

Anti-Bribery Policy

Introduction

1. Pendle Borough Council is determined to protect itself, its employees and the public from acts of Bribery.
2. Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.
3. 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 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.

Aims and Scope of this Policy

4. This policy provides a coherent and consistent framework to enable Council employees to understand and comply with the Bribery Act 2010.
5. We require that all staff, permanent, temporary and agency:
 - 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 under which the Council operates
6. This policy applies to all of the Council's activities. For partners, joint ventures and suppliers, we will seek to promote policies and conduct consistent with the principles set out in this policy.
7. This policy also applies to Members (including independent members), volunteers and consultants.

Policy Statement - Anti-Bribery

9. Bribery is a criminal offence (see Appendix 1). We do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor will we, accept bribes or improper inducements.
10. To use a third party as a conduit to channel bribes to others is a criminal offence. We will not engage indirectly in or otherwise encourage bribery.
11. We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance towards it. We aim to maintain anti-bribery compliance as "business as usual", rather than as a one-off exercise.

This Council's commitment to action

12. 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 the policy at all times
- Training all employees so that they can recognise and avoid the use of bribery by themselves and others
- Encouraging 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 police and other appropriate authorities in any resultant prosecution
- Taking firm and vigorous action against any individual(s) involved in bribery
- Include appropriate clauses in contracts to prohibit bribery.

Facilitation payments

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

Gifts and hospitality

14. Our Gifts and Hospitality policies applying to employees and members give guidance on acceptance of gifts and hospitality.

Public contracts and failure to prevent bribery

15. 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. The Council has the discretion to exclude organisations convicted of this offence.

Staff responsibilities

16. 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 activity that breaches this policy.

17. You must ensure that you read, understand and comply with this policy. You must also raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred, or may occur in the future.

18. As well as the possibility of civil action and criminal prosecution, staff who breach this policy will face disciplinary action, which could result in dismissal for gross misconduct.

Raising a concern

19. As a first step you should normally raise concerns with your line manager or service manager. This depends, however, on the seriousness and sensitivity of the issues involved and who is

thought to be involved. If you believe that management is involved, you should approach the Chief Executive, Corporate Director or Human Resources Manager (Liberata Services).

20. If a Councillor(s) is involved then you should always approach the Chief Executive or the Corporate Director. Concerns are better raised in writing. You should set out the background and history of the concern, giving names, dates and places where possible, and the reason why you are particularly concerned about the situation. If you do not feel able to put your concern in writing, you can ask to meet the appropriate officer. The earlier you express the concern, the easier it is to take action.

21. Although you are not expected to prove the truth of an allegation, you will need to demonstrate that there are sufficient grounds for your concern and that you believe it is substantially true.

22. If you have any questions about these procedures, please contact the Corporate Director.

Other related policies

23. A number of other existing Council policies and/or codes of conduct contain provisions dealing with specific aspects of fraud, theft and corruption. These include:-

- a) Anti-Fraud, Theft and Corruption Policy and Strategy and Fraud Response Plan
- b) Confidential Reporting (Whistleblowing) policy
- c) Gifts and Hospitality Policy
- d) Members' Code of Conduct
- e) Disciplinary Procedures
- f) Employee Code of Conduct (i.e. general statement, gifts and hospitality and employees engaging in business)

APPENDIX 1

The Bribery Act

There are four key offences under the Act:

- bribery of another person (section 1)
- accepting a bribe (section 2)
- bribing a foreign official (section 6)
- failing to prevent bribery (section 7)

The Bribery Act 2010 (http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1) 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.

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. 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.

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 maximum term of 12 months (six months in Northern Ireland), or to a fine not exceeding £5,000, or to both
- On conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both

Organisations are liable for these fines and if guilty of an offence under section 7 are liable to an unlimited fine.

Is the Council a “commercial organisation”?

The guidance 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 we will be a commercial organisation for the purposes of section 7. This policy is intended to ensure that we have in place the necessary procedures to act as a defence to a section 7 offence.

What are “adequate procedures”?

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine proportionate procedures in the recommended areas of six principals. These principles are not prescriptive. They are intended to be flexible and outcome focussed, allowing for the different circumstances of organisations. Small organisations will, for example, face different challenges to those faced by large multi-national enterprises. The detail of how organisations apply these principles will vary, but the outcome should always be robust and effective anti-bribery procedures.

Proportionate procedures

An 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. They are also clear, practical, accessible, effectively implemented and enforced.

Top level commitment

The top-level management (be it a board of directors, the owners or any other equivalent body or person) 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 organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage.

Due diligence

The 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.

Communication (including training)

The 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 that is proportionate to the risks it faces.

Monitoring and review

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

This Council is committed to proportional implementation of these principles.