

# **KENT COUNTY COUNCIL**

## **BRIBERY ACT POLICY**

**As approved by:**

**Standards Committee – 17 November 2011**

**Selection & Member Services Committee – To be confirmed**

**County Council – 15 December 2011**

## **Introduction**

1. This policy is introduced to ensure compliance with the Bribery Act 2010. It explains the process through which the Council intends to maintain high standards and to protect the organisation, employees, Members and business partners against allegations of bribery and corruption.
2. It is the Council's policy to conduct business in an honest and open way, and without the use of corrupt practices or acts of bribery to obtain an unfair advantage. The Council attaches the utmost importance to this policy and will apply a "zero tolerance" approach to acts of bribery and corruption by any of its Members, employees, or persons and partners acting on our behalf. Any breach of this policy will be regarded as a serious matter and is likely to result in disciplinary action and possibly criminal prosecution.

## **Policy Statement**

3. Bribery is a criminal offence. The Council will not pay bribes, or offer improper inducements to anyone for any purpose, nor will the Council accept bribes or improper inducements. The use of a third party to channel bribes is also a criminal offence. The Council will not engage indirectly in or otherwise encourage bribery.
4. The Council is committed to ensuring compliance with the highest legal and ethical standards. The Council will commit to policies and procedures to prevent, deter, and detect acts of bribery. The Council will ensure that anti-bribery compliance is an essential aspect of its governance process and at the core of its business principles. It is an on-going process and not a one-off exercise.

## **Objective**

5. This policy presents a clear and precise framework to understand and implement the arrangements required to comply with the Bribery Act 2010. It provides the context for the detailed rules, procedures and controls in place. It should provide no room for misinterpretation and will ensure that Members, employees, volunteers and business partners know what is expected of them in preventing bribery.
6. This policy should be read in conjunction with, and reinforce, other related policies and documents (see paragraph 27). The provisions in these policies and documents should be reflected in every aspect of the way the Council operates. The requirement to act honestly and with integrity at all times is made clear and is fundamental and non-negotiable.
7. This policy explains the procedures established to prevent acts of bribery and allow any breach to be identified and reported.

## **Scope**

8. This policy applies to all of the Council's activities. The Council requires that all Members (including independent and co-opted Members), employees at all levels and grades, temporary and agency staff, volunteers, contractors, agents, consultants and partners acting on the Council's behalf, comply with the provisions of this policy. The Council will also seek to promote the adoption of reciprocal anti-bribery and corruption measures that are consistent with the Council's policy by joint venture partners and major suppliers.
9. The responsibility to mitigate the risk of bribery resides at all levels of the Council and includes all directorates. It does not rely solely on the Council's assurance functions.

## **Policy Commitment**

10. The Council commits to:
  - setting out a clear anti-bribery policy and keeping this up-to-date with regular reviews
  - making all Members, employees and partners aware of their responsibilities to adhere to this policy at all times
  - providing training, where appropriate, to allow Members, employees and partners to recognise and avoid the use of bribery by themselves or others
  - encouraging Members, employees and partners to be vigilant and to report any suspicions of bribery
  - providing suitable channels of communication (e.g. Whistleblowing Procedure) to ensure that sensitive information is handled appropriately
  - investigating instances of alleged bribery and assisting the police and other authorities in any prosecution
  - taking action against anybody acting for or on behalf of the Council who is involved in bribery
  - reporting breaches and suspected breaches of this policy to Members, employees and partners in an open and transparent way and
  - including appropriate clauses in contracts with suppliers to advise on the Council's approach to the provisions of the Bribery Act 2010

## **The Bribery Act 2010**

11. The Bribery Act 2010 was introduced to update and enhance English law on bribery. It creates a strict liability corporate criminal offence of failing to prevent bribery. The only defence against this corporate offence is for organisations to have adequate procedures in place to prevent bribery.

12. The Act includes four offences:

- Bribing a person to induce or reward them to perform a relevant function improperly
- Requesting, accepting or receiving a bribe as a reward for performing a relevant function improperly
- Using a bribe to influence a foreign official to gain a business advantage and
- In relation to a commercial organisation committing bribery to gain or retain a business advantage, there being no adequate procedures in place to prevent such actions

13. Acts of bribery are intended to influence an individual or organisation in the performance of their duty and for them to act illegally.

14. The penalties under the Bribery Act have been raised significantly and are severe. The new corporate offence is punishable with an unlimited fine. An individual guilty of an offence may be liable to imprisonment for up to 10 years or to a fine, or to both.

15. The Council accepts that public bodies may be classed as a “commercial organisation” in relation to the corporate offence of failing to prevent bribery. In any event, it represents good governance and practice to have adequate procedures in place to protect the Council, Members, employees and partners from reputational and legal damage. It is in the interests of everybody connected to the Council to act with propriety at all times.

### **Council Procedures on the Bribery Act**

14. The Council will follow the guidance issued by the Ministry of Justice. The actions are intended to be proportionate to the risks faced by the Council and to the nature, scale and complexity of the Council’s activities. The actions are expected to provide a defence of “adequate procedures” against any corporate offence. The following steps will be taken:

- **Top Level Commitment** – The Corporate Management Team is committed to preventing bribery by persons associated with the Council. A report on the Bribery Act 2010 and the introduction of this policy has been approved by the Corporate Management Team (on 23 August 2011) and the Governance and Audit Committee (on 14 September 2011).
- **Risk Assessment** – The nature and extent of the Council’s exposure to external and internal risks of bribery will be assessed as part of the Council’s risk management process. Any risk assessment is intended to be an on-going process based on regular communication and review.
- **Due Diligence** – A proportionate and risk based approach will be taken in respect of persons and other organisations that perform services for or on behalf of the Council. Due diligence will include an evaluation of the

background, experience and reputation of business partners. The transactions will be properly monitored and written agreements and contracts will provide references to the Bribery Act 2010 and this policy. Reciprocal arrangements may be required for business partners to have their own policies in place. They will be advised of the Council's policy and be expected to operate at all times in accordance with such policy.

- **Communication** – The Council will ensure that this policy and other related policies and procedures are embedded in the Council's working arrangements through appropriate communication, including training, which is proportionate to the risks the Council faces. The Council's induction programme will include reference to the Bribery Act 2010 and this policy.
- **Monitoring and Review** – This policy, control arrangements, risk management processes and other related policies and procedures designed to prevent bribery and corruption will be monitored, reviewed and improved where necessary on a regular basis. All incidents of bribery or suspected bribery will be reported to the Governance and Audit Committee. An assurance of compliance will be included in the Annual Governance Statement.

15. In the context of this policy it is unacceptable for persons acting for or on behalf of the Council 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 is known to be, or suspected to have been, offered with the expectation that it will obtain a business advantage for them
- accept a gift or hospitality from a third party if it is known to be, or suspected to have been, offered 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 an act of bribery or who has raised concerns under this policy and
- engage in any activity in breach of this policy

### **Gifts and Hospitality**

16. This policy is not intended to change the requirements of the Council's Gifts and Hospitality policies and procedures. This is contained in the Kent Code and in the Members Code of Conduct in the Council's Constitution.

17. The guidelines clearly set out the restrictions on accepting gifts and hospitality, the need to inform the manager and the need to register any approved gifts that are retained.
18. If there is any doubt about whether an invitation or gift should be accepted then the offer should be refused. Each Corporate Director is required to review their respective Gifts and Hospitality registers at least annually. The Corporate Director of Finance and Procurement will ensure that reminders on this subject and the need for officers to complete a Register of Interests form are sent out every year.
19. The procedures for Members' registers of interest are set out in the Members' Code of Conduct.

## **Public Contracts**

20. 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. It is understood that there are no plans to amend the 2006 regulations for these 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 will use its discretion as to whether to exclude organisations convicted of this offence and any instances where this is the case will be reported to the Corporate Management Team for a decision.

## **Member, staff and partner Responsibilities**

21. The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or acting for or on its behalf. All Members, staff, volunteers and partners are required to avoid activity that breaches this policy. Adherence to the policy is mandatory.
22. Members, staff, volunteers and partners must:
  - Ensure that they have read, understood and comply with the Bribery Act Policy and
  - raise concerns as soon as possible if they believe or suspect that a conflict with this policy has occurred, or may occur in the future
23. In addition to the possibility of criminal prosecution, members of staff who breach the policy will face disciplinary action, which could result in dismissal for gross misconduct.

## **Raising a concern**

24. Staff are encouraged to raise any concerns with their manager. In addition, the Council has published a Whistleblowing Procedure. This provides information on the courses of action available to report serious concerns

(including bribery) in confidence. Members, staff or partners who refuse to accept the offer of a bribe may worry about the repercussions. The Council aims to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if they turn out to be mistaken.

25. The Council is committed to ensuring that nobody suffers detrimental treatment through refusing to take part in bribery.

### **Review of the Bribery Act Policy**

26. It is the responsibility of the Corporate Director of Finance and Procurement to routinely refresh, review and reinforce this policy and its underlying principles and guidelines. All members of staff are responsible for reading and understanding this policy which will also form part of the induction programme.

### **Other relevant policies**

27. The following policies, procedure documents and codes of conduct should be read in conjunction with the Bribery Act Policy:

- Constitution
- Anti-Fraud and Corruption Policy
- Anti-Money Laundering Policy
- Whistleblowing Procedure
- Kent Code
- Disciplinary Procedure
- Members Code of Conduct
- Spending the Council's Money