

ANTI-BRIBERY POLICY

January 2014

1. Anti-Bribery Policy Statement

1.1 Hertsmere Borough Council is committed to conducting business in accordance with the highest ethical and legal standards. The integrity of our Members, staff, and those with whom we do business, is critical to our success. Our residents and stakeholders have every right to expect that professional, competent and trustworthy people are working in the best interests of the Council. The Council observes high standards of openness and transparency and exercises rigorous stewardship of public money. This Anti-Bribery Policy is drafted with those obligations in mind.

1.2 The Council requires that all Members and personnel, including those permanently employed, temporary agency staff and contractors to;

- 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, in respect of the lawful and responsible conduct of activities.

1.3 The Council takes a zero-tolerance approach to bribery and corruption and is committed to acting professionally, fairly and with integrity in all its business dealings and relationships wherever it operates. The Council is committed to implementing and enforcing effective systems to counter bribery.

1.4 The Council's Anti-Bribery Procedure (which comprises this Policy and its associated guidance) reflects our commitment to uphold all laws relevant to countering bribery and corruption. In particular, we are committed to compliance with the Bribery Act 2010, which applies to individuals and all organisations carrying on a business in the UK, including the public sector. The territorial jurisdiction of the prosecutors extends to offences committed both in the UK and abroad.

1.5 The purpose of this Policy is to:

- set out our responsibilities, and of those working for us, in observing and upholding our position on bribery and corruption; and
- provide information and guidance to those working for us on how to recognise and deal with bribery and corruption issues.

1.6 Bribery and corruption are punishable for individuals by up to ten years imprisonment and if the Council is found to have failed to prevent bribery in relation to its business it could face unlimited fines and extensive reputational damage. The Council therefore take its legal responsibilities very seriously. All 'relevant commercial organisations' are required to comply with the Act, which defines a 'relevant commercial organisation' as including any body incorporated in the UK that engages in commercial activities. It further states. '...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.'

1.7 In this Policy, third party means any individual or organisation you come into contact with during the course of your work for the Council, and includes actual and potential clients, customers, suppliers, distributors, business contacts, agents, advisers, and government and other public bodies, including their advisors, representatives and officials, politicians and political parties.

1.8 The Bribery Act can be found at: <http://www.legislation.gov.uk/ukpga/2010/23/contents>

2. What is Bribery?

2.1 A bribe is an inducement or reward offered, promised or provided in order to gain any commercial, contractual, regulatory or personal advantage.

Examples:

Offering a bribe

You offer a catering company a 'light touch' Environmental Health inspection regime, but only if they agree reduce costs to the Council for the provision of refreshments.

This would be an offence as you are making the offer to gain commercial and contractual advantage. The Council may also be found to have committed an offence because the offer has been made to obtain business at preferential rates for the Council. It may also be an offence for the catering company to accept your offer.

Receiving a bribe

An applicant for a major development in the Borough offers to take a planning officer on a family holiday if she agrees to recommend the application for approval.

It is an offence for the applicant to make such an offer. It would be an offence for you to accept the offer as you would be doing so to gain a personal advantage.

3. Who is covered by the Policy?

3.1 Under Section 7 of the Bribery Act the Council may be liable to be prosecuted for an offence if a person associated with it bribes another person, intending to obtain or retain business or a business advantage for the organisation. It is a defence for the organisation to show that it has in place "adequate procedures" designed to prevent bribery by its "associated persons". A person is associated with an organisation if it performs services for or on behalf of that person, e.g. as employee, subsidiary, agent or subcontractor.

3.2 There are four key offences under the Act:

- bribery of another person (section 1) –described as active bribery.
- accepting a bribe (section 2) – described as passive bribery
- bribing a foreign official (section 6)

- failure by a commercial organisation to prevent persons associated with it from bribing another person on its behalf (section 7)

3.3 The Bribery Act 2010 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.

3.4 There is also a corporate offence under Section 7 of failure by a commercial organisation to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation. This is what is known as a “strict liability” offence. This means that there is no need to prove negligence or management complicity. 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.

3.5. The guidance that accompanies the Bribery Act 2010 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.” There are circumstances in which the Council will be a commercial organisation for the purposes of section 7. This policy is intended to ensure that the Council has in place the necessary procedures to act as a defence to a section 7 offence.

3.6 This Policy applies to all Councillors of Hertsmere Borough Council and individuals working at all levels and grades, including senior managers, officers, directors, employees (whether permanent, fixed-term or temporary), consultants, contractors, trainees, seconded staff, casual staff and agency staff, volunteers, interns, agents, sponsors, or any other person associated with the Council, or any of our subsidiaries or their employees, wherever located (collectively referred to as staff in this Policy).

3.7 Within the Council, the responsibility to control the risk of bribery occurring resides at all levels of the organisation. It does not rest solely within assurance functions, but in all business units and corporate functions.

4. Gifts and Hospitality

4.1 This policy does not prohibit normal and appropriate hospitality (given and received) to or from third parties.

4.2 The giving or receipt of gifts is not prohibited, if the following requirements are met:

(a) it complies with the Council’s Policy on Gifts and Hospitality;

(b) it is not made with the intention of influencing a third party to obtain or retain business or a business advantage, or to reward the provision or retention of business or a business advantage, or in explicit or implicit exchange for favours or benefits;

(c) it complies with the law;

- (d) it is given in the Council's name, not in your name;
- (e) it does not include cash or a cash equivalent (such as gift certificates or vouchers);
- (f) it is appropriate in the circumstances. For example, in the UK it is customary for small gifts to be given at Christmas time;
- (g) taking into account the reason for the gift, it is of an appropriate type and value and given at an appropriate time; and
- (h) it is given openly, not secretly.

4.3 The Council appreciates that the practice of giving business gifts varies, the test to be applied is whether in all the circumstances the gift or hospitality is reasonable and justifiable. The intention behind the gift should always be considered.

4.4 For Councillors the acceptance of a gift or hospitality with a value greater than £50 must be declared on their Declaration of Interest form. Staff must register the acceptance of gifts or hospitality on a form held by the Democratic Services Manager.

5. Gifts and Hospitality - what is not acceptable?

5.1 It is not acceptable for you (or someone on your behalf) 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 by the Council in return;
- threaten or retaliate against another worker who has refused to commit a bribery offence or who has raised concerns under this policy; or
- engage in any activity that might lead to a breach of this policy.

6. Facilitation Payments

6.1 Facilitation payments are typically small, unofficial payments made to secure or expedite a routine or necessary government action by a government official, when we have already paid for, or are entitled to, that action. They are not commonly requested in the UK, but this is a widespread form of bribery, despite being illegal in many countries. Under Sections 1 and 6 of the Bribery Act

2010, bribes and facilitation payments are illegal and the offer of any of these forms of payments is against Council policy.

7. Anti-Bribery Procedures

7.1 Whether an organisation's procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. As required by the Bribery Act 2010, adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation.

7.2 Hertsmere's policy and procedures have been designed to take account of the "Guidance on good practice procedures for corporate anti-bribery programmes" published by Transparency International in response to the Bribery Act requirement regarding adequate procedures.

7.3 The principles which support the Anti-Bribery Policy and underpin the Council's Anti-Bribery Procedures are as follows:

- **Proportionality**

The Council has procedures in place to prevent bribery by persons associated with it. These are proportionate to the bribery risks faced by the Council and to the nature, scale and complexity of the Council's activities. They are also clear, practical, accessible, effectively implemented and enforced.

- **Top level commitment**

The Chief Executive, Directors and all Senior Officials (internal and external) connected with the Council's business are 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 nature and extent of the Council's exposure to potential external and internal risks of bribery on its behalf by persons associated with it is periodically assessed. This includes financial risks but also other risks such as reputational damage.

- **Due diligence**

The Council takes 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**

Procedures designed to prevent bribery are monitored and reviewed and improvements are made where necessary.

7.4 The bribery risk faced by the Council will be regularly assessed by the Risk Manager and the Audit Manager will monitor and review the Bribery Policy annually.

8. Your Responsibilities

8.1 You must ensure that you read, understand and comply with this Policy.

8.2 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 any activity that might lead to, or suggest, a breach of this Policy.

8.3 You must notify your line manager OR the Head of Human Resources OR the Monitoring Officer OR Audit Manager as soon as possible if you believe or suspect that a conflict with this Policy has occurred, or may occur in the future. For example, if a supplier or potential supplier offers you something to gain a business advantage with the Council, or indicates to you that a gift or payment is required to secure their business. Further "red flags" that may indicate bribery or corruption are set out at the end of this Policy.

8.4 Any employee who breaches this Policy may face disciplinary action, which could result in dismissal for gross misconduct. The Council reserves its right to dismiss staff if they breach this Policy.

9. Record-Keeping

9.1 Financial records must be kept and appropriate internal controls must be put in place which will evidence the business reason for making payments to third parties.

9.2 Written records of all hospitality or gifts accepted or offered must be declared and kept, which will be subject to managerial review.

9.3 All expenses claims relating to hospitality, gifts or expenses incurred to third parties must be submitted in accordance with our expenses policy and specifically record the reason for the expenditure.

9.4 All accounts, invoices, memoranda and other documents and records relating to dealings with third parties, such as clients, suppliers and business contacts, should be prepared and maintained with strict accuracy and completeness. No accounts must be kept "off-book" to facilitate or conceal improper payments.

10. What to do if you have a specific concern about bribery or corruption

10.1 All staff are encouraged to raise concerns about any issue or suspicion of malpractice at the earliest possible stage. If you are unsure whether a particular act constitutes bribery or corruption, or if you have any other queries, these should be raised with your line manager OR the Head of Human Resources OR Monitoring Officer OR Audit Manager. Concerns could also be reported by following the procedure set out in the Whistleblowing Policy.

10.2 It is important that you tell your line manager OR the Head of Human Resources OR the Monitoring Officer OR Audit Manager as soon as possible if you are offered a bribe by a third party, are asked to make one, suspect that this may happen in the future, or believe that you are affected by any another form of unlawful activity.

11. Protection

11.1 Staff who refuse to accept or offer a bribe, or those who raise concerns or report another's wrongdoing, are sometimes worried about possible repercussions. The Council aims to encourage openness and will support anyone who raises genuine concerns in good faith under this policy, even if they turn out to be mistaken.

11.2 The Council is committed to ensuring no one suffers any detrimental treatment as a result of refusing to take part in bribery or corruption, or because of reporting in good faith their suspicion that an actual or potential bribery or other corruption offence has taken place, or may take place in the future. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. If you believe that you have suffered any such treatment, you should inform the Head of Human Resources OR Monitoring Officer immediately. If the matter is not remedied, and you are an employee, you should raise it formally through the Council's Whistleblowing Policy or through the Grievance Procedure.

12 Public contracts and failure to prevent bribery

21.1 Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. 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. A Local Authority has the discretion to exclude organisations convicted of this offence.

13. Training and Communication

13.1 Training and guidance will be updated and communicated as appropriate on a regular basis and all Members and relevant staff will receive regular, relevant training on how to implement and adhere to this policy.

13.2 The Council's zero-tolerance approach to bribery and corruption must be communicated to all suppliers, contractors and business partners at the outset of our business relationship with them and as appropriate thereafter.

14. Who is responsible for the Anti-Bribery policy?

14.1 The Chief Executive has overall responsibility for ensuring this policy complies with the Council's legal and ethical obligations, and that all those under his control comply with it. The Chief Executive and the Director of Resources are the joint-sponsors of the Council's Anti-Bribery Policy.

14.2 The Chief Executive and Directors have primary and day-to-day responsibility for implementing this Policy, and for monitoring its use and effectiveness. The Head of Human Resources and the Monitoring Officer have primary responsibility for dealing with any queries on its interpretation.

Council management at all levels are responsible for ensuring those reporting to them are made aware of and understand this Policy and are given adequate and regular training on it.

15. Monitoring and Review

15.1 The effectiveness of the implementation of this Policy will be reviewed and monitored regularly considering its suitability, adequacy and effectiveness. Any improvements identified will be made as soon as possible. Internal control systems and procedures will be subject to regular audits to provide assurance that they are effective in countering bribery and corruption. High risk areas of Council activity will receive particular attention from the Council's internal audit and the anti-fraud unit.

15.2 All staff are responsible for the success of this policy and should ensure they use it to disclose any suspected danger or wrongdoing.

15.3 Staff are invited to comment on this Policy and suggest ways in which it might be improved. Comments, suggestions and queries should be addressed to the Monitoring Officer.

15.4 This Policy does not directly form part of any employee's contract of employment and it may be amended at any time.

Potential risk scenarios: "red flags"

The following is a list of possible red flags that may arise during the course of your work and which may raise concerns under various anti-bribery and anti-corruption laws. The list is not intended to be exhaustive and is for illustrative purposes only.

If you encounter any of these red flags while working for the Council, you must report them promptly to your line manager OR to the Head of Human Resources OR the Monitoring Officer OR use the procedure set out in the Whistleblowing Policy:

- (a) you become aware that a third party engages in, or has been accused of engaging in, improper business practices;
- (b) you learn that a third party has a reputation for paying bribes, or requiring that bribes are paid to them, or has a reputation for having a "special relationship" with foreign government officials;
- (c) a third party insists on receiving a commission or fee payment before committing to sign up to a contract with us, or carrying out a government function or process for us;
- (d) a third party requests payment in cash and/or refuses to sign a formal commission or fee agreement, or to provide an invoice or receipt for a payment made;
- (e) a third party requests an unexpected additional fee or commission to "facilitate" a service;
- (f) a third party demands lavish entertainment or gifts before commencing or continuing contractual negotiations or provision of services;
- (g) a third party requests that a payment is made to "overlook" potential legal violations;
- (h) a third party requests that you provide employment or some other advantage to a friend or relative;
- (i) you receive an invoice from a third party that appears to be non-standard or customised;
- (j) a third party insists on the use of side letters or refuses to put terms agreed in writing;
- (k) you notice that the Council has been invoiced for a commission or fee payment that appears large given the service stated to have been provided;
- (l) a third party requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used by or known to the Council;
- (m) you are offered an unusually generous gift or offered lavish hospitality by a third party.