

## **St. Stephen's House Oxford**

### **Bribery and Fraud Policy**

On 1 July 2011 the Bribery Act 2010 came into force. Under the Act, organisations are expected to assess the bribery risks to which they are exposed and to put in place clear procedures to mitigate those risks which are proportionate to the nature, scale and complexity of their operations, and known and understood throughout the organisation. A bribery policy is the starting point for these procedures. The Finance and General Purposes Committee is asked to consider and, if thought appropriate, recommend adoption of the attached draft policy, which covers both bribery and fraud and is derived from the policy adopted by the University.

The policy covers the following areas:

- the College's approach to bribery and fraud;
- how the policy is to be implemented and the specific role of the Principal;
- the standards expected of College Trustee or employees and associated persons;  
and
- the procedure for reporting cases of suspected bribery or fraud and how those cases will be investigated and recorded.

### **The Act in brief**

Bribery has been an offence in England since at least 1215, when Magna Carta declared "*we will sell to no man... either justice or right*". However, the existing law lacks coherence, being set out in a number of different pieces of legislation and in case law. The Act replaces the current regime in full, consolidating and clarifying the law. In addition, the scope of the existing law is widened, with (amongst other things) the introduction of new expectations as to the safeguards the College ought to have in place to prevent bribery; and the responses that should occur on suspicion of an offence under the Act.

The Act establishes four offences relating to the giving and receipt of bribes:

- bribing another person (*Active Bribery*);
- being bribed by another person (*Passive Bribery*);

- bribery of foreign public officials (the *Foreign Official Offence*); and
- failure of a "relevant commercial organisation" to prevent bribery by its associates (the *Corporate Offence*).

### **The statutory guidance**

It is a defence to the fourth type of bribery listed above – the Corporate Offence – to prove that the organisation had adequate procedures in place to try to prevent associated persons from bribing. The Act requires the Government to provide guidance as to what such procedures might be. Recognising that the threat of bribery differs between organisations, the guidance makes clear that organisations should take a risk-based approach to their procedures to focus the effort where it is needed and will have most impact. The guidance also states that the procedures should be proportionate to the risks faced by an organisation; and it does not purport to be prescriptive, each case to be assessed on its merits.

The guidance sets out six principles to inform organisations of the types of procedures that might be put in place to prevent the Corporate Offence. The list below sets out the six principles, with a brief description of how it is intended that the College addresses each issue:

- *proportionate procedures*:  
the procedures should be proportionate to the risks faced by the College and be clear, practical, accessible, effectively implemented and enforced. The draft policy is designed to meet these criteria, as is the mechanism for reporting and investigating suspected bribery. Consideration will be given as to whether bespoke procedures are required to cover specific activities within the College;
- *top level commitment*:  
commitment on the part of the highest level of management (in this case, the Governing Body) to establishing a culture in which bribery is unacceptable. To this end, the policy attaches Standards, at schedule 3, which indicate clearly the College's position on bribery and fraud;
- *risk assessment*:  
a periodic assessment of the internal and external risks of bribery by the College's associates should be undertaken. As part of the annual risk assessment exercise College committees will be asked to think about the risks in relation to the activities, which they oversee, and to report on those risks as appropriate. Further, specific sections of the College, which might be deemed to be at higher risk, will be asked to undertake targeted risk assessments. These

sections include the Development Office, the College Office, and purchasing departments.

- *due diligence*: proportionate due diligence should be undertaken into all persons who will perform services on behalf of the College, taking a risk-based approach. Those sections of the College involved in this type of activity will be asked to consider the nature and extent of due diligence carried out on any persons performing services on behalf of the College;
- *communication (and training)*: clear and accessible policies and procedures should be embedded and understood throughout the College.
- *reporting and monitoring*: the College should monitor and review its anti-bribery procedures and compliance with those procedures on a regular basis and make improvements where necessary.

## **Bribery and Fraud Policy**

### **A. Introduction**

- The College is committed to conducting its business fairly, honestly and openly; to the highest standards of integrity; and in accordance with relevant legislation. The College has no tolerance of **bribery** and **fraud**, and believes that action against bribery and fraud is in the broader interests of society. As a charity deriving a significant proportion of its income from public funds, benefactions and charitable organisations, the College is concerned to protect its operations and reputation and its funders, donors, staff and students from the detriment associated with bribery and other corrupt activity. It is therefore committed to preventing bribery and fraud by its Trustees, employees, junior members (together referred to hereinafter as “Members of the College”) and any third party acting for or on behalf of the College.
- This Policy has been adopted by the Governing Body and applies to all Members of the College.

### **B Definitions**

- Words or phrases that initially appear in bold are defined in Schedule 1, which forms part of this Policy. Bribery and fraud are complex legal concepts and the definitions provide more detail about what they mean. For the purposes of this Policy, bribery and fraud have been treated as separate offences, but it should be recognised that there are circumstances in which they overlap.

### **C. The College's Approach to Bribery and Fraud**

- The College will take appropriate action to prevent bribery and all forms of fraud in the College.
- No Member of the College or **associated person** shall seek a financial or other advantage for the College through bribery. No Member of the College or associated person shall offer, promise, give, request, agree to receive or accept a bribe for any purpose.
- The payment or acceptance of **facilitation payments** or any other "kickback" by Members of the College or associated persons is unacceptable. The only exceptions are where the Member of the College or associated person is in a vulnerable position arising from the circumstances in which the payment

was demanded (for example where he or she is in personal danger) or the relevant territory specifically permits such payments in its local written law. In such exceptional cases, the payment should be reported in advance, or if that is not possible, as soon as reasonably practicable afterwards, in accordance with the procedure set out in schedule 2.

- The College has no tolerance of fraud within its operations. Members of the College and associated persons must not engage in any form of fraud with regard to activity carried out on behalf of the College.
- A Member of the College who suspects that bribery or fraud has occurred is required to report such instances internally, through the channels described in schedule 2. The College will appropriately investigate, record, and report all suspected instances of bribery and fraud in accordance with the procedures set out in schedule 2.
- Bribery or fraud by a College employee will be treated as a serious disciplinary offence resulting, potentially, in dismissal and legal action. Bribery or fraud by a College Trustee will be dealt with by the Chairman of the House Council. Bribery or fraud by a junior member of the College shall be dealt with in the first instance by the Principal in accordance with College Regulations.
- Excessive or lavish gifts or hospitality in relation to business transactions or arrangements with donors might constitute bribery. No Member of the College or associated person shall give or receive gifts or hospitality otherwise than in accordance with College rules. Gifts and hospitality must not exceed normal business courtesy; all gifts or hospitality given by the College shall be for the purpose of better presenting the College or establishing cordial relations with business partners and supporters and will be for proper charitable and/or business purposes, reasonable, appropriate and in accordance with the College rules and any other policy approved by Governing Body or made under its delegated authority.
- The College does not make political donations, and only makes and receives charitable donations in accordance with College rules. Any charitable donations received by the College must be requested and received for exclusively charitable purposes and shall not **improperly** influence any decisions made by or on behalf of the College.
- This Policy should be read together with any other relevant policies and procedures approved by Governing Body or made under its delegated

authority.

- The College takes measures to prevent bribery and fraud by agents or other third parties performing services for or on behalf of the College; and will take appropriate action should it discover that they are engaging in bribery and fraud on behalf of the College.

#### *D. Implementation*

- Responsibility for implementation of this policy lies with the Principal.
- The commitment by the College to preventing bribery and fraud shall be clearly and regularly communicated to Members of the College and associated persons by the Principal or others nominated by the Principal. For this purpose Governing Body has approved the **Standards** expected of Members of the College and associated persons. These are set out in schedule 3.
- The nature and extent of the risks relating to bribery and fraud to which the College is exposed shall be regularly and appropriately assessed and appropriate procedures to prevent bribery and fraud, including proportionate preventative and detective internal controls, and effective reporting procedures shall be implemented to reflect the outcomes of the risk assessments.
- Where risk assessments indicate a significant risk that bribery and/or fraud might occur in relation to a particular transaction, third party or territory, appropriate due diligence shall be conducted prior to proceeding with the relevant transaction.
- This Policy shall be available to every Member of the College and the College shall arrange specific instruction for those deemed likely to need it.
- The College's procedures to prevent bribery and fraud shall be monitored and reviewed and, where appropriate, amended to reflect legal requirements and in the light of any instances of bribery and fraud.

#### *E. Responsibilities of the Principal*

- The Principal shall have the following responsibilities:

- to maintain a register of the incidents of bribery and fraud that are reported to him or her and to investigate further and to report such incidents in accordance with the procedures set out in schedule 2;
- to compile an annual report for Governing Body on the implementation of this Policy including the outcomes of any relevant risk assessments and due diligence and any incidents of reported bribery and fraud, thereby contributing to the monitoring and review of this Policy; and to recommend any changes to this Policy which may, from time to time, become appropriate;
- to ensure that any standard College documents and procedures (including procurement terms and procedures, fundraising documentation, and terms and conditions of employment) reflect the requirements of this Policy;
- to coordinate the College's response to any investigation or charge under anti-bribery or fraud legislation;
- to ensure that procedures are in place to communicate the Standards to all Members of the College and any relevant associated persons and to deliver appropriate training to them;
- to oversee the compilation of specific bribery and fraud risk assessments and the conduct of appropriate due diligence into significant transactions with a view to assessing bribery and fraud risks and taking appropriate action to mitigate them; and
- to monitor the effectiveness and review the implementation of this Policy, regularly considering its suitability, adequacy and effectiveness.
- The Principal may delegate these responsibilities to named individuals as he or she sees fit.

## *Schedule 1*            *Definitions*

### **Associated person**

a person, company or other legal entity that performs services for or on behalf of the College and which may include for example agents, subsidiaries and sub-contractors of the College, recipients of grants from the College, partners in joint ventures or collaborative working arrangements of any kind and suppliers of fundraising, professional or other services to the College.

### **Bribery**

(a) offering, promising, giving, requesting, or accepting a financial or other advantage in circumstances occurring inside or outside the UK which are intended to induce or reward performance of a function or activity that :

- is of a public nature, performed in the course of a person's employment, connected with a business or trade, or performed on behalf of a body of people; and
  
- a reasonable person in the UK would expect to be performed in good faith, impartially or in accordance with a position of trust;

(b) offering, promising or giving a financial or other advantage to a public official outside the UK (or somebody else nominated by that official) intending to influence the official in the performance of their official functions in order to obtain or retain business or a business advantage.

### **Facilitation payments**

Payments intended to secure or expedite routine or necessary Government action by a public official. A facilitation payment includes a payment to a public official to do their job properly as well as payment to do their job improperly.

### **Fraud**

An act or omission, made with the intent of making a financial gain, or causing a financial loss, or exposing another to the risk of a financial loss, in which a person:

- dishonestly makes a false representation; or

- dishonestly fails to disclose information which he or she is under a legal duty to disclose; or
- occupies a position in which he or she is expected to safeguard, or not act against, the interests of another person and;
- dishonestly abuses that position; and
- intends, by means of that abuse of that position to make a gain for himself or herself or another, or
- to cause loss to another or to expose another to the risk of loss.

### **Improper**

(a) Failure to perform a function or activity in good faith, impartially or in accordance with a position of trust; or

(b) Not performing the function at all.

In deciding whether a function or activity has been performed improperly outside the UK, any local custom or practice must be disregarded unless it is permitted or required by the written law of the country in which it is performed.

### ***Schedule 2: Investigation, Recording and Reporting of Bribery and Fraud***

- Members of the College who reasonably suspect bribery or fraud in the College should report their concerns as soon as possible to the Principal, the Bursar or the Vice-Principal, providing a brief description of the alleged irregularity, the loss or potential loss involved, and any evidence supporting the allegations or irregularity or identifying the individual or individuals responsible.
- Where concerns are to be taken forward under this policy, they will be considered by the Principal, Bursar, Vice-Principal and Senior Tutor meeting together (the 'Review Group').
- In cases which involve or may involve junior members, the allegations will in the first instance be investigated by the Principal. If he or she finds that there is a serious case to answer it will be dealt with by the Review Group,

afforded for the purpose by the Principal. In such cases the Proctors will be informed by the Senior Tutor at the outset of the Review Group's investigation and will also be informed of the outcome.

- Bribery and fraud may include behaviour which would also be an offence under the provisions of the Proceeds of Crime Act 2002, or the Terrorism Act 2006 and related anti-terror legislation. If at any point there is a suspicion that the conduct complained of includes unlawful conduct of this nature, the Review Group will take immediate steps to secure appropriate professional advice as to the steps required to fulfill the College's obligations under the relevant legislation before proceeding further.
- The Review Group will decide on such further steps as are necessary as soon as is reasonably practicable.
- In any case where immediate action is required, the Principal or Bursar may take the necessary steps and in that case will report to the Review Group on the actions taken and the reasons for them as soon as possible thereafter.
- In any case where an individual with responsibility under this policy is the subject of an investigation under the policy, the Principal, or if he or she is the subject of complaint, a member of the Review Group unconnected with the matter in question, will appoint an alternate or alternates to fulfil the role or roles specified under the policy.
- Investigations will normally be carried out by the Bursar or the Vice-Principal, taking account of appropriate professional practice, and any relevant guidance issued from time to time by HEFCE, the Charity Commission or any other relevant regulatory body.
- The investigator will keep the Review Group informed as to the progress of the investigation and will complete the investigation in as timely a manner as is reasonably possible.
- Any individual who is suspected of bribery or fraud may be suspended immediately (without deduction of pay) pending a full investigation. In some cases it may also be necessary to suspend other staff in order to conduct a proper investigation. The suspension of a member of staff does not constitute a finding of misconduct against him or her. Any staff suspended as a result of suspected bribery or fraud will be informed of the reason for the suspension.
- Individuals suspended for being suspected of bribery or fraud, and individuals

suspended to enable a proper investigation to be carried out, will normally be required to leave College premises immediately and/or will be denied access to the College's IT facilities. During the period of any suspension they will not be permitted to return to the premises, to make contact with staff or witnesses, or to act on behalf of the College, unless given express permission to do so by the relevant College authorities. Any infringement of this requirement may be treated as a disciplinary offence.

- All persons concerned with the investigation must treat the information in strict confidence. An unwarranted breach of confidence may be the subject of disciplinary action.
- In all cases where the police are involved, the College reserves the right, where it would be reasonable to do so, to proceed with its own disciplinary procedures or with civil proceedings.
- The Review Group will notify the House Council that a matter has been reported under this policy and will provide such further and confidential interim reports as to the progress of the investigation as are deemed necessary. Such reports may be oral or written as appropriate. If the matter is deemed sufficiently serious the Review Group will also notify the University and, if appropriate, the Charity Commission.
- The Secretary to the House Council shall, on the Principal's behalf, maintain a register of all cases of bribery or fraud which are reported within the College including those where there was found to be no case to answer. The register will be maintained and will be available for inspection, subject to the requirements of Data Protection and Freedom of Information legislation.
- The complainant will be informed in broad terms of the outcome of the investigation, having due regard to the confidentiality of information relating to the individual or individuals accused and others identified in the report.
- All requests for references for members of staff known to have been disciplined or dismissed for bribery or fraud must be referred to the Principal for advice on how to respond in accordance with employment law. In no circumstances must any person provide a reference for a member of staff whom they know to have been dismissed for bribery or fraud, without first consulting the Principal.

- References for Student Members who have been the subject of disciplinary sanction under this policy must be referred to the Principal.

### *Schedule 3 . College Standards*

- The College is committed to carrying out its activities to the highest standards of integrity and in accordance with relevant legislation.
- The College has no tolerance of bribery and fraud, and believes that action against bribery and fraud is in the broader interest of society.
- The College will not offer, promise, give, request, agree to receive or accept bribes for any purpose, and will take appropriate action to prevent bribery in the College. The College will not make unlawful facilitation payments.
- The College will expect third parties acting on behalf of the College not to commit bribery or fraud; the College will take measures to prevent third parties from taking part in bribery or fraud on its behalf: and the College will take appropriate action should it discover that third parties are involved in bribery or fraud on its behalf.
- Any hospitality or gifts the College offers or receives relating in any way to its activities will always be for proper purposes, reasonable, appropriate and in accordance with properly approved policies.
- The College will not make political donations; any charitable donations it makes will comply with properly approved policies; and any charitable donations received by the College must be requested and received for exclusively charitable purposes and shall not improperly influence any decisions made by or on behalf of the College.
- The College will require those Trustees or employees who suspect bribery and fraud to report such instances internally, and will provide channels for them to do this.
- The College will appropriately investigate all suspected instances of bribery and fraud.
- Where bribery and fraud are shown to have occurred, the College will take firm action, including, potentially, dismissal and legal action.

- The College will seek to understand the risk of bribery and fraud in various contexts; implement policies and procedures to support these standards in view of its understanding of this risk; advise, inform and/or train its people appropriately concerning relevant standards, policies and procedures.
- The Governing Body has instructed the Principal to oversee the implementation of these Standards and supporting policies, provide advice as necessary, and monitor and report upon breaches of policy, and the general application of policy.

April 2012