating false or misleading financial reports.
- Submitting false or exaggerated claims for reimbursement of expenses.
- Forgery or alteration of documents.
- Falsification of work attendance times.
- Claiming payment for goods not received or for services not performed.
- Creation of false invoices for payment.
- Recording of transactions without substance.
- False or exaggerated compensation claims.
- Purchasing items for personal use with council funds.
- Failure to record/account for monies received or collected.
- Theft of cash and alteration of records to conceal deficiency.

Corruption is a specific type of fraud which involves two or more people where one party offers, gives, solicits or accepts any inducement, reward, advantage or benefit, financial or otherwise, which may influence the action of another. There are three main areas of concern in relation to corruption namely tendering and awarding of contracts, appointment of consultants, planning consent and licences. The following are some examples of corruption:

- Accepting or soliciting a bribe.
- Leaking confidential information that may directly or indirectly influence the action of any person.
- Improper or unauthorised use of funds and / or assets.
- Wrongful acts by a Local government employee in an official capacity for his or her own personal gain or for the gain of others.
- Mis-use of the Local Authority's Core Time Management Clocking system.
- Collusion to steal or misuse LA resources.
- Improper or unauthorised use of funds or assets.

The Criminal Justice Act 2018 creates the offence of active and passive corruption, defined as either directly or indirectly corruptly offering/giving or corruptly requesting/accepting a gift, consideration or advantage as an inducement or reward for any person doing an act in relation to his or her office of employment, position or business.

3. GDPR

Kildare County Council's Data Breach Management Policy is one of many measures operated to uphold its obligations under the Data Protection Act (as amended), under Article 5(1)(f) of the Articles 33 & 34 of the GDPR in relation to reporting and communication obligations regarding personal data breaches. The policy is intended to manage effectively any incidence of Personal Data Security Breaches. The policy applies to all permanent and temporary employees of KCC, and also to contractors (processing personal data) engaged by KCC. Staff contracts state the following in respect of Data Protection:

"You are required to abide by the provisions of the Data Protection Acts 1988 and 2003 and any Regulations made thereunder or amending or superseding legislation in respect of computerised or manual records. You must obtain the consent of the Data Controller before processing any such records."

4. CODE OF CONDUCT FOR KILDARE LOCAL AUTHORITY

The public is entitled to expect conduct of the highest standards from all those involved in the local government service. The Code of Conduct for Employees should be adhered to at all times. The core values underlying the Code include honesty, impartiality, integrity and serving the common good. Employees should have regard to and be guided by the Code in performing their duties.

5. PROCUREMENT

It is the role of senior management to ensure that proper procurement procedures and guidelines are in place in Kildare County Council. Details of these procedures and guidelines are included on the procurement portal of Kildare County Council's staff intranet and training is provided to staff on an ongoing basis by the Procurement Officer. The Procurement Officer will ensure that the most up to date and relevant processes and procedures,

which are based on public procurement legislation, are documented on the procurement portal.

6. CONFLICT OF INTEREST

Elected members and employees must ensure that they avoid situations where there is a potential for a conflict of interest. Such situations can arise with externalisation of services, internal tendering, planning and land issues etc. Individuals must never seek to use their official position so as to benefit improperly, themselves or others, with whom they have personal, family or other ties. Similarly, members and staff must not use or disclose confidential information acquired during their term of office or employment to their advantage or for the advantage of third parties.

7. CODE OF ETHICS

Part 15 of the Local Government Act 2001 sets out an Ethical Framework for the Local Government Service, specific to local authority members and employees. It requires all elected members and relevant employees to prepare and furnish to the Ethics Registrar, a declaration of interests by the last day of February each year. A public register is compiled from the completed declarations submitted. The Council's Ethics Registrar is responsible for maintaining the Register and will write to members and relevant employees annually to update the Register. The Ethics Registrar performs the function for a continuous two year period only.

8. RISK ASSESSMENT AND MANAGEMENT

Kildare County Council's Corporate Risk Register, updated annually, will assist the Council in identifying risk, including the risk of fraud and corruption, assessing the likelihood and impact of the risk, deciding on mitigating actions or controls to be put in place, assigning responsibility for a risk and providing assurance that the chosen responses are effective. The development and review of risk registers, at both corporate and departmental level, supports the objectives of this Anti-Fraud and Corruption Policy.

9. INTERNAL CONTROLS

Internal controls are embedded in various management systems within the Council. Their purpose is to provide a secure framework and reduce the risk of fraud or corruption occurring. The methods of control, common to all areas and which should be reviewed regularly by management are:

9.1 Physical Controls

- There should be limited access to certain goods to ensure custody of assets.
- Limited access to warehouse/store.
- Passwords to restrict access to computer files.
- Safe custody of important documents.

9.2 Segregation of Duties

No one person should have responsibility for recording and processing a complete transaction. The advantages of involving two or more people include:

- A reduction in the risk of intentional manipulation.
- A reduction in the risk of accidental error.
- Double checking of work.

9.3 Organisation

- Procedures and Responsibilities within a Section should be defined and allocated in a Procedures Manual.
- There should be clear reporting lines.
- Delegation of authority should be clearly specified.

9.4 Authorisation and Approval

- All transactions should require authorisation or approval by a specified person.
- The limits to this authorisation should be clearly specified.

9.5 Supervision

- Responsibility for supervision should be clearly specified and documented.
- There should be adequate levels of supervision within each Department.

9.6 Personnel Controls

- There should be procedures in place to ensure that staff are competent to carry out jobs assigned to them, e.g. sound training policies and procedures.

9.7 Arithmetic and Accountancy

- There should be adequate controls to ensure that all transactions are authorised, completed, recorded and accurately processed.
- This will include:
 - Checking arithmetic accuracy of records
 - Carrying out reconciliations
 - Sequential checking (to ensure that no documents are missing).

9.8 Management

- Management should exercise controls outside the day-to-day routine of the Section, e.g. review of accounts to check for abnormalities.

10. ROLES AND RESPONSIBILITIES

The Role of Elected members

The general conduct and behaviour of the elected members in carrying out their role is an important indicator by which the honesty, integrity, impartiality and performance of Local Government is judged and public trust

maintained. Kildare County Council's Code of Conduct for Councillors should be adhered to at all times, with these core values underpinning the work and role of the Elected Member. Members, in carrying out their role, should abide by this code as follows :

- Act in a way which enhances public trust and confidence.
- Avoid conflicts of interest and never seek to use improper influence.
- Make decisions based solely on consideration of the public interest and the common good.
- Serve their local authority and its people conscientiously, honestly and with impartiality.
- Promote equality and avoid bias.
- Perform their functions in a responsible and diligent manner.
- Treat their colleagues and local authority employees with courtesy and respect.

The Role of Management

It is the responsibility of management to take such steps as are reasonably available to them to prevent and detect fraud and corruption. This includes the communication and implementation of this policy in addition to all other Kildare County Council policies, rules and regulations in their work area. Management are also responsible for:

- Ensuring that all employees are aware of the Council's personnel policies and procedures.
- Ensuring staff understand their responsibilities, through adequate training, supervision, written procedures and job descriptions.
- Creating an environment in which they may be easily approached by staff with any concerns relating to suspected irregularities.
- Taking steps to provide reasonable assurance that the activities of the organisation are conducted honestly and that its assets are safeguarded.
- Establishing arrangements designed to deter fraudulent or other dishonest conduct and to detect any that may occur.
- Frequently reviewing and updating the Risk Register by examining risks within their remit. Such risk assessment(s) are an integral part of identifying areas vulnerable to fraud and corruption, including the likelihood and impact of its occurrence.
- Responding positively to recommendations made and advice given by Internal and External Audit. In addition, they have a responsibility to provide information required by the auditors. It is a criminal offence to give an auditor information or explanations which are misleading, false or deceptive.
- Ensuring that to the best of their knowledge and belief, financial information whether used in the entity or for financial reporting is reliable. Management are also responsible for the preparation of financial statements that give a true and fair view of the state of the affairs of the organisation and of its profit or loss for the financial year.

The Role of Employees

Each employee is governed in their work by the Code of Conduct for Employees and other policies on conduct and communications. The core values underlying the code include honesty, impartiality, integrity and serving the common good. Included in the Council policies, are guidelines on gifts and hospitality and codes of conduct associated with professional and personal conduct and conflict of interest. These are issued to all employees when they commence employment with the Council. Staff awareness of policy and procedures is fundamental to the effective operation of systems. In addition, employees are responsible for ensuring that instructions given by management, especially relating to the safeguarding of assets are abided by. Employees are obliged to:

- Inform their line manager of any gifts/hospitality offered (other than what is clearly a modest token).
- Inform their line manager of any outside interests that may conflict or impinge on their duties.
- Make management aware of any concerns they have about the conduct of Council affairs or the use of Council assets and resources
- Alert their line manager and /or the Internal Auditor to fraud or suspected fraud.
- Comply with the Council's policy on Internet and E-Mail usage.
- Employees are expected to report any knowledge or valid suspicions of the existence of fraud or corruption in the work place to Internal Audit or appropriate Director of Service.
- Alert management to weaknesses in control systems.
- Assist in any investigation that may arise in respect of fraud or suspected fraud.

The Role of Internal Audit

Internal Audit plays an important preventative role in providing reasonable assurance that appropriate systems and procedures are in place to prevent and deter fraud and corruption. Internal audit investigates all employee cases of suspected financial irregularity, fraud or corruption in accordance with agreed procedures.

In relation to any investigation Internal Audit may:

- Enter at all reasonable times any Council premises or land.
- Have access to all records, documentation and correspondence relating to any financial and/or other transactions as considered necessary.
- Have access to records belonging to third parties such as contractors if required for providing sufficient audit evidence in the course of an audit assignment.
- Require and receive such explanations as are regarded necessary relating to any matter under examination.
- Require any employee of the Council to account for cash, stock or any other Council property under his/her control or possession.

Internal Audit liaises with management to provide recommendations for procedures to reduce risks and prevent losses to the organisation. Internal Audit is governed by a Charter which sets out its roles and responsibilities.

The overriding aim of Internal Audit, in the context of fraud, is to help create an environment where fraud is difficult to perpetrate and easy to detect at an early opportunity. Internal Audit, however, needs the active co-operation of the organisation as a whole.

While management has the primary responsibility for preventing and detecting fraud, Internal Audit is responsible for ensuring that its audit programmes and methodologies take due account of the possibility of fraud.

The Role of the Audit Committee

In relation to the prevention of Fraud and Corruption the Audit Committee's role is to:

- Ensure that the organisation has an anti-fraud and corruption policy in place.
- Ensure the organisation has a fraud and corruption contingency plan
- Ensure that the policy and plan are reviewed on a frequent basis i.e. at least every two years.
- Ascertain the appropriateness of the policy to the organisation.
- Verify the communication of the policy to all relevant parties.
- Monitor and review the effectiveness of the Internal Audit function as it relates to the prevention or detection of fraud or corruption.
- Ascertain whether or not the policy is being applied in practice.

The Audit Committee is also governed by a Charter which sets out its roles and responsibilities.

The Role of External Audit

It is not the External Auditors' function to prevent fraud and corruption. The fact that an external audit is carried out may however act as a deterrent. The external auditors plan, perform and evaluate their audit work in order to have a reasonable expectation of detecting material misstatements in the financial statements arising from fraud. However, an audit cannot be expected to detect all instances of fraudulent or dishonest behaviour. Where External Auditors are required to investigate an alleged fraud or corruption event they will operate within legislation and their codes of conduct.

The Role of the Public

This policy, although mainly related to parties within or associated with the Council, enables concerns raised by the public to be investigated appropriately.

11. PROTECTED DISCLOSURES

A Protected Disclosure (also known as whistleblowing), is defined in the Protected Disclosures Act, 2014 as a disclosure of relevant information which, in the reasonable belief of the worker, tends to show one or more 'relevant wrongdoings', which came to the attention of the worker in connection with the worker's employment and is disclosed in the manner prescribed in the Protected Disclosures Act, 2014.

Kildare County Council is committed to ensuring that the culture and work environment are such that any employee/worker is encouraged and supported to report on any issue that may impact adversely on the Council's ability to deliver a high quality service and to facilitate the disclosure of wrongdoing and the protection of an employee/worker(s) who make such disclosures.

Consistent with the Council's existing policies, it is expected that any appropriate issue raised by an employee/worker with their line manager will be dealt with professionally and appropriately. This is essential to ensuring that all significant risks arising for the Council are identified and effectively managed. In addition, an employee/worker appropriately raising any issue of concern will not be penalised for doing so.

The disclosure under this policy should be made in writing or verbally to Kildare County Council's Designated Officer (designated to receive disclosures in the Council). In the event of a verbal disclosure, the disclosure shall be recorded by the Designated Officer and signed by the discloser as an accurate record of their disclosure. A standard form for making a Disclosure is available on the KCC website.

Recording and Tracking of Disclosures

Kildare County Council is obliged, by the 30th June annually, to prepare and publish a report detailing the number of protected disclosures made to the Council in the preceding year and any action taken in response to those protected disclosures. All disclosures of wrongdoing, irrespective of whether they are being dealt with formally or informally, shall be recorded and notified to a Designated Director who will report to the Chief Executive, as required. The identity of the discloser will remain confidential.

12. FALSE ALLEGATIONS

If an employee or worker of Kildare County Council makes a report in accordance with the Protected Disclosures policy, but the information or allegation is subsequently not confirmed by the investigation, no action will be taken against the person making the disclosure. The employee/worker will be fully protected from any less favourable treatment, penalisation or victimisation.

The motive of the person making the disclosure is not relevant but if a worker knowingly or recklessly makes a false allegation, then disciplinary action may be taken in line with Kildare County Council's Disciplinary Policy and Procedures. A false report of wrongdoing made deliberately or recklessly, does not attract protection under the Protected Disclosures Act, 2014.

13. PROTECTION FROM DISMISSAL/PENALISATION

An employee/worker of Kildare County Council, who has a reasonable belief in the occurrence of a serious wrongdoing in connection with their employment and discloses that concern, will not be penalised for the making of that disclosure, even if no investigation subsequently takes place, or where an investigation does take place, the investigation finds that no wrongdoing occurred. This undertaking extends to any other employee/worker who is required to provide information in relation to matters raised as a consequence of the disclosure.

14. FRAUD CONTINGENCY PLAN

Reporting Fraud and Corruption

Allegations and concerns about fraudulent or corrupt activity may come from different sources, e.g.

- Members of the public, anonymously or otherwise.
- County Council managers or staff member(s).
- Internal or external audit reviews.
- All Elected Members and Employees of Kildare County Council have a responsibility to report suspected fraud or corruption.

Irrespective of their origin, concerns will be treated seriously and confidentiality will be respected as far as possible.

- Suspicions of Fraud and/or evidence should be reported to the Internal Auditor and/or the appropriate Director of Service.
- Recipient must forward information obtained to Chief Executive.
- The Chief Executive and/or Internal Auditor should document information reported
- Decisions regarding the appropriate form of investigation are a matter for the Chief Executive in consultation with the Chairperson of the Audit Committee and/or the Internal Auditor.

When discussing with management, findings which indicate the possibility of fraud, it is imperative that as far as possible there is no communication with any person who may be implicated in the events which are under investigation. A thorough investigation will be made, but the level of resources applied will be dependent on the nature of the concern, evidence provided or available, resources involved and source of concern.

Note: Any individual suspecting fraud or corruption should not under any circumstances, attempt to carry out their own investigations.

Fraud and Corruption Investigation

Any investigation undertaken should have regard to the following:

- Obtain an understanding of the nature of the event and the circumstances in which it occurred.
- Examine the likelihood of the occurrence of fraud or corruption.
- Evaluate the possible effect, in financial and reputational terms.
- Identify the type of fraud or corruption in question.
- Identify the person(s) involved.
- Maintain utmost confidentiality.
- Take steps to minimise any immediate further losses if possible without alerting suspect(s).
- Consider legal implications.
- Initiate investigation to establish substance of allegation.
- Determine the extent to which it is realistic to expect that further investigation is likely to clarify the position.
- Ensure that investigating team have adequate resources.
- Having regard to the seriousness of the suspected offence, consider in consultation with the Chief Executive, suspension on full pay pending a full investigation.
- Secure all evidence.
- Identify all internal and external sources of information and evidence.
- Allow the interviewee adequate notice for each interview as deemed fair and reasonable but generally not less than one working day.
- Do not interview one to one – all interviewees must be given the opportunity to have a witness/representative.
- Keep detailed minutes of meetings and conversations with all those involved.
- It is the responsibility of any one or all of the following persons to inform An Garda Síochána if there is sufficient evidence that fraud or corruption has occurred; Chief Executive, Chairperson of the Audit Committee, Internal Auditor, Cathaoirleach of Kildare County Council. If the matter is referred, all evidence collected at this point should be made available to An Garda Síochána.
- Disciplinary action will be taken against all persons whose fraudulent and/or corrupt activity(s) affect Kildare County Council.
- Recovery of funds and/or assets will be sought after where relevant.
- If enquiry is inconclusive, consider internal measures to be taken e.g. further investigation, changes in procedures, disciplinary action, transfer

- of staff, external reporting requirements.
- On completion of investigation, review the process and consider improvements to the approach adopted.
 - Findings of all investigations conducted, regardless of the outcome, must be reported to the Chief Executive within a reasonable timeframe.
 - Any individual, auditor or otherwise has a statutory duty to take the initiative to report to the appropriate authorities suspected money-laundering related to drug trafficking and/or terrorism. A failure to report in these circumstances is itself a criminal offence. Similarly, report to An Garda Síochána, all relevant offences under the Criminal Justice Act 2018.

CONCLUSION

Kildare County Council is committed to tackling fraud and corruption whenever it happens. Our response will be effective and organised and will be in accordance with the principles set out in this document.

We will continue to review our rules and procedures and will make sure that this policy document is regularly reviewed and updated to ensure it remains effective.