

College Policies and Procedures

Anti-Bribery Policy

Anthony McGarel

Deputy Principal & Chief Executive

(February 2012; Revised June 2017, Revised September 2019, Revised June 2021)

EXECUTIVE SUMMARY

Anti-Bribery Policy

Policy Statement

PURPOSE To explain the College policy relating to bribery or corruption

SCOPE All aspects of the work of the College: all Members of the Corporation, Staff and Officials of the College

RESPONSIBILITY All Corporation Members and Staff

DEFINITIONS **Bribery** – inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages. (Bribery Act)

In ordinary language, bribery is the act or process of giving or taking bribes. A bribe is a reward, such as money or favour, given to procure services or gain influence, usually illegally.

The Bribery Act 2010 specifies the following elements:

1. Offence of bribing another person

A person is guilty of this offence if they either:

a. offer, promise or give a financial or other advantage to another, and intend the advantage to induce the person to perform a function improperly or reward that person for such improper performance, or

b. offer, promise or give a financial or other advantage to another, and know or believe that acceptance of the advantage would itself be an improper performance of the relevant function.

2. Offence relating to being bribed

A person is guilty of this offence if they:

- a. request, agree to receive or accept a financial or other advantage intending that, in consequence, a relevant business activity should be performed improperly, whether by themselves or another, or
- b. request, agree to receive or accept a financial or other advantage, and the acceptance of the advantage itself is an improper performance of the relevant activity, or
- c. request, agree to receive or accept a financial or other advantage as a reward for improper performance of a relevant business activity, whether by themselves or another, or
- d. perform or allow to be performed by another a relevant business activity improperly in anticipation of requesting, agreeing to receive or accepting a financial or other advantage

It does not matter whether the bribe is direct or through a third party, nor whether either person actually knows the performance of the business activity *is* improper. The test of what is expected to be proper performance is what a reasonable person in the UK would expect.

The Act also enacts a corporate offence for commercial organisations who fail to prevent bribery in connection with services it provides. In this case, it does not matter whether services are provided by employees, subsidiaries, agents, joint venture partners or the like.

Fraud and Corruption – the offering or acceptance of inducements, gifts, favours, payment or benefit-in-kind which may influence the action of any person. Corruption does not always result in a loss. The corrupt person may not benefit directly from their deeds – however, they may be unreasonably using their position to give some advantage to another.

The Fraud Act 2006 simplified and strengthened existing laws, creating new legislation to '*make provision for, and in connection with, criminal liability for fraud and obtaining services dishonestly*'

The Act sets out three general offences of fraud:

1. False representation

A person is in breach of this section if they:

- a. dishonestly make an express or implied representation of fact or law that is known to be or might be untrue or misleading, and
- b. intend, by making the representation, to either make a gain for himself or another to cause loss, or a risk of loss, to another.

2. Failure to disclose

A person is in breach of this section if they:

- a. dishonestly fail to disclose information which he has a legal duty to disclose, and
- b. intends, by failing to disclose, to either make a gain for himself or another or to cause loss, or a risk of loss, to another.

3. Abuse of position

A person is in breach of this section if they:

- a. are expected to safeguard the financial interests of another but dishonestly abuses that position, and
- b. intends, by the abuse of that position, to either make a gain for himself or another or to cause loss, or a risk of loss, to another.

This abuse can be an act of omission rather than a positive act.

The Fraud Act further goes on to state that:

- Possession of articles designed for use in fraud is an offence
- Persons who are sole traders can be guilty of being party to a fraud, other businesses being already covered by the Companies Act 2006. The Fraud Act, however, increases the maximum penalty for those convicted of committing business frauds to ten years' imprisonment
- It is an offence to obtain services with the intention of not paying either in full or part
- If directors (or trustees/governors), senior managers or similar company officers have consented or connived in an offence under this Act then they are liable to be proven guilty and punished.

Anti-Bribery Policy

Aim and Scope

This document sets out South Essex College's policy in respect of bribery or alleged or suspected bribery and how any such instances are raised and dealt with.

The Bribery Act 2010 introduces a new, clearer regime (by replacing a complicated and confusing combination of common law and statutory offences) for tackling bribery that applies to all organisations and their employees and representatives based in or operating in the UK. It covers all forms of bribery, the offering or receiving of a bribe, directly or indirectly, whether or not it involves a public official, in the UK or abroad. There are offences by individuals (and a corporate offence for corporate entities and partnerships) and penalties for non-compliance or transgressions are serious.

Bribery is a criminal offence for both organisations and individuals and can be punished with imprisonment of up to ten years or unlimited fines. If any individual was accused of bribery, the College's reputation might be considerably damaged and subsequent enforcement action will be time consuming and hinder the College from focussing on its core business and service delivery. Business may be lost.

As an organisation relying largely on public funds, the College has additional responsibilities to ensure that it adopts and adheres to the principles and values identified by the Nolan Committee on standards of holders of public office – these are set out in full in the Codes of Conduct for Staff and for Corporation Members.

The College has legal, reputational and moral responsibilities to prohibit any form of bribery. This policy applies to the College as a corporate entity, its subsidiary company, its joint venture shared services company with Chelmsford College and all staff, officials and Members of the Corporation, irrespective of their grade or position, and shall be followed at all times.

This policy shall be read in conjunction with other College policies, regulations, and procedures. Including the College Charter, Standing Orders, Scheme of Delegation, Financial Regulations, the system of internal control and risk management and the Codes of Conduct for Staff and Members of the Corporation. In addition, the College seeks to embed a comprehensive anti-bribery culture throughout the College.

This policy relates to all forms of bribery and is intended to provide direction and help to individuals who may suspect bribery. The overall aims of this policy are to improve the knowledge and understanding of all at the College about the risk of bribery and its consequences and set out the College's responsibilities to deter, prevent, detect and investigate bribery and fraud and corruption.

This policy applies to all staff, officials, Members of the Corporation of the College as well as consultants, vendors, contractors and any other parties who have a business relationship with the College. It will be brought to the attention of individuals through training and will form part of induction processes. Everyone has a duty to report any suspicions they may have regarding bribery freely and without consequence.

1. POLICY

- 1.1** The College is committed to maintaining an honest, open and high moral atmosphere in the College so as to meet these objectives. It is therefore committed to the prevention of bribery within the College and all individuals in and related to the College must share that commitment. It is also committed to rigorous investigation of any allegations that may be made and to taking appropriate action against wrongdoers.
- 1.2.** Off the book accounts and false or deceptive bookkeeping entries are strictly prohibited. All gifts, payments or any other contribution received by or on behalf of the College whether in cash or in kind (other than gifts of a token value specifically permitted under the Codes of Conduct) shall be documented, regularly reviewed and properly accounted for in the books of the College. Record retention and archival policy must be consistent with College's accounting systems, tax and other applicable laws and regulations.
- 1.3** The College must procure goods and services transparently with the service, quality, price and value for money determining the successful supplier or contractor, not by receiving or offering any improper benefits.
- 1.4** No individual will request or receive a bribe from anybody nor imply that such an act could be considered. This means that they will not agree to receive or accept a financial or other advantage from a former, current or future client, business partner, contractor or supplier or any other person as an incentive or reward to perform their functions or activities improperly.
- 1.5** No individual will offer, promise, reward in any way or give a financial or other advantage to any person in order to induce that person to perform his/her function or activities improperly. This includes creating the appearance of an effort to improperly influence another person.
- 1.6** The College will not adopt policies which provide students with financial or other incentives to achieve their course successfully.

- 1.7** Under the provisions of the Act, the College is likely to be held responsible for acts of bribery committed by intermediaries acting on its behalf such as subsidiary companies, joint venture companies or partnerships, clients, business partners, contractors, suppliers, agents, advisors, consultants or other third parties. The use of intermediaries for the purpose of committing acts of bribery or corruption is prohibited.
- 1.8** All intermediaries shall be selected with care and all agreements with them will be concluded under terms that comply with this policy. The College will contractually require its agents and other intermediaries in writing to comply with this policy and to keep proper books and records available for inspection by appointed auditors or other investigating authorities. In cases of non-compliance, the College will require without delay the correction of deficiencies, apply sanctions, and/or terminate the agreement.

2. GIFTS AND HOSPITALITY

- 2.1** In order to maintain proper relationships with outside organisations, clients or members of the public and avoid conflicts of interest, the giving and receiving of gifts is not permitted, other than gifts of a token value such as calendars, diaries, inexpensive pens, flowers or chocolates, etc but not alcohol.
- 2.2** Hospitality should be treated with caution. Staff, officials and Members of the Corporation may accept a reasonable amount of hospitality so long as it creates no impropriety other than a proper business arrangement.
- 2.3** Staff may receive tokens of thanks from individual or groups of students for a course well taught or for particular support during a course which has helped them succeed. This is common practice and outside this policy. Staff cannot receive gifts that in any way be construed as a bribe to influence the outcome of their students' studies.
- 2.4** No cash or alcohol is ever to be given or received.
- 2.5** Gifts and hospitality should never be given or received as a 'direct reward' for the letting of an order or similar transaction.

3. FACILITATION PAYMENTS

Facilitation payments are amounts disbursed to secure or expedite the performance of a routine action by a government official or agency to which the payer has a normal legal or commercial entitlement. The Bribery Act forbids such disbursements and they shall not be given.

4. POLITICAL AND CHARITABLE CONTRIBUTIONS

- 4.1.** The College will not make any contributions to politicians, political parties or election campaigns but is permitted to pay subscriptions to representative bodies such as the Association of Colleges.

- 4.2** The College may make charitable donations but such payments shall not be made to any organisation upon suggestion of any person in order to induce that person to perform improperly the functions or activities which he or she is expected to perform in good faith, impartially or in a position of trust or to reward that person for the improper performance of such function or activities.
- 4.3** Any donations or contributions must be ethical and transparent. The recipient's identity and the planned use of the payment must be clear and the reason and purpose of it must be justifiable and documented. All charitable donations will be publicly disclosed in the annual financial statements. They shall be subject to prior approval by a member of the Senior Leadership Team or a Head of Faculty.
- 4.4** It is entirely appropriate that staff and students may themselves wish to organise fundraising events for good causes. However, if any such event is to be endorsed by the College, prior approval is required as in 4.3 above.

5. SPONSORSHIP

- 5.1** Sponsorship by the College means any contribution in money or in kind towards an event organised by a third party in return for the opportunity to raise the College's profile. Government funding will not be used for sponsorship activities. All contributions shall be transparent, proportionate to the consideration offered by the event organiser and for legitimate and ethical business purposes. All sponsorship will be publicly disclosed and subject to prior approval as in 4.3 above.
- 5.2** Where commercial sponsorship is used to fund College activities, again, it must comply with the same guidelines noted in 4.2 above. It must be made clear as part of the event in question and shall be subject to prior approval as in 4.3 above.

6. REPORTING SUSPECTED OFFENCES

The College wishes to encourage anyone having reasonable suspicions of bribery to report them in accordance with the College's Whistle Blowing procedure. No individual will suffer any detrimental treatment or adverse consequence as a result of reporting any reasonable suspicions. However, any unfounded or malicious allegations will be subject to disciplinary action.

7. ROLES AND RESPONSIBILITIES

- 7.1** The Members of the Corporation have a general duty to provide a secure environment in which to work and one in which individuals are confident to raise concerns without fear or favour. Staff must feel protected and supported when carrying out their official duties and are not placed in a vulnerable position.

- 7.2** The Members of the Corporation have a specific duty to ensure that the College adopts an appropriate culture in which bribery and corruption and similar matters are clearly seen to be unacceptable and prohibited by all organisations and individuals associated with the College.
- 7.3** The Members of the Corporation will at all times lead by example in acting with the utmost integrity and adhere to all relevant policies, procedures and regulations ('tone from the top').
- 7.4** The Clerk to the Corporation will monitor and ensure compliance with anti-bribery and corruption measures, including this policy, the Whistle Blowing Policy and with other relevant policies and procedures, taking advice as necessary from members of the College Senior Leadership Team.
- 7.5** The Senior Leadership Team, acting collectively, will decide whether there is sufficient cause to conduct an investigation of suspected bribery or corruption. They will take advice, as necessary, from the College lawyers, internal auditors, external auditors, the Head of Human Resources, the Chairman of the Corporation, the Chairman of the Audit & Risk Committee of the Corporation and the Clerk to the Corporation. They will also determine whether, after taking advice, and when the matter should be reported to the Police or other criminal investigation authority (e.g. National Crime Agency).
- 7.6** The Senior Leadership Team shall immediately inform the Chairman of the Corporation, the Chairman of the Audit and Risk Committee of the Corporation and the Clerk to the Corporation of any such investigation and provide them with updates of the progress of the investigation.
- 7.7** On completion of such investigation, the Senior Leadership Team, having received all appropriate advice, including from the Chairman of the Corporation and the Clerk to the Corporation, shall have authority to determine suitable sanctions.
- 7.8** The Clerk to the Corporation will report to the Board regularly as to the suitability, adequacy and effectiveness of this policy. The Clerk will provide appropriate training to members of the Board (including co-opted members of Committees).
- 7.9** Line managers at all levels have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that those controls operate effectively.
- 7.10** All instances of actual or suspected bribery, which come to the attention of a manager, must be reported immediately to a member of the Senior Leadership Team, other than an accused member of the Senior Leadership Team, if that is the case. Alternatively, the report can be made to either the Chairman of the Corporation, the Chairman of the Audit and Risk Committee of the Corporation or the Clerk to the Corporation.

- 7.11** The role of the Human Resources Department is to provide advice to the Deputy Principal & Chief Executive on disciplinary procedures in accordance with the Whistle Blowing policy of the College. It is also their duty to ensure recruitment procedures are robust and effective as regards the propriety and integrity of the potential employee. All contracts of employment will include reference to employees' obligations in relation to this policy and a specific statement that a breach of such obligations is likely to constitute gross misconduct resulting in summary dismissal without warning.
- 7.12** The IT Support Manager will notify immediately in all cases where there is a suspicion of bribery that IT (including personal devices, internet/intranet, email etc) is being used for improper purposes.

8. EXTERNAL COMMUNICATIONS

No organisation or individual involved in any investigation or other action under the provisions of this policy will communicate with any member of the media or another third party as this may seriously damage the investigation and any subsequent actions to be taken.

9. TRAINING

The College will provide anti-bribery training to all relevant individuals on a regular basis so that they are fully aware of the Act, its provisions and this policy.

10. MONITORING

Compliance with this policy will be monitored regularly. This may consist of random spot checks by the Deputy Principal Chief Executive and/or planned inspections carried out by internal audit.

11. RELATED POLICIES AND PROCEDURES

- South Essex College Charter
- Code of Conduct of Staff and Members of the Board
- Register of Interests
- Financial Regulations
- Tendering and Contracting Procedures
- Whistle Blowing Policy & Procedure
- Disciplinary, Grievance and Capability Procedure
- Scheme of Delegation and Standing Orders
- Anti-Money Laundering Policy
- Ethics Policy

Approved by the Corporation Board at its Meeting on 5th July 2021.