



## Anti-Bribery Policy

### Introduction

In 1998 the UK ratified the OECD Anti-Bribery Convention criminalising the bribery of foreign public officials but relied on a patchwork of existing legislation, specific amendment to this legislation and the common law for the Convention to be applied.

The UK Bribery Act 2010 came into force in June 2011 and overhauled all the existing legislation and introduced four new bribery offences:

- Making a bribe – the promise of giving of an advantage with the intention of inducing or rewarding the improper performance of a relevant function or activity. It is sufficient for the offeror of the bribe to intend to influence improper action for an offence to arise; the bribe does not need to be accepted.
- Accepting a bribe – the receipt or acceptance of an advantage for the improper performance of a relevant function or activity.
- Bribery of a foreign public official where the intention is to influence an individual in their official capacity in order to win or retain business.
- Failing to prevent bribery – a strict liability corporate offence where an organisation fails to prevent bribery by those performing on its behalf. This will not only relate to the employees of the organisation but agents, partners or consultants acting on its behalf.

For the avoidance of doubt charities and non-governmental organisations are firmly within the scope of the Act.

It is increasingly a requirement of funding and governmental organisations, such as FCDO and others, that their civil society partners have an anti-bribery policy in place, and appropriate risk management occurs to ensure the law is not broken.

### **Extraterritoriality**

It is very important to understand that section 12 of the Bribery Act 2010 introduces extraterritoriality over a crime of foreign bribery. This means that:

- If a person's act or omissions outside of the UK would be considered part of a foreign bribery offence if it had taken place within the UK, and
- The person at the time of the act or omission had a close connection to the UK.
- The act or omission will fall within the scope of UK bribery law.

The Anti-Tribalism Movement Board fully endorse this anti-bribery policy and are committed to ensuring that the business of Anti-Tribalism Movement is conducted without bribery.

The Board will not tolerate active, passive or any other forms of bribery by any member of staff, volunteer or board member or any person representing Anti-Tribalism Movement either as a consultant, partner, agent or similar when carrying out activities for and on behalf of Anti-Tribalism Movement.

## What is Bribery?

Bribery is usually associated with cash payments. Facilitation payments (small payments to public officials designed to ensure the prompt performance of duties) remain illegal. It is believed, although there is no case law to support this as yet, that the UK prosecution policy will focus on proportionality so that a commonsense view is taken.

However, bribes also comprise non-monetary gifts, hospitality and other favours where the amount involved is disproportionate to the circumstances and where the level seems, or is, unreasonable. This can be subjective, and you must seek advice from either the Director, or the Chair of the Board as to whether what is being offered is reasonable.

Anti-Tribalism Movement can be liable if a person or organisation associated with it pays a bribe even if Anti-Tribalism Movement knows nothing about the bribe. This could have implications for Anti-Tribalism Movement' funding relationships with partner organisations and it will be important to stress Anti-Tribalism Movement' zero tolerance on the payment or receipt of any form of bribe.

The Conflict of Interest and Reporting of Gifts policy clearly states that all cash or cash equivalent gifts are to be refused or politely turned aside, but in all circumstances reported. It also requires that individual or collective gifts over the value of GBP50 or local currency equivalent are, where possible, to be handed over to Anti-Tribalism Movement and again in all circumstances must be reported. Customary courtesy gifts of small value may be accepted.

The negative reputational impact for Anti-Tribalism Movement being linked in any way to either a bribery prosecution or investigation could be enormous, deterring donors, jeopardising influence with policy makers and maybe even being disbarred from participating in future public contracts.

If Anti-Tribalism Movement becomes aware, in its honest held belief, that any one associated with it might have been soliciting or offering bribes it will, under the lead of the Director, carry out an immediate investigation of the circumstances the purpose of which will be to:

- Seek to confirm whether or not a bribe has taken place.
- To identify who was responsible.
- Confirm whether the internal controls and procedures have worked in practice.
- Identify any improvements.
- Determine whether the matter should be referred to the appropriate authorities for possible further investigation leading to legal action.

Whatever the outcome of these investigations Anti-Tribalism Movement reserves the right to initiate disciplinary action that may result in dismissal or terminate any contract that may be in place with a third party.

For anyone charged under the Bribery Act 2010 the legal penalties are:

- Prison sentences up to 10 years imposed on any individual if found guilty.
- Individual senior managers or board members may be prosecuted if a corporate body has committed an offence and those senior managers or board members knew bribery was happening and did nothing to stop it.

For an organisation charged under the Bribery act 2010 of failing to prevent bribery the legal penalty is:

- An unlimited fine.

Bribery is illegal in many countries not just the UK. The US also claims extraterritoriality for bribery offences wherever committed. The penalties for being found guilty of bribery also vary and do extend up to and include the death penalty in certain countries.

#### Key Risk Areas for Anti-Tribalism Movement

Below is a non-comprehensive list of bribery risk areas of which we all need to be aware:

#### **Geographical**

Certain countries and regions within countries have a higher risk tendency than others. The 2011 Corruptions Perception Index published by Transparency International is at <http://cpi.transparency.org/cpi2011/> and is updated annually. You are encouraged to consult this information source as well as using the local UK Embassy or High Commission to gather information.

## **Cultural**

In certain cultures and work environments, bribes may be seen as “business as usual” but they should be politely resisted.

## **Partners and Consultants**

Anti-Tribalism Movement works through many partners and consultants. Factors that may influence Anti-Tribalism Movement’ view of the bribery risk include, but are not limited to:

- Size / structure / governance.
- Adequacy of control systems.
- Selection process.
- Supporting contracts and agreements.
- Monitoring and support processes.
- Political involvement or political connections.
- Location.

## **Procurement**

A potential high-risk area where processes may not be fair or transparent. This is particularly true where funds are being distributed by Anti-Tribalism Movement to partner organisations. Funders are increasingly seeking reassurance that Procurement policies are in place delivering value for money both for Anti-Tribalism Movement and the funder.

## **Transactions**

Transactions that are high-risk areas are payments to government officials, payments on major contracts, and payments to third parties or beneficiaries in a different country to both the source of the goods or services, and the recipient of those goods or services.

As stated above in the “[What is Bribery?](#)” section, facilitation payments have always been illegal and remain illegal.

## **Recruitment**

Bribes can be offered or sought as part of a recruitment process. This may be for the recruiting of staff on a contract or permanent basis or where a consultant is being recruited or retained or a relationship with a

partner is being initiated, extended or reviewed.

## **New activities**

Increased risk to Anti-Tribalism Movement will arise if it seeks to start a new project in a new country or seeks to expand existing activities into a new country. It may apply if Anti-Tribalism Movement expands activities within an existing programmatic or thematic area.

## **Geographical**

It is a requirement of each Programme Team to periodically, but no less frequently than annually, undertake a security review for each of their programmes and the countries and areas in which they operate. It is a requirement of this policy that as part of the security review the following is covered:

- There is specific consideration given to bribery and corruption in the respective spheres of operation.
- If bribery and corruption are present the issues posed for Anti-Tribalism Movement and its work, whether that work is Anti-Tribalism Movement lead or partner lead.
- How Anti-Tribalism Movement should, or continue to, protect itself its people and the partners through which it works from being exposed to corruption or bribery.

Each security review will be considered by the leadership team and if necessary, the board.

## **Partners and Consultants**

Anti-Tribalism Movement should regularly communicate with its partners and consultants its zero tolerance position on bribery. All partnership and consultancy agreements will include a clear statement on Anti-Tribalism Movement's position in this regard and Anti-Tribalism Movement's expectations of the partner or consultant.

A review of the partners anti bribery policies and procedures is now a part of the Financial Assessment Checklist completed as part of taking on a new partner or as part of the periodic review of existing partners. Dissatisfaction with a partner's anti-bribery policy and procedures may give rise to consideration of the future of the relationship, if the partner is unable to or unwilling to improve its capabilities.

## **Conflicts of Interests and Gifts**

Anti-Tribalism Movement has a policy on the handling of Conflicts of Interest and Reporting of Gifts providing clear guidance on how conflicts should be handled, reported and recorded and also provides clear guidance on the handling, reporting and recording of gifts. The policy clearly states that cash or cash equivalent gifts are not to be accepted under any circumstances.

The Register of Interests and Gifts is kept in paper copy by the Director and electronically stored on the Shared Drive.

## **Public Interest Disclosure**

Anti-Tribalism Movement has a policy on Public Interest Disclosure providing a clear structure for reporting concerns to the organisational “designated person”. If you honestly believe that a bribe might have been paid or requested of Anti-Tribalism Movement and that the incident might not have been reported to Anti-Tribalism Movement’s board, you should use the reporting structure within this policy to report your concerns. The policy also provides information on making a disclosure to a “prescribed person” as defined by the Public Interest Disclosure Act 1998 if you feel unable or are unwilling to report your concerns to Anti-Tribalism Movement’s “designated person”.

## **Financial Controls**

Anti-Tribalism Movement has tiered levels of financial controls and sign off which scrutinises all financial transactions. But it remains the responsibility of each person working for and associated with Anti-Tribalism Movement to reject demands for or offers of bribes. Anti-Tribalism Movement’s anti-bribery policy should be made clear at all times.

Under no circumstances should a financial or non-financial bribe be offered by anyone associated with, or connected too, Anti-Tribalism Movement.

## **Recording of Bribes or Facilitation Payments**

All instances must be reported to the Director, using the form at [appendix 3](#), where anyone believes they have been offered a bribe or been asked to pay a bribe. If Anti-Tribalism Movement becomes aware that there has been a failure to report any offer of a bribe or request to pay a bribe, disciplinary action may be taken which could result in dismissal. In addition, it may also leave you exposed to future criminal action by the UK authorities if it emerges that you were aware of a potential bribe being offered or requested and no internal incident report was made.

## **Training**

Transparency International is the world's leading non-governmental anti-corruption organisation with 90 chapters world-wide. The UK chapter has produced training material that is freely available for all organisations and their staff. It is required that you study this material which can be found at <http://www.doingbusinesswithoutbribery.com/>.

You must make the time to study this training material to help develop your understanding of the issues of bribery and corruption as it provides practical pointers as to how difficult situations may be handled and what evidence you should gather and record



## Appendix 1

### Potential Indicators of Corruption

- Abnormal cash payments.
- Pressure exerted for payments to be made urgently or ahead of schedule.
- Payments being made through a 3<sup>rd</sup> party country (e.g. goods or services supplied to country “A” but payment is being made, usually to a company in country “B”)
- Abnormally high commission percentage being paid to a particular agency. This may be split between two accounts in two countries for the same agent.
- Private meetings with public contractors or companies hoping to tender for contracts.
- Lavish gifts being received.
- Individual never takes time off even if ill, or holidays, or insists on dealing with specific contractors him/herself.
- Making unexpected or illogical decisions accepting projects or contracts.
- Unusually smooth process of cases where individual does not have the expected level of knowledge or expertise.
- Abusing decision making process or delegated powers in specific cases.
- Agreeing contracts not favourable to the organisation either with terms or time period.
- Unexplained preference for certain contractors during tendering period.
- Avoidance of independent checks on tendering or contracting processes.
- Raising barriers around specific roles or departments which are key in the tendering / contracting process.
- Bypassing normal tendering / contracting process.
- Invoices being agreed in excess of contract without reasonable cause.
- Missing documents or records regarding meetings or decisions.
- Company procedures or guidelines not being followed.
- The payment of, or making funds available for, high value expenses or school fees etc on behalf of others.

Source: Serious Fraud Office - <http://www.sfo.gov.uk/bribery--corruption/corruption-indicators.aspx>

## Appendix 2

Definitions

### **Corruption**

The abuse of entrusted power for private gain.

### **Extortion**

The unlawful use of one's position or office to obtain money through coercion or threats. One example would be when customs officials request undue "customs duties" from importers as a condition to clear their goods.

### **Facilitation payments**

These are bribes and are usually small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

### **Foreign Public Official**

Foreign public official means anyone employed by the state – this can include, but is not limited too:

- Civil servants
- Local government officials
- Government ministers
- Health official including medical staff
- Customs officials
- A judge
- A member of th legislature
- Employees of state-owned companies
- Solicitation- The act of a person asking, ordering or enticing someone else to commit bribery [or another crime].

Anti-Tribalism Movement – Anti-Bribery Reporting Form

PLEASE SEND TO THE DIRECTOR AS SOON AS POSSIBLE AFTER A “BRIBERY” EVENT HAS OCCURRED

Board Member / Member of Staff / Consultant / Volunteer  <i>[Please delete as appropriate]</i>	
Description of bribe requested or offered	
Value/Estimated value of bribe requested or offered	
Please provide a background to the request and give details as to why the request or offer was made.	
Date and location the request or offer was made:	
Person / organisation requesting or offering the bribe	
Was any one else present when the request or offer was made and if so who?	
If a request or offer was made did any of the others present, accept or appear to accept the request or offer. If so please provide full details of the name/s and their organisation/s.	
Outline the current or potential future relationship which you or Anti-Tribalism Movement has with the person or organisation offering or requesting the bribe	

<p><b>Board Member / Member of Staff / Consultant / Volunteer</b></p> <p><i>[Please delete as appropriate]</i></p>	
<p>Was the bribe accepted or paid?</p> <p>If so please provide full details as to why and include details of what has happened to the bribe to the best of your knowledge.</p> <p>If not please provide full details as to the immediate and longer term impact that refusal has, and might have, for yourself, your relationship with the person or organisation and the impact for Anti-Tribalism Movement and its work.</p> <p>This is very important information in the event Anti-Tribalism Movement has to report the incident to the relevant authorities and/or defend itself and the actions of its staff/volunteers/consultants/board members as there may be circumstances where bribes have to be paid particularly under duress.</p>	

Signed:

Dated:

Entered in Register:

Dated:

Reviewed by the Director:

Comments: