

## **ANTI – BRIBERY POLICY**

### **INTRODUCTION**

Warwick SU is committed to the highest standards of ethical conduct and integrity in its business activities. This policy outlines the organisation's position on preventing and prohibiting bribery, in accordance with the Bribery Act 2010. Warwick SU will not tolerate any form of bribery by, or of, its employees, agents or consultants or any person or body acting on its behalf. The Trustees and Senior management are committed to implementing effective measures to prevent, monitor and eliminate bribery.

### **SCOPE OF THIS POLICY**

This policy applies to all employees and officers of the organisation, and to temporary workers, consultants, contractors, agents and subsidiaries acting for, or on behalf of, the organisation ("associated persons"). Every employee and associated person acting for, or on behalf of, the organisation is responsible for maintaining the highest standards of business conduct. Any breach of this policy is likely to constitute a serious disciplinary, contractual and criminal matter for the individual concerned and may cause serious damage to the reputation of the organisation.

The organisation may also face criminal liability for unlawful actions taken by its employees or associated persons under the Bribery Act 2010. All employees and associated persons are required to familiarise themselves and comply with this policy, including any future updates that may be issued from time to time by the organisation.

The Bribery Act 2010 is in force from 1 July 2011. This policy covers:

- the main areas of liability under the Bribery Act 2010;
- the responsibilities of employees and associated persons acting for, or on behalf of, the organisation; and
- the consequences of any breaches of this policy.

### **BRIBERY ACT 2010**

The organisation is committed to complying with the Bribery Act 2010 in all its activities.

Under the Bribery Act 2010, a bribe is a financial or other type of advantage that is offered or requested with the:

- intention of inducing or rewarding improper performance of a function or activity; or
- knowledge or belief that accepting such a reward would constitute the improper performance of such a function or activity.

A relevant function or activity includes public, state or business activities or any activity performed in the course of a person's employment, or on behalf of another organisation or individual, where the person performing that activity is expected to perform it in good faith, impartially, or in accordance with a position of trust.

A criminal offence will be committed under the Bribery Act 2010 if:

- an employee or associated person acting for, or on behalf of, the organisation offers, promises, gives, requests, receives or agrees to receive bribes; or
- an employee or associated person acting for, or on behalf of, the organisation offers, promises or gives a bribe to a foreign public official with the intention of influencing that official in the performance of his/her duties (where local law does not permit or require such influence); and
- the organisation does not have the defence that it has adequate procedures in place to prevent bribery by its employees or associated persons.

All employees and associated persons are required to comply with this policy, in accordance with the Bribery Act 2010.

### **WHAT IS PROHIBITED?**

The organisation prohibits employees or associated persons from offering, promising, giving, soliciting or accepting any bribe.

The bribe might be cash, a gift or other inducement to, or from, any person or organisation, whether a public or government official, official of a state-controlled industry, political party or a private person or organisation, regardless of whether the employee or associated person is situated in the UK or overseas.

The bribe might be made to ensure that a person or organisation improperly performs duties or functions (for example, by not acting impartially or in good faith or in accordance with their position of trust) to gain any commercial, contractual or regulatory advantage for the organisation in either obtaining or maintaining organisational business, or to gain any personal advantage, financial or otherwise, for the individual or anyone connected with the individual.

This prohibition also applies to indirect contributions, payments or gifts made in any manner as an inducement or reward for improper performance, for example through consultants, contractors or sub-contractors, agents or sub-agents,

sponsors or sub-sponsors, joint-venture partners, advisors, customers, suppliers or other third parties.

## **RECORDS**

Employees and, where applicable, associated persons, are required to take particular care to ensure that all organisation records are accurately maintained in relation to any contracts or business activities, including financial invoices and all payment transactions with clients, suppliers and public officials.

Due diligence should be undertaken by employees and associated persons prior to entering into any contract, arrangement or relationship with a potential supplier of services, agent, consultant or representative in accordance with the Organisation's procurement and risk management procedures.

Employees and associated persons are required to keep accurate, detailed and up-to-date records of all corporate hospitality, entertainment or gifts accepted or offered. Refer to Finance Regulations regarding Conflicts of Interest and Declaration of Hospitality or Gifts.

## **WORKING OVERSEAS**

### *Principle*

Employees and associated persons conducting business on behalf of the organisation outside the UK may be at greater risk of being exposed to bribery or unethical business conduct than UK-based employees. Employees and associated persons owe a duty to the organisation to be extra vigilant when conducting international business.

### *Procedure*

Employees and associated persons are required to cooperate with the organisation's risk management procedures and to report suspicions of bribery to their line manager. While any suspicious circumstances should be reported, employees and associated persons are required particularly to report:

- close family, personal or business ties that a prospective agent, representative or joint-venture partner may have with government or corporate officials, directors or employees;
- a history of corruption in the country in which the business is being undertaken;
- requests for cash payments;
- requests for unusual payment arrangements, for example via a third party;
- requests for reimbursements of unsubstantiated or unusual expenses; or
- a lack of standard invoices and proper financial practices.

If an employee or associated person is in any doubt as to whether or not a potential act constitutes bribery, the matter should be referred to the Finance Manager.

## **FACILITATION PAYMENTS**

### *Principle*

The organisation prohibits its employees or associated persons from making or accepting any facilitation payments. These are payments made to government officials for carrying out or speeding up routine procedures. They are more common overseas.

Facilitation payments are distinct from an official, publicly available fast-track process. Facilitation payments, or offers of such payments, will constitute a criminal offence by both the individual concerned and the organisation under the Bribery Act 2010, even where such payments are made or requested overseas.

Employees and associated persons are required to act with greater vigilance when dealing with government procedures overseas.

### *Procedure*

Where a public official has requested a payment, employees or associated persons should ask for further details of the purpose and nature of the payment in writing. If the public official refuses to give these, this should be reported immediately to the Finance Manager.

If the public official provides written details the Finance Manager will consider the nature of the payment. Local legal advice may be sought by the organisation.

If it is concluded that the payment is a legitimate fee, for example part of a genuine fast-track process, or is permitted locally, the organisation will authorise the employee to make the payment.

Where the Finance Manager considers that the request is for a facilitation payment, the employee or associated person will be instructed to refuse to make the payment and notify the public official that the employee or associated person is required to report the matter to the organisation and the UK embassy.

The organisation will seek the assistance of the relevant employee in its investigation and may determine that the matter should be referred to the prosecution authorities.

If an employee or associated person has any other concerns about the nature of a request for payment, he/she should report it their line manager using the reporting procedure set out in this policy.

## CORPORATE ENTERTAINMENT, GIFTS, HOSPITALITY AND PROMOTIONAL EXPENDITURE

### *Principle*

The Organisation permits corporate entertainment, gifts, hospitality and promotional expenditure that is undertaken:

- for the purpose of establishing or maintaining good business relationships;
- to improve the image and reputation of the organisation; or
- to present the organisation's services effectively;

provided that it is:

- arranged in good faith, and
- not offered, promised or accepted to secure an advantage for the organisation or any of its employees or associated persons or to influence the impartiality of the recipient.

The organisation will authorise only reasonable, appropriate and proportionate entertainment and promotional expenditure.

This principle applies to employees and associated persons, whether based in the UK or overseas.

### *Procedure*

Employees and, where relevant, associated persons should submit requests for proposed hospitality and promotional expenditure well in advance of proposed dates to their senior manager or for Trustees, to the Chair of the Board of Trustees.

The organisation will approve business entertainment proposals only if they demonstrate a clear business objective and are appropriate for the nature of the organisational relationship. The organisation will not approve business entertainment where it considers that a conflict of interest may arise or where it could be perceived that undue influence or a particular business benefit was being sought (for example, prior to a tendering exercise).

Any gifts, rewards or entertainment received or offered from members, clients, public officials, suppliers or other contacts should be reported immediately to the senior manager. In certain circumstances, it may not be appropriate to retain such gifts or be provided with the entertainment and employees and associated

persons may be asked to return the gifts to the sender or refuse the entertainment, for example, where there could be a real or perceived conflict of interest. As a general rule, small tokens of appreciation, such as flowers or a bottle of wine, may be retained by employees. Gifts or rewards will be authorised only in limited circumstances and will be subject to a cap of £15 per recipient.

#### *Charitable and political donations*

The organisation allows staff to support a number of charities through payroll giving, that are selected by the members of staff themselves. The organisation may also support fundraising events involving employees undertaken in their own time.

#### *What practices are permitted?*

This policy does not prohibit:

- normal and appropriate hospitality and entertainment with clients (please see the organisation's expenses policy); and
- the use of any recognised fast-track process that is publicly available on payment of a fee.

Any such practices must be proportionate, reasonable and made in good faith. Clear records must be kept.

## **RISK MANAGEMENT**

### *Principle*

The organisation has established detailed risk management procedures to prevent, detect and prohibit bribery. The organisation will conduct risk assessments for its key business activities on a regular basis and, where relevant, will identify employees or officers of the organisation who are in positions where they may be exposed to bribery.

### *Procedure*

The organisation will identify high-risk areas, for example projects undertaken in high-risk countries, tenders for work and those working on high-value projects.

The organisation will:

- regularly monitor "at risk" employees and associated persons;
- regularly communicate with "at risk" employees and associated persons;

- undertake extensive due diligence of third parties and associated persons; and
- communicate its zero-tolerance approach to bribery to third parties, including actual and prospective customers, suppliers and joint-venture partners.

## **REPORTING SUSPECTED BRIBERY**

### *Principle*

The organisation depends on its employees and associated persons to ensure that the highest standards of ethical conduct are maintained in all its business dealings. Employees and associated persons are requested to assist the organisation and to remain vigilant in preventing, detecting and reporting bribery.

Employees and associated persons are encouraged to report any concerns that they may have to the line manager as soon as possible. Issues that should be reported include:

- any suspected or actual attempts at bribery;
- concerns that other employees or associated persons may be being bribed; or
- concerns that other employees or associated persons may be bribing third parties, such as clients or government officials.

### *Procedure*

Employees should report any incidents of attempted bribery or suspected bribery to their Line Manager. Any such reports will be thoroughly and promptly investigated by the line manager in the strictest confidence. Employees and associated persons will be required to assist in any investigation into possible or suspected bribery.

Employees will also be required to comply with the organisation's whistleblowing policy.

Employees or associated persons who report instances of bribery in good faith will be supported by the organisation. The organisation will ensure that the individual is not subjected to detrimental treatment as a consequence of his/her report. Any instances of detrimental treatment by a fellow employee because an employee has made a report will be treated as a disciplinary offence. An instruction to cover up wrongdoing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager, employees and associated persons should not agree to remain silent. They should report the matter to the Finance Manager.

## **ACTION BY THE ORGANISATION**

The organisation will fully investigate any instances of alleged or suspected bribery. Employees suspected of bribery may be suspended from their duties while the investigation is being carried out depending on the nature of allegation and the risk to the organisation. The organisation will invoke its disciplinary procedures where any employee is suspected of bribery, and proven allegations may result in a finding of gross misconduct and immediate dismissal. The organisation may terminate the contracts of any associated persons, including consultants or other workers who act for, or on behalf of, the organisation who are found to have breached this policy.

The organisation may also report any matter to the relevant authorities, including the Director of Public Prosecutions, Serious Fraud Office, Revenue and Customs Prosecutions Office and the police. The organisation will provide all necessary assistance to the relevant authorities in any subsequent prosecution.

## **REVIEW OF PROCEDURES AND TRAINING**

The Organisation will regularly communicate its anti-bribery measures to employees and associated persons. The organisation will set up training sessions where applicable. The Finance Manager is responsible for the implementation of this policy.

The Finance Manager will monitor and review the implementation of this policy and related procedures on a regular basis, including reviews of internal financial systems, expenses, corporate hospitality, gifts and entertainment policies.

Employees and those working for, or on behalf of, the organisation are encouraged to contact the Finance Manager with any suggestions, comments or feedback that they may have on how these procedures may be improved.

The organisation reserves the right to amend and update this policy as required. For the avoidance of doubt, this policy does not form part of employees' contracts of employment.

## **LEADING STATUTORY AUTHORITY**

Bribery Act 2010

[Bribery Act 2010: Guidance about commercial organisations preventing bribery \(PDF format, 380K\)](#) (on the Ministry of Justice website)

The Bribery Act 2010 introduces new criminal offences for bribery for both individuals and companies. The Act comes into force on 1 July 2011.

The Bribery Act 2010 replaces the previous main statutory authorities on bribery and creates several new criminal corporate offences. Employers are advised to

review and update their anti-bribery measures to prepare for the Bribery Act 2010.

## **ACTIVE AND PASSIVE BRIBERY**

An active bribe is defined in s.1 of the Bribery Act 2010 as a financial or other advantage offered, promised or given to induce a person to perform a relevant function or activity improperly or to reward him or her for doing so. Section 2 defines a passive bribe as requesting, agreeing to receive or accepting a bribe. A bribe takes place even where the advantage offered is to be provided to a third party.

A person has performed a function improperly where he or she has not met an expectation that he or she would act in good faith, impartially, or in accordance with a position of trust.

A relevant function or activity includes state or public functions, those connected with a business or those performed in the course of employment, or on behalf of a organisation or other person. Bribery in both the public and private sectors is covered.

Both these general offences of active and passive bribery may apply to individuals and companies.

The Bribery Act 2010 creates three further specific offences of commercial bribery. These apply to all commercial organisations, including companies, partnerships and incorporated bodies that carry on a business or part of a business in the UK (including those with charitable, educational or public functions).

## **SECTION 6 – BRIBERY OF A FOREIGN PUBLIC OFFICIAL**

Section 6 of the Bribery Act 2010 prohibits bribery of a foreign public official to obtain or retain business or an advantage in the conduct of business. The offence is committed where a person offers, gives, or promises a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of his or her duties, where the official was not permitted by local law to be influenced in that manner. This includes all forms of facilitation payments.

Employers should research and consider local laws in relation to the making of payments to public officials.

The guidance states that, where an individual makes a payment to protect against loss of life, limb or liberty, where no alternative is available, he or she may be able to rely on the defence of duress to avoid prosecution.

## **SECTION 7 – FAILURE OF ORGANISATION TO PREVENT BRIBERY BY ASSOCIATED PERSON**

Section 7 of the Bribery Act 2010 establishes a new form of corporate liability where a commercial organisation has failed to prevent bribery by associated persons under ss.1 and 6 acting on behalf of an organisation. An associated person, defined in s.8, is a person who performs services for, or on behalf of, an organisation. This includes individuals and companies, so covers employees, agents, contractors, suppliers (who perform services) and subsidiaries based in and outside the UK. The scope of the Bribery Act 2010 extends to conduct undertaken by foreign nationals overseas.

Employers should be aware that an offence is committed even where the bribe has not actually been given. An offer or promise is sufficient for liability to arise under the Bribery Act 2010.

## **SECTION 14 – OFFENCES UNDER ss.1 AND 6 BY CORPORATE BODIES**

Section 14 of the Bribery Act 2010 provides that, where an offence is proved to have been committed by a organisation with the “consent or connivance” of the senior officer of the organisation, both the organisation and the senior officer will be guilty of the offence. A senior officer will include any director and senior manager who has a close connection to the UK (for example, a British citizen or a person who is resident in the UK).

Directors or senior management who are found to have omitted to take action or who have turned a blind eye to actions of employees or associated persons that amount to bribery will be personally liable and at risk of imprisonment. Therefore, it is imperative that senior management is fully engaged in implementing anti-bribery measures.

## **JURISDICTION**

Section 12 of the Bribery Act 2010 provides that UK courts will have jurisdiction over offences committed outside the UK for s.1, 2 or 6 offences by an individual with a close connection to the UK (for example, a person who is resident in the UK or a UK incorporated organisation or partnership).

However, for s.7 offences, there is no requirement that the offence be committed by an individual or organisation with a close connection to the UK. Any organisation that is incorporated or formed in the UK or carries out business in the UK will be liable for an associated person’s conduct, even where that person is not a UK resident, citizen or organisation, or where the conduct take place outside the UK. Companies need to be aware of the risks where business is conducted by foreign nationals overseas, especially in territories where corruption is commonplace. Companies will need to carry out extensive due diligence on any

agents, intermediaries, joint-venture partners or other representatives conducting business overseas.

## PENALTIES

Conviction for offences under the Bribery Act 2010 carries severe penalties. These include up to 10 years' imprisonment and fines for an individual and/or unlimited fines for a organisation convicted of bribery.

## ADEQUATE PROCEDURES DEFENCE

Companies will not be liable for offences of bribery by associated persons under s.7 where they can demonstrate the “adequate procedures” defence. The Act does not define “adequate procedures”, but the Government's guidance sets out six key principles that companies should follow when devising bribery prevention procedures, including having anti-bribery policies, staff training and a rigorous management and compliance framework to deal with instances of bribery.

The six principles are as follows:

- **Proportionate procedures:** the policy and procedures should be proportionate to the size of the organisation, complexity of commercial operations and risk that the organisation faces.
- **Top-level commitment:** the top-level management should be committed to preventing bribery and should foster a culture in which bribery is never acceptable.
- **Risk assessment:** the nature and extent of exposure to potential external and internal risks of bribery should be assessed and documented periodically.
- **Due diligence:** due diligence should be carried out in relation to third parties who will perform services on behalf of the organisation.
- **Communication:** bribery prevention policies and procedures, including processes for training staff, should be embedded and understood throughout the organisation.
- **Monitoring and review:** bribery prevention procedures should be monitored, reviewed and, where necessary, improved.

This policy is designed to comply with the six principles set out in the Government's guidance. However, employers will need to carry out and document their own risk assessments and due diligence before deciding if they need to use this policy in its entirety. The guidance emphasises that risk procedures should be proportionate to the level of risk faced by the organisation. In addition, employers are reminded that such a policy will not, by itself, help employers to meet the “adequate procedures” defence. Employers will need to design and rigorously apply a policy appropriate to the level of risk faced.

Employers should note that companies have a duty to report any instances of bribery to the Serious Fraud Office. Failure to do so could lead to prosecution

under the s.7 offence. Prosecuting authorities will consider whether or not a organisation has effectively implemented its anti-bribery policy, provided full disclosure and cooperated with the authorities. In determining whether or not the test for the adequate procedures defence has been satisfied, the courts will consider the particular circumstances of the case, with regard to the level of control over the activities of the associated person and the degree of risk requiring mitigation.

Companies should be aware that any employee who reports a suspected act of bribery will be protected from victimisation under the Public Interest Disclosure Act 1998. Employers should ensure that this is understood by managers and that whistleblowing policies are updated where necessary.