

Anti-Bribery Policy

Introduction

Bribery is highly unethical and illegal. Individuals can be held personally criminally liable. The University is committed to the prevention of bribery connected to University business. Serious action will be taken against anyone found to be involved in bribery.

What is bribery?

Most people will actually have a good feel for when something is bribery. However, the law under The Bribery Act 2010 (the "Act"), has given bribery a very detailed, technical definition to try and cover any loopholes.

Broadly the law says bribery is where someone requires, gives or promises financial (or other) advantage with the intention of inducing or rewarding *improper performance*. Creating an improper hurdle or set of conditions can in itself amount to improper performance e.g. requiring candidates for a post to pay a fee to a person just to be considered as part of a short-list.

Improper performance is a key concept. Improper performance generally means where someone, in performing their activity, does not meet expectations by not acting in good faith, not acting impartially or otherwise does not act properly in accordance with their position of trust. The test of what is improper is based upon what a reasonable person in the UK would expect. By way of example, if a contract for a supplier is being awarded you would expect those considering the award to focus in an unbiased way only upon the applicable criteria for the award.

There are two general forms of bribery where individuals are personally criminally liable:

- offering, promising or giving of a bribe – active bribery; or
- requesting, agreeing to receive or accepting of a bribe – passive bribery.

There are two other related offences:

- bribing a foreign public official in order to obtain or retain business or an advantage to the conduct of business; and
- corporate liability where a body like the University fails to prevent bribery.

So-called "facilitation payments", whereby payments to government officials to facilitate special treatment, such as prioritisation in an approval process, are also examples of bribes.

Bribery does not have to involve just payment of money. Other benefits can be an illegal inducement e.g. the acceptance of a donation to the University on condition that a member of the donor's family is offered a student place at the University. The money or other benefit need never materialise. The mere offer or acceptance is enough.

Who is covered?

Under the Act the University may be liable for any associated person or body engaged on University business. This would most obviously include staff conducting their normal duties, University representatives and agents (including those within and outside of the UK), subsidiary companies and possibly even students or suppliers purchasing or receiving goods or services on behalf of the University.

Generally it does not matter where business is being conducted the same standards apply. It is no excuse when outside of the UK to say "but that is the way you have to do things here".

Gifts and hospitality

Modest gifts and hospitality form a normal part of developing University relationships. However, excessive gifts and hospitality can be perceived as bribes. To this end gifts and hospitality must be transparently recorded, proportionate and reasonable. There must never be a suggestion that a gift or hospitality was offered or received on the assumption of certain favours being granted.

The University's approach is covered under its Financial Regulations. The Regulations say:

“Members of staff may accept meals and equivalent hospitality only in the normal course of business and only when the hospitality is of a reasonable level. When a gift is received, its receipt should be reported to the relevant Dean of Faculty/Head of School/Service; Gifts over £100 in value should then either be recorded as University property or sold (the proceeds going into general University funds). The receipt of gifts over £100 and corporate hospitality in excess of £100 must be reported to the Secretary who maintains a register; and in any event, gifts over £100 in value and hospitality in excess of £100 can be accepted only with prior approval from the Dean of Faculty/Head of School/Service.”

If there is any doubt as to whether a gift or hospitality to be given or received is appropriate, guidance should be sought from the Deputy Finance Director or the University Legal Adviser.

Identifying the risk of bribery

The University does not regard most of its activities as posing a high risk of bribery requiring further steps. Measures where taken must be practical and commensurate with levels of risk.

Certain University activities do pose more risk than others and will need to be subject to more careful scrutiny e.g. engagement with businesses in certain countries where bribery is commonplace.

Where there is a heightened general or specific concern, an assessment of risk must be conducted together with implementation of appropriate control measures. There will also be occasions where formal questions should be put to existing or potential partners to identify potential problems, so-called “due diligence”.

Standard University terms of business and donor conditions will look to clearly state the policy of the University and reduce any risk of bribery.

Advice on appropriate risk assessment and due diligence can be obtained from the Deputy Finance Director or University Legal Adviser.

Monitoring and review

The Policy and related procedures shall be reviewed annually by the University Secretary.

The University through the Finance office will continue to conduct an assessment of higher risk areas of normal University business. Higher risk areas will be required to conduct a formal risk assessment and implement agreed control measures.

All receipts and expenditure of money connected to the University must be properly recorded in accordance with financial procedures. These procedures will continue to be monitored by the University's Finance office.

The University Secretary shall have responsibility for ensuring compliance with this Policy.

Communication

It is the responsibility of all Heads of Services and Schools to ensure that this policy is properly communicated to those involved with University business within their relevant area.

This may include communication not only to staff but other external agencies e.g. agents and contractors engaged with that part of the University's business.

Regular training will continue to be provided to identified high risk areas. Ad hoc training can be accessed through the Deputy Finance Director and the University Legal Adviser.

Reporting concerns

The University requires anyone with concerns with regard to potential bribery to report this to the University Secretary.

Where concerns are genuine then the University will not permit any form of victimisation against those reporting. Those reporting concerns may wish to use the University's Code of Practice on Whistle Blowing.

Further information and contacts

Further information relating to issues raised in this Policy can be found at:

www.justice.gov.uk/downloads/legislation/bribery-act-2010-quick-start-guide.pdf

Financial Regulations: www.leeds.ac.uk/finance/policies/regulations/index.htm.

The University's Code of Practice on Whistle Blowing:

www.leeds.ac.uk/secretariat/documents/whistleblowing_procedure.pdf

Advice on anti-bribery issues can be obtained from the Deputy Finance Director (a.c.thomson@adm.leeds.ac.uk) and the Legal Adviser (a.j.slater@adm.leeds.ac.uk).

Further guidance on bribery related issues

1. You have heard substantial rumours that a third party, agent or collaborator, with whom you wish to do business has a reputation for engaging in what has been described as 'dodgy' 'underhand' or behaviour otherwise suggestive of corrupt practices.

Action required: You must follow up on those rumours and find out whether there is any substance. You should make enquiries from the source of the rumours. If you are convinced there are legitimate concerns, then you should not proceed without taking further advice from the University's Deputy Finance Director. Even if you think the rumours are unsubstantiated, you should always assess the likely risk of bribery and where concerned follow up with due diligence enquiries. Factors that would push the situation into higher risk require follow up action include:

- the business ethics of the country in which the third party is based (a so called "red flag country"). See web sites like Transparency International <http://www.transparency.org/>
- known 'under the table' practices within the area of business
- indications that the third party may not have effective policies on preventing bribery or possible poor internal governance arrangements or weak internal financial controls.

You should think about appropriate control measures. You must be satisfied that there is no likely risk of bribery.

2. A third party that you are going to be dealing with wishes to receive some advanced "commission" before the proposed business arrangement is concluded.

Action required. Although commission earned through a written contract that is at normal market rates and against demonstrable deliverables is acceptable, this particular arrangement smacks of bribery – do not agree.

3. An individual has approached you and indicated that in return for promising his daughter a place or at least interview for a place on a University course, he can make introductions that will lead potentially to further business for the University.

Action required: You cannot agree to any special treatment for his daughter. His daughter must apply and be treated like any other candidate. You must confirm this position in writing to the father.

4. You wish to export some research equipment to another country. You have received communication from the local customs officers holding the equipment that in exchange for a small additional payment they will take particular care to ensure that the goods arrive safely and are not held up by unnecessary red tape.

Action required: You have to reject this offer. The offer could be a facilitation payment or could constitute bribing a foreign official. You have to make as best preparation as you can, accepting there may be delay and problems getting through customs.

5. You have been approached by a supplier of services to the University wishing to take you on an all expenses paid golfing weekend.

Action required: This level of hospitality would most likely be deemed excessive in the context of the normal business relationship with suppliers. Reject the invitation.

6. You are planning on travelling to a another country and are aware that it is very common practice that the police stop motorists and demand small amounts of money, 'baksheesh', to allow people to proceed.

Action required: If the police are asking for the money on the back of an illegal threat then this may actually not constitute an act of bribery if you make the payment. In English law this would be more akin to extortion by the police, since you are not seeking yourself to induce improper conduct by the police. You are most likely only making payment under duress so as to allow you to continue on your lawful way, or prevent harm to yourself or others you are travelling with. However, if the police action is not in itself illegal (as nothing is actually threatened, only assumed), then to make payment is likely to constitute a bribe.

Clearly the line here between extortion and bribery is difficult to draw and may be even more difficult to evidence e.g. proving an implied threat by the Police. Staff should also be aware that making any payment to the police may in the jurisdiction be an unlawful act in itself. Consequently if you make payment you run a real risk it will be taken as a bribe.

7. A third party describes themselves as a "facilitator" and says that for a fee they will arrange the necessary introductions to people who are in high positions and who may influence the award of contracts to the University.

Action required: This could be the facilitator either taking a bribe for themselves or on behalf of others. Do not pay the money.

8. On a trip to another university, one of the senior academics offers you free of charge use of his personal holiday home for you and your family.

Action required: If that person is involved in developing a business relationship between the Universities, it could be construed as a bribe. The benefit you receive does not have to be money.

9. A third party visiting Leeds who has influence in establishing possible business with Leeds, requires that the University pays for his accommodation and generous daily allowance for living expenses at a 'top notch' hotel.

Action required: Placing someone in high class accommodation is not necessarily inappropriate. However, its appropriateness would need to be carefully considered and only allowed in the proper context of the situation e.g. to be proportionate to the

professional standing of the individual not the benefits that may be on offer. A demand for an allowance would generally be unacceptable.

10. A third party expects a substantial part of payment in cash.

Action required: Generally any request to pay substantial sums in cash is not acceptable.

11. It's customary to give gifts when doing business in certain countries – you have been asked to give guidance on what level of gift is acceptable to receive or give?

Action required: As indicated under the Financial Regulations, all gifts should be reported to the relevant Dean of Faculty/ Head of School/ Head of Service. If the value of the gift is over £100 this is subject to the prior approval of the Dean of Faculty/ Head of School/ Head of Service. Even if approved, if the value is over £100 it is to be reported to the University Secretary. However, no gifts should be given or accepted, of any value, where they are, as the Anti Bribery Policy states, excessive, disproportionate or unreasonable, or given on the understanding of certain favours being granted.

It is difficult to give an absolute guideline based upon value. You need to consider what is the expectation that may flow back from the gift. There should be no sense of reward. You need to consider what would represent the appropriate modest token. You need to feel totally comfortable that the gift could not reasonably be seen to influence decisions. The higher the value, the more likely that there is an expectation of some kind of payback. Modest gifts are to be given and accepted on behalf of the University. Common tokens of modest value are acceptable. If you are in any doubt then you should speak to the University's Deputy Finance Director who will be able to provide further guidance.

12. What happens if following this anti-bribery policy staff feel unable to do business with certain third parties in certain countries?

Action required: Sometimes this may be the case. The University puts its business ethics and compliance with the law first.

13. Following the award of a contract to a University supplier in which you've been involved you receive completely unsolicited and completely "out of the blue" a high-value fountain pen with a card marked "with thanks" from the successful contractor.

Action required: Given in particular the proximity of the award you should return the fountain pen and make your line manager aware of the gift.

14. A supplier who hopes to win some future business with the University would like to take you out for lunch at a restaurant in Leeds to discuss their services with you.

Action required: You may go to lunch without reporting the matter under the Financial Regulations subject to there being no likelihood that if the supplier is to pay your part of the bill it will exceed £100.

15. You are in conversation with agents who are looking to recruit students to the University. These agents require a commission to be paid based upon services delivered. The commission broadly reflects market rates.

Action required: The University can pay the commission. The commission arrangements should be part of a written agreement.

16. You assisted a member of staff in putting forward their successful application for promotion. You were not involved in considering the application. The member of staff has offered to buy you a case of expensive wine.

Action required: Whilst there is the possibility of the value of the gift exceeding £100, it is not being given in any way to induce you to improperly perform a role given your non-involvement in the selection process. You can take the wine and not declare it!

17. You are concerned about members of staff receiving gifts from students or their families and that they may constitute some form of bribery. What is the University's guidance in this area?

Action required: The guidance is that whilst staff should use some discretion, recognising in particular cultural sensitivity, gifts should not be encouraged. Gifts must only be accepted as a general gesture of goodwill rather than linked to any specific activity e.g. assessment of student work. If given gifts must only be in non-cash form, be of value of less than £10, be given only to relevant staff who have directly taught/tutored/supervised the student and should only be received at the end of the academic year or other time where clearly not related to assessment of work.

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