



CORPORATE BRIBERY ACT POLICY

AUGUST 2011

Policy Statement – Anti Bribery

1. 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.
2. To use a third party to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.
3. We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance towards bribery. We aim to maintain anti-bribery compliance “business as usual”, rather than as a one-off exercise.

Bribery

4. A bribe is a financial or other advantage. Bribery is offering, or giving a bribe to another to induce someone (not necessarily the person to whom the bribe is offered or given) to perform a relevant function or activity improperly or as a reward for such improper performance once it has been done.
5. It is an offence to:
 - request, agree to receive or to accept a bribe with the intention that a relevant function or activity should be performed improperly (whether by the person asking for or receiving the bribe or by a 3rd party).request, agree to receive or to accept bribe as a reward for the improper performance of a function or activity to perform a relevant function or activity improperly as a result of a bribe if the person accepting the bribe performs the function personally or it is performed by someone else at his request, with his agreement or with his acquiescence

“Relevant functions” are functions where the person performing the function is expected to perform it in good faith or impartially or the person performing it does so in a position of trust and are functions of a public nature, activities connected with a business, activities in the course of employment or activities performed by or on behalf of bodies of persons (incorporated or not).

There is a legal expectation that relevant functions will be performed in good faith, impartially and in a way which is consistent with being in a position of trust. Performance of a relevant function in breach of these expectations amounts to improper performance. Non-performance of a relevant function where the expectation is that the function would be performed is also improper performance. The standard of the expectation is what a reasonable person would expect of the person performing the function.

6. It is unacceptable to:-

- accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that an advantage will be provided by us 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.

Objective of this policy

7. This policy provides a coherent and consistent framework to enable Uttlesford District Council (UDC) employees and those dealing with the Council to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees and others to identify and effectively report a potential breach.

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

- act honestly and with integrity at all times and to safeguard the organisation'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

Scope of this policy

9. This policy applies to all of the Council's activities. For partners, joint ventures and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

10. Within the Council, the responsibility to control the risk of bribery occurring resides at all levels of the Council. It does rest in all business units and corporate functions.

11. This policy covers all staff, including all levels and grades, those permanently employed, temporary agency staff, contractors, agents, Members (including co-opted members), volunteers and consultants.

The Council's commitment to action

12. The Council commits to:

- Setting out a clear anti-bribery policy and keeping it up to date
- Making all employees aware of their responsibilities to adhere strictly to this policy at all times

- Training all employees so that they can recognise and avoid the use of bribery by themselves and others
- Encouraging its employees 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
- Provide information to all employees to report breaches and suspected breaches of this policy

Facilitation payments

13. Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to perform or expedite functions they are otherwise obliged to perform.

Gifts and hospitality

14. This policy is not meant to change the requirements of our PPN 62 - Gifts and Hospitality Guidance.

15. As a general principle gifts should not be accepted. All offers of cash (including offers of payments or services to third parties or to charity) and the offer or receipt of any gift or hospitality should be recorded in the Gifts Register. Any gifts for which there was felt to be an obligation to accept should be forwarded to the Personal Assistant to the Chief Executive or Members' Assistant. These gifts will be raffled and the money donated to charity.

16. There are exceptions which apply to:

- modest gifts, e.g. calendars, pens, articles for use in the office or
- gifts which are intended for the Council as a corporate body or for a particular service area but not for personal use. Such gifts must be recorded in the Register and forwarded to the Personal Assistant to the Chief Executive or Members' Assistant.

17. As a general principle hospitality should not be accepted. Some examples where it may be appropriate to accept hospitality are:

- Working lunches/dinner when working on projects or on community issues etc.
- Customary lunches/dinners at conferences or seminars where there are a number of guests;
- Civic or ceremonial occasions when representing the Council or accompanying the Chairman or the Council's representative.

18. If you have any questions on any part of this guidance do ask your Line manager, Divisional Head, Director or an Assistant Chief Executive

Public contracts and failure to prevent bribery

19. Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically debarred from competing for public contracts when it has been convicted of a corruption offence including bribery. There are no plans to amend the 2006 Regulations for this to include the crime of failure to prevent bribery. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. The Council has the discretion to exclude organisations convicted of this offence.

Staff responsibilities

20. 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.

21. 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.

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

Raising a concern

23. This 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.

24. We all have a responsibility to help detect, prevent and report instances of bribery. 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.

25. There are multiple channels to help you raise concerns. Please refer to PPN 61 Whistleblowing Policy, the Council's Anti-Fraud and Corruption Act Policy and the Council's Housing Benefit & Council Tax Benefit Anti-Fraud Policy to determine your favoured course of action.
26. As a first step you should normally raise concerns with your immediate supervisor or Divisional Head. This depends, however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if you believe that management is involved, you should approach the Internal Audit section, the Monitoring Officer, the Section 151 officer, a Director or the Chief Executive. Preferably the disclosure will be made and resolved internally (e.g. to your Divisional Head / Director).
27. Where internal disclosure proves inappropriate, concerns can be raised with the police, the External Auditor or relevant professional bodies or regulatory organisations. Raising concerns in these ways may be more likely to be considered reasonable than making disclosures publicly (e.g. to the media).
28. Concerns can be anonymous. 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 a clearly defined Anti-Fraud & Corruption Policies which set out procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind. This is easier and quicker if concerns raised are not anonymous.
29. Staff who refuse to accept or offer a bribe, or those who raise concerns or report wrongdoing can understandably be worried about the repercussions. We aim to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if they turn out to be mistaken.
30. 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.
31. If you have any questions about these procedures, please contact the Internal Auditor Manager.

The Bribery Act

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)
- failing to prevent bribery (section 7)

The Bribery Act 2010 (http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1) makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2). Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business. There is also a corporate offence under Section 7 of failure by a commercial organisation (UDC is a commercial organisation under the Act) to prevent bribery. An organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent bribery by or of persons associated with the organisation.

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

Bribery is a serious offence against the Authority and employees will face disciplinary action if there is evidence that they have been involved in this activity, which could result in summary dismissal for gross misconduct. Disciplinary action will be taken in addition to, or instead of, criminal proceedings, depending on the circumstances of each individual case.

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 Council. It is for individual services to determine proportionate procedures in the recommended areas of six principals. These

principles are not prescriptive. They are intended to be flexible and outcome focussed, allowing for the different circumstances of services. The detail of how services apply these principles will vary, but the outcome should always be robust and effective anti-bribery procedures.

THE SIX PRINCIPLES

Proportionate procedures

The procedures to prevent bribery by persons should be proportionate to the bribery risks faced and to the nature, scale and complexity of the service's activities. They should also be clear, practical, accessible, effectively implemented and enforced.

Top level commitment

The Strategic Management Board is committed to preventing bribery by persons associated with the Council. It fosters a culture within the organisation in which bribery is never acceptable.

Risk Assessment

The Council assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage.

Due diligence

The Council 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 Council seeks to ensure 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 Council monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

This Council is committed to proportional implementation of these principles.