

## The University of Birmingham

### Response to Bribery Act 2010

#### Preamble

The Bribery Act 2010 outlines four corporate offences, three of which also apply to individuals. These offences, whether for commercial organisations or for individuals, apply regardless of where in the world the bribes are offered or received, and regardless of whether the bribery is direct or via a connected party such as an agent or partner. An HEI that is found to have committed any bribery offence could face unlimited fines and may come under additional scrutiny from funders in the future. Individuals could face a 10 year prison sentence and unlimited fines. This includes senior officers of entities held liable through their consent to or connivance with the HEI committing the offence.

	Offence 1	Offence 2	Offence 3	Offence 4
	Paying or offering a bribe	Receiving or requesting a bribe	Bribing a foreign public official	Failing to prevent bribery
Organisation	✓	✓	✓	✓
Individual	✓	✓	✓	N/A

The Ministry of Justice has issued guidance on how organisations should respond to this legislation, in particular Offence 4, where organisations will be required to demonstrate that 'Adequate Procedures' were put in place to prevent bribery. The guidance emphasises that organisations should take a proportionate approach to implementing procedures to prevent bribery based on risk, and recommends six principles of compliance. These are:

Principle	University response
Proportionate procedures	Use of guidance developed specifically for the HE sector
Top level commitment	Policy and approach approved by UEB and Council
Risk assessment	Identification of potential higher risk activities and implementation of enhanced monitoring if required.
Due diligence	Requirement to assess on-going and new activities, and the use of third parties and implement enhanced controls if required.
Communication and training	Approval and dissemination of policy to all staff. Enhanced training in areas assessed as higher risk.
Monitoring and review	Project planning and risk identification including ethical assessments. Financial monitoring and internal control. Whistle blowing policy.

The attached draft policy aims to address the above principles to form the Adequate Procedures required under the act

# The University of Birmingham

## Anti-Bribery & Corruption Policy

### 1 Introduction

**It is the policy of the University of Birmingham that all staff and students conduct business in an honest way, and without the use of corrupt practices or acts of bribery to obtain an unfair advantage.**

This is not just a cultural commitment on the part of the University; bribery is a criminal offence in most countries and corrupt acts expose the University and its employees to the risk of prosecution, fines and imprisonment, as well as endangering the University's reputation.

This policy has been adopted by Council and Council requires it to be communicated to everyone involved in our organisation to ensure their commitment to it. Council and UEB attaches the utmost importance to this policy and will apply a 'zero tolerance' approach to acts of bribery and corruption by any of our employees or third-party representatives (including students). Any breach of this policy will be regarded as a serious matter and is likely to result in disciplinary action.

### 2 What is Bribery and Corruption?

**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.**

**Corruption is the misuse of public office or power for private gain, or misuse of private power in relation to business outside the realm of government.**

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 initiatives such as buying or selling, or it may involve the handling of administrative tasks such as licences, customs, visas or taxes. It does not matter whether the act of bribery is committed before or after the activity has been undertaken.

Annex A gives some examples of potential acts of bribery or corruption which are relevant to the HE Sector.

### 3 What is a Bribe?

Bribes can take many forms, but typically they involve corrupt intent. There will usually be a '*quid pro quo*' – both parties will benefit. A bribe could be:

- The direct or indirect promise, offering or authorisation of anything of value
- The offer or receipt of any kickback, loan, fee, reward, gift or other advantage
- The giving of aid, donations or voting designed to exert improper influence.

#### **4 Who can engage in Bribery or Corruption?**

In the eyes of the law, bribery and corrupt behaviour can be committed by:

- An employee, officer or director
- Any person acting on behalf of the University (agents or third-party representatives which sometimes include students)
- Individuals and organisations which authorise someone else to carry out these acts

Acts of bribery or corruption will often involve public or government officials and this is a specific offence under the Act. For the purposes of this policy, a government official could be:

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

#### **5 What does the law say about Bribery and Corruption?**

Bribery is a criminal offence in most countries and penalties can be severe. The Bribery Act 2010 not only makes bribery illegal, but also holds organisations, including the University, liable for failing to prevent such acts by those working for or on its behalf, no matter where the act takes place. Similar legislation is in force in many other countries including the USA. It is therefore in your interests, as well as the University's, that you act with propriety at all times. Corrupt acts committed abroad may well result in a prosecution at home.

#### **6 What steps can we take to prevent Bribery and Corruption?**

We can take the following steps to assist in the prevention of bribery and corruption:

##### **A. Risk Assessment**

Effective risk assessment lies at the very core of the success of this policy. All staff must assess the vulnerability of their activities, particularly overseas activities, on an ongoing basis and discuss potential vulnerabilities with the Director of Finance. Risk identification pinpoints the specific areas in which we face bribery and corruption risks and allows us to better evaluate and mitigate these risks and thereby protect ourselves. Business practices around the world can be deeply rooted in the attitudes, cultures and economic prosperity of a particular region – any of which can vary.

##### **B. Accurate Books and Record-Keeping**

Many serious bribery and corruption offences have been found to involve some degree of inaccurate record-keeping. Accurate records and financial reporting must be maintained for all activities and for all third party representatives acting on our behalf. False, misleading or inaccurate records of any kind could potentially damage the reputation of the University.

## **C. Effective monitoring and Internal Control**

Effective systems of monitoring and control are essential in all organisations and the University is no exception. Once bribery and corruption risks have been identified and highlighted through the risk assessment process, we may need to amend procedures to help mitigate these risks on an on-going basis.

**Council require that Heads of Budget Centres take the necessary steps to risk assess, record keep and monitor so as to prevent bribery and corruption. All Heads of Budget Centres shall ensure that all staff receive a copy of this policy.**

### **7 Where do the Bribery and Corruption risks typically arise?**

The following paragraphs summarise some key activities where potential risks arise. Further information is available in the guidance associated with this policy.

#### **A Use of third-party representatives**

The definition of a third-party representative is broad, and could include agents, distributors, consultants and joint venture partners. Third-parties who act on the University's behalf must operate at all times in accordance with this policy. Staff are responsible for the evaluation of each third-party relationship and determining whether or not there are specific risks. Where specific risks are identified, the third party should be made aware of this policy, and staff should ensure that appropriate enhanced controls are implemented to monitor and control the risk. Further information is provided in the guidance attached to this policy.

The University is ultimately responsible for ensuring that third-parties who pose significant risks are compliant with this policy as well as any local laws. Ignorance or 'turning a blind eye' is not an excuse.

#### **B Gifts, Entertainment and Hospitality**

Gifts, entertainment and hospitality include the receipt or offer of gifts, meals or tokens of appreciation or gratitude, or invitations to events, functions, or other social gatherings, in matters connected with our business. These activities are acceptable provided they fall within reasonable bounds of value and occurrence. The University Policy on Gifts and Hospitality sets out the limits approved by UEB, and the process required to record gifts and hospitality.

The guidance associated with this policy summarises matters that should be considered by a member of staff or a third party representative when deciding whether to offer or accept gifts or hospitality.

#### **C Facilitation Payments**

In many countries, it is customary business practice to make payments or gifts of small value to junior government officials in order to speed up or facilitate a routine action or process. **Despite this, facilitation payments as defined here are not permitted under this policy and the University takes the view that they are illegal within the UK as well as within most other countries.** Current UK legislation makes no distinction between facilitation

payments and bribes – regardless of size or local cultural expectations, even if that is ‘how business is done’.

However, in the event that a facilitation payment is being extorted, or if you are forced to pay under duress or faced with potential safety issues or harm, you must contact Legal Services as soon as possible for further advice. Any payments made under duress must be recorded appropriately to reflect the substance of the underlying transaction.

If you are unsure whether certain payments which resemble the definition of facilitation payments are permissible, please contact Legal Services.

## **8 How to raise a concern**

As individuals who work on behalf of the University, we all have a responsibility to help detect, prevent and report instances not only of bribery but also of any other suspicious activity or wrongdoing. The University of Birmingham is absolutely committed to ensuring that all staff have a safe, reliable and confidential way of reporting suspicious activity. The University wants each and every one to know how they can ‘speak up’.

If you are concerned that a corrupt act is being considered or carried out, you should report the matter to your line manager in the first instance. If it is not possible to speak to your line manager for some reason, you should contact the Registrar & Secretary, or the Director of Legal Services. More details of how to go about reporting your concerns can be found in the Whistleblowing Policy ([http://www.council.bham.ac.uk/shared/shared\\_council/Whistleblowing\\_Procedure.pdf](http://www.council.bham.ac.uk/shared/shared_council/Whistleblowing_Procedure.pdf)).

The policy is designed to allow **staff, students and all members of University bodies** (eg University Committees) to raise, at high level, concerns or information which they believe in good faith provides evidence of malpractice or impropriety. Individuals discovering apparent evidence of malpractice, impropriety or wrongdoing within the University should feel able to disclose the information appropriately **without fear of reprisal**. A disclosure made in good faith which is not confirmed by subsequent investigation will not lead to any action against the person making the disclosure. Individuals making disclosures which are found by subsequent investigation to be malicious and/or vexatious may be subject to disciplinary or other appropriate action.

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## **Annex - Anti-bribery and Corruption Guidance**

### **A Examples of risk areas:**

The following are examples of a range of UK and overseas activities which, depending on the circumstances, could lead to breaches of the Act by the individuals or HEI. Other activities could carry similar risks.

#### Procurement

A company is desperate to win a major contract with the HEI and offers to make a car available on a long term loan to a staff member who can influence the award of the contract.

#### Alumni / charitable donations

A wealthy alumnus arranges for his company to make a substantial donation to the HEI to ensure that his child is awarded a place.

#### Overseas recruitment

An agency responsible for recruiting students pays a small bribe to an education department official to be allowed access to students in a highly rated school.

#### Overseas development

The HEI seeks to expand into the Middle East and the Director exchanges valuable gifts with local leaders on the basis that this is expected practice in the country.

#### Field trip / research

A professor on a field trip with students pays a small sum to customs officials to avoid excessive delay in the import of field equipment.

#### Research

A professor conducting research in a specialist area is asked to give an overly positive peer review in exchange for a similar review of their own work.

### **B Use of third-party representatives**

It is important to identify risks when a third-party conducts activities on the University's behalf.

Where risk regarding a third-party arrangement has been identified, staff must:

- Evaluate the background, experience and reputation of the third-party
- Understand the services to be provided, and methods of compensation and payment
- Evaluate the rationale for engaging the third-party
- Take reasonable steps to monitor the transactions of third-parties appropriately
- Ensure there is a written agreement in place which acknowledges the third-party's understanding and compliance with this policy.

## **C Giving and accepting Gifts and hospitality**

When evaluating what is acceptable, first take a step back and consider:

- What is the intent – is it to build a relationship or is it something else?
- How would this look if these details were on the front of a newspaper?

If you find it difficult to answer one or more of the above questions, there may be a risk involved which could potentially damage the reputation and business of the University. The action could be unlawful.

Although no two situations are the same, the following guidance should be considered:

Circumstances which are never permissible include examples that involve:

- A '*quid pro quo*' (offered for something in return)
- Gifts in the form of cash or cash equivalent vouchers
- Entertainment of a sexual or similarly inappropriate nature.

As a general rule, employees and third parties should not provide gifts to, or receive them from, those meeting the definition of a government official (see section 4 of the policy). However, we understand that in certain countries gift giving and receiving with these individuals is a cultural norm. If you are faced with such a situation please consult with Legal Services before proceeding.