



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

**CROFTING COMMISSION  
ANTI-FRAUD AND BRIBERY  
&  
CONFLICTS OF INTERESTS  
POLICIES**

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# **PART 1: ANTI-FRAUD AND BRIBERY POLICY**

## **INTRODUCTION**

It is the Crofting Commission's policy to conduct all business in an honest and ethical manner. The Crofting Commission has a zero-tolerance approach to fraud, bribery and corruption in any form, recognising that these are contrary to fundamental values of the Crofting Commission which is committed to acting professionally, fairly and with integrity in all its business dealings and relationships, implementing and enforcing effective systems to counter fraud, bribery and corruption.

The Crofting Commission aims to reduce the risk of fraud, bribery and corruption to the absolute minimum and put in place arrangements to hold fraud, bribery and corruption at a minimum level permanently. This will enable the Crofting Commission to target more resources to crofting. The Crofting Commission's approach to countering fraud, bribery and corruption will be professional, comprehensive, fair, balanced, cost effective and inclusive.

It is the responsibility of all staff to report any reasonable suspicions of fraud, bribery and corruption. It is also the Crofting Commission's policy that an employee should not suffer as a result of reporting reasonably held suspicions, and there must be no unlawful recrimination on any grounds. Staff are encouraged to raise concerns under this Policy and the Crofting Commission's Whistleblowing Policy ([link](#)).

## **SCOPE**

This Policy applies to all staff (including volunteers) and Commissioners at the Crofting Commission. This Policy is available electronically on the Crofting Commission's Intranet. It is also applicable to third parties engaging with the Crofting Commission. Failure to adhere to this Policy may lead to disciplinary action under the Crofting Commission's Disciplinary Policy and/or consideration of criminal and/or civil proceedings, if appropriate.

## **DEFINITION OF FRAUD**

Fraud is the use of deception with the intention of obtaining personal gain, avoiding an obligation or causing loss to another party. Fraud can be used to describe a wide variety of dishonest behaviour such as forgery, false representation and the concealment of material facts. The fraudulent use of IT resources is included in this definition, where its use is a material factor in carrying out a fraud.

The following are examples of the types of activity that should also be regarded as fraud:

- Manipulation or misreporting of financial information, e.g. expenses fraud
- Misuse of IT equipment in the pursuit of fraud, e.g. the creation or deletion of applications
- Misrepresentation of qualifications to obtain employment
- Conspiracy to commit fraud
- Fraudulent completion of official documents
- Non-disclosure of personal interest in order to make a gain.

## DEFINITION OF BRIBERY

Bribery is a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith. Bribery does not have to involve cash, or an actual payment exchanging hands and can take many forms such as a gift (i.e. lavish treatment during a business trip or tickets to an event).

Bribery does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give some advantage to another.

In the United Kingdom, the Bribery Act 2010 provides the four main offences:

- Giving or offering a bribe
- Receiving or requesting a bribe
- Bribing a foreign public official (also known as facilitation payments)
- Negligently failing to prevent a bribe (corporate offence).

Under the Bribery Act 2010 an offence has been committed even if no money, goods or any other advantage have been exchanged.

Bribery can take many forms. The following are examples of bribery:

- A potential applicant promises to give a decision maker cash (or other benefit) only if the decision maker grants their application. Both the applicant and decision maker would have committed an offence under the Bribery Act 2010.
- The decision maker requests cases of alcohol from an applicant on the promise that the decision maker will consider the application more favourably.

There may be instances where the public (ordinary person) may perceive an action/decision made by a staff member to be corrupt, when in fact it is not. This perception can be caused by the staff member's relationship to the third party or the way in which the action/decision had been managed. In order to protect staff from such perceptions, staff are required to complete a declaration of interest (this will ensure that staff do not make decisions where they have a conflict) and register the receipt of gifts and hospitality. These measures demonstrate that the Crofting Commission's actions are fair, objective and transparent. For additional information on conflicts of interest and gifts and hospitality, please refer to the Crofting Commission's Conflicts of Interest Policy and Gifts and Hospitality Policy.

The section 7 offence of 'negligently failing to prevent a bribe' is a corporate offence. Essentially, should bribery be proven to have occurred at the Crofting Commission, and the Crofting Commission is unable to demonstrate that measures were in place to prevent bribery from occurring, then the Commission and its officers may be found guilty of the section 7 offence and receive a 10 year's imprisonment, unlimited fines and face reputational damage.

In order to avoid prosecution under section 7 of the Bribery Act, the Crofting Commission needs to demonstrate that it has implemented the six adequate procedures as defined by the Ministry of Justice. They are as follows:

- **Proportionate procedures** – Clear, practical, accessible, properly implemented and enforced
- **Top-level commitment** – Take responsibility at the board level for bribery prevention
- **Risk assessment** – Consider both internal and external risks
- **Due diligence** – Know who your funders and partners are
- **Communication** – Embedded policies and procedures
- **Monitoring and review** – Evaluate the effectiveness of current bribery prevention procedures

## REPORTING FRAUD AND BRIBERY

All staff have a duty to report suspected fraud, bribery or corruption. Should you have any suspicions of fraud please do not hesitate to report your concerns to the following:

- **Head of Compliance**  
You should report all suspicions of fraud and bribery to the Head of Compliance using the Fraud and Bribery Referral Form (attached as [Annex 2](#)), who is the first point of contact. Remember, do not report any instances of fraud to your line manager or other staff as you do not know whether they may be implicated. You will receive a written response from Head of Compliance.
- **Use the Crofting Commission's Whistleblowing Policy**  
If you do not wish to report the matter directly to the Head of Compliance and wish to remain anonymous, please refer to the Crofting Commission's Whistleblowing Policy which will provide details of how you can report your concerns in confidence.
- **Police & Crimestoppers**  
If you feel you cannot approach the Head of Compliance or anonymously raise your concerns via the Whistleblowing Policy; you should contact the Police to report your concerns by calling 101 or by calling Crimestoppers fraud hot-line on 08000 15 16 28. However, it is strongly advised that you raise your concerns directly with the Head of Compliance or via the Whistleblowing Policy.
- **Standards Commission for Scotland**  
The Standards Commission is independent of government, political institutions and political parties and as such is able to make impartial decisions, free from any influence, on the enforcement of the Codes of Conduct. You can contact the Standards Commission on 0131 348 6666 or via [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk).

The following is guidance for individuals who suspect fraud:

### Do:

- ✓ Stay calm – remember you are a witness not a complainant.
- ✓ Write down your concerns immediately – make a note of all relevant details such as what was said in telephone or other conversations, the date, the time and the names of anyone involved.

- ✓ Do report your concerns to the Head of Compliance as soon as possible, as any delay may cause the Crofting Commission to suffer further financial loss. We encourage you to raise your concerns – the Public Interest Disclosure Act 1998 protects employees who have reasonable concerns. You will not suffer discrimination or victimisation by following the correct procedures.

**Don't:**

- ✗ Do not investigate the matter yourself. Attempting to gather evidence yourself (unless it is about to be destroyed) may result in it becoming inadmissible and prejudice any criminal investigation. The gathering of evidence must be done in line with legal requirements in order for it to be admissible in court.
- ✗ Do not approach the person involved (this may lead to him/her destroying evidence).
- ✗ Do not tell you line manager.
- ✗ Do not discuss your suspicions with anyone other than those persons referred to above unless specifically asked to do so by them. Confronting the suspect or conveying concerns to anyone other than those authorised, could alert a fraudster or lead to an innocent person being unjustly accused.
- ✗ Do not use the process to pursue a personal grievance.
- ✗ Don't do nothing!

**Remember:**

- You may be mistaken or there may be an innocent or good explanation – this will come out in the investigation.
- The process may be complex and protracted. Investigations are carried out in confidence on a 'need to know' basis. You will be updated as and when it is appropriate to do so; do not be alarmed if you have not heard anything from the investigators.

## **MONITORING**

Monitoring the effectiveness of this policy is the responsibility of the Head of Compliance and will be considered in the routine reporting of all matters relating to counter fraud, risk of fraud and actual fraud to the Audit & Finance Committee.

## **RELATED POLICIES**

This Policy is linked to the following:

- Gifts and Hospitality Policy
- Conflicts of Interest Policy
- Anti-Money Laundering Policy
- Scottish Public Finance Manual
- Whistleblowing Policy

## PART 2: CONFLICTS OF INTEREST POLICY

### PURPOSE

The purpose of this Policy is to communicate the Crofting Commission's position on what matters could constitute a conflict of interest to staff (including volunteers) and Commissioners and to establish a protocol for disclosing and dealing with such Conflicts of Interest.

### SCOPE

This Policy applies to all staff (including volunteers) and Commissioners, involved in the Crofting Commission's work. Failure to comply with this policy may lead to disciplinary action under the Crofting Commission's Disciplinary Policy.

### RESPONSIBILITY

You (all staff, volunteers and Commissioners) are responsible for reading and understanding the conflict of interest policy and immediately disclosing verbally to the Head of Compliance, and followed up in writing to the Head of Compliance and copying in your Line Manager of any conflicts of interest which may occur within twenty-four (24) hours of having knowledge of the same (by completing [Annex 3](#)).

The Head of Compliance is responsible for determining what, if any, further steps or action should be taken regarding any disclosure received from staff.

The Head of Compliance is responsible for collecting your conflicts of interest returns and maintaining them on the conflicts of interest register.

### DEFINITIONS

"Conflict of interest" refers to a situation where a member of staff's (including volunteers and Commissioners) personal relationship(s) or financial interest(s) could reasonably be seen as influencing the members of staff's duty to act in the best interests of the Crofting Commission. Such Conflicts of Interest include but are not limited to:

- being a close relative of an individual who is involved in the crofting community;
- being a close relative of an individual who has a live application (or other business) with the Crofting Commission;
- being a close relative of an individual who is employed by or involved with a business which seeks to do business with the Crofting Commission or does business with the Crofting Commission;
- holding shares in a corporation which seeks to do business with the Crofting Commission, except where the corporation and the employee holds shares which are worth less than [1%] of the issued shares in a publicly-traded corporation;
- being involved with or investing in a business or charity which is competitive to the business conducted by the Crofting Commission;
- being retained by another company or organisation, whether on a consultancy or part-time basis, which receives funds from the Crofting Commission;
- accepting "commission", "kickbacks" in cash or in kind.

Additional examples of conflicts of interest are defined within [Annex 4](#).

The integrity of the individual is not in question here. However, it is necessary for the standing of the individual and the Crofting Commission that members of the public have confidence in their independence and impartiality. Even the perception of a conflict of interest in relation to a member of staff can be extremely damaging to the Crofting Commission's reputation and it is therefore essential that these are declared and explored, in the same way as an actual conflict would be. The fact that a member acted impartially may not avoid accusations of bias.

Should you deliberately not declare a conflict of interest (for financial gain or other advantage) you may be committing an offence (i.e. fraud by failing to disclose information) and may be subject to disciplinary action under the Crofting Commission's Disciplinary Policy and may potentially be subject to criminal prosecution.

## **WHAT TO DO WHEN YOU HAVE A CONFLICT OF INTEREST**

If you become aware of, or become involved in, a conflict of interest, you shall immediately disclose such conflict of interest to the Head of Compliance (whilst copying in your Line Manager and returning a complete Declaration of Interest Form to the Head of Compliance) and cease your involvement in the decision making process related to that interest. You must also disclose what could be "perceived" by an outsider as a conflict of interest.

***NB: It is your responsibility to comply with this policy and with the related Code of Conduct.***

Disclosure requirements cannot be avoided because a member of staff feels that he or she was not, is not, or will not be influenced by the conflict of interest. No "presumption of guilt" is created by the mere existence of a conflict of interest or relationship with third parties. However, if a conflict of interest has an influence on transactions (for instance, on purchases, contracts, or leases etc.), it is imperative that the employee discloses to the Head of Compliance as soon as possible the existence of the actual or potential conflict of interest so that safeguards can be taken to protect all parties.

If you are unsure whether something constitutes a conflict of interest, you shall immediately discuss the specific concern with the Head of Compliance in order to determine the Crofting Commission's position on the issue. Responsibility for compliance and declaration lies not as a corporate matter but with the individual.

The Head of Compliance will determine:

- a) whether a conflict of interest exists;
- b) the seriousness of the potential or actual conflict of interest;
- c) what steps are necessary to protect the Crofting Commission against the conflict of interest.

In making this determination the **Head of Compliance** shall be guided by any other policies which may apply, such as the Anti-Fraud and Bribery Policy.

With regards to item (c) in the above list, the Head of Compliance may, depending on the circumstances, institute one or more of the following steps:

- inform the SMT [your head of Department] / CEO about the matter;
- establish internal safeguards to protect the Crofting Commission from any conflict of interest;
- require that the employee ceases to be involved in the situation giving rise to the conflict of interest;
- temporarily remove the employee from a position of influence over the individual/organisation with respect to matters which give rise to the conflict of interest. For instance, if the conflict involves an application from an employee's relative, then the employee may be precluded from participating if involved in the decision-making process;
- require that the employee re-pay any benefit he or she has received or which is receivable as a result of the conflict of interest;
- take potential disciplinary action against the employee (up to and including termination of employment) for infringement of provisions set out in the Conflict of Interest policy. In determining the nature of such discipline, the Head of Compliance shall consider:
  - a) your disclosure of the existence of the conflict of interest, if such disclosure was made
  - b) whether any such disclosure was made promptly
  - c) the significance of the conflict of interest
  - d) whether the conflict of interest involved any kind of dishonesty
  - e) whether the Crofting Commission was actually harmed by way of the conflict of interest (e.g. financial or reputational)
  - f) the harm that could have resulted to the Crofting Commission as a result of the conflict of interest
  - g) whether or not such harm, if any, can be repaired in any way
  - h) whether disciplinary steps, short of termination, are adequate to deal with the infraction.
- take any other action deemed advisable by the Head of Compliance in the circumstances.

**ALL STAFF** are asked to complete the Declaration of Interest Form (shown in [Annex 3](#) to this policy) on an annual basis, even if those staff have no conflict to declare. In instances where staff have nothing to declare, staff are asked to make a 'nil' declaration (using the Declaration of Interest Form – [Annex 3](#)).

Staff who become aware of a conflict of interest or a potential conflict of interest, and who fail to immediately report that conflict may be subjected to disciplinary action, which may result in a number of disciplinary sanctions including summary dismissal.

Completion of the Declaration of Interest form is by consent. It is in the interest of staff and the organisation to have as full a return as possible.

## HOW TO MAKE A DECLARATION

If you believe that you are involved in or may become involved in a conflict of interest, you must immediately disclose such conflict of interest fully and accurately to the Head of Compliance (whilst copying in your Line manager). The Declaration of Interest Form, shown in [Annex 3](#) to this policy, shall be used for this purpose and must be sent to the Head of Compliance.

The Head of Compliance shall scrutinise the declaration and may inform the concerned department of any conflict of interest; and/or seek legal advice prior to informing the CEO and Convener (if appropriate) regarding what steps should be taken as a result of the conflict of interest.

The Head of Compliance shall ensure that the Declaration of Interest Form ([Annex 3](#)) is made available to all staff on an annual basis, for revision.

A copy of this policy shall be provided to each employee following commencement of their employment with the Crofting Commission and periodically thereafter as deemed necessary by the Crofting Commission.

The Head of Compliance will ensure that all declarations of interest are transferred and maintained in the Crofting Commission's Declaration of Interests folder.

The Crofting Commission takes the protection of your privacy seriously. To safeguard your personal data and make sure that it is accurate, we only collect and/or store the data necessary to carry out our functions as a regulatory body. In this case, the processing is necessary to allow us to perform an official public authority function. You can find a copy of our Privacy Notice at [www.crofting.scotland.gov.uk/privacy-policy](http://www.crofting.scotland.gov.uk/privacy-policy).

## RELATED POLICIES

This Policy is linked to the following:

- Gifts and Hospitality Policy
- Anti-Money Laundering Policy
- Scottish Public Finance Manual
- Whistleblowing Policy

**ANTI-FRAUD AND BRIBERY STRATEGY****The creation of an anti-fraud and bribery culture**

The Crofting Commission will use counter fraud and bribery publicity material to inform employees that fraud and bribery are serious offences which take away resources from the Crofting Commission's mission. Such activity will demonstrate that fraud and corruption is not acceptable and is being tackled.

**Maximum deterrence of fraud**

Deterrence is more than just tough sanctions; it is also about increasing the expectation that perpetrators will be caught if they attempt to defraud the Crofting Commission – the Crofting Commission will introduce such measures to minimise the occurrence of fraud and bribery.

**Successful prevention of fraud and bribery that cannot be deterred**

The Crofting Commission has policies and procedures in place to reduce the likelihood of fraud and bribery occurring. These include a system of internal controls, Scheme of Delegation and documented procedures, which involve physical and supervisory checks, financial reconciliations, segregation and rotation of duties, plus clear statements of roles and responsibilities. Where fraud and bribery has occurred, the Crofting Commission will ensure that any necessary changes to systems and procedures take place immediately to prevent similar incidents from happening in the future.

**Prompt detection of fraud and bribery that cannot be prevented**

The Crofting Commission will develop and maintain effective controls to prevent fraud and bribery and to ensure that if it does occur, it will be detected promptly and referred to the Head of Compliance for investigation.

**Professional investigation of detected fraud and bribery**

The Investigating Officer will be appropriately trained to carry out investigations into suspicions of fraud and bribery.

**Effective sanctions, including appropriate legal action against people committing fraud and corruption**

Following the conclusion of an investigation, if there is evidence of fraud or bribery, available sanctions will be considered in accordance with the guidance issued by the Ministry of Justice. This may include criminal prosecution, civil proceedings and disciplinary action, as well as referral to a professional or regulatory body.

**Effective methods for seeking redress in respect of money defrauded**

Recovery of any losses incurred will also be sought through civil proceedings if appropriate, to ensure losses to the Crofting Commission are returned for their proper intended use.

<b>FRAUD AND BRIBERY REFERRAL FORM</b>
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<b>REFERRAL FORM</b>	
<b>Name:</b>	<input style="width: 80%;" type="text"/>
<b>Job Title:</b>	<input style="width: 80%;" type="text"/>
<b>Telephone:</b>	<input style="width: 80%;" type="text"/>
<b>Email:</b>	<input style="width: 80%;" type="text"/>

<b>This Allegation of Fraud &amp; Bribery relates to:</b>	
<b>Name(s):</b>	<input style="width: 80%;" type="text"/>
<b>Job Title(s):</b>	<input style="width: 80%;" type="text"/>
<b>Suspicion:</b>	<input style="width: 80%;" type="text"/>
<b>Details:</b>	<p>i.e. What has happened (is it still happening)? Who is involved? Dates/times? Is there any evidence and if so, where is it? Please provide as much detail as possible and feel free to use additional pages.</p> <div style="border: 1px solid black; height: 150px; width: 100%;"></div>

<b>Please attached any additional information</b>	
<b>Signed:</b> <input style="width: 90%;" type="text"/>	<b>Date:</b> <input style="width: 90%;" type="text"/>
Return this referral form to the Head of Compliance. You will receive a written response.	

<b>DECLARATION OF INTEREST FORM</b>
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I, as a Staff/Volunteer/Commissioner member (*delete as appropriate*) of the Crofting Commission, have set out below details of my interests which may pose a conflict of interest under the Crofting Commission's Conflict of Interest Policy.

Please return the completed form to the Head of Compliance.

To the best of my knowledge, the information below is complete and correct. I acknowledge that it is an offence to knowingly provide false or misleading information. I undertake to update on an annual basis. I give my consent for it to be used by the Crofting Commission for the purposes described in the Conflicts of Interest Policy and for no other purpose. Copies will be destroyed when I leave the Commission.

**Name:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Date:** \_\_\_\_\_

(Please fill in the rows below and complete all that apply).

Nothing to Declare (nil interest)	
Closely related to and in regular contact with an individual who is involved in the crofting community e.g. owns or is the tenant of a croft, has a live application with the Crofting Commission, or any other business with the Crofting Commission. This description is limited to a spouse or cohabitee, parents and children, including step children, siblings and in-laws.	
Closely related to and in regular contact with an individual who has a pecuniary interest in the Crofting Commission (restricted as above).	
Current employment and any previous employment in which you continue to have a financial interest. Pensions information need only be declared where the beneficial interest in the company is 20% or more. Financial interests to declare would also include details of preferential loans from businesses or direct share ownership by the individual or someone closely related to them.	

Appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority membership, public or private bodies, professional associations, tribunals, grazing committees etc.	
Membership of any professional bodies, NGOs or CBOs (community based organisations) special interest groups etc.	
Any major investments in companies, partnerships and other forms of business, major shareholdings potentially conferring a beneficial interest, where these are felt to constitute a potential conflict of interest.	
Details of any Director or Secretary position with any company or charity that is registered with Companies House UK or the Scottish Charity Regulator (OSCR).	
Details of any active membership of a political party you hold. An interest should be declared if an individual is an office bearer or takes part in public canvassing on behalf of a party or speaks on behalf of a party.	
Confirmation of whether you are a relative or guardian of a beneficiary of the Crofting Commission. If so, details.	
Confirmation of whether you have any contractual relationship with the Crofting Commission. If so, details.	
Details of any relationship with any staff or potential staff members, suppliers or funders.	
Any other conflicts that are not covered above where there could be perceived to be conflicts of interest.	

<b>EXAMPLES OF CONFLICTS OF INTEREST</b>
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**There are five main issues, which could lead to real or apparent conflicts of interest. These are:**

- Relationships with other individuals/parties/organisations which could lead to perceived or real split loyalties
- Relevant pecuniary or other interests outside the organisation
- Perception of rewards for past contributions or favours
- Membership of some societies or organisations.

**Some examples of potential real or perceived conflicts of interest are:**

- Your father, mother, son or daughter is involved in crofting in an area which falls within your remit. **You or your family may be perceived to receive a benefit through your position on the Board.**
- You are a director of a building supplies firm and the Board to which you are seeking appointment conducts regular procurement exercises for building materials. **You could benefit personally from decisions taken by the Board.**
- You are a manager in a voluntary organisation, whose funding applications are considered by the board to which you are seeking appointment. **The body for which you work could benefit financially from decisions taken by the Board.**
- You have, in the past, contributed significant funds to the political party to which the appointing Minister belongs. **Your appointment could be viewed as a reward for past favours.**
- You and a senior official who is on the selection Panel are both members of an organisation, whose membership is kept secret. **Your appointment could be viewed as the “old boy network” in operation.**

In other words, no-one should use, or give the appearance of using, their position to further their private interests. This is an area of particular importance, as it is of considerable concern to the public and receives a lot of media attention.

The above are examples only, so you should consider carefully your own circumstances to gauge whether or not a real, or perceived, conflict might exist.

**KEY FRAUD AND BRIBERY RISKS (*historic information*)**

**1. OBJECTIVES**

1.1. In the absence of its own specific Anti-Fraud Policy, the Crofting Commission had adopted the Scottish Government Anti-Fraud Policy. The Scottish Government Policy is mainly focused on financial fraud however there are other non-financial risks that are specific to the Crofting Commission that are considered more critical. They have been identified as:

- Misrepresentation by third parties in relation to regulatory application and other casework
- Potential conflicts of interest relating to staff or Commissioners in processing of casework
- Potential conflicts of interest relating to staff or Commissioners in developing policy, and
- Public perceptions of Commission processes in relation to conflicts of interest relating to staff or Commissioners.

1.2. The key objectives of this assignment were to create a draft Anti-Fraud Policy that will be presented to the Crofting Commission Board for consideration and approval. The Policy is to:

- Be compliant with the principles of the Scottish Public Finance Manual (SPFM)
- Cover the risk areas noted above specific to the Crofting Commission in addition to financial fraud
- Take into account that all the Crofting Commission’s permanent staff are employed by the Scottish Government and are therefore bound by and have access to Scottish Government policies
- Be proportionate to the size and nature of the Crofting Commission, and
- Utilise experience and knowledge of other comparable public bodies.

**2. ACKNOWLEDGMENTS**

2.1. The following individuals gave their time and co-operation during this assignment and Scott-Moncrieff (and Moore Stephens) would like to record our appreciation:

<b>NAME</b>	<b>POSITION</b>
Colin Kennedy	Convener/Commissioner
William Swann	Commissioner
Catriona Maclean	Chief Executive
Neil Macdonald	Finance Manager
Donna Smith	Head of Operations
Joseph Kerr	Head of Regulatory Support
John Toal	Head of Policy
Jane Thomas	Head of Compliance
David Findlay	Solicitor

### 3. KEY FRAUD AND BRIBERY RISKS

3.1. For this assignment, an Accredited Counter Fraud Specialist was deployed to draft a bespoke Anti-Fraud Policy for the Crofting Commission. The Counter Fraud Specialist (CFS) met with key individuals in order to better understand the unique fraud and bribery risks that are likely to affect the Crofting Commission. The key risks identified are as follows:

#### ➤ **Conflicts of Interest**

The issues surrounding undeclared conflicts of interest were highlighted as the main risk area. The risk of fraud (or bribery) due to undeclared interests is more likely to occur due to the nature of crofting and how the Crofting Commission operates. It was explained that many of the staff at the Crofting Commission have links to the crofting community (often familial) and are thus conflicted in some form. There is therefore a potential risk that conflicted staff may use their position within the Crofting Commission to render bias (and dishonest) decisions that would benefit their interest. Although there would be no financial loss to the Crofting Commission, there would potentially be a loss to an unsuccessful applicant, and there would be the risk of reputational damage should the fraud be identified.

In addition to staff, it was noted that Commissioners pose a risk in respect of undeclared interest, more so than the staff. Due to the fact that Commissioners reside in their crofting communities, they are more likely to be conflicted. Due to the fact that Commissioners are required to make decisions on crofting in their localities, there exists a potential fraud (and bribery) risk of Commissioners making decisions that will benefit their interests (personal or familial). Moreover, there is an increased risk that the public perceive a decision by a Commissioner to be corrupt (when it is not). In order to circumvent such perceptions, the Crofting Commission are taking measures by moving more of the decision making from Commissioners to staff at the Crofting Commission. In doing so, the risk of the public perceiving corrupt behaviour is significantly reduced.

#### **Recommendation One:**

In order to manage the conflicts of interest, it is recommended that the Crofting Commission introduce a procedure whereby all staff are required to make an annual declaration, including a nil declaration. However, it is acknowledged that this procedure would go beyond the requirements imposed by the Scottish Government and will therefore be subject to approval by trade unions.

➤ **IT Fraud Risks**

It was explained that the Crofting Commission's current IT system was exposed to potential fraudsters. The system does not maintain an audit trail and those who are provided access to the system, have access to the entire system; meaning that staff responsible for only one region not only have access to casework/applications for their region but have access to casework/applications for all regions. This system leaves the Commission exposed to the risk of fraud. A fraudster could potentially create, delete, approve or decline applications or casework in someone else's name. However, it should be noted that the current IT system is being replaced by a new system that maintains a strict audit trail, captures information in relation to conflicts of interest, and limits user access. This should significantly reduce the Crofting Commission's exposure to fraud via its IT system.

➤ **Area Assessors**

The Crofting Commission use Area Assessors in order to assist the Crofting Commission in making decisions in relation to crofting. Area Assessors are volunteers, receive no form of compensation from the Crofting Commission and are from the Crofting Community. The risks associated with Area Assessors are twofold. Firstly, Area Assessors are likely to be conflicted and may potentially provide a bias assessment in order to benefit their own interests. Secondly, Area Assessors are potentially more exposed to bribery or corruption due to the fact that their assessments are influential and they are not compensated by the Crofting Commission.

It was stated that the role of the Area Assessor was being reviewed.

**Recommendation Two:**

It was noted that the Area Assessors are not formally contracted to the Crofting Commission. Therefore, the Crofting Commission should consider requiring Area Assessors to sign a volunteer's contract with the Crofting Commission. This will ensure that Area Assessors can be held accountable for their assessments.

- 3.2. The CFS has drafted two policies for the Crofting Commission's consideration; Anti-Fraud and Bribery Policy and a Conflicts of Interest Policy. The risk of fraud (or bribery) occurring due to a conflict of interest is the most significant risk, therefore it is recommended that the Crofting Commission has a standalone Conflicts of Interest Policy. By having a standalone policy, it is intended that awareness of the issues surrounding conflicts of interest will be increased, thus reducing the Crofting Commission's exposure to fraud and bribery as a result of conflicts of interest.

**Recommendation Three:**

It is recommended that in order to ensure the policies are embedded (i.e. introduced, acknowledged and proven to be understood), it is advised that the new policies are sent to all staff and a training sessions is held at the Crofting Commission to inform staff of the fraud and bribery risk likely to affect the Crofting Commission and the issues surrounding conflicts of interest.