

Anti-Bribery and Corruption Policy

Approved by the Board of Governors on 22 November 2017

Policy Owner: Head of Finance

1. Introduction

- 1.1 The University is committed to the highest standards of integrity, probity and ethics in all its dealings - wherever they may take place and in whatever context. Bribery is both illegal and unethical, and brings with it the potential for criminal liability and severe penalties - at both University and individual level. The legislation is extensive and, crucially, the University's anti-bribery responsibilities do not end at the office door or campus gate. Those responsibilities potentially extend to any associated person, representative, agent, subsidiary, partnership or body engaged on University business, including those within and outside of the UK.
- 1.2 All personnel are required to confirm that they have read and understood this policy (see section 8.3).

2. Definitions

- 2.1 **Corruption** can be defined as dishonest or fraudulent conduct, typically involving bribery.
- 2.2 **Bribery** can be defined as the offering, giving, promising, asking, agreeing, receiving accepting or soliciting of any item of value (money, goods, favours or other forms of recompense) or of an advantage to influence the actions or decisions of another individual to gain commercial, regulatory or personal advantage.

3. Policy statement

- 3.1 The University values its reputation for ethical behaviour and recognises that any involvement in bribery is illegal and will reflect adversely on its hard-earned image and reputation.
- 3.2 The University prohibits the offering, giving, soliciting, promising, asking, agreeing or the acceptance of any bribe in whatever form to, or from, any person or company (public or private) by anyone associated with the University.
- 3.3 The University expects any person or company (public or private) associated with the University to act with integrity and without any actions that may be considered an offence within the meaning of the Bribery Act 2010.

- 3.4** The University requires any potential breaches of this policy and bribery offers to be reported under the University's reporting processes (see 10, below).
- 3.5** The prevention, detection and reporting of bribery is the responsibility of everyone associated with the University.

4. Scope and Approach

4.1 Scope

This policy applies to all University staff and students. It also applies to agency and self-employed workers working for the University, and all other persons associated with and acting for the University, whether directly or indirectly. This definition includes external members of University Committees, representatives, agents, subsidiaries, individuals appointed as directors of any company, consultants, contractors and partners. Where appropriate, this policy may also be used by any individual or organisation doing business with the University or working in partnership with it. To the fullest extent permissible by law, this policy shall apply in all jurisdictions in which the University operates.

4.2 Approach

The University has a zero tolerance approach to bribery and serious action will be taken against anyone found to be involved in bribery, up to and including dismissal under the University's disciplinary processes. For associated persons, breach of this policy may result in contractual, legal and/or other sanction(s).

5 The Bribery Act 2010

- 5.1** The Act came into force in July 2011. It is a comprehensive piece of legislation which has extensive scope and geographic reach. According to the Act, bribery is where someone requires, gives or promises financial (or other) advantage with the intention of inducing or rewarding *improper performance*. Improper performance is a key concept and generally means where an individual does not act in good faith, impartially and/or properly, and will include promising or agreeing to act in a way that constitutes improper performance. The test of what is proper is based upon what a person in the UK would reasonably expect.

A typical example of improper performance could involve work being continually directed to a particular construction contractor at the expense of other qualified contractors as a result of bribery - work that has invariably been overpriced to allow for the bribery payments required. Further examples of instances of bribery are set out in Appendix 1.

- 5.2** Under the Act, there are two general forms of bribery where individuals are personally criminally liable:

- Offering, promising or giving of a bribe (either directly or indirectly) with the intent to induce a person to improperly perform a relevant function - known as *active bribery*.
- Requesting, agreeing to receive or accepting a bribe (either directly or indirectly) such that a relevant function is, or will be, improperly performed - known as *passive bribery*.

There are two other related offences:

- Bribing a foreign public official in order to obtain or retain business or an advantage to the conduct of business.
- Corporate liability where a body, such as a University, fails to prevent bribery.

It is important to note that:

- So-called 'facilitation payments' - payments typically to government officials to facilitate special treatment, such as prioritisation in an approval process - are also bribes. The University does not offer or make, and shall not demand or accept, facilitation payments of any kind. Advice should be sought if required in order to distinguish between properly payable fees and disguised requests for facilitation payments.
- The timing of bribery payments - before, during and/or after a relevant function does not affect the offence.

5.3 The Bribery Act has extensive global reach and holds UK organisations liable for failing to implement *adequate procedures* sufficient to prevent such acts by those working for the University or on its behalf, no matter where in the world the act takes place. In addition, current US legislation (Foreign Corrupt Practices Act or FCPA) offers similar prohibitions and potential penalties, and is enforced robustly by the US authorities, supported by extensive inter-agency co-operation on an international basis.

5.4 There is a statutory defence against the Act if the University can demonstrate that it had in place appropriate adequate procedures designed to prevent bribery. It should be noted that the only defence that an individual may be able to plead against criminal bribery charges is the common law defence of duress, i.e. that a payment was made in order reasonably to protect against loss of life, limb or liberty.

The University's anti-bribery and corruption policy and procedures are intended to directly mitigate its risk of bribery and corruption by changing the organisational environment and culture, by removing/restricting the supply of money, goods, services and favours and/or reducing the demand for bribery. Reducing the demand for bribery, although clearly challenging, can be achieved in a number of ways including collaboratively creating a 'level playing field' or 'no bribery' approach in the higher education sector.

6. Risk

6.1 In common with other Higher Education Institutions (HEIs), the University faces a range of bribery risks throughout its activities, operations and geographies.

6.2 Risk Management

Effective risk management lies at the very heart of this policy. Risk management is a crucial element of the University's overall governance process. It facilitates identification of the specific areas where the University does, or could, face bribery and corruption risks and allows mitigation plans, actions and protections to be put in place.

Global custom and practice in business can be deeply rooted in the attitudes, cultures and economic prosperity of a particular region, any of which can change at any time. Moreover, UK or European norms may not be applicable in some parts of the world where the University has interests; for example, the definition of 'foreign public official' may be technically significantly different in those countries where there is extensive nationalisation.

6.3 Areas of Risk

Whilst the University's high risks will undoubtedly change over time, the areas of continuing bribery high risk that will require enhanced levels of due diligence and caution will almost certainly include:

- Agents and Intermediaries, particularly those who operate in jurisdictions where bribery is prevalent or endemic.
- Joint Ventures and consultancies, where the University could be held liable for any bribery or corruption committed by a third party with whom the University is associated by means of a joint venture or consultancy agreement.
- Contracts, particularly construction contracts where the values involved are likely to be high - and the industry has a perceived propensity for bribery.
- All aspects of procurement of services (particularly) and goods undertaken by the University.
- Admissions, examinations and awards.

7. Prevention

7.1 The University recognises that a key preventative measure is to take effective steps at the recruitment stage to establish, as far as possible, the previous record of potential staff in terms of their propriety and integrity. Staff recruitment must, therefore, be in accordance with University policy and procedures.

7.2 Employees are expected to follow any code related to their professional role and qualifications. The role that staff are expected to play in the University's framework of internal control is set out in Financial Regulations.

7.3 Governors are required to adhere to their responsibilities as determined by the Articles of Government. In particular they should be scrupulously careful to declare any private interest when discussing University business.

7.4 Similarly, all employees who are budget holders, must declare any interest in or association with any University activity which could cause potential conflict.

7.5 The University requires all governors, senior staff, budget holders and others with responsibilities in areas of risk to complete declarations of interest annually. These records are held by the Registrar.

7.6 The University will assess the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it as part of its risk management process. This will incorporate consideration of risk of fraud, bribery and corruption. It will also include appropriate 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 University, in order to mitigate identified bribery risks.

8. Training

8.1 The University recognises that the continuing success of its Anti Bribery and Corruption Policy, and its general credibility, depend largely on the effectiveness of programmed training and the responsiveness of staff throughout the organisation.

8.2 The University will provide induction for all staff and ongoing training and development, particularly for staff involved in internal control systems, to ensure that employees' responsibilities and duties in this respect are regularly highlighted and reinforced.

8.3 As part of the induction process, all personnel will be asked to confirm that they have read and understood this policy. A record will be maintained by the Head of Legal Services and Compliance, in conjunction with the HR Director.

8.4 Disciplinary action will usually be taken against staff who ignore such training and guidance.

9. Communication

9.1 It is the responsibility of the Head of Legal Services and Compliance to ensure that this policy is fully and regularly communicated to those involved with University business. Crucially, this will include communication not only to staff but other external agencies e.g. agents, representatives and contractors. As indicated above, the University will continue to provide regular training to identified high risk areas, particularly procurement and where overseas activities are involved.

10. Reporting concerns and breaches

10.1 All employees and others associated with the University are encouraged to report any concerns that they may have regarding potential breaches of this policy, including incidents relating to external agencies and third parties. This includes any instances where you may be the victim of attempted bribery.

10.2 The University would expect employees, in support of its policy, to report matters of genuine concern to their managers or supervisors. If it is not appropriate to raise concerns with line managers or supervisors, or if individuals who are not employees of the University wish to raise concerns, they may raise concerns with:

- The Head of Finance
- The Head of Legal Services and Compliance

- The Chief Operating Officer
- The Vice-Chancellor
- The Chair of the Board of Governors
- The Chair of Audit Committee
- The Internal or External Auditors

10.3 The University does not encourage disclosures to be made anonymously. Proper investigation may be more difficult or impossible if further information cannot be obtained from the person raising the concern. It is also more difficult to establish whether any allegations are credible. Anyone who is concerned about possible reprisals if their identity is revealed should come forward to their line manager or one of the other contact points listed in paragraph 10.2 and appropriate measures can then be taken to deal with the matter sensitively and securely.

10.4 This policy should be read alongside and in conjunction with the University's Whistleblowing Policy. In some cases, it may be more appropriate to follow the procedure laid out in that policy.

10.5 The University's Disciplinary Procedures will be used where investigation indicates improper conduct on the part of staff.

10.6 There are, of course, two sides to every story. Abuse of the process by raising malicious, unfounded allegations will be treated as a serious disciplinary matter. However, employees should not be deterred from raising genuine concerns, and in so doing they will be supported in every possible way.

10.7 Any allegations of misconduct under this policy will be taken very seriously. Attempted bribery or acceptance of a bribe may be considered as gross misconduct and, where it is considered that a criminal offence may have occurred, the police may be informed.

10.8 Any concerns raised pursuant to this policy will, save in the case of manifestly non-genuine concerns, be reported by the Chief Operating Officer to the relevant meeting of the Vice-Chancellor's Advisory Group, the Chair of the Audit Committee and the Board of Governors. The Head of Finance and the Head of Legal Services and Compliance will record and monitor such instances and any corrective measures taken.

10.9 Any employee who breaches this policy may face disciplinary action, which could result in dismissal for misconduct or gross misconduct

11. Monitoring & Review

11.1 This policy and related procedures will be reviewed annually by the Head of Legal and Compliance, the Head of Finance and the Audit Committee. Risk identification (4, above) will form a key element of the overall monitoring and review process. Any incidents of bribery

and corruption reported, and recorded under paragraph 10.2 will be incorporated into that review.

Appendix 1 - Examples

Examples of situations in which bribery and corruption might arise are given in the table below, and in the specific examples below the table:

Category	Meaning	Potential example relating to BSU's activities
Conflict of interest	Situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests.	An official in a University admissions office who allocates study places unfairly to members of his/her extended family.
Cronyism or nepotism	Form of favouritism based on acquaintances and familiar relationships whereby someone in an official position exploits his or her power and authority to provide a job or favour to a family member or friend, even though he or she may not be qualified or deserving.	A member of University staff involved in the procurement of goods or services to the University who awards a contract to someone who is related (nepotism) or as a favour (cronyism), possibly having leaked information about rival bids (which is also a breach of trust and confidentiality).
Fraud	To cheat. The act of intentionally deceiving someone in order to gain an unfair or illegal advantage (financial, political or otherwise).	A University employee who siphons off profits from a transaction into a personal bank account, or who uses his or her University credit card to purchase goods or services for his or her own personal benefit, unrelated to University business.
Gifts & Hospitality (see also gifts and hospitality policy)	Definition specifically for business transactions: 'They could affect or be perceived to affect the outcome of business transactions and are not reasonable and bona fide' [Source: Business Principles for Countering Bribery]	Increasingly lavish hospitality, such as tickets and hospitality at major sporting events, especially when offered to business partners.
Lobbying	Any activity carried out to influence a government or institution's policies and decisions in favour of a specific cause or outcome. Even when allowed by law, these acts can become distortive if disproportionate levels of influence exist — by companies, associations, organisations and individuals	A University paying for high-level access to senior foreign government officials or ministers in order to influence the University's acceptance into or approval of registration in that country: lack of transparency from both University and government about the access and influence.

Two specific examples are:

Curtin University lecturer accepted bribes from students

“A former Curtin University lecturer has admitted accepting bribes and passing students who should have failed. Tuck Cheong Foong, 54, ... increased the marks of two of his students who would otherwise have failed their units in Applied Science in Construction Management after one paid him \$3000 and the other paid \$1500. He also increased the mark on an assignment of a third student and gave him a pass mark on an assignment that had not been submitted. Foong had a long-term personal and professional connection with the student’s father in Malaysia.”

(Perth Now, 2013)

University of Bath student jailed over tutor bribe bid

“A failing student who tried to bribe his tutor while carrying a loaded air pistol has been jailed for 12 months. Yang Li, 26, placed £5,000 in cash on the professor's table but when he was told to leave, the gun fell from his pocket. Li, who admitted bribery and possessing an imitation firearm, was also ordered to pay £4,800 in costs. The court heard the innovation and technology management masters student had arranged the meeting with his University of Bath professor on 23 November. Mark Hollier, prosecuting, said Li was awarded a 37% mark in his dissertation - three marks off the 40% needed to pass - and wanted to discuss his options.”

(BBC, 2013)

Less obvious forms of bribery include “financial assistance” and “sponsorship”. Transparency International provides detailed guidance including examples of the types of bribery that may be encountered (available online: <https://www.transparency.org.uk/publications/adequate-procedures-guidance-to-the-uk-bribery-act-2010/>). The examples given include receiving expenses and accommodation for attendance at a conference and donations to charitable foundations linked to foreign public officials involved in decision making relevant to the payer.