

## Bribery Policy FIN19

**Equality Impact Assessment:** Askham Bryan College recognises the importance of the Equality Act 2010 and its duties under the Act. This document has been assessed to ensure that it does not adversely affect staff, students or stakeholders on the grounds of any protected characteristics.

### 1. POLICY STATEMENT

- 1.1 Askham Bryan College is committed to conducting its activities fairly, honestly and openly and to the highest standards of integrity.
- 1.2 The College has a zero tolerance approach to acts of bribery or corruption, by employees or anyone acting on the College's behalf.
- 1.3 This includes the offering, promising or giving of a bribe ("active bribery") and the requesting, agreeing to receive or accepting of a bribe ("passive bribery").
- 1.4 The College and its associates, which means consultants, contractors, service providers and external partner organisations, are at all times required to uphold the highest standards of integrity in their dealings with or on behalf of the College and will comply with all relevant anti-bribery and anti-corruption legislation.

### 2. SCOPE

- 2.1 This policy applies to all members of Askham Bryan College which means all employees and members of the Corporation. Staff are individually responsible for ensuring that they comply with College policies and procedures, in particular the College Bribery Policy.
- 2.2 The Legal and Compliance Adviser will have responsibility review of this policy.
- 2.3 The Director of Finance has a legal responsibility to make sure that fraud and corruption are prevented, detected and investigated.
- 2.4 In addition, the Audit Committee will provide an independent check on the financial management of the College. The Committee meets, receives and considers reports by the internal and external auditors on all aspects of financial processes and procedures. The Director of Finance attends Audit Committee and presents progress reports on the financial position of the College, changes to processes and procedures and progress reports on bribery prevention and if necessary, on any investigation work undertaken, in the event of a breach of this policy. The Audit Committee can question and ask for further explanation in relation to any aspects of this work.

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### **3. LEGAL BACKGROUND AND CONTEXT**

- 3.1 Prior to the Bribery Act 2010, British anti-bribery law was based on a number of separate pieces of legislation, such as the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts 1906 and 1916, a body of law described as "inconsistent, anachronistic and inadequate". The Bribery Act 2010 was therefore the result of several decades of reports and draft bills, aimed at improving on this existing body of law.
- 3.2 The Bribery Act 2010 received Royal Assent on 8<sup>th</sup> April 2010. Initially scheduled to enter into force in April 2010, this was changed to 1<sup>st</sup> July 2011. The Act repeals all previous statutory and common law provisions in relation to bribery, instead replacing them with offences of bribing another person, being bribed, the bribery of foreign public officials, and the failure of a commercial organisation to prevent bribery on its behalf.

### **4. OFFENCES**

- 4.1 Section 1 of the Act creates 2 offences of "**bribing another person**".
- 4.2 A person is guilty of the offence of "bribing another person" if he/she either:
- offers, promises or gives a financial or other advantage to another person (directly or indirectly) and intends the advantage to induce a person to perform a function or activity improperly or to reward a person for the improper performance of such a function or activity; or
  - offers, promises or gives a financial or other advantage to another person and knows or believes that the acceptance of the advantage would itself constitute the improper performance of a function or activity.
- 4.3 "Improper performance" is defined as performance which amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. The offence applies to bribery relating to any function of a public nature, connected with a business, performed in the course of a person's employment or performed on behalf of a company or another body of persons. Therefore, bribery in both the public and private sectors is covered.
- 4.4 Whether a function or activity has been performed improperly will be decided with reference to what the reasonable person in the UK would expect in relation to the performance of that function or activity. In many ways, this takes a common sense approach to what is or is not a bribe.
- 4.5 So, for example, an invitation to a contractor to attend a Six Nations match at Twickenham as part of a public relations exercise designed to cement good relations or enhance knowledge in the organisation's field is extremely unlikely to engage section 1 as there is unlikely to be evidence of an intention to induce improper performance of a relevant function. However, a large cash payment to a representative of a contractor to secure a contract would.

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- 4.6 Section 2 creates offences of “**being bribed**”.
- 4.7 A person is guilty of the offence of “being bribed” if he/she either directly or indirectly commits any of the following:
- firstly, where the recipient requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a function or activity should be performed improperly;
  - secondly, where the recipient requests, agrees to receive or accepts a financial or other advantage and such request, agreement or acceptance itself constitutes the improper performance of a function or activity;
  - thirdly, where a recipient requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance of a function or activity; or
  - fourthly, where, in anticipation of or in consequence of a recipient or potential recipient requesting, agreeing to receive or accepting a financial or other advantage, a function or activity is performed improperly.
- 4.8 “Improper performance” has the same meaning as it does under section 1.
- 4.9 Section 6 of the Act sets out the offence of **bribing a Foreign Public Official**, which involves a person either directly or indirectly offering, promising or giving an advantage to a Foreign Public Official, or to another person at the Foreign Public Official 's request or with their assent or acquiescence, in circumstances where the person intends to influence the official in his/her capacity as a Foreign Public Official, and where the person intends to obtain or retain business or a business advantage.
- 4.10 Section 7 of the Act creates the offence of “**failure of commercial organisations to prevent bribery**”. The offence would be committed where the College fails to prevent any employee or other “associated person” (see below) from committing “active bribery”, “passive bribery” or bribery of a foreign official on the College’s behalf.
- 4.11 Only a “relevant commercial organisation” can commit an offence under section 7 of the Bribery Act. A “relevant commercial organisation” is defined at section 7(5) of the Act as a body or partnership incorporated or formed in the UK irrespective of where it carries on a business, or an incorporated body or partnership which carries on a business or part of a business in the UK irrespective of the place of incorporation or formation. The key concept here is that of an organisation which “carries on a business”.
- 4.12 The courts will be the final arbiter as to whether an organisation “carries on a business” in the UK taking into account the particular facts in individual cases.

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- 4.13 So long as the organisation in question is incorporated (by whatever means), or is a partnership, it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught by the Act if it engages in commercial activities, irrespective of the purpose for which profits are made.
- 4.14 An “associated person” is someone who provides the College with services so includes employees, agents, consultants, contractors and external partner organisations.
- 4.15 The College is automatically liable for the bribery unless it can show that it had “adequate procedures” to prevent the bribery.

### **“What is a bribe?”**

- 4.16 The Act refers to "a financial or other advantage". This is deliberately broad and goes beyond the payment of money and the handing over of "brown envelopes".
- 4.17 A “bribe” may therefore cover a wide range of things, including:
- gifts and corporate hospitality;
  - promotional expenses, travel expenses and accommodation costs;
  - employing public officials or their relatives;
  - vouchers or other cash equivalent;
  - provision of services such as use of a car or provision of a decorator;
  - awarding a contract to a company connected to a public official;
  - awarding a contract to a particular company; or
  - making political or charitable donations.
- 4.18 Reasonable and proportionate corporate hospitality should not be caught by the Act.
- 4.19 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.
- 4.20 For corporate hospitality to be a bribe, there needs to be an intent to induce improper performance or improper conduct and there needs to be a link between the hospitality and the inducement. This could be indicated by the lavishness of the hospitality and or its proximity to big decision making by the guests.
- 4.21 For the protection of those involved, the Director of Finance will maintain a register of gifts and hospitality received where the value of the gift is in excess of £50. Governors and members of staff in receipt of such gifts or hospitality are obliged to notify the Clerk to the Corporation promptly.

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## **5. FACILITATION PAYMENTS**

- 5.1 A “facilitation payment” is a type of bribe. A common example is where a government official is given money or goods to perform (or speed up the performance of) an existing duty.
- 5.2 Facilitation payments are illegal under the Bribery Act 2010, regardless of their size or frequency. As such, any facilitation payment will be considered unauthorised and in breach of this policy.

## **6. PENALTIES**

### **For individuals**

- 6.1 An individual guilty of an offence under section 1 (“bribing another person”), section 2 (“being bribed”) or section 6 (“bribing a Foreign Public Official”) is liable—
- (a) on summary conviction (Magistrates Court), to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both,
- (b) on conviction on indictment (Crown Court), to imprisonment for a term not exceeding 10 years, or to a fine, or to both.
- 6.2 Any other person guilty of an offence under section 1, section 2 or section 6 is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.
- 6.3 In addition:
- employees face dismissal or other disciplinary sanctions;
  - Corporation members face removal from office; and
  - a person may suffer significant damage to his/her reputation.

### **For individuals and relevant commercial organisations**

- 6.4 A person guilty of an offence under section 7 (“failure of commercial organisations to prevent bribery”) is liable on conviction on indictment to a fine.
- 6.5 A successful conviction under section 7 could also have significant consequences for the College:
- unlimited fines and a potential ban from bidding for future research and other public contracts;

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- damage to reputation and loss of public trust and confidence;
  - adverse impact on donors, recruitment of members of the College and students and UK Borders Agency approved list;
  - regulatory and funding issues – Office for Students/Skills Funding Agency/other grant funding bodies; and
  - disruption to business activities.
- 6.6 A successful conviction under section 7 could also be grounds for instant termination by a supplier, contractor, etc of any contracts with the College.
- 6.7 Directors and or senior managers of an organisation can also be personally liable under the Act where they consent to or connive in bribery, ie where they knew of the bribery, but turned a blind eye to it.
- 6.8 If a member of staff or member of the Corporation suspects a director or senior officer is guilty of bribery, then they should report the matter confidentially, using the College’s whistleblowing procedure, HR20A.

## **7. MAIN AREAS OF RISK FOR THE COLLEGE**

- 7.1 The main risk areas that have been identified for the College are:
- international activities – both abroad and in the UK;
  - commercial and facilities/purchasing departments (“procurement”) – giving and receiving bribes when awarding contracts for goods and services;
  - teaching areas – awarding of grades and qualifications; and
  - subsidiary and associate companies.

## **8. DEFENCES**

### **For individuals**

- 8.1 There are limited defences under the Act for individuals, none of which will apply to employees of the College. For instance, it is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for (a) the proper exercise of any function of an intelligence service, or (b) the proper exercise of any function of the armed forces when engaged on active service.

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- 8.2 In some situations, if a person is coerced, by, for instance, their line manager, into making a bribe, they may be able to argue “duress” or “undue influence”. **No employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if such refusal may result in the College losing business.**
- 8.3 Otherwise, the only defence available under the Act is for commercial organisations.
- 8.4 A commercial organisation accused of a bribery offence must prove that it “had in place **adequate procedures**” designed to prevent persons associated with it from undertaking such conduct. The burden of proof rests with the organisation.
- 8.5 To discharge this burden, the organisation will need to show not only that it has adopted appropriate policies; but also that it has taken appropriate steps to apply and enforce them.

### **“Adequate procedures”**

- 8.6 It is a defence for a commercial organisation to show that they had “**adequate procedures**”, ie systems, in place to prevent persons associated with it from bribing. In some cases, this could amount to a full defence.
- 8.7 The Act does not define “adequate procedures”; but the Government has published guidance to help organisations decide what is appropriate for their needs. That guidance sets out **six principles** that a commercial organisation should take into account when determining what policies and procedures and systems it should have in place to prevent bribery. For further details, see section 8 below and also FIN20 Bribery Policy – Guidance.
- 8.8 **These principles are not prescriptive.** They are intended to be flexible and outcome focussed, allowing for the huge variety of circumstances that commercial organisations find themselves in. Small organisations will, for example, face different challenges to those faced by large multi-national enterprises. Accordingly, the detail of how organisations might apply these principles, taken as a whole, will vary; but the outcome should always be robust and effective anti-bribery procedures.
- 8.9 In short, 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.

### **The Six Principles**

- 8.10 **First Principle - Proportionate procedures:** a commercial organisation’s procedures to prevent bribery by persons associated with it are **proportionate to the bribery risks it faces** and to the nature, scale and complexity of the commercial organisation’s activities. They are also clear, practical, accessible, effectively implemented and enforced.

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- 8.11 **Second Principle - Top level commitment:** The top-level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.
- 8.12 **Third Principle – Risk Assessment:** the commercial organisation 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.
- 8.13 **Fourth Principle – Due Diligence:** The commercial organisation 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.
- 8.14 **Fifth Principle – Communication (including training):** The commercial organisation 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.
- 8.15 **Sixth Principle – Monitoring and Review:** The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.
- 8.16 Appendix A of FIN20 Bribery Policy – Guidance sets out examples of the six principles in practice. For further guidance on the Six Principles see <https://www.gov.uk/government/publications/bribery-act-2010-guidance>

## 9. ASSOCIATED POLICIES AND PROCEDURES

9.1 This document is supplemented by the following policies and procedures:

FIN20 Bribery Policy Guidance  
HR20 Bribery, Fraud and Corruption Policy  
HR20A Procedure for Whistleblowing  
QA8 Risk Management Policy  
QA8A Risk Management Procedure  
FIN5 Procurement Policy  
Financial Regulations

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