



THE BRIBERY ACT 2010

POLICY STATEMENT AND PROCEDURES

DECEMBER 2011

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THE BRIBERY ACT 2010

1. Introduction

The Bribery Act 2010 came into force on 1 July 2011 and is designed to reform existing legislation and strengthen UK laws specifically to ensure compliance with the Organisation for Economic Development (OECD) Convention on combating Bribery which was ratified in 1998.

The Act defines bribery as ***“a financial or other advantage intended to induce or reward the improper performance of a person’s function or activity, where benefit could create a conflict between personal interests and business interests”***.

The guidance, provided by the Ministry of Justice, stresses that top level commitment is required to foster a culture within an organisation in which bribery is never accepted, and also suggests that one effective method of demonstrating this commitment is to develop and publicise a formal statement which is appropriately communicated.

This formal Policy Statement and associated procedures have been developed in line with the Ministry of Justice guidance.

The policy and procedures, set out in this document, cover all the activities of arc21 and therefore applies to Members who have been nominated to serve on the Joint Committee by their respective Councils, staff (both permanent and temporary), contractors and agents.

The guidance also recommends that a senior officer within the organisation should be identified to whom any queries or issues relating to bribery should be initially directed.

In the case of arc21, the senior officer is Mr George Craig, Corporate Services Director, who can be contacted at ‘Walsh House’, 35 Dargan Road, Belfast BT3 9LZ, or by using any of the following:

Telephone Number 028 90726333 extension 6672

Mobile Number 07748 804836

Email address george.craig@arc21.org.uk

2. Objective of This Policy

This policy provides a coherent and consistent framework to enable all those associated with arc21, Members, staff, contractors and agents to understand and implement arrangements enabling compliance.

In conjunction with related policies and key documents, it will also enable Members, staff, contractors and agents to identify, and effectively report, a potential breach.

We require all those associated with arc21 to:

- **act honestly and with integrity at all times and safeguard the organisation's resources for which they are responsible; and**
- **comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which arc21 operates, in respect of the lawful and responsible conduct of activities.**

3. The Joint Committee's Commitment to Action

The arc21 Joint Committee commits to:

- Setting out a clear anti-bribery policy and keeping it up to date;
- Making all staff aware of their responsibilities to adhere strictly to this policy at all times;
- Training all staff so that they can recognise and avoid the use of bribery by themselves and others;
- Including appropriate clauses in contracts to prevent bribery;
- Encouraging staff to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately;
- 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; and
- Providing information to all employees to report breaches and suspected breaches of this policy.

4. Policy Statement Anti-Bribery

The arc21 Joint Committee is committed to preventing bribery and maintaining a culture within the organisation in which bribery is never acceptable.

Bribery is a criminal offence and arc21 does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor does arc21 accept bribes or improper inducements. It is a criminal offence to use a third party as a conduit to channel bribes to others and arc21 does not, and will not, engage indirectly in or otherwise encourage bribery.

arc21 is committed to the prevention, deterrence and detection of bribery. A zero tolerance towards bribery, whether internal or external to the organisation, is applied and our aim is to maintain anti-bribery compliance as “business as usual”, rather than as a one-off exercise.

The following Policy Statement outlines the commitment of the Joint Committee:

arc21 welcomes the Bribery Act 2010 and the Joint Committee is committed to ensure compliance.

One of the six principles demands that there is top level commitment in the organisation to the prevention of bribery. An important component of this commitment is the identification of a senior Officer to whom any queries or issues relating to bribery should be initially directed to. The relevant officer in arc21 is George Craig, Director of Corporate Services.

As a local government organisation, arc21 follows good local government business practice and have robust controls in place to prevent bribery. Councillors are obliged to comply with the relevant requirements of the Local Government Act (Northern Ireland) 1972 and in particular to be guided by the Northern Ireland Code of Local Government Conduct produced by the Department of the Environment.

The Local Government Staff Commission have published a Code of Conduct for Local Government Employees. The aim of the Code is to set minimum guidelines for council employees which will help maintain and improve standards and protect employees from criticism or misunderstanding. This is necessary to meet the public’s entitlement to expect the highest standards of conduct from all employees who work for district councils. As a local government body, arc21 has adopted the Code of Conduct for Local Government Employees which has been included in the Staff Policies Handbook.

It is important that all of our employees, contractors and agents comply with arc21 policies and procedures particularly with regard to procurement and also the strict limitations and controls on hospitality and gifts.

arc21 commits to:

- ***carrying out business fairly, honestly and openly;***
- ***setting out a clear anti-bribery policy and keeping it up to date;***
- ***making all employees aware of their responsibilities to adhere strictly to this policy at all times;***
- ***training all employees 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 suspicion of bribery, providing them with suitable channels of communication and to ensure sensitive information is treated appropriately;***

- *rigorously investigating instances of alleged bribery and assisting the PSNI and other appropriate authorities in any resultant prosecution;*
- *taking firm and vigorous action against any individual(s) involved in bribery;*
- *provide information to all employees to report breaches and suspected breaches of the bribery policy and related procedures; and*
- *including appropriate clauses in contracts to prevent bribery.*

5. Scope of this Policy

This policy applies to all of the activities of the arc21 Joint Committee and, within the organisation, the responsibility to control the risk of bribery occurring resides with the Chief Executive but the policy applies to all the activities the Joint Committee is engaged in.

This policy covers all Members, staff, those permanently employed and temporary staff, contractors and agents.

6. The Bribery Act

There are four key offences under the Act:

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

The Bribery Act 2010 http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1 makes it an offence to offer, promise or give a bribe (Section 1).

It also makes it an offence to request, agree to receive, or accept a bribe (Section 2).

Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business.

There is also a corporate offence under Section 7 of failure by a commercial organisation (arc21 is a commercial organisation under the Act) to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation.

An organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent bribery by or of persons associated with the organisation.

7. Penalties

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

- On conviction in a magistrates court, to imprisonment for a maximum term of 12 months, or to a fine not exceeding £5,000, or to both; and
- On conviction, in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both.

Organisations are also liable for these fines and, if guilty of an offence under section 7, may be liable to an unlimited fine. Bribery is a serious offence against the Authority and employees will face disciplinary action if there is evidence that they have been involved in this activity, which could result in summary dismissal for gross misconduct.

Following any disciplinary action taken, depending on the circumstances of each individual case, consideration may be given to the taking of criminal proceedings.

8. Adequate Procedures

Introduction

- 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, based on the level of risk of bribery in the organisation.
- It is for individual organisations to determine Proportionate Procedures in the recommended areas of six principles as set out below.
- These principles are not prescriptive. They are intended to be flexible and outcome focussed, allowing for the different circumstances of organisations.
- Small organisations will, for example, face different challenges to those faced by large multinational enterprises. The application of these principles will vary but the outcome should always be robust and effective anti bribery procedures.

Proportionate Procedures

- An organisation's procedures, to prevent bribery by persons associated with it, must be proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation's activities. They must also be clear, practical, accessible, effectively implemented and enforced.

arc21 is committed to proportionate implementation of the following principles:

Top Level Commitment

- The Joint Committee is committed to preventing bribery by persons associated with it and fosters a culture within the organisation in which bribery is never acceptable.

Risk Assessment

- The 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. It includes financial risks but also other risks such as reputational damage.

Due Diligence

- The 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.

Communication (Including Training)

- The 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.

Monitoring and Review

- The organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

9. Bribery

Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage. Any such advantage is referred to as a “business advantage” in this policy.

It is unacceptable to:

- 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 third party 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 third party 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; and
- engage in activity in breach of this policy.

10. Facilitation Payments

Facilitation payments are illegal and will not be tolerated. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions.

11. Gifts and Hospitality

This Bribery Policy does not change the requirements of the Gifts and Hospitality Policy of arc21, which makes it clear that:

- Sample tokens of modest value bearing the name or insignia of the organisation giving them (e.g. pens, diaries, calendars) may be retained unless they could be regarded as an inducement or reward;
- Staff should refuse the offer of a gift or invitation to partake of hospitality (or return the gift) unless the Chief Executive or a Director has advised that it may be accepted or retained; and
- In all cases, the Register of Gifts and Hospitality form must be completed by all staff and signed by the Chief Executive, for the purposes of maintaining a formal record of all transactions.

12. Public Contracts and Failure to Prevent Bribery

Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence or “the offence of bribery”.

Organisations that are convicted of “**failing to prevent bribery**” are not automatically barred from participating in tenders for public contracts. arc21 has the discretion to exclude organisation convicted of this offence.

13. Member and Staff Responsibilities

All Members and staff are required to avoid activity that breaches this policy. The prevention, detection and reporting of bribery, and other forms of corruption, are the responsibility of all those working for, or on behalf of, the Joint Committee.

Members and staff must:

- ensure that they read, understand and comply with this policy; and
- raise concerns, as soon as possible, if they believe or suspect that a conflict with this policy has occurred, or may occur in the future.

14. Members

Members of the Joint Committee are nominated by their respective Councils and accordingly are responsible to their own Council for their conduct whilst serving on the Joint Committee.

The Code of Local Government Conduct requires that Councillors should maintain the highest standards of conduct and ethics in the performance of all Council duties.

Where a Member acts as a representative of the Council, as in the case of serving on the Joint Committee, he or she must not use, or attempt to use, their position as a Member improperly to confer on or secure for themselves, or any other person, an advantage or disadvantage.

Like all members of the public, Councillors should uphold the law at all times and any breaches of the Bribery Act 2010 are subject to the possibility of civil action and criminal prosecution.

Any breaches of this policy by Members will, in the first instance, be brought to the attention of the Chief Executive of their respective Council.

15. Staff

As well as the possibility of civil action and criminal prosecution, staff that breach this policy will face disciplinary action, which could result in summary dismissal for gross misconduct. Dismissal can still be an outcome with or without civil action or criminal prosecution.

16. Raising a Concern

arc21 is committed to ensuring that all of us have a safe, reliable, and confidential way of reporting any suspicious activity and want Members, and each and every member of staff, to know how they can raise concerns.

We all have 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 as your information and assistance will help. The sooner you act, the sooner it can be resolved.

As outlined on page 2, arc21 has appointed Mr George Craig, Corporate Services Director, as the officer to whom enquiries should be made initially. Alternatively, initial contact can be made with another Director or the Chief Executive of arc21 in order that, preferably, the disclosure can be resolved internally.

Where internal disclosure proves inappropriate, concerns can be raised, by Members and Staff, with any of the following:

- The Chair of the Joint Committee;
- The Chair of the Audit Committee;
- The Head of Audit Governance and Risk Services;
- The Local Government Auditor; or
- The Police Service Northern Ireland.

Concerns can be reported anonymously and, in the event that an incident of bribery is reported, arc21 will act as soon as possible to evaluate the situation. Clearly defined policies relating to Anti Fraud and Whistleblowing are in place which set out procedures for investigating fraud, misconduct and non compliance issues and these will be followed in any investigation of this kind.

In the case of particularly serious incidents, contact can also be made with the Police Service of Northern Ireland.

Members and staff who refuse to accept a bribe, or those who raise concerns, can understandably be worried about the repercussions. arc21 aims to encourage openness and will support anyone who raises a genuine concern, in good faith, under this policy, even if they turn out to be mistaken.

arc21 is committed to ensuring no-one suffers detrimental treatment through refusing to take part in bribery, or because of reporting a concern in good faith.