

DERBY CITY COUNCIL

ANTI-BRIBERY POLICY

**November 2011
(Updated Dec 2012)**

1. Introduction

- 1.1 The Bribery Act 2010 has updated the legislation on bribery and extended the law to cover bribery in the international business community. It has also created a corporate offence of failing to prevent bribery.
- 1.2 It is considered good practice to comply with the Guidance issued by the Ministry of Justice to evidence an anti-bribery culture across the organisation. As such, Derby City Council has established this policy to ensure compliance.

2. Scope of the Policy

- 2.1 This policy applies to all employees and members of the Council, as well as anyone acting as an agent or subsidiary of the Council – these parties are described as an "associated person" in the Act. The policy aims to maintain the high standards of conduct, which currently exist within the Council by preventing criminal activity through bribery. The Policy sets out the procedures that must be followed (for example the reporting of offers or invitations to bribe) to enable the Council, its members, employees and agents/subsidiaries to comply with its intention to establish an anti-bribery culture within the organisation.
- 2.2 The policy sits alongside the Council's the Anti-Fraud and Corruption Policy, Confidential Reporting Code, the Anti-Money Laundering Policy and the Codes of Conduct for Members and for Employees.

3. Disciplinary Action

- 3.1 Failure by a member of staff to comply with the procedures set out in this policy may lead to disciplinary action being taken against them. Any disciplinary action will be dealt with in accordance with the Council's Disciplinary and Dismissal Procedure Policy. Failure by a Member to comply with the procedures set out in this policy may be referred to the Standards Committee.

4. What Is Bribery?

- 4.1 Bribery is defined as the offer, promise or giving of financial or other advantage to another with the intent of inducing that person to perform improperly, or rewarding that person for the improper performance of a relevant function or activity.
- 4.2 The term bribery can be applied to both the act of offering or giving a bribe (active bribery), or the request for or acceptance of a bribe (passive bribery).
- 4.3 Any Member, employee or agent/subsidiary who, in the course of Council business, becomes aware that a bribe has been requested, offered, given or accepted should report their suspicions promptly, in accordance with the Policy set out in this document.

Failure to do this may inadvertently result in an offence under the Bribery Act 2010.

- 4.4 The risk of the Council contravening the legislation is, however, relatively low but preventative measures need to be in place to prevent the Council becoming liable under the new provision of failure by a relevant commercial organisation to prevent bribery.
- 4.5 The statutory provisions relating to bribery are summarised in Appendix A to this policy, together with references to further information.

5. The policy

- 5.1 The aims of the Policy are to:
- assist the staff, Members and agents/subsidiaries of Derby City Council to understand bribery and their personal legal obligations and responsibilities arising from the requirements of the legal and regulatory provisions
 - prevent the Council from the corporate offence of failure to prevent bribery, and
 - set out the procedures which must be followed to enable the Council and its staff to comply with their legal obligations.
- 5.2 Derby City Council will do all it can to:
- prevent the Council, its members, staff and agents/subsidiaries being exposed to bribery;
 - identify the potential areas where it may occur; and
 - comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases of bribery.

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Bribery: Legal and Regulatory Framework

The Bribery Act 2010

This Act defines four principal bribery offences, only three of which are likely to apply to the Council:

- a) the giving or offering of a bribe
- b) the request for, or acceptance of a bribe
- c) bribing a foreign public official
- d) the failure by a relevant commercial organisation to prevent bribery

The offence of failing to prevent bribery will not apply so long as the Council has appropriate procedures in place to act as a deterrent.

Statutory Definitions

- “Bribe” is defined as “giving a financial or other advantage to another person” It is clear that a bribe is not restricted to only financial payment.
- The intention of the bribe is “to induce them to perform improperly a relevant function or activity, or to reward them for having improperly performed a relevant function or activity”.
 - The term “relevant function or activity” includes all functions of a public nature and all activities connected with a business, trade or profession.
 - The term “improper performance” is defines as being in breach of a relevant expectation, including the failure to perform that function or activity when it would be reasonable to expect it to be performed.
- “Relevant commercial organisation” is defined as
 - A body incorporated under the law of any part of the UK and which carries on business whether there or elsewhere
 - A partnership that is formed under the law of any part of the UK and which carries on business there or elsewhere, or
 - Any other body corporate or partnership wherever incorporated or formed which carries on business in any part of the UK.
- “Failure to prevent bribery” relates only to active bribery on the part of a person with the intent to obtain or retain business, or to obtain or retain an advantage in the conduct of business for the organisation. It does not include preventing passive bribery, (ie .the invitation to a third party to give a bribe, or the acceptance of such a bribe).
- Penalties under the Bribery Act are:
 - for an individual either

- a fine up to £5000 if the conviction is summary, or unlimited if by indictment; or
- a prison term of up to 1 year if the conviction is summary, or 10 years if by indictment; or
- both a fine and a prison sentence.
- for an organisation either
 - a fine of up to £5000 if the conviction is summary, or unlimited if by indictment.

The offence of failing to prevent bribery can only be tried upon indictment. The length of sentence may be limited in future by Section 154 of the Criminal Justice Act 2003 if this measure is activated.