

Ethical Business: Bribery Prevention Policy

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**HERIOT-WATT UNIVERSITY
ETHICAL BUSINESS: BRIBERY PREVENTION POLICY**

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POLICY

1. INTRODUCTION

Heriot-Watt University values its reputation for ethical business practice, honesty, financial probity and reliability.

We recognise that the University's good reputation is a significant asset. In our determination to protect our reputation, the University is committed to the 'Seven Principles of Public Life' * set out by the Nolan Committee: *Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership*. (* these Principles are set out fully in appendix A of this policy).

In the conduct of our business the University aims at all times to:

- act with honesty, integrity and transparency;
- act in an ethical and lawful manner;
- act in compliance with all relevant laws and regulations: in the UK and in other countries in which we carry out business activities, complying with the spirit as well as the letter of these laws and regulations;
- foster an ethical business culture within the University and communicate this to others with whom we engage and associate; and
- demonstrate our zero-tolerance towards bribery.

2. PURPOSE

This policy sets out the University's commitment to the prevention of bribery associated with its business activities, in particular, compliance with **The Bribery Act 2010** (the Act). The Act, which extends to all parts of the UK received Royal Assent in 2010, coming into force on 1 July 2011. The Act is available at: <http://www.legislation.gov.uk/ukpga/2010/23/contents>

The Act sets out **four** offences:

- the **general offence** of paying bribes (active bribery);
- the **general offence** of receiving bribes (passive bribery);
- the bribery of foreign officials; and
- the failure of commercial organisations to prevent bribery

In terms of the **general offences** under the Act:

1. **paying bribes:** it is an offence to offer or give a financial advantage with the intention of inducing that person to perform a "relevant function or activity" "improperly" or to reward that person for doing so. (*Section 1 of the Act*)
2. **receiving bribes:** it is an offence to receive a financial or other advantage intending that a "relevant function or activity" should be performed "improperly" as a result. (*Section 2 of the Act*)

"Relevant function or activity" includes any function of a public nature and any activity connected with a business. "Improper performance", as described in Guidance to the Act, "means performance which amounts to a breach of expectation that a person will act in good faith, impartially, or in accordance with a position of trust", and is judged by whether it breaches the expectation of "what a reasonable person *in the UK* would expect in relation to the performance of that function or activity." In terms of the Act, the function or activity need have no connection to the UK.

In terms of the **further two offences** under the Act:

3. **Bribery of foreign officials:** it is an offence to offer promises or give a financial or other advantage to a foreign public official with the intention of *influencing* the official in the performance or his or her official functions. In creating the offence, the person offering,

promising or giving the advantage must also intend to obtain or retain business or an advantage in the conduct of business by so doing. (*Section 6 of the Act*)

4. **Failure of a commercial organisation to prevent bribery:** a commercial organisation will be liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation. This section of The Act is applicable to the activities of companies and partnerships and applies to employees, agents or other third parties acting on the corporates' behalf. (*Section 7 of the Act*) This section of the Act applies to certain activities of the University which are set out in section 3 below.
5. A violation of the Act may result in some or all of the following consequences and penalties for the University:
 - Criminal penalties and possible unlimited fines for the University
 - Members of Court could face unlimited fines themselves and/ or jail sentences of up to 10 years
 - Indefinite debarment from public procurement contracts
 - Damage to reputation
6. A violation of the Act may result in some or all of the following consequences and penalties for individuals:
 - Prosecution
 - Unlimited fines and/ or jail sentences of up to 10 years
 - Disqualification from holding a directorship for up to 15 years

In meeting our commitment to ethical business practice, the University shall:

- ensure that the **Ethical Business: Bribery Prevention Policy** is appropriately implemented, communicated, monitored, evaluated and reviewed, and ensure that other University policies, which have relevance to bribery prevention and reporting, also reflect, as appropriate, the legislation and the University's stated bribery prevention objectives.
- ensure that the underpinning policies and procedures that the University has in place to prevent bribery being committed on our behalf are effective in delivering our bribery prevention objectives, and are informed by the set of **six principles** set out by the Government:

Principle 1: Proportionate procedures

- In pursuing our bribery prevention objectives, the University will put in place underpinning policies and procedures which are proportionate to the bribery risks associated with our business activities, as informed by appropriate regular ongoing risk assessment processes within the University.

Principle 2: Commitment of senior management

- The senior management of the University (the University Executive (UE)) are committed to preventing bribery by persons associated with the University and are responsible to the University Court, which has ultimate authority for ensuring that the University has adequate controls and procedures in place to identify and manage bribery, as well as other business associated risks.

Through the office of the Secretary of the University, the UE will ensure that the University's bribery prevention stance is communicated effectively and that any formal communications issued by the University carry appropriate senior management endorsement. Through the office of the Secretary of the University, the UE will also ensure senior management involvement and oversight of the development, implementation, communication, monitoring, evaluation and review of the University's Ethical Business: Bribery Prevention Policy and Procedures.

Principle 3: Risk Assessment



- The University shall ensure, in line with its approved risk management processes, that regular assessments are undertaken of the nature and extent of our exposure to internal and external risks of bribery, and shall ensure timely actions in response to identified risks including, as necessary, making alterations to its policies and procedures to mitigate the risks and communicating these changes.

Principle 4: Due diligence

- The University shall ensure that due diligence procedures in relation to bribery prevention are incorporated within the University's wider due diligence procedures. In determining whether, and the extent to which, due diligence should be undertaken as a proportionate step to mitigate bribery risks, the University's decisions shall be informed by the outcomes of regular processes of risk assessment. Bribery prevention objectives will be reflected in due diligence in relation to the appointment or commissioning of: agents, intermediaries, contractors, suppliers of goods, consultancy and other services, as well as appraisal of prospective business partners.

Principle 5: Communication and training

- The University shall ensure that a range of tailored communications and awareness raising activities are undertaken which take account of the nature and extent of bribery risks and which promote understanding of the University's bribery prevention stance both within and outwith the University.

Principle 6: Monitoring and review

- The University shall ensure that regular processes of monitoring, evaluation and review of the effectiveness of its Ethical Business: Bribery Prevention Policy and Procedures are in place. These processes, and any required adaptation of the Policy and Procedures, will be informed by any future changes to bribery prevention legislation, the external environment in which we conduct our business, best practice guidance and the outcomes of the University's regular risk assessments.

3. PRINCIPAL POLICY OBJECTIVES

The University **prohibits** any action which is intended to bring about gain of any commercial, contractual or other advantage for the University in a way which is unethical, or which is intended to bring about gain, financial or otherwise, to an individual operating for or on behalf of the University or anyone connected with that individual, in a way which is unethical.

The University shall rigorously investigate instances of alleged bribery and shall assist the police and other relevant authorities in any resulting prosecution.

The University **prohibits**:

1. the **offering or giving** of any direct or channelled bribe, whether this be a financial or other inducement by any individual employee, agent or other person or body acting on behalf of the University,
2. the **solicitation or acceptance** of any direct or channelled bribe, whether this be a financial or other inducement received or receivable by any individual employee, agent or other person or body acting on behalf of the University, from any individual or company, whether they are situated in the UK or overseas, whether the individual is operating in an official capacity (e.g. a public official or employee of an organisation), or in an individual capacity.
3. the **offering or giving** of any direct or channelled bribe to a foreign public official, whether this be a financial or other inducement by any individual employee, agent or other person or body acting on behalf of the University. A foreign public official includes officials, elected or appointed who hold a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside of the UK.

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The University is committed, within the scope of its bribery prevention objectives, to act with the aim of reducing, as far as possible, the risk that an individual or body associated with the University engages in bribery. Under the terms of the Bribery Act, a commercial organisation may be acting illegally if it fails to prevent bribery by a person associated with it who intends to obtain or retain business or an advantage in the conduct of business for that organisation. This part of the legislation applies to the following commercial activities of the University:

- consultancy (both academic and professional service);
- contract research;
- wholly-owned subsidiary companies of the University;
- joint ventures, partnerships, strategic alliances and technology licences;
- arrangements for collaborative, joint, dual degrees and articulations;
- commercial leases and construction contracts;
- relationships with recruitment agents; and
- procurement

For the purposes of the Act, the “associated” person includes individuals or an incorporated or unincorporated body. This includes employees of the University, agents, intermediaries, subsidiaries, contractors, suppliers and other party in a joint venture where that party is performing services for the University and the bribe is paid with the intention of benefiting the University.

4. SPECIFIC POLICY OBJECTIVES

The following policy objectives apply to each member of staff and all other individuals who are operating for and on behalf of the University.

4.1 Gifts and hospitality

This section should be read in conjunction with the Financial Regulations and the Ethical Business: Gifts and Hospitality Policy.

The University **will only** give and accept gifts or hospitality for business purposes. Permissible hospitality and gifts will include, for example, ceremonial or promotional gifts, mementos or relatively low value gifts which are proportionate to circumstances and not of a scale or frequency that these might reasonably be judged inducements to undertake business or to influence business decisions.

The University recognises that what is considered customary and appropriate may vary significantly from country to country and from one area of University business activity to another. The recipient must always be entitled to receive the gift or hospitality under the law of the recipient’s country. Members of staff should refer to the guidance for accepting gifts and hospitality contained within the **Ethical Business: Gifts and Hospitality Policy**.

All members of staff who accept or offer hospitality or a gift in the course of their duties are required to provide a written record of such exchanges in the approved form. A record of hospitality and gifts will be maintained by the relevant Heads of School or Professional Service which will be reported annually to the Secretary of the University.

4.2 Expenses

The University **will only** pay expenses to cover costs of legitimate business activities, in accordance with the University **Travel and Expenses Policy**. For the purposes of this policy, legitimate business activities extend to include routine business courtesies which accord with the recognised, reasonable and proportionate norms established within the University. Where a member of staff, or other individual acting for on behalf of the University, is in doubt they must seek the advice and approval of the relevant Head of School or Professional Service.

4.3 Political and charitable donations

The University **forbids** the giving of any political or charitable contribution or donation on its behalf, either financial or in kind. This policy does not apply to charitable funds set up by the University in the course of its development and alumni relations activities.

The University aims to ensure that the reputations of all parties, i.e. donors and all parts of the University are wholly protected from any real or perceived impropriety in the relationship that is established through the offer and receipt of a charitable gift. Charitable donations and gifts include but are not limited to cash or cheques, property, shares or bonds, tangible personal property (gifts in kind), legacy gifts, corporate sponsorship and charitable foundation gifts. This part of the Policy should be read alongside the **Ethical Business: Charitable Gift Acceptance Policy**.

4.4 Facilitation payments

The University **forbids** the offering or giving of any facilitation payment, recognising that such payments are illegal under the terms of the Bribery Act. A facilitation payment is defined as an unofficial payment made to a public official in order to secure or expedite an action (See payments to foreign public officials below).

This policy is not intended to prohibit the use of any recognised fast-track process which is available to all on payment of a fee, or to prohibit a reasonable and proportionate offer of resources to assist efficient decision making, provided that these resources are supplied for that purpose only.

Where a member of staff, or other individual acting for on behalf of the University, is in doubt they must seek the advice of the relevant Head of School or Professional Service. The Secretary of the University must be consulted where uncertainty remains.

4.5 Payments to foreign public officials

The University **forbids** any member of staff, or person acting for and on behalf of the University, to make any kind of direct or channelled payment, including a bribe or other inducement to a foreign public official, or at the official's request or assent, to another individual, in order to influence or reward any action by that public official. Prohibited payments include any facilitation payment or payment made to expedite action with the purpose of securing proper performance of the official's duties.

Where a member of staff, or other individual acting for on behalf of the University, is in doubt they must seek the advice of the relevant Head of School or Professional Service. The Secretary of the University must be consulted where uncertainty remains.

4.6 Finance, procurement and contracting

The University **will ensure** that our commitment to the prevention of bribery is reflected in appropriate and effective policies, policy procedures and Financial Regulations in relation to our sales, procurement and financial/accounting and contracting practices.

4.7 Disclosure of known or suspected unethical business practice

Employees of the University are required to report to the Secretary of the University any knowledge or suspicions they have of unethical business practice. The University is committed to ensure that employees in this position know that their disclosure will be treated appropriately, in confidence and that they will be supported, provided that they are acting in good faith.

The University's Policy on **Public Interest Disclosure** will make appropriate explicit provision for any individual with a concern to make a disclosure about an instance of actual or suspected bribery.

5. SCOPE OF THIS POLICY

This policy applies to all of the University's activities at all campuses and conducted anywhere in the world and all employees*. (*for the purposes of this policy, this includes individuals who have been hired or commissioned by the University through a third party agent, or in a freelance capacity, and volunteers.) This Policy also applies to all members of the University's governing body (the Court) and those serving on its committees.

Heads of Schools and Professional Services are responsible for ensuring that newly appointed employees are briefed appropriately and provided with access to the Ethical Business: Bribery Prevention Policy as part of the induction process.

The prevention, detection and reporting of bribery or any other form of corruption is the responsibility of all employees of the University. **All staff must** :

- ensure that they read, understand and comply with the University's Ethical Business: Bribery Prevention Policy; and
- raise concerns as quickly as possible if they believe or suspect that this policy has been breached or may be breached in the future.

In addition to the possibility of criminal and civil prosecution, employees in breach of this policy will face disciplinary action by the University which could extend to dismissal for gross misconduct. Disciplinary action will also apply to any employee who has been found to retaliate against or threaten another member of staff who has refused to act in a way that would put that member of staff in breach of this policy or who has raised concerns in relation to this policy.

It is the aim of the University to promote the adoption of policies, consistent with the principles set out in its own Ethical Business: Bribery Prevention Policy, by our partners, joint venture bodies and suppliers.

6. LINES OF RESPONSIBILITY

The Secretary of the University has overall responsibility for the Ethical Business: Bribery Prevention Policy and its implementation in compliance with the Bribery Act 2010. Other senior officers with particular responsibilities include:

- Director of Finance, in relation to Financial Regulations and associated processes
- Director of Governance & Legal Services, in relation to compliance
- Assistant Principal, International Development in relation to the University's International Strategy and associated processes
- Director of HR, in relation to employee awareness, training and discipline
- Chief Procurement Officer, in relation to procurement regulations and associated processes
- Deputy Principal, Enterprise and Business, in relation to business associations / partnerships
- Director of Research & Enterprise Services, in relation to research, technology transfer and enterprise related activities
- Director of Recruitment, in relation to student recruitment related activities
- Academic Registrar, in relation to student admissions
- Assistant Principal, Development, in relation to alumni relations, donations and institutional development
- Heads of Schools, in relation to their respective academic partnerships (teaching and research based)

7. MONITORING AND EVALUATION

- 7.1 This policy will be reviewed every two years.
- 7.2 The procedures associated with this policy will be reviewed annually in the light of the outcomes of the University's risk assessments.
- 7.3 The University's record of hospitality and gifts, signed off, as required, by the relevant Heads of School/Professional Service, will be reviewed annually.
- 7.4 A report will be submitted to the University Court annually which provides monitoring and review evidence of the effectiveness of the Ethical Business: Bribery Prevention Policy in meeting bribery prevention aims and objectives.

8. IMPLEMENTATION

The Secretary of the University is responsible for ensuring the effective implementation of this policy and the associated policy procedures, delegating authority as appropriate to the senior managers set out in 6 above.

The University **will ensure** that implementation of this policy is supported by effective procedures guidance and appropriate generic and role-based communications, training and awareness-raising measures, applicable to all individuals and bodies referred to in 5 above.

9. RELATED POLICIES, PROCEDURES AND FURTHER REFERENCE

Ethical Business: Bribery Prevention Procedures
Conflict of Interest Policy (staff)
Ethical Business: Conflict of Interest Policy (Court and Court Committee members)
Public Interest Disclosure Policy
Travel and Expenses Policy
Financial Regulations
Fraud Prevention and Response Plan
Ethical Business: Gifts and Hospitality Policy
Ethical Business: Charitable Gifts Acceptance Policy

10. POLICY VERSION AND HISTORY

Version No	Date of Approval	Approving Authority	Brief Description of Amendment
V4.4	July 2011	PME	
V5	November 2013	Court and the UE	Minor amendments to approving authority (UE replaces PME). Strengthened statement re penalties associated with violation of the Act.
V6	March 2017	Court	Minor updates. The Policy is now explicit in its scope extending to members of the Court and Court Committees.

POLICY

THE SEVEN PRINCIPLES OF PUBLIC LIFE

SELFELESSNESS

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

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