

Anti-Bribery & Corruption Code of Conduct

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1. Overview

- 1.1 The UK Bribery Act 2010 received Royal Assent in April 2010 and became law on 1 July 2011. The Act made radical changes to UK bribery and corruption law and puts UK legislation amongst the strictest in the world.
- 1.2 Because the change is so radical and far-reaching, the impact will be felt across all organisations in the UK, or with links to the UK, including those in the education sector.
- 1.3 The Bribery Act introduces a new strict liability offence for organisations of failing to prevent bribery. The introduction of this new corporate criminal offence places a burden of proof on organisations to show that they have 'adequate procedures' in place to prevent bribery, with the adequate procedures being informed by the following six principles:
 - Principle 1 - Proportionate Procedures
 - Principle 2 - Top-level commitment
 - Principle 3 - Risk Assessment
 - Principle 4 - Due diligence
 - Principle 5 - Communication
 - Principle 6 - Monitoring and review
- 1.4 An organisation will be guilty of an offence under the Bribery Act if an 'associated person' carries out an act of bribery or corruption in connection with the organisation's business. Most importantly, a person will be associated with the organisation where he or she performs services for, or on behalf of, that organisation; the association could be as a result of being an employee, or through another role such as a subsidiary, agent, third-party, intermediary or supplier.
- 1.5 The Ministry of Justice guidance highlights the critical need for a formal statement "of the commitment to zero tolerance to bribery". This document contains the University's Anti-Bribery and Corruption (ABC) Code of Conduct. This document is intended to address a number of aspects of the principles detailed at 1.3, and to directly discharge some aspects of Adequate Procedures required under the Act.

2. Introduction & Policy Statement

- 2.1 It is the policy of the University that all staff, students and persons associated with the organisation as a result of being an employee, agent, third-party, intermediary, representative, business partner or supplier, or through another role such as a subsidiary, should conduct business on its behalf honestly, and without the use of bribery or corrupt practices in order to gain an unfair advantage.
- 2.2 The University has a zero tolerance policy towards bribery and corruption and is committed to the highest levels of openness, integrity and accountability, both in letter and spirit. This is not just a cultural commitment on behalf of the University, but reflects the fact that any bribery-related issue could expose the University, its employees and associated persons to the risk of prosecution, fines and imprisonment, together with reputational damage and other consequences.
- 2.3 This ABC Code of Conduct has been adopted by the University's Executive Team and endorsed by Audit Committee and it is essential that everyone involved with the organisation abides by it. The University's ABC training and communication programme is intended to support these objectives.
- 2.4 Any breach of this policy will be considered a serious matter and is likely to result in disciplinary action.

3. What is Bribery & Corruption, and what is a bribe?

- 3.1 **Bribery is the offer, promise, giving, demanding or acceptance of an advantage as an inducement for an action which is illegal, unethical, a breach of trust or the improper performance of a contract. Inducements can take the form of gifts, fees, rewards, jobs, internships, examination grades, favours or other advantages. Corruption is the misuse of entrusted power for personal gain.**
- 3.2 The Bribery Act 2010 made radical changes to UK bribery and corruption law and puts UK legislation amongst the strictest in the world. The Bribery Act introduced a new strict liability offence for organisations of failing to prevent bribery. The introduction of this new corporate criminal offence places a burden of proof on organisations to show that they have 'adequate procedures' in place to prevent bribery, with the adequate procedures being informed by the six principles shown in Section 1.
- 3.3 An organisation will be guilty of an offence under the Bribery Act if an 'associated person' carries out an act of bribery or corruption in connection with the organisation's business.

Most importantly, a person will be associated with the organisation where he or she performs services for, or on behalf of, that organisation; the association is

widely interpreted and could be as a result of being an employee, or through another role such as a subsidiary, agent, third-party, intermediary or supplier.

3.4 The Bribery Act provides for strict penalties for 'active' (giving) and 'passive' (receiving) bribery by individuals, as well as companies. The four prime offences are:

- Two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage
- A discrete offence of bribery of a foreign public official, and,
- A new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or a business advantage (with there being a defence that the organisation has adequate procedures in place to prevent bribery).

3.5 Acts of bribery or corruption are designed to influence the individual in the performance of their duty and incline them to act dishonestly. The person being bribed is generally someone who will be able to obtain, retain or direct business. This may involve activities such as buying, selling or adjudication, or it may involve administrative tasks such as licences, customs, visas, fines or taxes. It does not matter when the act of bribery is committed, either before or after the activity has been undertaken.

3.6 Appendix 1 gives some examples of 'Red Flag' risk scenarios - potential acts of bribery or corruption - which are relevant to the University.

4. Who can engage in Bribery & Corruption?

4.1 Bribery and corrupt behaviour could be committed by:

- Any member of staff
- A person acting on behalf of the University (including agents, third-parties and representatives, which can include students)
- Individuals and organisations that authorise someone else to carry out these acts.

4.2 Bribery and corruption will often involve public or government officials and this is a specific offence under the Act. It is important, again, to recognise that 'government official' is widely interpreted and could include:

- A public official, whether foreign or domestic
- A political candidate, or party official
- A representative of a government-owned or majority controlled organisation
- An employee of a public international organisation (e.g. World Bank).

5. Bribery & Corruption geography and penalties

- 5.1 Bribery is a criminal offence in most countries and penalties can be very severe, potentially resulting in prison sentences of up to 10 years, unlimited fines or both. There are also other consequential penalties, such as debarment from public (government) tendering.
- 5.2 The Bribery Act not only makes bribery illegal, but also holds organisations, such as the University, liable for failing to prevent bribery by those working for it, or on its behalf, irrespective of where the act takes place. Similar legislation is in place in many other countries, for example the Foreign and Corrupt Practices Act (FCPA) in the USA.
- 5.3 It is in the interests of both the University and the individual that everyone associated with the University acts with propriety at all times. Corrupt acts committed abroad may well result in prosecution at home.
- 5.4 Failure to comply with any parts of this ABC Code of Conduct could be regarded as a disciplinary offence. Penalties could include dismissal in accordance with the University's disciplinary procedures.

6. The University's Bribery & Corruption Implementation and Action Plans

The University's Action Plan is summarised below. It should be noted that some actions are the responsibility of individual members of staff, whereas others are managed by nominated individuals and functions within the University:

6.1 Top-level commitment

This ABC Code of Conduct has been produced and adopted by the University's Executive Team and endorsed by Audit Committee. The Executive Team has appointed the Chief Financial Officer as the Responsible Officer with responsibility for all matters relating to bribery and corruption. The University's governance processes will also now incorporate periodic bribery and corruption reviews, directly linked to the risk assessment process.

6.2 Risk Assessment

This is central to the success of the University's Anti-Bribery and Corruption programme. Bribery and Corruption risk assessment - and consequent risk mitigation - will form an important component of the University's overall risk management programme. The risk assessment will recognise that business practices around the world can vary widely and may be deeply rooted in history, attitudes, cultures and the business prosperity of that particular region. The Risk Register is formally reviewed at regular intervals by the Executive Team, Audit Committee and Court.

6.3 Due Diligence

A comprehensive and mandatory due diligence programme will be undertaken in respect of all parties having a business relationship with the University. This will incorporate a requirement for all new partners and suppliers to undertake, and satisfy, an initial due diligence review.

6.4 Accurate Record-Keeping

Many serious bribery and corruption offences have been found to involve some form of inaccurate record-keeping; it is for this reason that some bribery and corruption-related legislation incorporates offences directly related to record-keeping.

Accurate records and financial reporting must be maintained for all activities, including these where third-parties are acting on the University's behalf. False, misleading, mis-stated or inaccurate records could significantly damage the reputation of the University.

6.5 Training, Communication & Declaration

An Anti-Bribery and Corruption training programme will be incorporated into the University's compliance training programme. This will be supported by both regular communications and a periodic refresh appropriate to an individual's role and responsibilities; induction training for new members of staff will also incorporate Anti-Bribery and Corruption information. Training will be provided for all 'associated persons' on a face-to-face or e-learning basis, using the University's Intranet - or Extranet for third-parties, agents and representatives. Periodic communications will be issued to maintain awareness of bribery and corruption.

6.6 Code of Conduct for Third-Parties

A version of this Code of Conduct will be provided to all third-parties who could be considered 'associated persons' under the Bribery Act. Progressively, Counterparty Clauses will be incorporated into all the University's contracts which will include a contract termination clause related to bribery and corruption.

6.7 Associated Persons, including Agents and Consultants

All Associated Persons and in particular Agents and Consultants, will need an appropriate clause inserted into their contractual documents, which can be derived from this Code of Conduct under advice from the Chief Financial Officer and the University's legal advisors.

All existing and new suppliers will have a mandatory Bribery Act clause inserted into their supply contracts by the University Procurement team. This will be undertaken as soon as is practically possible, and certainly no later than the next formal contract renegotiation.

This clause will give the University the right to terminate the contract in the event of any bribery issue and the University will not contract with any supplier who does not include the University's bribery clause, or a clause deemed to be materially comparable (this is likely to be confined to the largest suppliers to the University). All new employees will also have a mandatory Bribery Act clause inserted into their contracts of employment and it is the intention of the University to incorporate a relevant clause into existing employment contracts at an appropriate juncture.

7 Controls and Record-Keeping

The management and controls around Gifts and Hospitality, donations and similar activities are central to the University having, and being seen to have, an effective Anti-Bribery and Corruption programme.

7.1 Gifts and Hospitality

The University's Gifts & Hospitality process has been reviewed in light of the Bribery Act. It is essential that the guidance and process are followed regarding acceptance, or otherwise, of any gift or hospitality of any value - although it must be stressed that some gifts and hospitality remain acceptable. The University's Policy for the receipt of gifts, hospitality and other benefits should be read in conjunction with this Code of Conduct.

7.2 Donations

The University's Donations process has similarly been reviewed. Many issues related to donations arise from timing - for example, a donation coinciding with a tender or an application for a place at the University. For this reason, it is essential that potential donations are fully considered across the University and then formally accepted, or declined, through the University's authorisation process.

7.3 Facilitation payments

In many countries, it is customary business practice to make payments or gifts of small value to junior government officials, customs officers, and people in similar official roles in order to speed up or facilitate a routine action or process. **Irrespective of this custom, facilitation payments are not permitted under this Code of Conduct and the University takes the view that they are illegal - under UK jurisdiction, and in many other countries.** UK legislation makes no distinction between facilitation payments and bribes - regardless of value or local culture, even if that is 'how business is done'.

However, there are clearly exceptions - if a facilitation payment is extorted, or if personal safety or **Protection of Life** is involved. Any payments made under duress must be recorded appropriately in conjunction with the University's legal advisors.

7.4 Conflicts of Interest

The University's Code of Practice on Conflicts of Interest has also been reviewed in light of the Bribery Act. It is essential that the record of interests is kept up-to-date such that the appropriate authorisation process can be followed in order to prevent any conflicts, or perceived conflicts, of interest. It should be recognised that **transparency** is of paramount importance and, as a consequence, potential conflicts of interest involving family members, business activities and other occupations must all be declared using the authorisation process.

If there are any questions about what should be declared then these can be directed, in the first instance, to your line manager and then to the University's Chief Financial Officer.

7.5 Anti-Money Laundering (AML)

The University already has Anti-Money Laundering procedures in place, which are managed by the Chief Financial Officer and audited by both the internal and external auditors. Notwithstanding these measures the University will continue to review these procedures in light of the requirements of the Bribery Act.

8 Bribery concerns

8.1 Raising a concern

There are several routes to raise any bribery and corruption-related concern, or indeed, any concern related to the governance of the University.

In the first instance, any concern can be raised with your line manager but where this is not possible or appropriate then it can be raised directly with the University's Chief Financial Officer or Chief Operating Officer.

The University's Public Interest Disclosure Policy (Whistleblowing) and Fraud Prevention Policy are also available and, if required, anonymity can be requested. Please see links below:

http://www.strath.ac.uk/media/ps/cs/gmap/academicaffairs/publications/Public_Interest_and_Disclosure_Policy_-_FINAL.pdf

http://www.strath.ac.uk/media/ps/internalaudit/fraud_prevention_policy_20110523.pdf

8.2 If you are a victim of bribery or corruption

In the event that you are a victim of bribery or corruption (e.g. you are approached about a bribe or offered a bribe) then you should immediately notify your line manager.

Where this is not possible or appropriate then it can be raised directly with the University's Chief Financial Officer or Chief Operating Officer.

As detailed above, the University's Public Interest Disclosure Policy (Whistleblowing) and Fraud Prevention Policy are also available and, if required, anonymity can be requested.

8.3 Protection

Where a bribery or corruption-related concern is reported in good faith, typically in the circumstances of 8.1 or 8.2 above, then the University will afford appropriate protection to the reporter, provided that the report has been made in good faith.

8.4 Investigation process

Any bribery or corruption-related investigations will be undertaken in accordance with the University's documented investigation process, as detailed in the University's Public Interest Disclosure Policy (Whistleblowing) and Fraud Prevention Policy. The decision to involve the police and/or other external organisations such as the Crown Office and Procurator Fiscal Service (COPFS) will be taken in conjunction with internal and external advisers. Clearly, in some circumstances the decision to involve the police or other authorities will not solely rest with the University e.g. where the University is implicated in an ongoing police investigation.

8.5 Self-reporting

The formal decision to self-report, where that is an option for the University, will be taken by the Principal in conjunction with appropriate internal and external advisers. Self-reports will, typically, be made to the Police for investigation. The Police report all Bribery Act cases to COPFS' Serious and Organised Crime Division (SOCD). Crown Counsel will decide whether to start criminal proceedings and cases will be referred to specialist prosecutors within the SOCD.

8.6 Bribery Act 'grace' period

There is no grace period (i.e. a period when a previous act of bribery or corruption can be reported without fear of penalty). If you have any knowledge of such an act, or acts, then you should make an immediate report through the channels identified in 8.1 and 8.2.

9 Anti-Bribery and Bribery Act accountability, roles and responsibilities

9.1 Code of Conduct and Policy

Responsibility for the preparation, authorisation by the Executive Team and Audit Committee and updating of this document rests with the University's Chief Financial Officer. Any questions about this document, the University's Anti-Bribery and Corruption process or response to the Bribery Act should be directed to the Chief Financial Officer in the first instance.

9.2 Managers

All University managers have responsibility for ensuring that they and their staff are fully aware of the content of this ABC Code of Conduct and attend all relevant training. They are also responsible for ensuring that they understand the potential consequences of an act of bribery or corruption. Managers also need to act as the initial point of escalation on bribery and corruption issues for University staff, with the support of the Chief Financial Officer.

The Executive Team retains overall responsibility for the management of all aspects of bribery and corruption, as part of the wider University governance process.

9.3 Students

Although likely to be exceptional, there will be circumstances where students could be in a situation - such as research, dealing with suppliers and overseas bodies with a relationship to the University - where bribery and corruption could potentially be an issue. In these circumstances, it is essential that their supervisor ensures that they follow the same process as an employee. Typically, this would include receipt of this document and undergoing the University's Anti-Bribery and Corruption and Bribery Act training.

9.4 Monitoring and Review

The Executive Team will undertake periodic reviews of all aspects of bribery and corruption, as part of the wider University governance process. The Executive Team will also undertake an annual 'fitness for purpose' review of the University's anti-bribery, corruption and Bribery Act capabilities in light of legislative developments and emerging best practice. In this, they will be supported by the Chief Financial Officer, Internal Audit and the University's external auditors

Appendix 1 - 'Red Flag' risk scenarios relevant to the University

For the most part, 'Red Flag' risk scenarios relevant to the University are largely identical to those affecting most organisations. However, there are some - typically related to overseas campuses and donations - that are largely confined to the education sector.

Some scenarios - such as a donation - when considered in isolation may seem perfectly acceptable. However, when that donation coincides with the donor tendering for a contract or a family member of the donor applying for a place at the University then, clearly, this presents a completely different scenario and risk.

Clearly, for this reason it is imperative that such issues are considered across the University in a co-ordinated manner.

Whilst it is accepted that the following risk scenarios are central to the activities of the University, nonetheless the associated bribery and corruption risks should not be underestimated:

- Any procurement-related activity
- Supply relationships where relatively significant hospitality has become the norm, or is expected from potential/new suppliers
- Payments for travel, hospitality, gifts and entertainment - particularly overseas
- Invoicing issues, including agent fees, cash payments, disproportionate costs and 'dubious' expenses
- Overseas field trips involving potential 'facilitation' payments to customs officials and others, typically, in order to speed things up or to gain access
- Facilitation payments to expedite overseas building, building permissions and access to utilities
- Overseas agents and brokers, particularly where student enrolment is involved
- Overseas campuses
- Donations
- Student places
- Examination results and associated processes

Concerns - which would clearly need to be substantiated - over lavish hospitality, unnecessary foreign travel and entertainment linked to (apparently) legitimate business travel.