

Counter Fraud Framework Manual 2014

Bribery Policy Statement and Procedure

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Counter Fraud Framework – Bribery Policy Statement and Procedure

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Counter Fraud Framework – Bribery Policy Statement and Procedure

1. Bribery Policy Statement

- 1.1 Bribery is a criminal offence. The London Borough Of Barnet 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 any improper inducements.
- 1.2 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.
- 1.3 We are committed to the prevention, deterrence, detection and investigation of bribery.
- 1.4 The London Borough Of Barnet has a zero-tolerance towards bribery. We aim to maintain anti-bribery compliance “business as usual”, rather than as a one-off exercise.
- 1.5 The Corporate Anti Fraud Team (CAFT) are the only authorised department to investigate all instances of fraud, corruption or bribery committed against the London Borough of Barnet and will ensure cases are appropriately sanctioned where applicable.
- 1.6 All suspicions of bribery must be reported to the CAFT, failure to do so may result in disciplinary action. No employee will suffer demotion, penalty or other adverse consequences for raising concerns to CAFT, or for refusing to make or accept bribes.
- 1.7 This policy is part of a coherent and consistent counter fraud framework that will enable the Council employees, members, partners and providers to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees to identify and effectively report a potential breach.
- 1.8 We require that all personnel, including whether employed permanently, temporary, agency staff or 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 organisation operates, in respect of the lawful and responsible conduct of activities

2. Scope

- 2.1 This policy applies to all of the London Borough of Barnet’s activities.
- 2.2 For partners, providers, suppliers and schools we recommend that they either adopt this policy or adhere to a policy consistent with the principles set out in this policy. In such instances, the council may request annual confirmation of the policy that they have in place.
- 2.3 Within the Council the responsibility to control the risk of bribery occurring resides at all levels of the organisation. It is the responsibility of management to ensure that a sound system of internal control exists within their area of responsibility. Corporate Anti-Fraud Team (CAFT) and Internal Audit will review arrangements periodically to provide assurance to relevant stakeholders.
- 2.4 This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Members (including independent members), volunteers and consultants.

3. The London Borough of Barnet’s commitment to action

- 3.1 This council commits to:
 - Setting out a clear anti-bribery policy and keeping it up to date;

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- Ensuring all personnel are aware of their responsibilities to adhere strictly to this policy at all times;
- Conducting its contracting and procurement practices in a fair and transparent manner;
- Provide awareness training for all 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, ensuring that relevant cases are prosecuted, or by assisting police and other appropriate authorities in any resulting prosecutions;
- Taking firm and vigorous action against any individual(s) involved in bribery;
- Provide information to all employees on reporting breaches and suspected breaches of this policy; and
- Include appropriate clauses in contracts to prevent bribery.

4. The Bribery Act

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

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)

4.2 The Bribery Act 2010

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 the Act for 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.

4.3 Are we 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.”

For the purpose of applying the Act the London Borough of Barnet is treated as a “commercial organisation”.

4.4 The Council’s approach to the six principles within the Bribery Act is as follows:

1. Proportionate procedures

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This policy represents our documented procedure to be applied across the Council. Procedures that are developed are in line with the Council's bribery risks it faces and to the nature, scale and complexity of the activities.

2. Top level commitment

The council's senior management, led by the Chief Executive Officer, are committed to preventing bribery by persons associated with it. The Council's people values recognise the importance of being trustworthy. Being trustworthy is defined 'By communicating clearly and honestly about what we can or can't do we inspire trust'. Further reinforced by 'ensuring that everything we do we do with integrity'. Recognition and rewards (non monetary) are carried out annually to reinforce importance of our people values.

3. Risk Assessment

The council 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 reputation damage. Managers are required to comply with the Risk Management Strategy and Policy Statement in recording, managing and reporting risks of Bribery.

4. Due diligence

The council 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 council, in order to mitigate identified bribery risks.

5. Communication (including awareness 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.

6. Monitoring and review

CAFT monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary. The Audit Committee oversees risk management arrangements and seeks assurances on the application of this policy.

4.5 Penalties

An individual guilty of an offence under sections 1, 2 or 6 of the Act 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.

5. Bribery is not tolerated

5.1 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

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- 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.

5.2 Facilitation payments

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

5.3 Political contributions

A political contribution is a contribution, financial, or in-kind, to support a political cause. Political contributions can be vulnerable to abuse with companies using contributions to gain undue influence to win contracts or shape legislation to their business. The Council's policy is to not make or accept political contributions.

5.4 Charitable Contributions and Sponsorships

A Charitable contribution is a payment made to a Charitable Institution made without any demand or expectation of business return. Sponsorship is a transaction where the Council makes payment, in cash or in-kind, to associate its name with an activity or other organization and receives in consideration for the sponsorship fee.

The council will ensure that Charitable Contributions and Sponsorships are not being used as a subterfuge for Bribery. Approval for charitable donations and sponsorship must be in line with the Council/Directorate Scheme of Delegation. All charitable donations or sponsorship must be noted as such in the Council's accounts and open for review. When making sponsorship decisions a review must be carried out to assess any conflicts of interest, or whether this would influence any bidding situation.

In the interests of transparency, the Council will publish any receipt of or payments for Corporate Sponsorship and any Charitable Contributions on an annual basis.

5.5 Gifts and hospitality

Gifts are money, goods, services or loans given ostensibly as a mark of friendship, or appreciation. They are professedly given without expectation of consideration or value in return. Gifts may be used to express a common purpose and the hope of future. Hospitality includes entertaining, meals, receptions, tickets to entertainment, social or sports events, participation in sporting events, such activities being given or received to initiate or develop a relationships between business people business success and prosperity.

This policy is not meant to change the requirements of the council's gifts and hospitality policy contained within the Code of Conduct. This makes it clear that:

- Under no circumstances should gifts or hospitality be accepted to give personal, commercial, regulatory or contractual advantage
- nominal unsolicited gifts and hospitality up to a financial value of £25 are acceptable

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- reasonable, proportionate gifts and hospitality made in good faith and in the course of normal business and that are not lavish are acceptable.
- Employees should consider whether the acceptance of the gifts or hospitality affect or be perceived to affect the outcome of business transactions and are not reasonable and bona fide expenditure.

In the interests of transparency the Council will publish annually gifts and hospitality registers for those staff earning £58,200 and above.

5.6 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 will exclude organisations convicted of this offence.

Appropriate due diligence will take place during procurement phases to ensure that potential providers have not been convicted for Bribery. The Council will also seek to confirm that its major suppliers and partners have appropriate Anti-Bribery policies in place. When carrying out large procurement activity the Council will request relevant Anti-Bribery policies in place from the bidder at the Pre-Qualification Questionnaire (PQQ) stage.

6 Staff and management responsibilities

6.1 The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the organisation or under its control. All staff are required to avoid activity that breaches this policy.

You must:

- ensure that you read, understand and comply with this policy
- participate in any training offered to raise awareness of Bribery
- 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.

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

6.3 Management is responsible for a sound system of internal control. Managers should assess the risks of Bribery within their area of responsibility and put in place adequate mitigating controls where perceived or actual risks exist. Managers should record their risk assessments in line with the Council's Risk Management Strategy and Policy Statement.

6.4 Internal control systems, in particular the accounting and record keeping practices, will be subject to regular internal audits to provide assurance that they are effective in countering bribery.

7. Raising a concern

7.1 This 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 member of staff to know how they can raise concerns.

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- 7.2 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.
- 7.3 There are multiple channels to help you raise concerns direct to the CAFT– either via a phone call, email, in writing, in person, or via the on line reporting form or the whistleblowing policy.
- 7.4 If you wish to raise a concern regarding a member of the CAFT then this should either be raised directly with the Monitoring Officer, or the Chief Executive.
- 7.5 Concerns can be anonymous. In the event that an incident of bribery, corruption, or wrongdoing is reported, we 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. This is easier and quicker if concerns raised are not anonymous.
- 7.6 Staff who are offered a bribe or those who raise concerns or report wrongdoing can understandably be worried about the repercussions. We aim 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. We are committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith.
- 7.7 If you have any questions about this procedure, please contact the Assurance Assistant Director on 0208 359 7791.
- 7.8 To act as a deterrent we will commit to publishing details of public legal cases of bribery involving the Council.

8. The Role of the Audit Committee

- 8.1 The Council promotes a culture that encourages commitment to compliance with the law and ethical conduct by exercising due diligence in meeting the criteria in this policy.
- 8.2 One of the specific roles of the Audit Committee to monitor the Council’s Counter Fraud framework (and policies within) and recommend their application across the Council.

9. Other relevant Barnet Policies

- 9.1 Counter Fraud Framework including introduction document
- Fraud Policy Statement and Procedure
 - Whistleblowing Policy Statement and Procedure
 - Prosecution and Sanction Policy Statement
 - Anti-Money Laundering Policy Statement and Procedure
 - Regulation of investigatory Powers (RIPA) Policy Statement and Procedure (Directed Surveillance)
- 9.3 Code of conduct including specifically the Gifts and hospitality policy