

UNIVERSITY OF ULSTER

ANTI- BRIBERY GUIDANCE

1. Introduction

This guidance applies to all members of the University including all employees and independent members of Council and its Committees.

2. Position Statement and Commitment

2.1 Bribery is a criminal offence and exposes the University and individuals within the University to the risk of prosecution, fines and imprisonment as well as endangering the University's reputation.

2.2 The University is committed to maintaining the highest ethical standards and to carrying on its activities fairly, honestly, openly and in compliance with all applicable laws.

2.3 Bribery will not be tolerated by the University and all members of the University and associates (including consultants, contractors, service providers and external partner organisations) are required to uphold the highest standards of integrity in their dealings with or on behalf of the University and to comply with all applicable laws of the countries in which they are working.

3. Legal Background and Context

3.1 The Bribery Act 2010 ("**Act**"), came into force on 1 July 2011 and replaces all previous legislation relating to bribery and replaces and enhances fragmented and complex existing laws which date from 1889, 1906 and 1916.

3.2 The United Kingdom signed an international treaty in 1998 to combat bribery and corruption and the new Act is intended to ensure that the United Kingdom is compliant with its obligations under that treaty.

3.3 The Act applies to offences committed on or after 1 July 2011 and the earlier statutes continue to apply to offences committed before 1 July 2011.

4. Scope

4.1 Members of the University Community who pay or accept a bribe could be personally prosecuted.

4.2 Senior managers are at risk of prosecution if they ignore or condone bribes which are paid by the staff they supervise.

4.3 Organisations can be prosecuted and, in addition to companies and partnerships, this expression is wide enough to include universities, schools and charities.

4.4 The Act does not only apply to individuals and commercial organisations in the United Kingdom but also to those who have a “close connection” (business presence) with the United Kingdom.

5. Range of possible penalties (criminal and internal sanctions)

5.1 For individuals:

- i. A criminal record with a sentence of imprisonment of up to 10 years and unlimited fines.
- ii. (Employees) dismissal or other disciplinary sanctions.
- iii. (Council members) removal from office.
- iv. Damage to reputation.

5.2 For the University:

- i. A criminal record with unlimited fines and a potential ban from bidding for future research and other public contracts.
- ii. Damage to reputation and loss of public trust and confidence.
- iii. Adverse impact on donors, recruitment of Members of the University Community and students and UK Borders Agency approved list.
- iv. Regulatory and funding issues – HEFCE/DEL.
- v. Disruption to business activities.

6. Offences under the new Act

6.1 Three offences apply to all Members of the University Community **and** the University:

- i. Giving a bribe (this is called “**active bribery**”).
- ii. Receiving a bribe (this is called “**passive bribery**”).
- iii. Bribing a foreign official.

6.2 A further offence (the “**corporate offence**”) applies only to the University:

- i. This would apply where the University failed to prevent active bribery or bribery of any foreign official by any members of the University or any agent, contractor, subsidiary or other individual or organisation acting on the University’s behalf.
- ii. The only defence is if the University can show that it had “adequate procedures” to prevent the bribery (see Section 9 below).

6.3 Further detail on the above offences is set out in Appendix 1 below.

7. The corporate offence and “adequate procedures”

- 7.1 The Act does not define “adequate procedures”, but the Government has published guidance to help organisations decide what is appropriate for their needs.
- 7.2 There is no ‘one size fits all’ and the guidance makes clear that each organisation needs to decide a proportionate response based on its activities and areas of risk.

8. The main risk areas for the University

- 8.1 The main risk areas that have been identified for the University are:
- i. Purchases of goods and services by the University, particularly the award of tenders and contracts.
 - ii. Tenders and bids for research contracts which are made by the University.
 - iii. The giving/receiving of gifts and hospitality.
 - iv. The admission/recruitment of students (particularly from overseas).
 - v. Collaborations, joint ventures, partnerships, affiliations (academic and commercial) (particularly with organisations based overseas).
 - vi. Fundraising by the University (typically where the donation of funds or sponsorship is conditional on the University taking/not taking some action).
 - vii. Student assessments/examinations.
 - viii. Subsidiaries and spin-out companies.
- 8.2 If any Members of the University Community identify any bribery risk which they consider has not been addressed or adequately addressed by any actual or planned anti-bribery measures, then they should report this to the University’s Chief Finance and Information Officer either directly or through their line manager, so that it can be considered in accordance with Section 10 below. Contact details are available in Appendix 2 below.

9. Anti-bribery measures

- 9.1 To promote a strong anti-bribery culture, the University’s existing policies and procedures in the main areas will be reviewed and, where necessary, enhanced.
- 9.2 The key policies and procedures for the prevention of bribery include:
- i. The Financial Regulations.
 - ii. Gifts and hospitality policy.
 - iii. Purchasing and procurement.
 - iv. Tender procedures.
 - v. The fraud, theft and corruption policy.

- vi. Public interest disclosure policy.
- vii. The Code of Conduct for Members of Council and senior officers.

9.3 Compliance with the above policies and procedures is mandatory for all members of the University (as appropriate).

10. Reporting bribery

10.1 All members of the University have a responsibility to help detect, prevent and report not only bribery but all other suspicious activity or wrongdoing.

10.2 All concerns or suspicions of bribery, fraud or corruption must be reported to the University's Chief Finance and Information Officer so that action can be taken under the University's Theft, Fraud and Corruption policy. Contact details are available at Appendix 2.

A copy of the Theft, Fraud and Corruption Policy and the University's Public Interest Disclosure Policy is available at the urls below.

- i. Theft, Fraud and Corruption Response Plan
https://www.ulster.ac.uk/_data/assets/pdf_file/0020/123149/Theft,-Fraud-and-Corruption-Policy.pdf
- ii. Whistleblowing (Public Interest Disclosure) Policy
https://www.ulster.ac.uk/_data/assets/pdf_file/0015/123153/Whistleblowing-Policy.pdf

10.3 Where an incident of bribery has been identified the University will report the incident to the Serious Fraud Office who will take decisions on prosecution.

11. Consequences of bribery

11.1 Any breach of this Policy will be regarded as a serious matter and is likely to result in disciplinary action or removal from office (see Section 5 above).

11.2 Managers may also be subject to disciplinary sanctions for supervisory failures.

11.3 The University will avoid doing business with agents, consultants, contractors and suppliers who commit bribery and may end contracts with them.

12. Further information

If you have any questions or require any further information about this Policy, (other than reporting any concerns – see Section 10 above) please contact the University Secretary in the first instance. Contact details are available in Appendix 2 below.

APPENDIX 1

THE OFFENCES UNDER THE NEW BRIBERY ACT

1. Active bribery

- a. An offence is committed where an individual or the University gives, promises or offers any financial or other advantage which is intended to induce or reward the improper performance of a public function or business activity or is made in knowledge or belief that acceptance of that financial or other advantage will itself amount to improper performance.
- b. It does not matter whether the financial or other advantage is given, promised or offered directly or through a third party.
- c. The financial or other advantage does not actually have to be given – the offer is sufficient to commit the offence.
- d. Reasonable and proportionate corporate hospitality should not be caught by the Act. However, entertaining which is disproportionate, lavish or beyond what would be reasonably necessary to ‘cement good relations’ may be evidence of intent to induce or reward improper performance.

2. Passive bribery

- a. An offence is committed where an individual or the University requests, accepts or agrees to receive a financial or other advantage which is intended to induce or reward the improper performance of a public function or business activity.
- b. It does not matter whether the financial or other advantage is requested, accepted or agreed directly or through a third party.
- c. The financial or other advantage does not actually have to be received – requesting or agreeing to accept it is sufficient to commit the offence.
- d. Reasonable and proportionate corporate hospitality should not be caught by the Act. However, entertaining which is disproportionate, lavish or beyond what would be reasonably necessary to ‘cement good relations’ may be evidence of intent to induce or reward improper performance.
- e. It does not matter who pays the bribe, e.g. if a director pays a bribe to ensure that his company is awarded a contract, that is still caught by the Act.

3. Bribing a foreign official

- a. An offence is committed where an individual or the University gives, promises or offers any financial or other advantage to a foreign official which is intended to:
 - i. influence that foreign official in the performance of his/her official functions; and

- ii. secure business or an advantage for the University.
- b. It is only a bribe if the financial or other advantage is not required or permitted under local laws.
- c. A belief that local practice permits the payment is not a defence.
- d. There is no exception for facilitation payments (small bribes paid to facilitate routine Government action).

4. Corporate offence

- a. The offence is committed where the University fails to prevent any employee or other “associated person” (see below) from committing “active bribery” or bribery of a foreign official on the University’s behalf.
- b. An “Associated person” is someone who is providing the University with services so includes employees, agents, consultants, contractors and external partner organisations.
- c. The bribe is caught even if it takes place outside the UK.
- d. The bribe must be intended to induce or reward the improper performance of a public function or business activity.
- e. The bribe must also be intended to secure business or other advantage for the University.
- f. Knowledge of the bribe by the University is irrelevant.
- g. The University is automatically liable for the bribery unless it can show that it had “adequate procedures” to prevent the bribery.
- h. If the University is a member of a company (e.g. joint venture or spin-out) the University is only liable for the corporate offence in respect of bribes paid by that company if that company is providing services to the University and the bribes are paid for the benefit of the University rather than the company itself.

APPENDIX 2

CONTACT DETAILS

University Secretary	Clare Jamison J312 Ulster University Coleraine BT52 1SA Tel: 028 7012 3502 Email: c.jamison@ulster.ac.uk
Chief Strategy and Finance Officer	Elaine Hartin BD 05 039 Ulster University Belfast BT15 1ED Tel: 028 9536 7683 Email: e.hartin@ulster.ac.uk