

ANTI-BRIBERY POLICY AND PROCEDURE

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Document Owner: Head of Democratic and Partnership Services

1 POLICY STATEMENT

Bribery is a criminal offence – The Council does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, and will not accept bribes or improper inducements.

To use a third party as a conduit to channel bribes to others is also a criminal offence – The Council does not, and will not, engage indirectly in or otherwise encourage bribery.

The Council is committed to the prevention, deterrence and detection of bribery and, as such, has a zero-tolerance towards bribery. The Council aims to maintain anti-bribery compliance as a continuous requirement rather than as a one-off exercise.

1.1 Objective of the Policy

This policy provides a coherent and consistent framework to enable the Council's employees to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents, it will also enable employees to identify and effectively report a potential breach.

The Council requires all employees, 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 of all jurisdictions under which the Council operates, in respect of the lawful and responsible conduct of activities.

1.2 Scope of the Policy

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

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

This policy covers all staff at all levels and grades and includes those permanently employed, temporary agency staff, contractors, non-executives, agents, Members (including independent members), volunteers and consultants.

1.3 The Council's commitment to action

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 the 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
- include appropriate clauses in contracts to prevent bribery.

1.4 Bribery

Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.

1.5 The Bribery Act

The [Bribery Act 2010](#) is designed to combat bribery and corruption in the public and private sector. There are four key criminal offences under the Act:

- Bribery of another person (Section 1)
- Accepting a bribe (Section 2)
- Bribing a foreign public official (Section 6)
- Failing to prevent bribery (Section 7)

The Bribery Act makes it an offence to offer, promise or give a bribe with the intention of inducing that person to “perform improperly” a “relevant function or activity” (Section 1).

It also makes it an offence to request, agree to receive, or accept a bribe “intending that, in consequence, a relevant function or activity shall be performed improperly” (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 to prevent bribery that is intended “to obtain or retain business”, or “an advantage in the conduct of business”, for the organisation. This is a strict liability offence and the Prosecution does not need to prove management complicity or negligence. There is a single statutory defence to this corporate offence if the organisation can prove on the balance of probabilities that it had in place “adequate procedures” designed to prevent persons “associated with” the organisation from bribing.

1.6 Is the Council a “relevant commercial organisation?”

A “relevant commercial organisation” is defined at section 7(5) of the Act as “a body which is incorporated under the law of any part of the United Kingdom and which carries on a business.” The courts will be the final arbiter. The [Ministry of Justice Guidance](#) (MOJ) states the Government’s intentions as regards the application of the phrase - “so long as the organisation in question is incorporated ... 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.”

This means that there will be circumstances in which the Council will be a commercial organisation for the purposes of section 7. Accordingly, the Council could be liable to severe penalties if it fails to implement adequate procedures which act as a statutory defence to a section 7 offence.

2 ANTI BRIBERY PROCEDURES

2.1 Adequate procedures

The question of adequacy of bribery prevention procedures will depend in the final analysis on the facts of each case, including matters such as the level of control over the activities of the associated person and the degree of risk that requires mitigation. The capacity in which the person “performs services” for or on behalf of the organisation does not matter. This person can be an individual or an incorporated or unincorporated body. Employees, agents and subsidiaries are included but Section 8(4) makes it clear that the question as to whether a person is performing a service for an organization is “determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship” between the person and the organization. This means that contractors could be “associated persons” to the extent that they are performing services for or on behalf of a commercial organisation.

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. The Ministry of Justice guidance states that procedures to prevent bribery being committed on behalf of an

organisation should be informed by six key broad principles and should be proportionate to risk. The principles are not prescriptive but are intended to be flexible and outcome focussed, allowing for the different circumstances that organisations find themselves in. Accordingly, the detail of how organisations might apply the principles will vary, but the outcome should always be robust and effective anti-bribery procedures.

Principle 1 Proportionate Procedures

The commercial organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation's activities. As well as a proportionate risk-based approach, they are clear, practical, accessible, effectively implemented and enforced.

Principle 2 Top- Level Commitment

The top-level management of the commercial organisation are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

Principle 3 Risk Assessment

The nature and extent of the commercial organisation's exposure to potential external and internal risks of bribery on its behalf by persons associated with it is periodically assessed, informed and documented. This includes financial risks but also other risks such as reputational damage and the risk assessment should evolve to match the nature of the organisation's business and transaction risk.

Principle 4 Due Diligence

The commercial organisation 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.

Principle 5 Communication (including training)

The commercial organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training, which is proportionate to the risks it faces.

Principle 6 Monitoring and Review

The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

The Council is committed to applying the principles which are set out above and to implement bribery prevention procedures which are proportionate to risk.

2.2 Initial Bribery Risk Assessment

An initial assessment of the risks is outlined below to determine the extent to which procedures additional to those already in place may be required.

Across the Council the Section 2 risk of Council staff being bribed is the risk most likely to be encountered. The risk of the Council being prosecuted for failing to prevent staff/agents bribing others on behalf of the Council is in all probability low. However, further risk assessment may need to be completed and agreed to ensure that the risk assessment accurately reflects the bribery risks faced by the Council.

Preventing bribery of others – likely to be low risk but Councils do sell some services, for example, to schools.

The Council publishes all transactions over £500 in value to promote transparency of its spending activities.

Preventing bribery of Council staff/associates - higher risk.

The Council has a Code of Conduct for both Members and employees that prohibits financial inducements and sets out the rules on gifts and hospitality. Some employees work in higher risk areas.

Procurement regulations ensure fair competition on awarding contracts and the Council's Contract Procedure Rules set out policy and procedures for the conduct of procurement exercises.

The Council grants licences, (eg: taxis) and authorisations, (eg: planning permission) as well as assessing entitlement to grants, benefits and other entitlements and allocating school places, provision of school transport assistance, etc.

2.3 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 term not exceeding 12 months, or to a fine not exceeding £5,000, or to both
- On conviction in a Crown Court, to imprisonment for a term not exceeding 10 years, or to a fine, or to both

Organisations are liable to these fines and if guilty of an offence under section 7, the Council would be liable on conviction on indictment to a fine.

2.4 Bribery is not tolerated

It is unacceptable 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
- 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.

2.5 Facilitation Payments

Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions. Facilitation payments are not tolerated and are illegal.

2.6 Gifts and Hospitality

The Council's policies relating to Gifts and Hospitality are set out in the:

[Code of Conduct for Members](#) (see Part 2)

[Code of Conduct for Employees](#)

2.7 Public Contracts and Failure to Prevent Bribery

Under The Public Contracts Regulations 2006 No. 5, which give 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 a failure to prevent bribery. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. However, the Council does have the discretion to exclude organisations convicted of this offence.

2.8 Staff Responsibilities

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council, or under the control of the Council. All staff are required to avoid activity that breaches this policy.

All staff must ensure that they:

- read, understand and comply with this policy
- raise concerns as soon as possible where they believe or suspect that a conflict with this policy has occurred, or may occur in the future.

In addition to the possibility of civil and criminal prosecution, any staff who breach this policy will face potential disciplinary action, which could result in dismissal for gross misconduct.

2.9 Raising a Concern

The Council is committed to ensuring that staff 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.

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.

There are a number of ways to help you raise concerns. Please refer to the [Whistleblowing Policy](#) to help you determine your favoured course of action:

It is preferable that any disclosure to be made can be resolved internally (for example via your Line Manager, Head of Service or the confidential Fraud Hotline based in the Internal Audit Section). Where an internal disclosure is not appropriate, there is provision for external disclosure provided that relevant conditions as detailed within the Whistleblowing Policy are satisfied. [The Public Interest Disclosure \(Prescribed Persons\) \(Amendment\) Order 2003 Statutory Instrument 2003 No. 1993](#), provides a non-exhaustive list comprising the persons most likely to be of relevance to the work of a Local Authority.

Concerns can be raised anonymously. In the event that an incident of bribery, corruption, or wrongdoing is reported, the Council will act as soon as possible to evaluate the situation. There are clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind. This process is facilitated if concerns raised are not anonymous.

Staff who refuse the offer of a bribe, or those who raise concerns or report wrongdoing can understandably be worried about any repercussions. The Council's aim is to encourage transparency and openness, and as such will support anyone who raises a genuine concern in good faith under this policy, even if the concern ultimately turns out to be misinformed.

The Council are committed to ensuring that nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because they have reported a concern in good faith.

If you have any questions about these procedures, please contact Bob Wright, Management Auditor (Investigations), Internal Audit on Ext 3593 or email bob.wright@calderdale.gov.uk or Jeannine Houshmand, Solicitor, Democratic and Partnership Services on Ext 3044 or email Jeannine.houshmand@calderdale.gov.uk.

3 OTHER RELEVANT POLICIES

[Anti-Fraud and Corruption Strategy](#)

[Anti-Money Laundering Policy](#)

[Gifts and Hospitality Policy](#)

4 USEFUL LINKS

[CIPFA Better Governance Forum - CIPFA Networks](#)

[Bribery Act Final Guidance](#)

[Bribery Act Quick Start Guide](#)

[Joint Prosecution Guidance](#)

[National Fraud Authority](#)

[Transparency International UK](#)

[Public Concern at Work](#)

[The British Standards Institution Code of Practice on Whistleblowing](#)

[Department for Business Innovation and Skills \(blowing the whistle to a prescribed person\)](#)