

Policy Summary

Overview Why is the policy required?	Awareness and legal compliance with Bribery Act is required to minimise risk to UHI and its staff
Purpose What will it achieve?	This policy forms part of the University of the Highlands and Islands' governance arrangements.
Scope Who does it apply too?	All UHI employees, temporary and agency staff and consultants.
Consultation/notification Highlight plans/dates	The policy will initially be reviewed by the university's Senior Management Group prior to consideration by the Finance & General Purposes Committee.
Implementation and monitoring (including costs)	The policy will be implemented through the Senior Management Group of the University. It will be monitored on a regular basis through the Secretary and the Audit Committee.

1.0 Overview

The University of the Highlands and Islands requires its staff to act with honesty and integrity at all times and to safeguard the resources for which they are responsible.

The University is committed to ensuring that its business is conducted in an open and transparent manner and it will take all appropriate steps to address the risks of bribery.

The University condemns all acts of bribery or corruption: any cases brought to its attention will be investigated exhaustively and dealt with appropriately.

The University is committed to the highest international standards of integrity and to ensuring it adheres to and promotes best practice in bribery prevention.

2.0 Purpose

This policy forms part of the University of the Highlands and Islands' governance arrangements. The purpose of the policy is to ensure that all staff are aware of the provisions of the Bribery Act and comply with these at all times.

3.0 Scope

The scope of this policy is to apply all employees of the University or any subsidiary company including any temporary or agency staff or unpaid members of staff and voluntary workers. The policy applies to all activities of the University, whether related to research, teaching, commercial or other activities, and exists for the protection of members of staff and the University.

The University will expect any person or organisation performing services for it or on its behalf, to adhere to this policy or otherwise have equivalent procedures in place to prevent corruption. These third parties include agents and others who represent the University and suppliers, consultants and private sector partners who perform services for the University or on its behalf, wherever located in the world.

4.0 Policy

4.1 Principles

The following principles will apply in all cases:

- Bribes must not be offered, paid, requested, agreed to or accepted.
- Facilitation payments must not be offered, promised, paid, requested, agreed or accepted. (see Appendix A)
- Disciplinary Action will be taken by the University against staff who breach this policy. This includes the sanction of summary dismissal in cases where staff pay or receive bribes. Similar action will also be taken against other parties performing services for the University who fail to comply with this policy which include termination of the University's relationship with them.
- The University encourages all staff to report any corruption concerns immediately and will support staff to do so. All reporting will be handled sensitively and the University is committed to ensuring that no member of staff who reports a corruption concern in good faith suffers any detrimental effect for doing so.
- A deliberate failure to report suspicions of corruption or to conceal bribes by others will also be subject to disciplinary action.
- Third parties who have, or who are suspected of having, offered or accepted bribes should not be engaged to work for the University.
- Any malicious, wilful or deliberate misreporting of a bribe or suspicion of a bribe may be treated as a disciplinary matter and handled through the University's Disciplinary Policy.

4.2 Definitions

The Bribery Act 2010 provides for 4 bribery offences:

- Bribing: offering, promising or giving an advantage
- Being bribed: requesting, agreeing to or accepting an advantage
- Bribing a foreign official
- Failing as an organisation to prevent any person who performs services on its behalf from committing an act of bribery.

A summary of the Bribery Act as well as relevant definition of terms can be found at Appendix B.

4.3 Links with Other Policies

The Anti-Bribery policy is supported by related university policies including:

- Disciplinary Policy
- Conflict of Interest Policy
- Procurement Policy
- Financial Regulations
- Policy on Receipt of Gifts, Hospitality and Other Benefits
- Public Interest Disclosure Policy
- Development Office - Ethics Policy and Acceptance of Charitable Gifts (Draft)
- Use of Consultants Policy

5.0 Enforcement

Where an allegation is made to the effect that a member of staff has breached this policy, the matter will be dealt with under the University's Disciplinary Policy. Where, after investigation and subsequent disciplinary hearing, allegations are upheld, the employee may be subject to formal action which could ultimately lead to dismissal.

Where third parties performing services or supplying goods for, or on behalf of the University are in breach of this policy, action may be taken to bring to an end the relevant contractual relationship.

The police will be informed where considered appropriate.

6.0 Roles and Responsibilities

The COO/Secretary of the University is the policy owner and thus has overall responsibility for the creation, implementation, monitoring and review of this policy. In addition, the COO/Secretary has primary responsibility for monitoring compliance with the policy and for ensuring that instances of suspected corrupt activity are investigated appropriately.

6.1 Role of Finance and General Purposes Committee

The Finance and General Purposes Committee is responsible for approving this policy on behalf of the Court and ensuring arrangements are in place for monitoring compliance.

6.2 Role of the Audit Committee

The Audit Committee has a general responsibility for monitoring the operation and effectiveness of anti-bribery arrangements and should receive appropriate reports on any bribery activity.

6.3 Role of the Senior Management Group

- Implementing the Anti-Bribery policy and ensuring compliance
- Communicating the policy to staff and other stakeholders.
- Ensuring that everyone in their area of responsibility understands the policy and implements it where appropriate.
- Conducting a regular risk assessment of corruption risks faced by the University.
- They inform the COO/Secretary immediately when there are notified of any corruption concerns.

6.4 Role of Members of Staff

- All members of staff must read and adhere strictly to the guidelines contained in this policy.
- Raise corruption concerns immediately with their line managers
- Follow University guidance and best practice when involved in activities relating to the procurement of goods, services or works, or using overseas or other agents or third parties.

APPENDIX A

Guidance Notes on the University of Highlands and Islands Anti-Bribery Policy

These Guidance Notes supplement the University's Anti-Bribery Policy. They are designed to assist staff on the practical application of the Policy. In addition, they include important obligations on specific areas, which staff must adhere to.

1. Frequently Asked Questions about the Bribery Act

- 1.1. *It is customary to provide gifts in some countries outside of the UK when visiting or meeting with public officials. Can University staff offer gifts to their counterparts at an overseas university?*

The fact that something is a local custom is not a defence under the Bribery Act so a cautious approach is required to ensure any gift or other advantage that is offered overseas is not construed as a bribe based on UK standards of conduct. Secondly, in this scenario it is possible that a member of an overseas university will be classed as a "foreign public official" under the Bribery Act. If so, it is very easy to fall foul of the law. Any financial or other advantage offered to them will be seen as a bribe if the offeror intends to influence the official and intends to obtain or retain any business advantage.

This guidance does not however preclude the University or its staff from giving small, low value gifts seen as a 'mark of respect' to other public officials.

- 1.2. *Can gifts and hospitality be accepted from private sector companies with whom the University has a business relationship or may do in future? What about sponsorship?*

Care has to be exercised that no gift or hospitality could be considered excessive or lavish. Normal business meals and modest entertainment is normally acceptable where there is a legitimate purpose for the hospitality - such as to foster cordial relations or for reasonable public relations. No hospitality should be accepted if it could be construed as intended to induce a member of staff to perform their functions improperly. (See Policy on Receipt of Gifts and Hospitality). In relation to sponsorship, similar principles apply. Care should be exercised that the sponsorship does not improperly induce members of the University to perform their functions improperly. This could include where it compromises academic integrity or influences the outcome of a research project.

- 1.3. *Can we engage agents to recruit international students to the University?*

Yes but a number of compliance steps must be taken. The use of overseas agents involves high risks to an organisation, whether for recruitment or other purposes. The University will be liable for any corrupt acts by anyone performing services on its behalf. The risks of engaging an agent in a particular case must be assessed and enhanced due diligence undertaken about the suitability of the agent and the nature of the services they are providing to the University. Further guidance on these steps is set out below.

- 1.4. *The University undertakes an annual research project in a jurisdiction outside of the UK with a poor reputation for corruption. The project leader needs to transport equipment to the overseas location for the project, which will be checked by local customs officials. What steps should the project leader consider?*

The project leader should consider in advance the risk that members of staff or others acting on behalf of the University will be vulnerable to demands for corrupt payments, such as facilitation payments. Staff will need guidance in advance on strategies to resist any such demands. The project leader should also consider any preventative measures that can be taken in advance, such as allowing adequate time for delays in the delivery of equipment whilst any demand for a facilitation payment is resisted.

- 1.5. *The family of a student who is applying to the University offers to provide the University with a substantial donation to its development fund in return for a place at the University being offered to the student. Is this caught by the Bribery Act?*

Yes. This situation clearly involves a financial advantage being offered to the University, which is intended by the family to induce the admissions department to perform their functions improperly. It does not matter what decision is in fact reached over offering the student a place or not. The donation should be refused because of the basis on which it was offered. Donations can be bribes in other less obvious circumstances. The University's due diligence procedures should always be followed to ensure a donation does not involve someone misusing their position or being induced to do so.

2. Further Guidance on Gifts Entertainment and Hospitality

All members of staff should refer to the Policy for Staff on the Receipt of Gifts and Hospitality. This guidance note is intended to supplement the provisions of the above policy. It applies to all gifts, hospitality and entertainment that members of staff give or receive in the context of their activities for the University. In cases where a member of staff pays for a gift, entertainment or hospitality, but it is not reimbursed by the University, this guidance note remains applicable in this context.

The following overarching principles in relation to gifts, entertainment and hospitality (whether given or received) are particularly important for staff to consider in the context of potential corruption risks:

Expenditure should always be reasonable and proportionate (having regard in particular to the recipient).

Expenditure should be in accordance with the Policy for Staff on the Receipt of Gifts, Hospitality; and any necessary approvals sought in accordance with that policy; and records kept in accordance with the policy.

The recipient must always be entitled to receive the gift, entertainment or hospitality under the law of the recipient's country.

3. Charitable and Political Donations by the University

All charitable donations should be recorded accurately in the University's financial records and accounts.

Requests for charitable donations can sometimes mask corrupt activity by others. No charitable donations should be made if these could be construed as improperly influencing another party with whom the University has a business relationship. Should a member of staff have any ethical concerns about a proposed charitable donation, this should be reported immediately to the COO/Secretary.

The University does not under any circumstances make donations to political parties.

4. Philanthropic Giving

All donations made to the University by benefactors or others wishing to support the University's activities must be considered in the light of the Bribery Act.

Donations of this kind can sometimes mask corrupt activity. No donations should be accepted without due diligence procedures being followed in respect of the purpose of the donation and the background of the donor, amongst other steps. The level of due diligence required will be proportionate to any potential corruption risk identified.

No donation should be accepted if it could be construed as improperly influencing the University or another person. Should a member of staff have any ethical concerns about a proposed donation, this should be reported immediately to the COO/Secretary.

5. Honorary Degrees and Fellowships

Under no circumstances may an honorary degree or fellowship be awarded as an improper inducement to the individual recipient to provide additional services to the University. In addition, the University's Nominations Committee will oversee the award of honorary degrees and fellowships and will ensure the guidance in this policy is taken into account when considering nominations for such degrees.

6. Agents, Other Third Parties, and Joint Ventures

In some parts of the University's commercial activities, it needs to engage agents and other intermediaries.

All appointments of agents and other parties who provide the University with services must follow risk-based due diligence procedures. This includes where the University enters in to any form of partnership with another organisation or a joint venture arrangement.

For the appointment of any overseas agents, a high level of due diligence is required. A non-exhaustive list of steps that must be considered is set out in Section 7 below.

Advice should be sought from COO/Secretary on due diligence steps required for any joint venture, whether in the UK or overseas. All appointments of agents and joint venture partners must be monitored and reviewed on a periodic basis and ongoing due diligence procedures adopted, proportionate to any corruption risks that have been identified.

Any agents or other parties who are performing services for, or on behalf of the University, will be expected to agree to a contractual clause which confirms that they will comply with the University's Anti-Bribery Policy or adhere to an equivalent policy, standard or other procedures they may have in place to prevent bribery. This clause will confirm that any breach of these anti-corruption obligations can lead to termination of the contractual relationship.

7. Due Diligence

Appropriate risk-based due diligence must be conducted in relation to any party outside of the University who is performing services for it or on its behalf. Enhanced due diligence should be conducted in relation to overseas agents and joint venture partners of the University. The following guidance indicates the steps that should be considered in planning and conducting Due Diligence in these types of relationship.

Require the party/agent to provide details of the party/agent's ownership; details of senior management of the party/agent; a copy of CVs of key personnel performing services for the University; details of referees for the party/agent and key personnel who will be providing services under the proposed agreement; details of other directorships held, existing partnerships, and third-party relationships, and any relevant judicial or regulatory findings about the party/agent or key personnel of the party/agent, and details of the jurisdictions in which the agent operates.

Undertake research, including reasonable internet research (dependent on risk), on the party/agent and any individuals who have a degree of control if the agent is a corporate entity.

Check independently that the party/agent does not appear on any applicable sanctions list, or have outstanding court actions or judgments against it.

Make enquiries with any relevant authorities, including contacting a commercial attaché at the embassy in the territory where the party/agent operates, to verify information obtained and seek any independent background information about the party/agent's reputation.

Take up references and assess responses received.

Conduct any further enquiries of the party/agent to clarify any matters arising from the information provided, including arranging a face to face meeting if required.

Request and review copies of the party/agent's anti-bribery policies and any relevant procedures they operate to prevent bribery and corruption.

Assess relevant commercial considerations for the University's activities, e.g.:

- is the appointment necessary?
- does the party/agent have the required expertise to provide the services?
- is the party/agent going to interact with a public official, or are there any other connections between an party/agent and a public official?
- are the proposed payment terms of the party/agent reasonable and in accordance with the market rate?
- have appropriate steps been taken to consider alternative appointments/competitors to this party/agent?

8. Facilitation Payments

Facilitation payments are typically small unofficial payments paid to speed up an administrative process or secure a routine government action by an official. They are more common in certain overseas jurisdictions in which the University conducts its activities but it is possible that they could arise in the UK.

Facilitation payments are treated as bribes by the Bribery Act and are prohibited by this Policy.

Examples of when such payments may be requested include:

- To obtain or expedite a permit, licence or other official document or approval
- To facilitate provision of utilities, such as connecting water, electricity, gas or telephone services
- At border controls or crossings to allow safe or prompt entry or exit from a jurisdiction
- To avoid unwarranted delays when goods are held by a customs official
- To ensure personal security or preservation of property from law enforcement officials

Facilitation payments should be contrasted with official, lawful payments (typically to an organisation rather than an individual) to expedite certain functions (e.g. where there is an official system to choose a premium fast track service to obtain a passport). Sometimes demands for facilitation payments are forms of extortion (e.g. unless the demand is met, a person's safety or liberty is placed in jeopardy). However, identifying when a payment is a lawful, official payment and when it is a facilitation payment and a bribe is not always easy. In these cases, it is important for staff to seek confirmation wherever possible of the lawfulness of the payment from an independent source, and seek additional guidance from the COO/Secretary immediately.

If it is not possible to undertake the above steps and if a member of staff is unsure as to the validity of an official's request for a payment, the steps below should be followed as far as they are applicable and as far as it is possible to do so:

The member of staff should:

- Contact their line manager
- Ask the official for proof of the validity of the fee
- Request that a receipt be provided confirming the validity of the payment
- If no proof of validity will be provided, politely decline to make the payment and explain they cannot make the payment because of the University's policy and anti-bribery laws
- If possible ask to see the official's supervisor
- Make a full note of the request, the circumstances and the parties involved
- At all times remain calm, respectful and polite.

The University policy is that it strictly prohibits any kind of facilitation payments made by members of staff or third parties acting on its behalf. However, if a member of staff is in fear for their safety or at risk of loss of liberty, they should not refuse the demand for a payment. In all circumstances members of staff must report any demand for facilitation payments immediately to the COO/Secretary for advice and guidance.

APPENDIX B

Summary of Bribery Act

1. What Is Bribery and Corruption?

The Bribery Act defines corruption offences very widely. Most offences apply equally to private and public sector activities. This Appendix sets out further details of the offences and how they may apply to the University.

As a summary of the key provisions in the UK law, members of staff should follow these three principles:

- Do not make payments to someone (or favour them in any other way) if you know that this will involve someone in misuse of their position.
- Do not misuse your position in connection with payments (or other favours) for yourself or others.
- Do not deliberately use advantages to try to influence foreign public officials for business reasons. If you need to promote the University's business with a foreign public official, always check in advance with your Head of School/Support Department.

A bribe does not need to be a monetary sum. It can be any form of advantage: e.g. lavish hospitality or gifts; an offer of employment; or the provision of services free of charge or with a substantial discount. A person who is offered or agrees to accept a bribe does not need to benefit personally. Actual payment of a bribe does not need to occur for there to be a criminal offence. An offer or request would be sufficient.

Sometimes offering or making a payment (or giving some other favour such as lavish hospitality) is an act of bribery in itself – i.e. where this is improper without the recipient needing to do anything else as a consequence.

2. How Does Corruption Affect The University?

Risks of corruption can arise in a wide range of the University's activities and its interaction with third parties. Some examples of these are as follows:

- International operations
- Recruitment of students and awards of degrees
- Gifts and donations to or from the University or its staff
- University Fundraising Activities
- Sponsorship and partnerships with private sector organisations in the UK or overseas and other commercial activities

- Procurement processes across the University and relationships involving estate and property management
- Appointment of agents or representatives in the UK or overseas who perform services for or on behalf of the University
- Relationships with other academic institutions, regulatory or funding bodies
- Field trips and overseas research in jurisdictions where there are particular corruption risks;

The University will undertake periodic risk assessments of its activities, including risks relating to: the sector in which it operates; its international business activities; its existing processes for gifts and hospitality and donations; its relationships with a wide range of third parties in the UK and overseas who provide services to it or on its behalf; its procedures for procurement and other internal policies; and its other business structures, such as private sector joint ventures or joint research collaborations.

3. What is the Law?

The offences under the Bribery Act are extensive in scope, broadly defined and, in some circumstances, also allow for crimes committed anywhere in the world to be prosecuted in UK courts. The University's standards therefore apply to conduct that occurs both in the UK and in any activity it undertakes abroad.

The UK law has serious consequences for anyone found guilty of an offence. For individuals, a maximum prison sentence of ten years and/or an unlimited fine can be imposed; for commercial organisations, an unlimited fine can be imposed. Other measures can include the ability to confiscate assets, where these are found to be the proceeds of criminal activity including corruption.

The Bribery Act includes a new offence of failure of commercial organisations to prevent bribery. In light of its various commercial activities, the University will be treated as a commercial organisation for this purpose even though it has primarily educational aims.

4. Offences under the Bribery Act

The Bribery Act contains four main offences:

- **Paying bribes** - Can apply to members of staff and the University
- **Receiving bribes** - Can apply to members of staff and the University
- **Bribery of a foreign public official** - Can apply to members of staff and the University
- **Failure of a commercial organisation to prevent bribery** - Can apply to the University and its subsidiary companies.

In addition, if a senior officer of a commercial organisation consents to or connives in an act of bribery by that organisation, they can be separately prosecuted.

As a reference guide, set out below are brief explanations of what each of the four main offences mean.

4.1 Paying bribes

It is an offence if a person offers, promises or gives a financial or other advantage with the intention of inducing another person to **perform a function or activity improperly** or to reward that person for doing so.

It is not necessary to prove that this person intended this consequence in all cases: it is also an offence if the person knows or believes that acceptance of the advantage by another is in itself an improper performance of their function or activity.

4.2 Receiving bribes

It is an offence if a person requests, or agrees to accept, or receives a financial or other advantage intending that a **function or activity** should be **performed improperly** as a result.

It is also an offence:

- Where the request or receipt of the advantage is in itself an improper performance of a function or activity;
- Where the request or receipt is a reward for the person's or someone else's improper performance in the past;
- Where their improper performance takes place in anticipation or as a consequence of a request or receipt of an advantage.

In these other scenarios, it does not matter whether the person knows or believes that the performance of a function or activity is improper.

With both of the above offences, it does not matter that no money changed hands, or that a person received no personal benefit or enrichment.

Both offences can also apply to acts of bribery that take place outside of the UK, where the person or organisation paying or receiving a bribe has a close connection to the UK. This includes all UK citizens, other persons ordinarily resident in the UK, and UK incorporated companies.

4.3 What activities do these offences apply to?

The offences could apply to any function or activity involving the University and any activities of its staff, connected with a business, performed in the course of employment, or on behalf of the University or a subsidiary company. Examples include the University's dealings with:

- private sector businesses, or third parties including subcontractors or agents
- other publicly funded organisations, grant giving bodies, and relevant public bodies.
- service providers or agents
- individuals, including students and prospective students, donors and other sponsors.

4.4 What does improper performance mean?

Whether an activity or function is **performed improperly** will be measured on an objective basis, not necessarily on a person's own perception of the circumstances of the activity. The test will be whether a function has been performed in breach of how a reasonable person in the UK would expect it should be performed. This means customary or historic practices will not necessarily be acceptable.

4.5 Bribery of a foreign public official

It is an offence if a person offers or gives a financial or other advantage to a foreign public official with the intention of influencing the foreign public official and to obtain or retain business or a business advantage. Foreign public officials include persons performing functions at state owned or controlled enterprises and agencies - and therefore could potentially include those working for public universities outside of the UK.

The University has identified that it has relevant international activities where it may have dealings with foreign public officials, including;

- in territories where it engages overseas agents for student recruitment
- in territories where members of the University undertake research or other academic activities from time to time

The Bribery Act contains no exemption for "facilitation payments" (see also the section of this Guidance Notes to the University Policy relating to Facilitation Payments).

If a member of staff of the University in the UK or overseas needs to promote the University's business with a foreign public official, the member of staff must contact the COO/Secretary in advance to confirm what steps are appropriate in any dealings they intend to have with the foreign public official.

4.6 Failure of commercial organisations to prevent bribery

It is an offence for the University in relation to its commercial activities if a person associated with the University bribes another person intending to:

- obtain or retain business for the University; or
- obtain or retain an advantage in the conduct of business for the University.

A person is associated with the University if they perform services for or on behalf of the University. This covers a wide category of people where the University has a potential liability for their acts. It does not matter in what capacity they are acting. Associated persons include all employees of the University as well as other persons outside of the University such as agents, joint ventures to which the University is party, and those with whom the University contracts to perform services.