

**DARLINGTON BOROUGH COUNCIL**

**Anti Bribery Policy and Procedures**

**November 2011**

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## **1. POLICY STATEMENT**

Bribery is a criminal offence. Darlington Borough Council (the Council) does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we, accept bribes or improper inducements.

To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance towards bribery. We aim to maintain anti-bribery compliance “business as usual”, rather than as a one-off exercise.

### **1.1 Objective of this Policy**

This policy provides a coherent and consistent framework to enable the Council members and employees to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable members and employees to identify and effectively report a potential breach.

The Council requires that all members and personnel, including those permanently employed, temporary agency staff and contractors:

- 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 and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities.

### **1.2 Scope of this Policy**

This policy applies to all of the Council’s activities. For partners, joint ventures and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

Within the Council, the responsibility to control the risk of bribery occurring resides at all levels of the organisation. It does not rest solely within assurance functions, but in all service areas business units and corporate functions.

This policy covers all members (including independent members), personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, volunteers and consultants.

### 1.3 The Council's Commitment to Action

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 this policy at all times;
- training key employees so that they can recognise and avoid the use of bribery by themselves and others;
- encouraging its 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;
- provide information to all employees to report breaches and suspected breaches of this policy;
- include appropriate clauses in contract documents to prevent bribery.

### 1.4 What is Bribery?

Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.

### 1.5 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](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. This is what is known as a 'strict liability' offence. This means that there is no need to prove negligence or management complicity. 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.

## **1.6 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 the Council will be a commercial organisation for the purposes of section 7. This policy is intended to ensure that the Council has in place the necessary procedures to act as a defence to a section 7 offence.

## **2. ANTI BRIBERY PROCEDURES**

### **2.1 The Council’s Procedures Cover Six Principles:**

#### **Proportionality**

The Council has procedures in place to prevent bribery by persons associated with it. These are proportionate to the bribery risks faced and to the nature, scale and complexity of activities undertaken. They are also clear, practical, accessible, effectively implemented and enforced.

#### **Top level commitment**

Cabinet and the Chief Officers are committed to preventing bribery by persons associated with the Council. They foster a culture within the organisation in which bribery is never acceptable.

#### **Risk Assessment**

The nature and extent of the Council’s exposure to potential external and internal risks of bribery on its behalf of persons associated with it is periodically assessed. This includes financial risks but also other risks such as reputational damage.

#### **Due diligence**

The Council takes 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 Council 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**

Procedures designed to prevent bribery are monitored and reviewed and improvements are made where necessary.

## **2.2 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;

The Council, if convicted under sections 1, 2 or 6 will also face the same level of fines and, if guilty of an offence under section 7, is liable to an unlimited fine.

## **2.3 Bribery is not Tolerated**

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 by us 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.

## **2.4 Facilitation Payments**

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

## **2.5 Gifts and Hospitality**

This policy is not meant to change the requirements of the Council's approach to gifts and hospitality as set out within the Code of Conduct for Members and Co-opted Members and the Code of Conduct for Employees. These make it clear that all offers of gifts and hospitality of a value of £25 or over should be registered whether they are accepted or not.

## **2.6 Public Contracts and Failure to Prevent Bribery**

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.

## **2.7 Your Responsibilities as a Member or Officer**

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 members and staff are required to avoid activity that breaches this policy.

You must:

- ensure that you read, understand and comply with this policy;
- 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.

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

## 2.8 Raising a Concern

The Council is committed to ensuring that all of us have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every Council member or employee, agency staff, contractors, agents, volunteers and consultants to know how they can raise concerns.

We all have a responsibility to help detect, prevent and report instances of bribery. If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

Please refer to the Council's Confidential Reporting Policy.

Concerns can be anonymous. In the event that an incident of bribery, corruption, or wrongdoing is reported, the Council will act as soon as possible to evaluate the situation. We have clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind.

If you have any questions about these procedures, please contact Brian James, Head of Corporate Assurance on 01325 388140 or [brian.james@darlington.gov.uk](mailto:brian.james@darlington.gov.uk)



### **3. OTHER RELEVANT POLICIES**

Other relevant policies can be found on the Council's website. They include:

Anti Fraud and Corruption Policy Statement

Anti Fraud and Corruption Strategy

Anti Money Laundering Policy

Confidential Reporting Policy

Code of Conduct for Members and Co-opted Members

Code of Conduct for Employees