

# Anti-Corruption Arrangements

27 January 2021

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# Summary

## Introduction

1. Corruption is defined as dishonest conduct by those in power. It can include bribery, which is defined as offering or paying of illegal inducements, usually in exchange for an unfair and illegitimate advantage. In common with other governments, the States of Jersey face increasingly complex risks and threats from corruption. Instances of corruption create losses to the taxpayer, reputational risk to the States of Jersey and also undermine public trust.
2. An effective response to the risk of corruption takes time to develop and mature. It requires ongoing investment in order to demonstrate flexibility against the scale of risk and threat that the States of Jersey face. The response must be dynamic and must recognise the evolving nature of the risks and new challenges arising.
3. An effective response includes strong controls to mitigate the actual and the perceived risks of corruption, as well as establishing a culture of compliance with regulations and other requirements at all levels of the organisation.
4. A strong culture of compliance can be achieved through developing effective standards and controls, ensuring policies and procedures are diligently followed and enforced, and frequent communications from senior management on the importance and value of compliance and ethical practices. Setting high ethical standards and requiring all business to be conducted with honesty and integrity in compliance with codes of ethics and conduct, are crucial elements of an effective response.
5. My review has included consideration of compliance with established policies and procedures in respect of procurement and gifts and hospitality, as well as anti-corruption arrangements at a more strategic level within the States of Jersey. My findings and recommendations therefore encompass detailed compliance issues where action is needed to embed a compliance culture, alongside recommendations to enhance the overall anti-corruption response.

## Key findings

6. The key findings from my review are as follows:
  - the Corruption (Jersey) Law 2006 introduced comprehensive measures to combat bribery and corruption in Jersey and enhance the provisions for prosecution in Jersey, even where acts alleged to constitute an offence

were committed outside of Jersey. There have been no investigations using this Law in the last 10 years;

- the Government participates in external review programmes led by the United Nations and Moneyval (Council of Europe) which assess how the risk of corruption is managed in all sectors on the Island. The last reported outcome demonstrated a high level of compliance;
- I have not identified any examples of corruption in the States of Jersey;
- the States of Jersey have drafted a formal anti-corruption policy and accompanying strategy recently. Once approved, the policy and strategy are intended to be implemented over the next year;
- corruption risks have previously been assessed and managed by the Government of Jersey alongside fraud risks. However, a structured risk assessment has not been undertaken routinely to identify specific corruption risks; and
- there are policies and procedures in place to manage the corruption risks associated with procurement, gifts and hospitality and conflicts of interest. However, there are some weaknesses in these procedures and compliance with required procedures is variable.

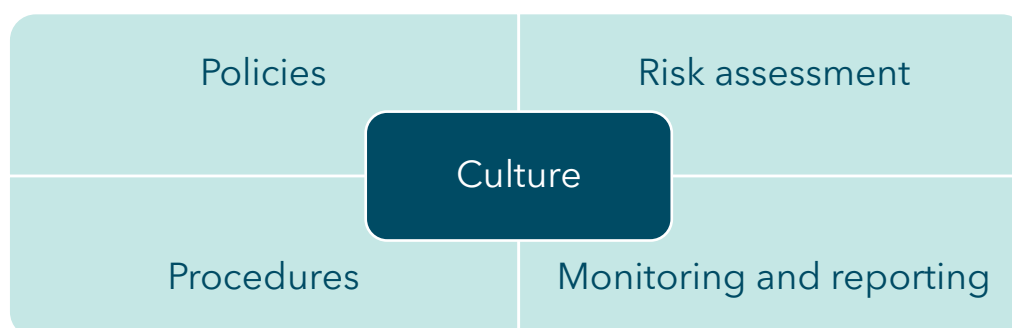
## Conclusions

7. A robust statutory framework is in place in Jersey to combat bribery and corruption.
8. Detailed work is required by the States of Jersey to implement the new Anti-Corruption Policy and the Counter Fraud and Corruption Strategy over the next 12 months. This should include doing more to raise awareness and further embed a compliance culture amongst States Members and States employees.
9. There is a need to review and update the Codes of Conduct for employees, States Members, Ministers and Assistant Ministers to include references to the policies and procedures for managing the risk of corruption.
10. There is also a need to review and improve policies and procedures in respect of:
  - managing States Members' and States employees' conflicts of interest;
  - procurement breaches and exemptions; and
  - scrutiny of gifts and hospitality.

# Objectives and scope of the review

11. As set out in Exhibit 1, the review has evaluated:
- culture – how leadership within the States promotes an effective culture by determining resistance to corruption and establishing a robust control environment;
  - risk assessment – the effectiveness of design and operation of arrangements for assessing the risk of corruption throughout the organisation;
  - policies and procedures – the effectiveness of design and effectiveness of policies and procedures to control and monitor the risk of corruption; and
  - monitoring and reporting – the effectiveness of design and operation of arrangements for reporting instances of corruption.

## Exhibit 1: Areas considered in review



12. In undertaking the work, two specific risk areas have been reviewed to test the arrangements in practice. These were:
- procurement; and
  - receipt of gifts and hospitality.
13. The review extended to activities across the States of Jersey, including all Ministerial departments and non-Ministerial departments. The review did not extend to States owned entities or arm's length organisations and did not consider cyber security risks.
14. As part of my review, I reflected on the risks of corruption arising during the Covid-19 pandemic. However, I will consider these in more depth in my subsequent work on the Government's response to the Covid-19 pandemic.

# Detailed findings

## Culture

15. The Corruption (Jersey) Law 2006 introduced comprehensive measures to combat bribery and corruption in Jersey and enhance the provisions for prosecution in Jersey, even where acts alleged to constitute an offence were committed outside of Jersey. It includes specific reference to corruption concerning a public body and corruption by officials. There are no instances of cases investigated under this law in the last 10 years.
16. Effective mitigation against the risk of corruption within an organisation starts with a strong tone from the top which sets the foundation for an overall compliance framework. This tone is typically articulated through an over-arching anti-corruption policy, a strategy to turn the policy into practice, codes of conduct and relevant training.
17. Effective policy, strategy and codes of conduct are essential resources in helping manage the risks of corruption by:
  - establishing a clear framework for assessing and managing the risk of corruption;
  - providing guidance to Officers and States Members in relation to relevant policies and procedures; and
  - describing the behaviours required of Officers and States Members.
18. To be effective, codes of conduct and the anti-corruption policy and strategy should be supported by ongoing training.

## Anti-corruption policy and strategy

19. A counter fraud policy 'Taking Fraud Seriously' has been in place since 2006. This is currently being updated for inclusion in the Public Finances Manual (PFM). This counter fraud policy indicates that there is a zero-tolerance approach to both fraud and corruption but, other than isolated references to corruption in the document, until the recent draft, there has been no specific policy for anti-corruption.
20. Fraud and corruption are often grouped together in States' documents, policies and processes. However, such an approach fails to recognise that the risks of corruption, and therefore the response, should be considered separately. The new draft Anti-Corruption Policy seeks to address this risk.

21. The Anti-Corruption Policy has been prepared recently to sit alongside the Counter Fraud and Corruption Strategy. When finalised, the Policy will require communication, awareness raising and training throughout the States. A plan to deliver this is not yet in place but is proposed for early 2021.
22. I have reviewed the final draft Anti-Corruption Policy and outline in Exhibit 2 my suggestions for improvement.

**Exhibit 2: Observations on the Draft Anti-Corruption Policy (November 2020)**

Policy area	Observations
Objective	<ol style="list-style-type: none"> <li>1. The introduction to the Policy would benefit from a definition of corruption and the global context.</li> <li>2. The principles refer to the Codes of Conduct for Staff and Ministers/Assistant Ministers. There is no reference to the Code of Conduct for Elected Members that is included as Schedule 3 of Standing Orders.</li> <li>3. Elected Members are not included in the list of parties expected to comply with the Policy.</li> </ol>
Key principles	<ol style="list-style-type: none"> <li>1. Management responsibility and an appropriate 'tone from the top' is a key principle that is not reflected in the Policy.</li> <li>2. There is no specific reference to managing conflicts of interest.</li> <li>3. Ongoing corporate risk assessment to reflect the need for a dynamic response to corruption risk is not included.</li> </ol>

23. The risk of corruption is constantly changing as new opportunities emerge for corrupt players to exploit organisations and individuals, and techniques become more sophisticated. Therefore, an anti-corruption policy must be dynamic to respond to this and be supported by an effective strategy that translates policy into practice.
24. Alongside the Anti-Corruption Policy, the Counter Fraud Strategy has been updated to reflect the risk of corruption as part of a revised Counter Fraud and Corruption Strategy for integration into the Public Finances Manual. This revised Strategy replicates much of the content of the previous Counter Fraud Strategy and, as a result, lacks specific references to anti-corruption. In Exhibit 3, I outline my suggestions for improvement in the draft Counter Fraud and Corruption Strategy.

### Exhibit 3: Observations on the final draft Counter Fraud and Corruption Strategy (November 2020)

Area of strategy	Observations
Overall	More bespoke content should be added to address the new Anti-Corruption Policy specifically.
Objectives	<p>The objectives are repeated from the previous Counter Fraud Strategy and do not include specific anti-corruption objectives. Specific anti-corruption objectives could include:</p> <ul style="list-style-type: none"> <li>• high standards of integrity;</li> <li>• reducing the threat of abuse of power;</li> <li>• managing the risk of procurement corruption;</li> <li>• strengthening the reputation of the Government and of Jersey, for example in respect of the financial services industry; and</li> <li>• working with other jurisdictions.</li> </ul>
Culture	<p>The Strategy would benefit from clarity on how the new Anti-Corruption Policy is to be implemented.</p> <p>The culture section does not refer to Elected Members.</p>
Definitions	Whilst the Strategy includes references to the Jersey (Corruption) Law 2006, a States' wide definition of corruption could be useful.
Preventing the opportunity	<p>The Strategy largely relates to controls to manage the risk of fraud. It would benefit from more reference to specific corruption risks such as:</p> <ul style="list-style-type: none"> <li>• conflicts;</li> <li>• procurement issues - where not addressed in the fraud risks;</li> <li>• excess travel, entertainment, gifts and hospitality;</li> <li>• employee history concerns;</li> <li>• lack of awareness of corruption risks on the part of management; and</li> <li>• political donations.</li> </ul>
Reporting	<p>The Anti-Corruption Policy includes requirements to report on compliance to the States Assembly, Council of Ministers, Executive Leadership Team, Public Accounts Committee, the Risk and Audit Committee as well as a range of Designated Employees. Breaches by Members are required to be reported to the Commissioner for Standards and the Privileges and Procedures Committee.</p> <p>These provisions are not included in the Counter Fraud and Corruption Strategy and should be.</p>



Area of strategy	Observations
	The Strategy does not include a requirement to report alleged corruption events to the States of Jersey Police in the same way as alleged fraud events.
Responsibilities	The responsibilities section of the Strategy does not include anti-corruption within the responsibilities of Ministers or Accountable Officers.
Examples of fraud and corruption	<p>Additional corruption examples may enhance the new Strategy by improving understanding of the issue. Areas where specific anti-corruption examples would be helpful include:</p> <ul style="list-style-type: none"> <li>• bribery through gifts and hospitality;</li> <li>• procurement corruption;</li> <li>• corruption in hiring staff;</li> <li>• political donations; and</li> <li>• corruption in times of a pandemic or other emergency response.</li> </ul>
Fraud and corruption response plan	This section would benefit from inclusion of more bespoke anti-corruption measures to demonstrate how the Anti-Corruption Policy is translated into practice.

## Codes of Conduct and training - employees

25. The Code of Conduct for States of Jersey staff has not been updated since 2002. It refers to the Nolan principles of public life and sets out the behaviours expected of employees. It also includes some requirements and guidance on managing conflicts of interest as well as requirements and guidance on gifts and hospitality.
26. My predecessor's report in 2019 on the *Role and Operation of the States Employment Board* found that there is no comprehensive 'map' of the relationship between Employment Codes of Practice and Human Resources (HR) policies and guidance. She recommended that work to produce this comprehensive 'map' is prioritised. She also recommended that a clear framework is established for the development, approval, communication, review and revision of Employment Codes of Practice and supporting HR policies and guidance.
27. The Code of Conduct is scheduled for review as part of a wider employee related policy overhaul. The timetable for the new policy framework has been developed and the Code of Conduct is being consulted on prior to approval for implementation in March 2021. I acknowledge that some elements of the current Code of Conduct, such as the key principles, will remain relevant and fit for purpose.

28. Alongside the Code of Conduct, a Whistleblowing Policy was agreed in January 2019 and has been operational since that date. There is no reference in this document to whistleblowing in respect of alleged corruption events although it does suggest that there is an interdependency with the counter fraud policy.
29. In my report on *Use of Enforcement Powers* in April 2020, I referred to inconsistencies in departmental arrangements for employees to declare interests. The 2002 Code of Conduct includes the following extract:
- “A conflict of interest arises where you might be influenced in your duties by considerations of gain or benefit for yourself, members of your family or friends or by taking a decision from which you will gain personally. On all such occasions, you must draw the potential conflict to your manager’s attention in order that a decision may be taken on how to proceed.”*
30. There is no detailed conflict of interest policy to provide employees with requirements and guidance on:
- why it is important;
  - what is a conflict - real, perceived or potential;
  - types of conflict;
  - how and what to declare; and
  - how managers should manage conflicts.
31. Training for employees on corruption risks and anti-corruption measures should be designed to raise awareness of the current risk environment as well as reinforcing the need for compliance with existing processes, including gifts and hospitality and conflicts of interest.
32. In the absence of an anti-corruption policy or strategy in the past, there is no emphasis on corruption in existing staff induction training. Treasury and Exchequer has led on training related to the PFM, including managing conflicts of interest and gifts and hospitality. With regular reinforcement training, the Government should aspire to embed the zero-tolerance aspiration within the culture of the organisation.

## Code of Conduct and training - States Members

33. Requirements and guidance for States Members are contained in:
- Standing Orders, including:
    - Schedule 2 - Register of Interests; and
    - Schedule 3 - Code of Conduct; and
  - Codes of Conduct and Practice for Ministers and Assistant Ministers.
34. The Code of Conduct within Standing Orders covers the principles of conduct in public life. Both this and the Code of Conduct and Practice for Ministers and Assistant Ministers address the need for integrity in managing conflicts of interest and declarations of gifts and hospitality. There is, however, no reference to the risk of corruption in either document. The Code of Conduct for States Members regarding receipt of gifts and hospitality is brief. More detail within the Code of Conduct or supplementary guidance would be beneficial in clarifying what type of gifts and hospitality can be justified and in what circumstances.
35. The declarations required are shown in Exhibit 4 together with my observations from review. I have highlighted a number of areas where requirements could be stricter in order to demonstrate a more robust response to the potential, perceived and actual risks of corruption.

### Exhibit 4: Observations from review of States Member declaration requirements

Declaration	Observations
<b>Employment</b> Any person or organisation from whom remuneration is received.	There is no requirement to disclose the value of any remuneration received from a third-party person or organisation.
<b>Self-employment</b> Any consultancy or self-employment that pays remuneration.	There is no requirement to disclose the value of any remuneration received from a third-party person or organisation.

Declaration	Observations
<p><b>Shareholdings</b></p> <p>Any company where shares are owned exceeding 1% of issued share capital or £25,000 in value.</p>	<p>P.67/2019 extended this to include holding companies although the Code of Conduct is yet to be updated for this. No updated declarations have been made.</p>
<p><b>Sponsorships</b></p> <p>Any person who provides sponsorship for purposes of the role.</p>	<p>No areas for improvement identified.</p>
<p><b>Gifts and hospitality and benefits</b></p> <p>Any gift or hospitality over 1% of current remuneration (£480 for States Members).</p> <p>Ministers and Assistant Ministers also required to declare any gift or hospitality over £40 in departmental registers.</p>	<p>A fixed sum may be more appropriate and easier to manage.</p>
<p><b>Overseas travel</b></p> <p>Any person who pays all or part of the costs of overseas travel.</p>	<p>No areas for improvement identified.</p>
<p><b>Land</b></p> <p>Any land owned other than main residence.</p>	<p>There is no requirement to disclose the value of significant land-holdings and any rental income. For example, in the UK, there is a requirement to disclose land valued over £100,000 and rental income over £10,000 per year.</p> <p>Similarly, there is no requirement to declare any significant land held by a company or holding company in which the Member has a significant interest.</p>
<p><b>Miscellaneous</b></p> <p>Any other item felt to be worth noting to the public.</p>	<p>No observations.</p>

36. States Members are provided with guidance and induction training. New members are briefed by the Greffier of the States on Standing Orders and Codes of Conduct at the time of taking office. There are also occasional reminders about policies and processes but there has been no specific States Member training on the risk of corruption.

## Recommendations

- R1** Update the draft of the States of Jersey Anti-Corruption Policy to improve clarity by additional references to Elected Members, management responsibility, conflicts and risk assessment.
- R2** Update the final draft of the States of Jersey Counter Fraud and Corruption Strategy to ensure that it addresses practical implementation of the Anti-Corruption Policy.
- R3** Prepare a detailed timetable for finalising and implementing the new Anti-Corruption Policy.
- R4** Revise and expand the existing Employee Code of Conduct to include reference to potential corruption risk areas such as conflicts of interest and gifts and hospitality.
- R5** Prepare a specific policy statement in respect of conflicts of interest for States of Jersey employees.
- R6** Review Codes of Conduct for Ministers and Assistant Ministers and States Members to reflect the risk of corruption with supporting guidance provided where appropriate.
- R7** Review the declarations requirements for States Members to consider whether openness could be improved by disclosure of:
- value of remuneration from employment or self-employment; and
  - value of land holdings or rental income.
- R8** Develop specific corporate anti-corruption training for all staff with a view to raising awareness of corruption risk and further embedding the culture articulated in the new policy throughout the States.
- R9** Develop training for all States Members with a view to raising awareness of the risk of corruption and embedding the appropriate culture throughout the States.

## Risk assessment

37. The best performing organisations undertake a comprehensive risk assessment to identify the specific risks of corruption that they face. This assessment is then used to develop the components of an effective anti-corruption programme.
38. The States of Jersey have not undertaken a formal assessment of the specific risks of corruption. There are however proposals to trial two risk assessment tools obtained from an Australian State Audit Office. These cover both fraud and corruption risks.
39. The generic risk of fraud and corruption has recently been included in the Government Corporate Risk Register with the mitigation for the risk of corruption being the draft Anti-Corruption Policy and the draft Counter Fraud and Corruption Strategy. As part of the response to Covid-19, three departmental risk registers were updated to include specific references to fraud and corruption as follows:
  - Treasury and Exchequer - the need for a robust fraud and corruption strategy to mitigate risks associated with the financial measures to support Covid-19 processes;
  - Customer and Local Services - the risk of fraudulent activity related to claim schemes; and
  - Chief Operating Office - commercial fraud related to increased activity and unsupervised staff working at home.
40. Some specific and common corruption risks are addressed in individual policies and procedures for both employees and States Members. These include the inherent risks associated with acceptance of gifts and hospitality, procurement and conflicts of interest.

## Recommendations

- R10** Review the specific risk of corruption at departmental and corporate levels and, where appropriate, include specific corruption risks in departmental and corporate risk registers.
- R11** Evaluate available risk assessment tools to test suitability as a resource to assess compliance with the new Anti-Corruption Policy and Counter Fraud and Corruption Strategy.

## Policy and Procedures – Procurement

41. I have considered the specific policies and procedures in place in respect of procurement and gifts and hospitality (for both States employees and States Members) and have considered the operation of these procedures in practice.
42. There are inherent risks of corruption related to procurement which need to be managed by organisations. My review has considered how the States of Jersey manage these risks and has considered specifically:
  - procurement policies and guidance;
  - breaches and exemptions;
  - tender evaluations - conflicts of interest; and
  - due diligence.
43. The United Nations Convention Against Corruption identifies several controls for public bodies which are referenced in the States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit) (see Exhibit 5).

### **Exhibit 5: UN Convention Against Corruption - Article 9 - Public procurement and management of public finances**

*'Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:*

*(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*

*(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;*

*(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;*

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.'

Source: UN Convention Against Corruption

44. My predecessor's reports, *Procurement* (2014) and *Procurement: Follow-up* (2015), highlighted progress in developing and refining corporate procurement guidance. Whilst the States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit) refers to the requirements of Article 9, it does not contain any reference to the actual risks of corruption which may guide the user.
45. Audit Scotland and Police Scotland have developed some useful guidance on risk areas for corruption. Some of this is reflected in the 'Danger Signs' included within the Counter Fraud and Corruption Strategy. However, the States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit) is the practical guidance for employees and does not contain similar 'Danger Signs' or corruption examples. An extract from the Audit Scotland and Police Scotland guidance is shown in Exhibit 6 for consideration as an enhancement to the States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit).

**Exhibit 6: Suggested 'Red Flags' for procurement corruption (extract)**

Area	Potential corruption risks or 'red flag'
<b>Procurement process</b>	Acceptance of personal reward by procurer Single officer dealing with supplier Favouritism to assist supplier in bypassing processes Bid manipulation with assistance Undeclared conflicts
<b>Contracts</b>	Excessive margins agreed by officer Inadequate checks before payments Underperformance with no penalties Contract variations



Area	Potential corruption risks or 'red flag'
Payments	Gifts given to staff Employee with conflict of interest Employee doesn't take leave Alterations to invoices

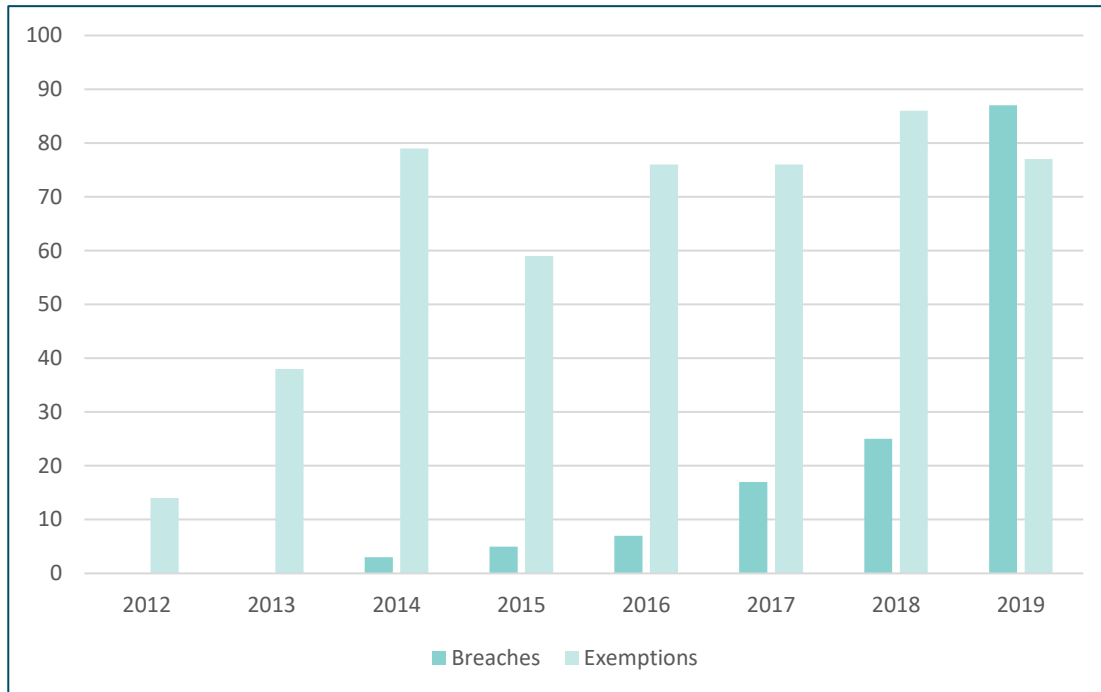
Source: Audit Scotland and Police Scotland - Procurement Red Flags October 2019

## Breaches and Exemptions

46. The PFM requires deviation from the procurement guidance to be recorded as a breach (where guidance has not been followed) or an exemption (where deviation has been approved for a valid reason). The requirement to record breaches and exemptions is good practice and can provide a snapshot of compliance when departments adhere to the requirement to record.
47. In 2014 my predecessor reported that there were nearly 40 exemptions in the previous year (2013) and made recommendations to improve controls and reduce the volume of exemptions.
48. In 2019, the breaches and exemptions logs show:
  - 87 breaches with an aggregate value of £1.3 million, some of which relate to expenditure without approved contracts in place; and
  - 77 exemptions, with an aggregate estimated value of £18.8 million, for a variety of reasons. At the time of my review, the exemptions log did not include evidence of:
    - the rationale for the exemption in 14 cases;
    - the value of the exemption in almost half of the cases;
    - a second signature (as required by procedures) in 16 cases; and
    - the quarterly review by the Treasurer since mid-December 2019 (although the end of year review for the 2019 accounts took place in February 2020 and emergency arrangements with additional approvals have been in place since April 2020).
49. Exhibit 7 shows the volume of breaches and exemptions in each year from 2012 to 2019. Whilst I have not seen evidence of any corrupt activity, the volumes of

procurement breaches and exemptions indicate non-compliance with standard procurement requirements.

### Exhibit 7: Volume of procurement breaches and exemptions since 2012



Source: Commercial Services Exemption Register since 2012

50. Analysis of the data for 2019 in Exhibit 8 shows that two departments (Children, Young People, Education and Skills, and Health and Community Services) account for the majority of recorded procurement breaches. These two departments together with the Chief Operating Office also account for the majority of recorded procurement exemptions. I have noted the total expenditure figure for each department to provide some context only (see Exhibit 8).

## Exhibit 8: Procurement breaches and exemptions by departments - 2019

Department	Spend 2019	Breaches			Exemptions		
		£m	No.	£	%	No.	£*
<b>Children, Young People, Education and Skills (CYPES)</b>	148	45	120,330	0.08	10	1,428,904	0.96
<b>Health and Community Services (HCS)</b>	220	37	1,105,337	0.50	20	5,345,110	2.43
<b>Chief Operating Office (COO)</b>	23	N/A	N/A	0.00	24	5,683,023	24.71
<b>Growth, Housing and Environment (GHE)</b>	92	N/A	N/A	0.00	6	1,658,564	1.80
<b>Treasury and Exchequer (T&amp;E)</b>	125	1	105,654	0.08	9	3,769,599	3.01

\* The value of individual exemptions not shown in register in all cases. Where not available, the value of the contract has been used in calculation.

Source: Procurement breach and exemptions log 2019. Net expenditure 2019 from Departmental Operational Business Plans 2020.

51. I reviewed a small sample of 10 breaches and 10 exemptions recorded in 2019. My review found that the procedures for documenting the rationale for and approval of breaches and exemptions are working effectively in the majority of cases.
52. It is important to ensure that there is a compelling case for all procurement exemptions that are approved to ensure that an appropriate compliance culture is maintained and value for money in procurement can be demonstrated. I noted one example where an exemption had been approved on the grounds of urgency but there was evidence to suggest that a procurement exercise could have been

completed, had the exercise been commenced as soon as need for a procurement had become apparent. There was also a lack of documentation in respect of this procurement as to how the risks of the potential for perceived conflicts of interest were considered and mitigated. The value of the contract award was in excess of £60,000.

## **Conflicts of interest**

53. Separate guidance (Declaring a Conflict of Interest: Responsibilities) has been produced by the States on managing conflicts of interest in procurement for those involved in tender evaluation. This guidance is not part of the short form of the States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit) included as a supporting document in the PFM nor is it included separately in the PFM.
54. Conflicts of interest in procurement are addressed in the full version of the Procurement Best Practice Procedures (User Guide and Toolkit) but this does not include a description of what a conflict is and when a conflict can happen, as set out in the separate Declaring a Conflict of Interest: Responsibilities guidance. Part of the guidance requires individuals to 'identify any actual, perceived or potential conflicts of interest'. However, within the Declaring a Conflict of Interest: Responsibilities guidance, it is stated that 'for major, complex and high-risk projects consideration may be given to asking all parties to complete a declaration...".
55. These statements lack the rigour I would expect. Any individual with a conflict (actual or perceived) should be excluded from the tender evaluation. For major, complex and high risk projects I would expect all parties to complete a declaration as a matter of course.

## **Due diligence**

56. Due diligence arrangements are a critical part of an organisation's response to the risk of contracting with corrupt suppliers. The due diligence arrangements in the States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit) are summarised in Exhibit 9.

## Exhibit 9: States of Jersey due diligence in procurement

Area	Considerations	Information Source
<b>Legal Status</b>	<ul style="list-style-type: none"> <li>Confirm legal status</li> <li>Identify outstanding/ongoing litigation</li> <li>States of Jersey have power to enter the contract</li> </ul>	Company data
<b>Business &amp; Financial Information</b>	<ul style="list-style-type: none"> <li>The supplier has financial capacity to deliver contract or can secure additional finance</li> <li>Secure guarantees if required</li> <li>The supplier holds adequate insurances</li> <li>A process for contract management in place</li> <li>Verify terms and conditions</li> </ul>	<ul style="list-style-type: none"> <li>Accounts</li> <li>Insurance</li> <li>Key Performance Indicator metrics</li> <li>Standard forms</li> </ul>
<b>Human Resource Issues</b>	<ul style="list-style-type: none"> <li>Adequacy of staff and numbers to deliver contract</li> <li>Are staff previous employees?</li> </ul>	Supplier
<b>Assets</b>	<ul style="list-style-type: none"> <li>Identify / agree assets to be used in contract</li> </ul>	Asset List
<b>Communications</b>	<ul style="list-style-type: none"> <li>Communications Strategy (if required)</li> </ul>	
<b>Other</b>	<ul style="list-style-type: none"> <li>Resolve outstanding issues from preferred supplier and debrief unsuccessful bidders</li> <li>Supplier quality &amp; assurance strategies</li> <li>Suppliers' exit strategy</li> <li>Contingency plans</li> <li>Reputational considerations</li> <li>Health &amp; safety policies</li> </ul>	Project Plan

Source: States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit)

57. The guidance reflects recommendations included in my predecessor's review of *Procurement* (2014). However, at that time, the need for a consistent framework for undertaking and documenting due diligence was also recommended.

The current guidance is limited in this respect and the exercise of judgment is required in interpreting the documents provided. In addition, the arrangements do not explicitly require more general tools such as internet searches to be used to consider whether specific questions should be asked to individual potential suppliers.

58. As a result, there is a risk of inconsistency in the procedures used in practice and a risk that relevant questions may not be asked of suppliers before contracts are awarded. In a recent example, the due diligence in a procurement process did not include internet searches regarding the bidders, and the questions asked in the pre-tender questionnaire did not identify corruption allegations related to the previous company owners of a bidder, dating from 2010 to 2014. These issues were identified and investigated prior to subsequent contract award based on information available at that time. However, the identification of the issues and the subsequent investigation only took place after a third party was requested to undertake additional due diligence, including an assessment of the bidders' financial and operational resilience related to Covid-19.

## Recommendations

- R12** Ensure that the planned update of the States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit) includes additional guidance on the identification of the potential risks of corruption as well as specific corruption risk examples.
- R13** Undertake refresher training to remind departments of the need for compliance with procurement requirements of the Public Finances Manual to reduce volume of breaches and exemptions.
- R14** Include in the updated States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit) rigorous requirements for managing conflicts of interest covering: identification of conflicts, declaration of interests and the circumstances in which an individual should be excluded from involvement in the procurement process.
- R15** Review due diligence procedures to promote consistency by providing enhanced guidance on how to undertake due diligence, including specifying all relevant data to be provided by suppliers and other intelligence sources.

## Policies and Procedures – Gifts and Hospitality

### Employees

59. A guidance and requirements document on receipt of gifts and hospitality for employees has recently been updated for inclusion in the PFM. Any gift or hospitality over £40 must be declared in a register. The new guidance and requirements document lists several principles:
- employees should not accept a valuable gift or money for personal reward;
  - in all cases where a gift or hospitality is offered a test of reasonableness should be applied;
  - employees should consider, in all cases, whether the gift or hospitality offered may implicate or cause the Government or States of Jersey or themselves reputational damage if details were in the public domain. For example, this could apply to gifts or hospitality given by a supplier, potential supplier, an Arm's Length Organisation or grant funded body; and
  - multiple gifts of less than £40 should not be used to avoid making a declaration in the Register.
60. Declarations are made online using a system introduced in September 2019. Prior to this date, each department was required to keep a gifts and hospitality register which the Accountable Officer for the department would review for completeness and compliance at the year-end. No registers are maintained of gifts and hospitality offered by Officers, Ministers or other States Members. In addition, no registers have been maintained of offers of gifts and hospitality that have been made to but refused by Officers, Ministers or other States Members, although the requirement to record this is included in the online system and will be introduced formally when the new guidance is finalised and included in the PFM.
61. The new online system is available for real time review by Accountable Officers and by Internal Audit. As part of my review, I have considered entries in the online system against the principles stated in the PFM. I found that there is a need to evidence on a more consistent basis the rationale and justification for acceptance of gifts and hospitality, to demonstrate compliance with the guidance and requirements document. I also identified three instances where acceptance of gifts was in contravention of policy. In each of these three instances the acceptance had been approved by an appropriate manager. In my view there was a lack of suitable judgement exercised in the decision to accept these three gifts. The cash equivalent value of these gifts ranged from £69 to £1,000.

## States Members

62. The Code of Conduct (the Code) for Elected Members states that:
- ‘Elected members should not accept gifts, hospitality or services that might appear to place the recipient under any form of obligation to the giver. In receiving any gift or hospitality, members should consider whether they would be prepared to justify acceptance to the public’.
63. The Code specifies that a declaration is required where the monetary value exceeds 1% of a States Member’s remuneration (around £480). The rationale for linking to remuneration is not clear and a fixed threshold may be more appropriate. The threshold should also relate to the cumulative value from a single person or organisation. The Code of Conduct and Practice for Ministers and Assistant Ministers is consistent with the guidance for employees and sets a limit of £40, over which gifts and hospitality should be declared.
64. States Members are required to complete a return of their interests not less than 30 days after the day on which they take the oath of office as a Senator, Constable or Deputy (whether following their election or re-election). These interests must be registered and submitted to the Greffier of the States who maintains a register. Any subsequent changes must also be registered within 30 days.
65. The declaration by each States Member is made at the time of taking office as part of the same process for making other declarations such as land, property and shareholdings. Although the Greffier of the States issues periodic reminders to all States Members to seek to ensure that gifts and hospitality records are up to date, there is no routine half-yearly or annual formal update process. This increases the risk of the register being incomplete. In addition, there is no structured review process in place for the entries on the register which increases the risk of inappropriate acceptance of gifts and hospitality going unnoticed.
66. At the time of my review, the public register of gifts and hospitality had only two entries. As noted above, the Code of Conduct and Practice for Ministers and Assistant Ministers requires gifts and hospitality over a perceived value of £40 to be declared in the departmental gifts and hospitality registers. A review of a sample of the manual departmental registers since 2018 did not identify any gifts and hospitality received. Similarly, the new online register requires hospitality over £40 for Ministers and Assistant Ministers to be included. The new guidance states that all these entries will be reviewed by the Chief of Staff on behalf of the Chief Minister and notified to the Greffier of the States. Five entries had been made at the time of my review.



## Recommendations

- R16** Introduce a requirement to record gifts and hospitality given by a States employee in the Gifts and Hospitality Register.
- R17** Introduce a requirement to record offers of gifts and hospitality that have been refused by a States employee in the Gifts and Hospitality Register.
- R18** Ensure that Accountable Officer reviews of new online gifts and hospitality declarations are rigorous and timely.
- R19** Ensure that all instances of non-compliance with policy are referred to in the Annual Governance Statements from departments and summarised in the annual review of these statements undertaken by the Chief Internal Auditor.
- R20** Review the threshold for declaring States Members' gifts and hospitality to define a cumulative monetary value received from a single person or organisation.
- R21** Revise the gifts and hospitality guidance for States Members to include the requirement to record offers of gifts and hospitality that have been refused.
- R22** Revise the gifts and hospitality guidance for States Members to include the requirement to record gifts and hospitality given.
- R23** Provide refresher training for all States Members on acceptance and declaration of gifts and hospitality.
- R24** Introduce a formal annual review process of States Members' declarations that includes review of the online register and also requires each Member to confirm completeness and compliance of declarations made.

## Monitoring and reporting

67. A response to a question in the States Assembly in 2018 confirmed that there had been no cases of corruption since 2015 and there have been none reported since 2018. I have considered the reporting arrangements and the sources of internal and external assurance in place regarding corruption events and anti-corruption activities.
68. Any corruption events are required to be reported in accordance with the arrangements set out in the new Anti-Corruption Policy and Counter Fraud and Corruption Strategy.
69. The Anti-Corruption Policy sets out the responsibilities for oversight including reporting to the States Assembly, Council of Ministers, Executive Leadership Team, Public Accounts Committee and Risk and Audit Committee. There is also provision for any concerns to be reported to an identified 'Designated Employee' or the Whistleblowing Helpline. At this stage, the format, purpose, responsibilities and timing of the reporting arrangements have not been clarified within the Counter Fraud and Corruption Strategy.
70. There have been no instances of corruption investigated by Internal Audit in the last three years.
71. Internal Audit has however carried out periodic spot checks and an annual review of the gifts and hospitality registers. The new online system for recording gifts and hospitality provides the opportunity for ongoing real-time review.
72. The last full Internal Audit review of gifts and hospitality registers in 2016 identified that departments were using a mix of policy guidance on gifts and hospitality and there was no assurance on full compliance. Internal Audit recommended that a corporate policy is drawn up for the consistent treatment of gifts and hospitality both given and received. A counter fraud audit in 2017 confirmed that this recommendation had not been implemented and this remained the case until 2019 when the new PFM requirements were introduced. In the meantime, departments continued with a variety of processes where weaknesses had been identified and there has been no assurance on completeness.

## Recommendations

- R25** Clarify reporting requirements in respect of compliance with the new Anti-Corruption Policy and any instances of corruption. These should include an annual report on compliance as well as specific arrangements in the event of an alleged corruption event.
- R26** Include specific anti-corruption reviews on a more regular basis within future Internal Audit plans.

## Appendix One

### Audit Approach

The review included the following key elements:

- review of relevant documentation provided by the States of Jersey; and
- interviews with key officers within the States of Jersey.

The documentation reviewed included:

- Anti-Corruption Policy – November 2020;
- Counter Fraud and Corruption Strategy – November 2020;
- Codes of Conduct for staff and Elected Members;
- documents recording internal policies and procedures;
- gifts and hospitality registers; and
- procurement exemption and breach registers.

The following officers were interviewed remotely or provided written input:

- Group Director, Commercial Services;
- Group Director, People and Corporate Services;
- Director, Risk and Audit;
- Greffier of the States;
- Director, Financial Crime Strategy;
- Chief Internal Auditor;
- Head of Financial Governance;
- Head of Category (Professional Services);
- Group Director, Performance, Accounting and Reporting; and
- Organisational Effectiveness Manager.

I would like to thank all officers who have contributed to this report. The fieldwork was carried out by an affiliate working for the Comptroller and Auditor General.

## Appendix Two

### Summary of recommendations

- R1** Update the draft of the States of Jersey Anti-Corruption Policy to improve clarity by additional references to Elected Members, management responsibility, conflicts and risk assessment.
- R2** Update the final draft of the States of Jersey Counter Fraud and Corruption Strategy to ensure that it addresses practical implementation the Anti-Corruption Policy.
- R3** Prepare a detailed timetable for finalising and implementing of the new Anti-Corruption Policy.
- R4** Revise and expand the existing Employee Code of Conduct to include reference to potential corruption risk areas such as conflicts of interest and gifts and hospitality.
- R5** Prepare a specific policy statement in respect of conflicts of interest for States of Jersey employees.
- R6** Review Codes of Conduct for Ministers and Assistant Ministers and States Members to reflect the risk of corruption with supporting guidance provided where appropriate.
- R7** Review the declarations requirements for States Members to consider whether openness could be improved by disclosure of:
- value of remuneration from employment or self-employment; and
  - value of land holdings or rental income.
- R8** Develop specific corporate anti-corruption training for all staff with a view to raising awareness of corruption risk and further embedding the culture articulated in the new policy throughout the States.
- R9** Develop training for all States Members with a view to raising awareness of the risk of corruption and embedding the appropriate culture throughout the States.
- R10** Review the specific risk of corruption at departmental and corporate levels and, where appropriate, include specific corruption risks in departmental and corporate risk registers.
- R11** Evaluate available risk assessment tools to test suitability as a resource to assess compliance with the new Anti-Corruption Policy and Counter Fraud and Corruption Strategy.

- R12** Ensure that the planned update of the States of Jersey Procurement Best Practice Procedures (User Guide and Toolkit) includes additional guidance on the identification of the potential risks of corruption as well as specific corruption risk examples.
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