



APPENDIX A

Anti-Bribery Policy

1. Policy Statement - Anti Bribery

The Council is committed to the prevention, deterrence and detection of bribery and has a zero-tolerance towards bribery. The Council aims to maintain anti-bribery compliance as ongoing “business as usual”, rather than as a one-off exercise.

Bribery and corrupt practices undoubtedly result in substantial financial loss to the public purse and corrupt individuals or groups can exist in many organisations and remain undetected. That is why it is essential that the Council has a Policy and procedures in place to deal with this issue and any occurrence of such practices will be managed in accordance with these in a swift and effective manner.

2. Objectives of this policy

The objectives of this policy are to:

- (a) provide a coherent and consistent approach as part of the Council’s overall Anti-Fraud and Corruption framework:

<http://www.north-herts.gov.uk/home/council-performance-and-data/policy/anti-fraud-corruption-policy>

- (b) enable persons working for the Council / on its behalf to understand and implement arrangements to prevent bribery and comply with relevant legislation. In conjunction with related policies it will also enable employees to identify and effectively report a potential breach.

- (c) show the Council’s Bribery Act 2010 (Act 2010), procedures to prevent bribery by or of persons associated with the organisation (the ‘adequate procedures’).

The Council requires that all persons working for the Council or on its behalf in any capacity, (employees at all levels, Members, agency workers, seconded workers, volunteers, interns, agents, contractors, external consultants, third-party representatives and partners, sponsors, or any other person associated with us, wherever located):

- are made aware and read this Policy;
- 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 within which the Council operates, in respect of the lawful and responsible conduct of activities;
- report cases where they know, or have a reasonable suspicion, that bribery has occurred or is likely to occur in relation to the Council’s business.

3. Scope of this policy

The Policy applies to all of the Council's activities. For partners, joint ventures and suppliers, the Council 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 and, as indicated, covers all persons working for the Council or on its behalf during the course of the work with or for the Council.

The Chief Executive, Strategic Director of Finance, Policy and Governance and the Monitoring Officer will lead on overseeing this Policy.

The Council's commitment to action

North Hertfordshire District Council commits to:

- Setting out a clear anti-bribery policy and keeping it up to date;
- Making all persons working for the Council or on its behalf aware of their responsibilities to adhere strictly to this Policy at all times;
- Training all employees as part of the ethics and governance agenda 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 information as to how to do this;
- 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;
- Include appropriate clauses in contracts to prevent bribery.

This Policy covers areas of specific risk of potential bribery and corrupt acts (and their exceptions):

- a) Bribes;
- b) Facilitation payments and kickbacks;
- c) Gifts and hospitality (with reference to the adopted Policy & Protocol);
- d) Political contributions/ donations;
- e) Public contracts;
- f) Charitable contributions;

3(a) Bribes

Bribery and corruption are criminal offences in most countries and as an authority we are subject to the legal controls under the Act 2010. Individuals would also be subject to the controls under the Act 2010 as well as the Prevention of Corruption Acts 1906 (for any pre-1 July 2011 conduct), the Local Government Act 1972 (as well as various Codes/ Constitutional Rules and Regulations and contractual obligations). Whilst conduct under any element of 3(a)-(f) could fall under the realm of bribery and corruption, for simplicity's sake the Act 2010 is explained under this section.

Under the Act 2010 there are four key offences:

- bribing another person (section 1)
- accepting a bribe (section 2)
- bribing a foreign official (section 6)
- failing to prevent bribery (section 7)

Failure by a commercial organisation to prevent bribery is a corporate offence. For the purposes of the Act 2010, North Hertfordshire District Council is a “*commercial organisation*”.

It does not matter whether the bribery occurs in the UK or abroad. Whilst it may not *appear* to be particularly relevant to a local authority, persons working for or on behalf the Council should be aware that a corrupt act committed abroad may well result in a prosecution in the UK or abroad or both. However, with increasing commercialisation and broadening procurement, for example, this may be or become relevant for the authority for its own part – or indeed in respect of suppliers who have committed offences abroad¹. Equally it does not matter whether the action is done directly or indirectly.

Bribery is an inducement or reward offered, promised, solicited or provided/ accepted to gain personal, commercial, regulatory or contractual **advantage**, to induce the recipient or any other person to act improperly in the performance of their functions, or to reward them for **acting improperly**, or where the recipient would act improperly by accepting the advantage.

An advantage includes money, gifts, loans, fees, hospitality, services, discounts, and the award of a contract or anything else of value. These should be viewed in the light of *what is acceptable under the Employee Gifts & Hospitality Policy, the NHDC Member Gifts & Hospitality Protocol and consider the Contract Procurement Rules and Financial Regulations (see links at the end of the Policy)*.

A person acts improperly where they act illegally, unethically, or contrary to an expectation of good faith or impartiality, or where they abuse a position of trust. The improper acts may be in relation to any business or professional activities, public functions, acts in the course of employment, or other activities by or on behalf of any organisation of any kind.

Those working for or on behalf of the Council must not engage in any form of bribery, either directly or through any third party (such as an agent or distributor).

What are *indicators* of bribery?

Not all the indicators listed below (*which are not exhaustive and for illustrative purposes only*) will be bribery – but they should set off a red flag warning that something is not right, should be reported and may require further investigation by the Monitoring Officer or Director of Finance, Policy and Governance:

- Payments are for abnormal amounts (e.g. commission), or made in an unusual way, e.g. what would normally be a single payments is made in stages, through a bank account never previously used, or in a currency or via a country which has no connection with the transaction;
- Process is bypassed for approval or sign-off of terms or submission of tender documents, payments; those who monitor processes (e.g. Monitoring Officer, s151 Officer, Directors and Cabinet Members or where relevant – certain committees or Council/ or SIAS/ SAFS) may be prevented from or hindered in doing so;
- Individuals are secretive about certain matters or relationships and/or insist on dealing with them personally. They may make trips at short notice without explanation, or have a more lavish lifestyle than expected;

¹ Smith and Ouzman Ltd - UK printing company primarily used for, eg, security documents such as election ballot papers and two employees were convicted in December 2014 of offences under the Prevention of Corruption Act 1906 for corrupt payments made in Kenya and Mauritania for the award of business contracts to the company.

- Decisions are taken for which there is no clear rationale;
- Records are incomplete or missing;
- An individual who works for the Council or on its behalf engages in, or has been accused of engaging in, improper business practices;
- A supplier or potential supplier has a reputation for paying bribes, or requiring that bribes are paid to them, or has a reputation for having a "special relationship" with foreign government officials;
- A potential supplier/ supplier requests payment in cash and/or refuses to sign a formal agreement, or to provide an invoice or receipt for a payment made;
- A potential supplier/ supplier requests that payment is made to a country or geographic location different from where the supplier resides or conducts business;
- A supplier or potential supplier requests an unexpected additional fee or commission to "facilitate" a service;
- A supplier or potential supplier demands entertainment or gifts before commencing or continuing contractual negotiations or provision of services;
- A supplier or potential supplier requests that you provide employment or some other advantage to a friend or relative;
- The Council receives an invoice from a supplier or potential supplier that appears to be non-standard or customised;
- A supplier or potential supplier insists on the use of side letters or refuses to put terms agreed in writing;
- A supplier or potential supplier requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used by or known to the Council;
- Those who work for the Council or on its behalf are offered an unusually generous gift or lavish hospitality by a supplier or potential supplier.

Penalties and potential action

An individual guilty of an offence under sections 1, 2 or 6 as set out above is liable:

- On conviction in a Magistrates Court, to imprisonment for a maximum term of 12 months, or to a statutory maximum fine. , or to both. Since 11 March 2015 (for offences committed after that date) there is no cap on the level of fine that can be imposed.
- On conviction in a crown court, to imprisonment for a maximum term of 10 years, or to an unlimited fine, or both.

If a commercial organisation is convicted of an offence under section 7 it will be liable for an unlimited fine.

Failure to abide by this Policy by employees may also lead to disciplinary action including possibly dismissal under the Council's Managing Misconduct Policy.

Defence

An organisation will have a defence to the corporate offence (under section 7) if it can show that it had **adequate procedures** in place designed to prevent bribery by or of persons associated with the organisation. This is one of the purposes of the Council's Anti-Bribery Policy.

What are "adequate procedures"?

The term is not defined in statute.

Whether the procedures are adequate will ultimately be a matter for the Courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately and based on the level of risk of bribery in the Council. It is for the Council to determine proportionate procedures in the recommended Ministry of Justice guidance and quick start guide² six principles. North Hertfordshire District Council is committed to proportional implementation of these principles and awareness of them reinforced appropriately

Proportionate procedures

The Council's procedures to prevent bribery by persons working for the Council or on its behalf are proportionate to the bribery risks it faces and to the nature, scale and complexity of the Council's activities. They are also clear, practical, accessible, effectively implemented and enforced.

Top level commitment

The Chief Executive and Strategic Directors and Monitoring Officer are committed to preventing bribery by persons working for the Council or on its behalf. A culture exists within the Council in which bribery is never acceptable.

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 reputational damage.

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 organisation, in order to mitigate identified bribery risks.

Communication and training

The Council seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the Council through internal and external communication, including training that is proportionate to the risks it faces.

Training: All existing employees will receive regular, relevant training in relation to the Act 2010. In addition all employees will be asked to complete an annual declaration form that indicates awareness of this Policy.

Our zero-tolerance approach to bribery and corruption must be communicated to all suppliers, contractors and partners at the outset of our business relationship with them and as appropriate thereafter.

Monitoring and review

The Council monitors and reviews procedures designed to prevent bribery by persons working for or on behalf of it and makes improvements where necessary.

This includes effective record – keeping: All accounts, invoices, memoranda and other documents and records relating to dealings with third parties, should be prepared and maintained with strict accuracy and completeness. No accounts must be kept "off-book" to facilitate or conceal improper payments.

² Bribery Act 2010: Quick Start guide, Ministry of Justice. & Bribery Act 2010 Guidance Ministry of Justice

The Council maintains financial records and has appropriate internal decision-making controls in place (in terms of delegations and disclosure procedures) which will evidence the reason for making payments to third parties. This includes authorisation by a relevant body or person – which will be recorded in a legally compliant manner (where individual - by Record of Decision for individual executive and appropriate non-executive decisions). This also includes adherence to the Employee Conflicts of Interest Policy and Gifts & Hospitality Policy (and records of such matters) and the NHDC Member Code of Conduct.

The Council expects employees to complete an annual declaration form which will demonstrate awareness of relevant Policies and procedures.

Bribery is not tolerated

In summary those persons working for the Council or on its behalf must not:

- 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 supplier or potential supplier 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 supplier or potential supplier 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; or
- engage in activity in breach of this policy.

3(b) Facilitation payments and kickbacks

Facilitation payments are not tolerated, are illegal and must not be paid.

Facilitation payments, also known as "back-handers" or "grease payments" are typically small unofficial payments made to public officials in order to secure or expedite routine or necessary actions (for example by a government official), and are a form of bribery. Facilitation payments tend to be demanded by more junior employee/ third parties to obtain a level of service which a party *would normally* be entitled to in any event. They are not common in the UK, but are common in some other jurisdictions. Kickbacks are typically payments made in return for a business favour or advantage.

Those working for the Council or on its behalf must avoid any activity that might lead to a facilitation payment or kickback being made or accepted by the Council or on our behalf, or that might suggest that such a payment will be made or accepted. If those working for the Council or on its behalf are asked to make a payment on the Council's behalf, they should always be mindful of what the payment is for and whether the amount requested is proportionate to the goods or services provided and these should always be supported by a genuine invoice from the party's finance or accounts section. If there are any suspicions, concerns or queries regarding a payment, these should be raised with the Monitoring Officer or Director of Finance, Policy and Governance (or via the confidential reporting lines – see below).

3(c) Gifts and hospitality

Those working for the Council or on behalf of it should not give any gift or hospitality which could be regarded as illegal or improper, or which violates the recipient's policies.

Employees and Members should also follow their respective Policy and Protocol in respect of gifts and hospitality offered to them. These can be found on the intranet and internet respectively together with declaration forms:

<http://intranet.north-herts.gov.uk/home/human-resources/hr-policies/gifts-and-hospitality>
<http://www.north-herts.gov.uk/home/council-and-democracy/councillors-mps-and-meps/councillors-declaration-interests>

It is always best practice to declare any gifts or hospitality received irrespective of value.

The Employee Gifts & Hospitality Policy makes it clear that the general principles in deciding whether to accept gifts or hospitality are:

1. The presumption is that an employee should not accept any gift or hospitality in connection with the performance of their duties as an employee of the authority (although this is subject to the consent regimes mentioned below).
2. Never to accept a gift or hospitality as an inducement or reward for anything an employee does in their job.
3. that an employee should only accept a gift or hospitality if there is a commensurate benefit to the authority, and (if appropriate) they have Special Consent to do so.
4. Never to accept a gift or hospitality if acceptance might be open to misinterpretation.
5. Never to solicit a gift or hospitality.

The authority has agreed that employees may accept gifts and hospitality in certain circumstances (called a 'General Consent' under section 2(a) of the Gifts & Hospitality Policy). Employees should notify their Directorate contact of any gift or hospitality received on the General Consent Notification form.

Details of the consent regimes are given in the Gifts & Hospitality Policy. In some instances an employee must obtain Special Consent (under 2(b) of the Gifts & Hospitality Policy) from an Appropriate Officer before accepting and it may be refused. Acceptance of a gift or hospitality in breach of that Policy and as indicated it will be a disciplinary matter which may result in action, including dismissal, under the Council's Managing Misconduct Policy and in certain circumstances, it could be a criminal offence.

Members should also declare gifts & hospitality in line with the adopted Protocol. These may need to be declared in a Council meeting and may result in a Member not being in a position remain in a meeting and/ or to take a decision on behalf of the Council.

The Council maintains Gifts & Hospitality Registers that may be examined by relevant bodies and by the public (in accordance with legislative/ transparency requirements and the Information Commissioner's guidance).

3(d) Political Contributions/ Donations

The Council, as a body, does not make donations, whether in cash or kind, in support of any political parties or candidates.

Members may, however, spend money on their campaign and receive funding to promote them at an election/ fund their campaign. This is governed by electoral rules and after the election candidates' agents must account for the costs of campaigning and donations to the campaign in a spending return which is sent to the Council's Returning Officer (here the Chief Executive). This should then be made available for public inspection.

Any payment or provision of any other financial benefit (other than the allowance from the Council to the Member) made or provided to a Member within 12 months of an election or to carry out duties as a Member, is a Disclosable Pecuniary Interests. These must be declared in writing to the Monitoring Officer, should be declared (where relevant) in Council meetings, are available for public inspection and will mean that a Member will not be involved in decisions relating to *the donor*. Failure to abide by these procedures could be a criminal offence.

Any other gifts and hospitality provided to Members (in relation to their role as an elected Councillor at NHDC) should (where relevant) be declared in accordance with the NHDC Member Gift & Hospitality Protocol.

3(e) Public contracts

Under the Public Contracts Regulations 2006, a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. 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.

Like many organisations the Council uses external parties to provide goods and help deliver services. Whilst that use is important, and in some cases essential, it can involve significant risks and therefore it is essential that due diligence is performed in relation to suppliers, any potential relationships they may have with employees/ contractors or Members and standard contract terms used when engaging a supplier.

Whilst larger EU value contracts are subject to strict procurement rules, that does not mean bribery cannot occur.

In a recent review of local authorities and the 2010 Act³, procurement was identified as a risk area, particularly the use of contractors to facilitate procurement – and concern that policies and procedures were not (and sometimes are not) properly communicated to the contractors⁴. Although actions frequently take place between two individuals without the knowledge of the authorities concerned – failing to ensure that those who work for and on a Council's behalf could be seen as a failing to have “adequate procedures” in place and a Council will potentially liable for conviction of the section 7, of 2010 Act.

Management should therefore ensure that even when employing temporary agency staff (who effectively undertake the role of an employee) are aware of the Policies and where employing contractors, that the necessary contractual terms are in place (referring to the Policies and anti-bribery provisions).

3(f) Charitable contributions

Charitable support and donations are acceptable (to the Council) and as made by those working for or on behalf of the Council - indeed they are encouraged (whether of in-kind services,

³ NCA/ CIPFA September 2015.

⁴ A former contractor of the London Borough of Tower Hamlets ('LBTH') and the Department of Constitutional Affairs ('DCA') pleaded guilty to receiving payments from a private sector costs-recovery firm Transaction Analysts Limited ('TAL') in return for helping them secure contracts with LBTH and the DCA. The contractor has been temporarily employed by TAL in 2004 and on leaving signed an agreement with the TAL CEO to receive 10% of any earnings made through business introductions he made to the company. The contractor then joined LBTH and during his time facilitated the award of a contract to TAL. Whilst then employed by DCA in 2007 he did the same. During the police investigation it also became apparent that he had provided information on the tender process to TAL and lobbied the decision makers at TAL

knowledge, time, or direct financial contributions). However, those working for or on behalf of the Council must be careful to ensure that charitable contributions are not used as a scheme to conceal bribery. Equally if someone undertakes regular “work” for or is a member of a charitable organisation that undertakes or has involvement with the Council this may need to be disclosed and the Conflicts of Interest Policy should be considered.

To ensure that employees are aware of the requirements, they will be expected to complete an annual declaration form.

4. How to raise a concern

The Council is committed to ensuring that everyone has a safe, reliable, and confidential way of reporting any suspicious activity. The Council wants employees and agency workers to know how they can raise concerns.

Everyone has 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 Whistleblowing Policy for the appropriate channel to raise your concern:

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. The Council has clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind.

5. Protection if you raise a concern

Individuals who refuse to accept or offer a bribe, or who raise concerns or report another's wrongdoing, are sometimes worried about possible repercussions. The Council encourages openness and will support anyone who raises genuine concerns under this Policy and/ or our Whistleblowing Policy, even if they turn out to be mistaken. This is because reporting such concerns has been identified as one of the most effective tools to counter-act bribery.

The Council is committed to ensuring no one suffers any detrimental treatment as a result of refusing to take part in bribery or corruption, or because of reporting in good faith their suspicion that an actual or potential bribery or other corruption offence has taken place, or may take place in the future. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. If you believe that you have suffered any such treatment, you should inform the Monitoring Officer immediately. If the matter is not remedied, and you are an employee, you should raise it formally using our Complaints Resolution Procedure.

If you have any questions about these procedures, please contact: the **Monitoring Officer** on: 01462 474315 or monitoring.officer@north-herts.gov.uk.

Other relevant policies

- Anti-Fraud and Corruption Policy (includes various other policies – see below)
<http://www.north-herts.gov.uk/home/council-performance-and-data/policy/anti-fraud-corruption-policy>
[Anti Fraud & Corruption Policy](#) 185.56 KB [Appendix 2 - Confidential Reporting \(Whistleblowing Policy\)](#) 217.83 KB [Appendix 3A - Anti-Money Laundering Policy](#) 95.67 KB [Appendix 3B - Anti-Money Laundering Guidance Notes](#) 150.19 KB [Appendix 4 - Employee Personal Conflicts of Interest Policy](#) 194.84 KB [Appendix 5 - Benefits Anti-Fraud Strategy and Prosecution Policy Statement](#) 130.98 KB [Appendix 6A - Fraud Response Plan](#) 91.85 KB [Appendix 6B - Fraud Response Plan - IT Electronic Evidence](#) 32.77 KB
- [NHDC Member Gifts & Hospitality Protocol](#)

<http://www.north-herts.gov.uk/home/council-and-democracy/councillors-mps-and-meps/councillors-declaration-interests>

➤ Management of Organisational Conflicts in Council roles and duties Guidance 2015

http://srvinternet01.north-herts.gov.uk/intracontent/conflicts_of_interest_policy.doc

➤ Employee Code of Conduct

http://srvinternet01.north-herts.gov.uk/intracontent/employee_code_of_conduct

➤ Constitution - Part B - Contract Procurement Rules

<http://www.north-herts.gov.uk/sites/northherts->

[cms/files/CONTRACT%20PROCUREMENT%20RULES%20post%20SV%20amd%2012%208%2015.pdf](http://www.north-herts.gov.uk/sites/northherts-cms/files/CONTRACT%20PROCUREMENT%20RULES%20post%20SV%20amd%2012%208%2015.pdf)

➤ Constitution - Part B - Financial Regulations

<http://www.north-herts.gov.uk/sites/northherts->

[cms/files/Constitution%20PART%20B%20120215%20Financial%20Regulations%20with%2016%2007%2015%20changes.pdf](http://www.north-herts.gov.uk/sites/northherts-cms/files/Constitution%20PART%20B%20120215%20Financial%20Regulations%20with%2016%2007%2015%20changes.pdf)