

Bribery Prevention Guidance Note

This guidance note is directed at all staff, consultants and other persons, such as partners, agents or contractors, associated with the University of Greenwich. It should be read in conjunction with the University Anti-bribery Policy http://www.gre.ac.uk/_data/assets/pdf_file/0005/656465/Anti-Bribery-Policy.pdf

1. Guiding principles

All staff, consultants and other persons associated with the University must ensure that they observe ethical standards of behaviour in performing their duties, and in particular:

- their actions must not be influenced by a benefit (eg a gift or hospitality) offered or received to show favour or disfavour to any person or organisation;
- they should not give the impression that they have been or may have been influenced by a benefit offered or received to obtain advantage or to disadvantage any person or organisation;
- their actions must not induce or reward someone to perform a role or function improperly.

It is expected that all members of staff and University Court will ensure the highest possible standards of public accountability in line with the **Nolan Principles** <http://www.archive.official-documents.co.uk/document/parlment/nolan/nolan.htm>

2. What is bribery?

The definition of bribery is the receiving or offering reward by or to any person in order to influence their behaviour to obtain advantage in the business of the organisation.

The person most likely to be bribed is usually someone who will be able to obtain, retain or direct business. This may involve tendering and contracting; or it may simply involve the handling of administrative tasks such as licences, customs, taxes or import/export matters. It makes no difference whether the act of bribery is committed before or after the tendering of a contract or the completion of administrative tasks.

Bribes can take many different shapes and forms, but typically they involve corrupt intent. There will usually be a *quid pro quo* where both parties will benefit. A bribe could be, for example:

- a direct or indirect promise, offering, or authorisation, of anything of value;
- an offer or receipt of any kickback, loan, fee, reward or other advantage;
- the giving of aid, donations or voting designed to exert improper influence.

in return for, for example:

- admitting students with inadequate qualifications;
- enhancing marks;
- offering extenuating circumstances inappropriately;
- ignoring plagiarism;
- ignoring academic misconduct;
- favouring one supplier over another.

It is acceptable to offer or accept normal and appropriate hospitality or gifts provided they are not intended to unduly influence the recipient and provided it is in compliance with the University's Policy on the Acceptance of Gifts and Hospitality. For more information please see [Expenses for Hospitality in Faculties and Offices](#), particularly the final paragraph

What gifts, hospitality or expenses are appropriate?

- the size and value of the gift/hospitality is relevant;
- a gift/hospitality given as an act of appreciation is likely to be appropriate;
- a gift which creates a feeling of unease or places an obligation on the recipient is not appropriate.

Individuals must declare to their Pro Vice-Chancellor/Director and the University Secretary in writing any financial or other interests which they or any member of their family have in any contract the University may be entering into with a supplier or contractor. Please see the University Policy on the Acceptance of Gifts and Hospitality for more information.

3. Individual responsibilities

The detection and prevention of bribery and other forms of corruption are the responsibility of all those working for or with the University.

Staff, consultants, and other persons associated with the University *must not*:

- offer or make a bribe, unauthorised payment or inducement of any kind
- solicit business by so doing
- accept any kind of bribe, unauthorised payment or inducement.

An individual must notify their line manager as soon as possible if they have any suspicion of bribery or corruption.

The University is committed to the highest standards of openness, integrity and accountability, and it will support anyone who raises a genuine concern, even if they turn out to be mistaken.

Any breach of the procedures or of the law will be treated as a disciplinary offence and will be dealt with under the disciplinary procedures.

4. Risk assessment

Pro Vice-Chancellors and Directors should carry out a review of the functions for which their areas are responsible and undertake a risk assessment of those areas

which may be at risk of bribery or improper conduct. The University risk management documentation and guidance should be used for this purpose:

<http://www.gre.ac.uk/governance/risk-management>

Following the completion of a risk assessment, appropriate action plans to mitigate or eliminate these risks should be prepared and carried out.

In line with good business practice, risk assessments and action plans should be regularly reviewed, especially if there is a significant change in the operation of an activity where bribery is a risk. All documentation relating to risk assessments and action plans should be retained by the Faculty/Directorate and made available to internal auditors. The documentation could be used by the University to demonstrate that it had adequate procedures in place to prevent bribery.

5. Frequently asked Questions

Why did the University introduce the Anti-bribery Policy?

The Anti-bribery Policy was introduced following the Bribery Act 2010, which came into force on 1st July 2011. The Act created two new offences and placed responsibility on organisations as well as individuals. The Act covers any country in the world in which UK organisations operate, and covers all persons acting on behalf of the organisation.

Who does the Bribery Act apply to?

It applies to both individuals and companies. Both UK and foreign companies are covered, provided they have some operations in the UK, and could be prosecuted by the Serious Fraud Office (SFO). It is a criminal offence for an individual to give or receive a bribe. It is also a corporate offence if an organisation is found to have failed to prevent bribery.

What are the penalties?

Individuals can face up to ten years in prison and an unlimited fine. Organisations can also face unlimited fines.

What counts as bribery?

In its *Guide to the Bribery Act*, the Ministry of Justice says:

‘Very generally, [bribery] is defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so.’

Facilitation payments, whereby officials are paid to speed up routine services they are obliged to carry out, are bribes. These types of payments were illegal even before the Bribery Act. A facilitation payment may, for example, involve giving cash to customs officials abroad to get goods through.

Hospitality is not prohibited by the Act. This had previously been unclear and the legislation was delayed after the government issued additional guidance.

What is the definition of ‘bribing another person’?

‘Bribing another person’ is defined as the offering, promising or giving of a reward to induce a person to perform a relevant function or activity improperly.

For this offence to be committed there needs to be evidence that the act under consideration was carried out with the purpose of inducing a person to act improperly. The government guidance gives the example of inviting clients to a Six Nations match at Twickenham to cement good relations. This act of hospitality is unlikely to be seen as a bribe because the purpose is not to induce improper behaviour.

What is the definition of ‘being bribed’?

‘Being bribed’ is defined as the accepting of, agreeing to accept or requesting of a reward in return for performing a relevant function or activity improperly.

A ‘relevant function or activity’ includes any activity of a public nature or any activity connected to a business.

‘Acting improperly’ will be any breach of what a reasonable person in the UK would expect in relation to the performing of the function or activity. However, the offences apply even if the function or activity is not taking place in the UK.

What is the definition of ‘bribing a foreign public official’?

A ‘foreign public official’ includes officials, whether elected or appointed, who hold a legislative, administrative or judicial position of any kind of a country or territory outside the UK. It also includes any person who performs public functions in any branch of the national, local or municipal government of such a country or territory or who exercises a public function for any public agency or public enterprise of such a country or territory, such as professionals working for public health agencies and officers exercising public functions in state-owned enterprises. Foreign public officials can also be an official or agent of a public international organisation, such as the UN or the World Bank.

‘Bribing a foreign public official’ is a specific offence of trying to influence a foreign public official with the intention of obtaining or retaining business in a situation where the public official was not permitted or required by law to be influenced.

The government guidance makes specific comment about situations that can occur when seeking tenders for publicly funded contracts. In such situations governments often permit those tendering for the contract to offer some kind of additional investment in the local economy, or to carry out some act that would be of benefit to the local community. If relevant written law permits or requires an official to be influenced by such an arrangement then this will fall outside of the offence. If the additional investment would amount to an advantage to the foreign public official and there is no reference in local law as to whether this is permitted, then prosecution is possible – consideration would be given to the public interest in prosecuting.

What is the definition of ‘failure to prevent bribery’?

This is the ‘corporate offence’ and it occurs when an organisation fails to stop people who are operating on its behalf from being involved in bribery.

This offence could occur as a result of the activities of a range of people working on behalf of the organisation – an employee, consultant or agent, for example – if those

individuals were involved in accepting or receiving a bribe which resulted in the organisation gaining or retaining business.

Specifically offences may be prosecuted if:

- committed by a British national or corporation or individual who is ordinarily resident in the UK regardless of where the offence was committed; and/or
- any act or omission which forms part of the act is committed in the UK.

Are there any defences to a 'failure to prevent bribery'?

An organisation will not be liable if it can show it had adequate procedures in place to prevent bribery. 'Adequate procedures' may include providing anti-bribery training to staff, carrying out risk assessments, or carrying out due diligence on the people the organisation deals with. In the government guidance six guiding principles set out the approach that organisations should use to prevent bribery occurring in their organisation.

What are the six guiding principles?

There are six guiding principles outlined in the Government Guidance to the Bribery Act:

Principle 1 – Procedures to prevent bribery by persons associated with the University are proportionate to the bribery risks it faces and to the nature, scale and complexity of the University's activities.

Principle 2 – The top-level management, including members of the Court, the Vice-Chancellor's Group and senior managers, are committed to preventing bribery by persons associated with the University.

Principle 3 – Risk Assessment by the University assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it.

Principle 4 – The University 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 – The University 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.

Principle 6 – The University monitors and reviews procedures designed to prevent bribery by persons associated with it and make improvements where necessary.

6. Example case scenarios

Example scenarios in which offences may be committed

Active bribery

1. An intermediary in India says that for a £30K fee she can guarantee securing a cohort of 150 engineering students who are currently reviewing their options with a number of UK institutions. The University normally pays the intermediary a flat rate of commission for each student recruited.
2. The University is seeking planning permission for a new site and the local planning officer suggests that a charitable donation to a local school (where he is governor) will help the University's cause. But this will be 'off the record'.
3. Offering excessive hospitality **to** a contact to secure a commercial research project or grant.

Passive bribery

1. Receiving concert tickets **from** a contact on the understanding that you will, as a result, put business 'their way' or award or renew an existing contract.
2. The University is reviewing its IT hardware suppliers. One bidder offers a free iPad for every department head if its bid is successful.
3. A student has been unable to secure an undergraduate position due to poor grades, but his father offers to make a £10,000 donation to the University if the decision is reversed.

Bribing a foreign official

1. The University is opening a new representative office overseas. You learn that because of a backlog registration with the authorities it is taking up to six months to obtain registration. However, you are told that a payment of £5,000 will expedite the process.
2. Using an overseas intermediary to pay a suggested £1,500 'fee' for expedited approval by a foreign official of a local course proposed to be run by the University.

Example scenarios of potential risk – red flags to be reported

If you encounter any of the following while working for the University, you must report them promptly to the relevant Pro Vice-Chancellor/Director who in turn must report it to the Secretary and Registrar. Please note that the list is not exhaustive:

1. You are offered an unusually lavish gift or hospitality.
2. A third party demands lavish entertainment or gifts before commencing or continuing contractual negotiations.
3. A third party requests an unexpected additional fee or commission to 'facilitate' a service.
4. You become aware that a third party has been accused of engaging in improper business practices, has a reputation for paying bribes, or requiring that bribes are paid to them.
5. A third party demands that you provide employment to a friend or relative.
6. A third party insists on receiving a commission or fee payment before committing to signing up to a contract.
7. You learn that a third party requests payment in cash and/or refuses to sign a formal commission, or to provide an invoice, or receipt for a payment made.