

Informative on the Council's Legal Duties

The Council is required to comply with numerous legal duties (see below but not an exhaustive list). Where the Council's functions are carried out by an external provider, the Council remains responsible for meeting the duty. The Council must therefore ensure that it builds relevant legal obligations into its procurement process to ensure that its legal responsibilities are met, regardless of who is carrying out the function.

Bribery Act 2010 - makes it an offence to offer, promise or give a bribe. It is also an offence to request, or agree to receive or accept a bribe. While the legislation takes a robust approach to commercial bribery, it also applies to individuals who attempt to influence the application of rules, regulations and normal procedures.

The Council adheres to the highest ethical standards and this is reflected in every aspect of the way in which it operates. The Council expects its employees and anyone acting for or on its behalf, to be fair and honest and to give the necessary help, information and support to help prevent and eliminate bribery and other corrupt practices. The Council applies a 'zero tolerance' approach to any act of bribery or corruption by a member of staff and contractors/service providers. Any acts of bribery will result in termination of any contractual arrangements with the Council and immediate debarment/ineligibility from tendering for Council business.

Civil Contingencies Act 2004 - requires the Council to maintain plans to ensure it can continue to perform all of its ordinary functions in the event of an emergency. External providers are required to comply with the Council's Business Continuity Plan – this obligation will be referred to in contractual arrangements.

Counter-Terrorism and Security Act 2015 - the Council has a legal duty to, "when exercising its functions, have due regard to the need to prevent people from being drawn into terrorism". External providers are required to give reasonable assistance and support to the Council in meeting its duty and to have regard to the Prevent Duty Guidance issued under [section 29 of the CTSA 2015](#).

Data Protection Act 2018 (applying the General Data Protection Regulation (GDPR)) - applies to any public or private organisation processing personal data. The 'data controller' will be the Council letting the contract or calling-off from a framework agreement and the 'data processor' will be the contractor/service provider.

Under the GDPR, 'data processors' now face direct legal obligations and they can be fined by the Information Commissioner's Office. Both 'data controllers' and 'data processors' can face claims for compensation where they have not complied with their obligations under GDPR.

For contracts which involve the [processing of personal data](#), the Council (as data controller) must set out, in each contract with the contractor/service provider (as data processor), details of the nature, scope and duration of the data processing and impose specific obligations on the contractor/service provider, including:

- (i) a requirement to create and maintain records of processing activities; and
- (ii) the provision of a guarantee from the contractor/service provider to implement appropriate technical and organisational measures that are sufficient to secure that the processing will (a) meet the requirements of the GDPR and (b) ensure the protection of the rights of the data subject.

The Council will not accept liability clauses indemnifying the contractor/service provider against fines or claims under the GDPR. The legal penalty regime has been extended directly

to 'data processors' to ensure better performance and enhanced protection for personal data, therefore indemnifying the contractor/service provider for any GDPR fines or court claims undermines these principles.

Equality Act 2010 – brings together the existing duties relating to equality (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex & sexual orientation). The Council is under a single equality legal duty to actively look at ways of ensuring promotion of equality and diversity through its procurement activities. Contractors'/service providers' policies and processes must be consistent with the Act.

Freedom of Information Act 2000 - gives the public a statutory right to be informed whether the Council, holds particular information and, if so, to have that information disclosed to them, subject to a number of exemptions, which may be applied. Any information that contractors/service providers have previously provided or may provide in future to the Council, including proposals, correspondence, submissions and tenders, will be subject to the Act. When identifying issues of commercial confidentiality, contractors/service providers must provide sufficient evidence of harm or prejudice to the commercial interests identified, to enable the Council at the FOI request stage, to consider engaging the exemptions in the legislation and refuse the request. The Council will not refuse a FOI request unless it is satisfied on the evidence submitted, that disclosure would adversely affect a legitimate economic interest of the person the confidentiality is designed to protect.

Human Rights Act 1998 - the Council is obliged to comply with the Act in any action it undertakes as a public body, including the delivery of services. The Council retains this obligation even if it arranges for a contractor/service provider to provide services to the public. Therefore, the service needs to be provided in a way that takes account of the Act. Providing the service in this way, will assist in the provision of an optimised service. Not to do so, may expose the Council to legal liability and, furthermore, may infringe the legal rights of service users.

Modern Anti-slavery & Human Trafficking - the Council is committed to preventing slavery and human trafficking in its corporate activities and to ensuring its supply chains are free from slavery and human trafficking. The Council is under a duty to notify the Secretary of State of suspected victims of slavery and human trafficking.

Contractual arrangements will require contractors/service providers to comply with the Council's Modern Anti-slavery & Human Trafficking Statement. Contractors/service providers with an annual turnover of at least £36million will be required to prepare and deliver to the Council each year, an annual anti - slavery and human trafficking report setting out the steps taken to ensure that slavery and human trafficking is not taking place in any of their supply chains or in any part of their business.

Public Interest Disclosure Act 1998 - the Council is committed to the highest standards of openness, probity and accountability and encourages all its employees, Councillors and employees of firms contracted to the Council who have serious concerns about any aspect of the Council's work to come forward and voice those concerns through the [Whistleblowing Policy](#).

Safeguarding – safeguarding is a term which relates to the action taken to promote the welfare of children, young persons and adults at risk and protect them from harm. Safeguarding is everyone's responsibility. The Council's Safeguarding Guidelines for External Providers makes a positive contribution to a strong and safe community and recognises the right of every individual to stay safe and establishes a framework to support contractors/service providers in their safeguarding practices and clarifies the Council's compliance and reporting expectations.

Transparency - the Council is required to publish on-line, items of spending over £500, including tenders, contracts and actual payments. The Council has therefore included transparency provisions in the contract terms and conditions which provide that, with the exception of information which is exempt from disclosure under the Freedom of Information Act (notified to the Council before the commencement of the contract), the contract and its schedules will be published in its entirety.

TUPE – is designed to preserve employees' terms and conditions of employment when either a business or undertaking is transferred to a new employer, or there is a 'service provision change' (for example, contractor A takes on a contract to provide a service for the Council from contractor B and the same staff provide the service).

As a matter of course, the Council includes contractual requirements for disclosure of TUPE related information by the outgoing contractor/service provider.

The "Principles of Good Employment Practice for Government, Contracting Authorities and Suppliers" sets out what the Council expects of its contractors/service providers in their employment practices. Although compliance with the Principles is voluntary, the Council will expect contractors/service providers to follow the Principles should TUPE apply.

It is tenderers' responsibility to consider whether or not TUPE applies in the specific circumstances of their bid. If tenderers have a contrary view to that of the Council on the applicability of TUPE, they must advise the Council, giving the reasons, prior to the tender return date.