

# Anti-Bribery Policy



## 1.0 Policy Statement

Bribery is a criminal offence. We do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we accept bribes or improper inducements.

To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance of bribery. We aim to maintain anti-bribery compliance as “business as usual”, rather than a one-off exercise.

## 2.0 Objective of this policy

This policy provides a coherent and consistent framework to enable the Council’s employees and Members to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees and Members to identify and effectively report a potential breach.

We require that all personnel, including those permanently employed, temporary agency staff and contractors:

- act honestly and with integrity at all times and to safeguard the Council’s resources for which they are responsible
- comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates.

## 3.0 Scope of this policy

This policy applies to all Council activities. For partners (including shared service providers), joint ventures, contractors and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

The responsibility to control the risk of bribery occurring resides at all levels of the Council.

This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, agents, Members, volunteers and consultants.

## 4.0 This Council's commitment to action

This Council commits to:

- Setting out a clear anti-bribery policy and keeping it up-to-date.
- Making all employees and Members aware of their responsibilities to adhere strictly to this policy at all times.
- Making training available to permit recognition and avoidance of bribery.
- Encouraging employees, Members and others to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.
- Rigorously investigating instances of alleged bribery and assisting Police and other appropriate authorities in any resultant prosecution.
- Taking firm and vigorous action against any individual(s) involved in bribery.
- Include appropriate clauses in contracts to prevent bribery.

## 5.0 The Bribery Act 2010

### 5.1 *Definition of Bribery*

Broadly, the Act defines bribery as giving or receiving 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, lavish treatment during a business trip or tickets to an event.

### 5.2 *Offences*

There are four key offences under the Act:

- bribery of another person (section 1)
  - accepting a bribe (section 2)
  - bribing a foreign official (section 6)
  - failure by a commercial organisation to prevent bribery - a corporate offence (section 7)
- Note - It is still an offence for someone to offer a bribe even if it is not accepted.

A *commercial organisation* will have a defence to the corporate offence of failure to prevent bribery if it can show that it had in place *adequate procedures* designed to prevent bribery by or of persons associated with the organisation.

### 5.3 *Is the Council a “commercial organisation”?*

Yes. The guidance states that a “commercial organisation” is any body formed in the United Kingdom and “...it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made.”

### 5.4 *What are “adequate procedures”?*

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine what procedures to adopt based on the six principles set out below.

### 5.5 *Six principles for bribery prevention*

- ***Proportionate procedures*** – An organisation’s procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation’s activities. They are also clear, practical, accessible, effectively implemented and enforced.
- ***Top level commitment*** – The top-level management is committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.
- ***Risk assessment*** – The organisation assesses the nature and extent of its exposure to potential external or internal risks of bribery on its behalf by persons associated with it. This includes financial risks but also other risks such as reputational damage.
- ***Due diligence*** – The organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.
- ***Communication (including training)*** – The organisation ensures that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.
- ***Monitoring and review*** - The organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

The Council is committed to proportional implementation of these principles.

## **5.6 Penalties**

An individual guilty of an offence under sections 1, 2 or 6 is liable:

- On conviction in a Magistrates' Court, to imprisonment for a maximum term of 12 months (six months in Northern Ireland), or to a fine not exceeding £5,000, or to both
- On conviction in a Crown Court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both

Organisations are also liable for these fines and if guilty of an offence under section 7 are liable to an unlimited fine.

## **6.0 Bribery is not tolerated**

It is unacceptable to:

- give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure;
- accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them;
- accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided in return;
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy;
- engage in activity in breach of this policy.

## **7.0 Facilitation payments**

Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions.

## **8.0 Gifts and hospitality**

This policy is not meant to change the requirements of our gifts and hospitality guidance, which can be found within the Conditions of Service. In summary, all gifts and hospitality offered to or received by officers should be reported

to their line manager and recorded in a Register, regardless of whether they are accepted or not.

## **9.0 Public contracts and bribery offences**

Under the Public Contracts Regulations 2015, a Bribery Act conviction in respect of active bribery (section 1), passive bribery (section 2) or bribery of foreign public officials (section 6) gives rise to a mandatory exclusion from participation in public tenders. The offence of 'failure of commercial organisations to prevent bribery' (section 7) will not trigger mandatory exclusion, but may give rise to grounds in support of a discretionary exclusion.

## **10.0. Staff responsibilities**

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or under its control. All staff are required to avoid activity that breaches this policy.

You must:

- ensure that you read, understand and comply with this policy
- raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred, or may occur in the future.

As well as the possibility of civil and criminal prosecution, staff who breach this policy will face disciplinary action, which could result in dismissal for gross misconduct.

## **11.0 Raising a concern**

The Council is committed to ensuring that all of us have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff to know how they can raise concerns.

If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

There are multiple channels to help you raise concerns. Please refer to the Council's [Whistleblowing Policy](#) and determine the most appropriate course of action. Preferably the disclosure will be made and resolved internally. However, where internal disclosure proves inappropriate, concerns can be raised via your trade union, professional organisation or regulatory body (e.g. External Auditor). Raising concerns in these ways may be more likely to be considered reasonable than making disclosures publicly (e.g. to the media).

In the event that an incident of bribery, corruption, or wrongdoing is reported, we will act as soon as possible to evaluate the situation. We have clearly

defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind.

We are committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith.

If you have any questions about these procedures, please contact Gary Angell, Audit Manager either by email ([gary.angell@rother.gov.uk](mailto:gary.angell@rother.gov.uk)) or by telephone (01424 787709).

### **Version Control**

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