

East Dunbartonshire Council

Anti-Bribery Policy

April 2016

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1. Introduction

- 1.1 The Council is wholly committed to preventing bribery and corruption in all its dealings and relationships, and upholding all relevant laws, including the Bribery Act 2010.
- 1.2 Bribery and corruption in any form are unacceptable and will lead to disciplinary action where allegations are substantiated. The Council operates a zero tolerance approach to these matters.
- 1.3 This Policy sets out key principles to achieve these aims, and details the Council's corporate and employee responsibilities required to ensure compliance with the Act.
- 1.4 This Policy should be read in conjunction with the Council's suite of policies and procedures in this area initiating with the Employee Code of Conduct.
- 1.5 This Policy also provides information and guidance for employees on how to prevent, recognise and deal with bribery and corruption issues.

2. Scope

- 2.1 This Policy applies to all employees and covers all activities undertaken by the Council.
- 2.2 In all dealings with third parties¹, the Council will promote the adoption of practices and arrangements consistent with the principles set out in this policy.

3. Compliance

- 3.1 In order to ensure all employees are aware of their responsibilities under this Policy, each employee will be required, at the point of commencing employment with the Council, and annually thereafter to confirm that they have read and understood the requirements of this Policy.
- 3.3 Failure to adhere to this Policy may result in disciplinary action being taken up to and including dismissal.

4 What is Bribery?

- 4.1 Bribery is an inducement or a reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage and can take various forms such as;

- bribery of another individual or organisation,
- accepting a bribe from an individual or organisation,

¹ A "third party" is an individual or organisation that engages for business with the Council e.g. external service providers, suppliers and contractors.

- 4.2 Bribes may not always be monetary and may include gifts or hospitality.
- 4.3 Bribery is a criminal offence.
- 4.4 Additionally, failure by the Council to put in place adequate procedures to prevent bribery can also constitute an offence.
- 4.5 The maximum penalty for individuals under the Act is 10 years imprisonment and/or unlimited fines. Failure by an organisation to prevent bribery carries an unlimited fine.

5. What is the Council's position on Bribery?

- 5.1 The Council expressly forbids employees or associated persons² from offering or accepting bribes or unlawful inducements to or from anyone for any purpose.
- 5.2 The use of an associated person or third party as a 'go-between' to channel bribes to others is also unacceptable.
- 5.3 The Council is committed to the prevention, deterrence and detection of bribery by;
- Ensuring procedures are in place to prevent bribery.
 - Making all employees aware of their responsibilities through this Policy, the associated Anti-Bribery Procedure, Corporate Fraud and Corruption Policy, Whistleblowing Policy and the Employee Code of Conduct.
 - Training all employees so that they can recognise bribery and enable them to take any subsequent action that may be required.
 - Ensuring training on this policy forms part of the induction process for all new employees, and that all employees are reminded annually of their responsibilities regarding bribery.
 - Encouraging employees to be vigilant and to report any reasonably held suspicions of bribery or corruption, using the Council's Whistleblowing policy if necessary.
 - Investigating instances of alleged bribery and providing assistance to any external investigating agencies and the Crown Office and Procurator Fiscal Service in any resultant proceedings.
 - Taking disciplinary action up to and including dismissal against any individual involved in bribery or other corrupt activity.
 - Including appropriate clauses in commercial contracts to prevent bribery.

² An "associated person" is a person who performs services for or on behalf of the Council, and can therefore include agents, suppliers and contractors.

6. Preventing Bribery – Adequate Procedures

- 6.1 An organisation will have a statutory defence against prosecution for bribery offences if it puts in place “adequate procedures” designed to prevent bribery. What is “adequate” depends on the bribery risks, the nature, size and complexity of the business. Adequate procedures need to be applied **proportionately**, based on the level of risk.
- 6.2 In determining such procedures, the Government has indicated that organisations should be informed by six principles:
- Top Level Commitment.
 - Risk Assessment.
 - Proportionate Procedures (proportionate to the bribery risks faced).
 - Due Diligence.
 - Communications (the anti-bribery policy and procedure are embedded and understood).
 - Monitoring and Review.

The Council’s arrangements embody these six principles.

- 6.3 A separate **Anti-Bribery Procedure** will be developed to provide a tool for assessing and mitigating risk of bribery and reflects these principles.

7. Employee Responsibilities

- 7.1 Employees must read and understand this Policy, the Anti-Bribery Procedure and the Employee Code of Conduct. Management will ensure that all employees are given a copy for this purpose.
- 7.2 The prevention, detection and reporting of bribery is the responsibility of all employees working for the Council.

Therefore, all employees **must**:

- comply with this policy and the associated suite of policies,
- avoid any activity that breaches this Policy or could be seen as a breach of this Policy,
- seek advice **before** accepting gifts or hospitality,
- fully comply with Procurement Anti-Bribery Assurance,

- disclose all known or potential conflicts of interest.
- raise any concerns as soon as possible if an officer believes or suspects that a breach of this policy has occurred or may occur in the future.

Employees **must not**:

- give or promise to give, or offer a payment, gift or hospitality with the expectation or hope that a personal, commercial, regulatory or contractual advantage will be received, or to reward any such advantage already given,
- give or promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to facilitate or speed up a procedure,
- accept payment from a third party known or suspected to be offered with the expectation that it will obtain a business advantage for them,
- accept a gift or hospitality from a third party if known or suspected that it is offered or provided with an expectation that a business advantage will be provided by the Council in return,
- facilitate any business advantage for personal interest, this includes personal interest of third parties, or
- retaliate against, threaten or victimise anyone who has refused to be involved in bribery or corrupt practices, or who has raised concerns under this policy.

7.3 The list above is not exhaustive but is intended to provide examples of conduct likely to breach this policy.

7.4 If employees have any doubt at all about circumstances that they find themselves in, advice should be sought from their line manager **before** it becomes an issue to be dealt with.

7.5 Depute Chief Executives, Strategic Leads, Managers and Team Leaders must establish adequate measures and controls to address all potential areas of bribery, proportionately based on risk level.

7.6 Failure to establish adequate measures and controls could lead to disciplinary action under the Discipline at Work Policy & Procedures. Advice may also be sought from Internal Audit and the Counter Fraud Team on potential control issues.

8. Consequences of Improper Behaviour

8.1 All allegations relating to bribery or corrupt practices, in which criminality is suspected, will be investigated by the Corporate Fraud Team or, if appropriate, Police Scotland or other Specialist Reporting Agency.

- 8.2 Local Authorities are classed, by the Crown Office and Procurator Fiscal (COPFS) as a Specialist Reporting Agency. The Corporate Fraud Team will comply with all guidance issued by COPFS.
- 8.3 There are distinct roles within an investigation, each having unique functions and responsibilities associated, which will only be undertaken by suitably trained officers. Reasonable lines of enquiry, both inculpatory and exculpatory will be undertaken in all occasions and in accordance with all relevant legislation. Training will be provided to ensure continual compliance with all legislation, case law and guidance.
- 8.4 The Council will be stringent in punishing bribery and will use all available measures at its disposal to recover losses. This will include the deduction of losses against any monies due to be paid by the Council.
- 8.5 Where an investigation has been conducted and a sufficiency of admissible evidence gathered to warrant the submission of a report to the Crown Office and Procurator Fiscal Service (COPFS), for consideration of criminal proceedings, the Council will adopt the following.
- 8.6 The Senior Investigating Officer or Reporting Officer, investigatory roles defined in guidance issued by COPFS, will identify cases that are suitable for prosecution and seek authorisation for sanction action from the Audit & Risk Manager or their nominee. In deciding if a case is suitable for submission of a report to COPFS the following factors will be considered.
- 8.7 Evidential considerations:-
- Sufficiency of evidence.
 - Admissibility of evidence.
 - Reliability of evidence.
 - Credibility of evidence.
- 8.8 Public interest considerations:-
- The nature and gravity of the offence.
 - The impact of the offence on the victim and other witnesses.
 - The age, background and personal circumstances of the accused.
 - The age and personal circumstances of witnesses.
 - The motive for the crime.
 - The age of the offence.
 - Mitigating circumstances.
 - The effect of prosecution on the accused.
 - The risk of further offending.
 - The availability of a more appropriate civil remedy.
 - Powers of the court.
 - Public concern.

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- 8.9 If Police Scotland has been the lead agency they will have sole responsibility for the consideration of criminal proceedings.
- 8.10 Where the investigation concludes that improper behaviour may have occurred, the Council's Disciplinary procedures will be applied. This could result in dismissal.
- 8.11 All elected members and employees of the Council have a duty to assist with an investigation and to allow investigating officers' unhindered access to employees, information and other resources as required. Failure to do so may be considered a breach of trust or failure to comply with financial regulations which could lead to disciplinary action under the Discipline at Work Policy & Procedures. Appropriate action will be taken which may lead to dismissal and if appropriate consideration will also be made to criminal prosecution.
- 8.12 Failure to report serious organised crime, as defined by Criminal Justice & Licensing (Scotland) Act 2010 is a criminal offence. Therefore all instances of suspected or known serious organised crime will be reported to Police Scotland.

9. Gifts & Hospitality

- 9.1 Gifts, offers of hospitality or favours from or to a third party, a contractor, client or partner organisation of the Council are capable of being perceived as constituting a bribe.
- 9.2 Therefore, all employees, or associated person, a or any person on their behalf, should never accept or offer a gift, hospitality, favour or any other form of inducement, or promise of above, which may influence or be perceived as influencing actions or decisions related to their employment. Gifts exchanged between employees will be acceptable provided the gift is not given to influence or be perceived as influencing actions or decisions related to their employment
- 9.3 In certain limited circumstances, and in connection with your official duties, it may be appropriate for an officer to offer or receive gifts of low value or small tokens of gratitude, such as merchandise / branded items which have been designed for the purpose of being given away e.g. pens, post-its etc. Similarly, small gifts such as sweets etc. e.g. given to a team at Christmas will be acceptable.
- 9.4 Gifts of alcohol or offers of hospitality, however small, should not be accepted by Council employees. Similarly, such gifts or offers should not be made by Council employees.
- 9.5 Advice should be sought from management on the appropriateness of offering or accepting **any** such hospitality or gifts. Other than in circumstances similar to those set out in paragraph 9.3 officers should not accept a gift unless satisfied, following discussion with your manager, that to do so would not lead to actions as a Council employee being called into question.

9.6 Other than the small gifts indicated in paragraph 9.3, all offers of gifts and hospitality, whether refused or accepted, should be recorded in the register of gifts and hospitality, in accordance with departmental arrangements. Such arrangements including the requirement for Directors to maintain a register that sets out:

- the date of offer being made,
- the date of the declaration being received,
- details of the item,
- details of the individual offering the item,
- reason for the gift being made,
- name of the individual receiving the item, and
- whether the item was approved to be accepted by the Director.

10. Reporting and Publicity

Elected Members

10.1 The Audit and Risk Manager will provide Performance Reports, as appropriate, for the Elected Members, where these include considerations in respect of this policy these will be clearly identified.

Local Media

10.2 In order to deter future bribery activity, where a case is referred to the Crown Office and Procurator Fiscal Service for consideration of criminal proceedings and is subsequently brought to court, the Council may publicise the details in the local press.

10.3.2. Publish general statistical information relating to bribery, as and when required.

11. Reporting Bribery

Bribery can be reported by using:

- Online at www.eastdunbarton.gov.uk/whistleblowing
- Email to whistleblowing@eastdunbarton.gov.uk
- Telephone 0300 123 4510

12. Review

12.1 The procedure and associated policy will be reviewed by the Audit and Risk Manager or their nominee on an annual basis, to reflect organisational changes, best practice, operational experience and legislative updates, in order to maintain its effectiveness. Where there are material changes the amended policy will be referred to the Policy & Resources Committee

13. Equality Act 2010 – Equality Impact Assessment

13.1 This policy has been equality impact assessed and no concerns were raised.