

Anti Bribery Policy

Policy Owner: The Mercian Trust
Finance & Resources Committee

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Increasing Opportunities
Improving Outcomes

1. INTRODUCTION

- 1.1 This document sets out the Mercian Trust's policy and advice to employees in dealing with bribery or suspected bribery. This policy details the arrangements made in the Trust for such concerns to be raised by employees or members of the public.
- 1.2 The Bribery Act 2010 introduces a new, clearer regime for tackling bribery that will apply to all businesses based or operating in the UK. It covers all sorts of bribery, the offering and 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 corporates and partnerships), and penalties for non-compliance are serious.
- 1.3 Bribery is a criminal offence for both individuals and commercial organisations and can be punished with imprisonment of up to 10 years or unlimited fines. If any employee was accused of bribery, the Trust's reputation might be damaged considerably, and subsequent enforcement action will be time-consuming and hinder the Trust from focusing on its core business and service delivery.
- 1.4 It therefore is the policy of the Trust to prohibit any form of bribery covered by the Bribery Act 2010. The policy applies to the Mercian Trust and all its employees, independent of their grade and position, and shall be respected at all times.
- 1.5 This document sets out the Trust's policy for dealing with detected or suspected bribery and corruption.

2. SCOPE

- 2.1 This policy relates to all forms of bribery and is intended to provide direction and help to employees who may identify suspected bribery. The overall aims of this policy are to:
 - improve the knowledge and understanding of everyone in the Trust, irrespective of their position, about the risk of bribery within the organisation and its unacceptability
 - assist in promoting a climate of openness and a culture and environment where staff feel able to raise concerns sensibly and responsibly
 - set out the Trust's responsibilities in terms of the deterrence, prevention, detection and investigation of bribery and corruption
 - ensure the appropriate sanctions are considered following an investigation, which may include any or all of the following:
 - criminal prosecution
 - civil proceedings
 - internal / external disciplinary action (including professional / regulatory bodies)
- 2.2 This policy applies to all employees of the Trust, regardless of position held, as well as consultants, vendors, contractors, and / or any other parties who have a business relationship with the Trust. It will be brought to

the attention of all employees and form part of the induction process for new staff. It is incumbent on all of the above to report any concerns they may have concerning bribery.

- 2.3 In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of the Trust's Equal Opportunities Policy. Special attention should be paid to ensuring the policy is understood where there may be barriers to understanding caused by the individual's circumstances, where the individual's literacy or use of English is weak, or where the individual has little experience of working life.

3. PUBLIC SERVICE VALUES

- 3.1 The three fundamental public service values are:

Accountability	Everything done by those who work in the Trust must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
Probity	Absolute honesty and integrity should be exercised in dealing with assets, employees, suppliers and customers.
Openness	The Trust's actions should be sufficiently public and transparent to promote confidence between the Trust, our employees and the public.

In addition, all those who work for or are in contract with the Trust should exercise the following when undertaking their duties:

Selflessness	...should take decisions 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	...should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties
Objectivity	... should, in carrying out public business, (including making public appointments, awarding contracts, or recommending individuals for rewards and benefits), make choices on merit
Accountability	...are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

Openness ...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 demands

Honesty ...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 ...should promote and support these principles by leadership and example

4. POLICY

- 4.1 All employees have a personal responsibility to protect the Trust from bribery or corruption.
- 4.2 The Trust is absolutely committed to maintaining an honest, open and well-intentioned atmosphere, so as to best fulfil its objectives. It is, therefore, also committed to the elimination of bribery, to the rigorous investigation of any such allegations and to taking appropriate action against wrong-doers, including possible criminal prosecution.
- 4.3 Off-the-book accounts and false or deceptive booking entries are strictly prohibited. All gifts, payments or any other contribution made under the Anti-Bribery Policy and these guidelines, whether in cash or in kind, shall be documented, regularly reviewed, and properly accounted for on the books of the Trust. Retention and distribution policy must be consistent with the Trust's accounting standards, tax and other applicable laws and regulations.
- 4.4 The Trust procures goods and services ethically and transparently with the quality, price and value for money determining the successful supplier / contractor, not by receiving (or offering) improper benefits. The Trust will not engage in any form of bribery, neither in the UK nor abroad. The Trust and all employees, independent of their grade and position, shall at all times comply with the Bribery Act 2010 and with this policy.
- 4.5 The Trust's employees will not request or receive a bribe from anybody, nor imply that such an act might be considered. This means that you 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 improperly your function or activities.
- 4.6 Bribing anybody is absolutely prohibited. The Trust's employees will not pay a bribe to anybody. This means that you will not 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.

- 4.7 The Trust may, in certain circumstances, be held responsible for acts of bribery committed by intermediaries acting on its behalf such as subsidiaries, clients, business partners, contractors, suppliers, agents, advisors, consultants or other third parties. The use of intermediaries for the purpose of committing acts of bribery is prohibited.
- 4.8 All intermediaries shall be selected with care, and all agreements with intermediaries shall be concluded under terms that are in line with this policy. The Trust will contractually require its agents and other intermediaries to comply with the Anti-Bribery Policy and to keep proper books and records available for inspection by the Trust, auditors or investigating authorities. Agreements with agents and other intermediaries shall at all times provide for the necessary contractual mechanisms to enforce compliance with the Anti- Bribery regime. The Trust will monitor performance and, in case of non-compliance, require the correction of deficiencies, apply sanctions, or eventually terminate the agreement even if this may result in a loss of business.
- 4.9 All employees should be aware that bribery will normally, dependent upon the circumstances of the case, be regarded as gross misconduct thus warranting summary dismissal without previous warnings. However, no such action will be taken before a proper investigation and a disciplinary hearing have taken place. Such actions may be in addition to the possibility of criminal prosecution.

5. FACILITATION PAYMENTS

- 5.1 Facilitation payments are small payments made to secure or expedite the performance of a routine action by a government official or agency (e.g. issuing licenses or permits, installation of a telephone line, processing goods through customs, etc.) to which the payer (or the company) has legal or other entitlement.
- 5.2 Facilitation payments are prohibited under the Bribery Act like any other form of bribe. They shall not be given by the Trust or the Trust's employees in the UK or any other country.

6. GIFTS AND HOSPITALITY

- 6.1 Courtesy gifts and hospitality must not be given or received in return for services provided or to obtain or retain business but shall be handled openly and unconditionally as a gesture of esteem and goodwill only. Gifts and hospitality shall always be of symbolic value, appropriate and proportionate in the circumstances, and consistent with local customs and practices. They shall not be made in cash. (Please refer to the Trust's Gifts and Hospitality policy and register for more guidance)

7. POLITICAL & CHARITABLE CONTRIBUTIONS

- 7.1 The Mercian Trust does not make any contributions to politicians, political parties or election campaigns.
- 7.2 As a responsible member of society, the Trust may make charitable

donations. However, these payments shall not be provided to any organisation upon suggestion of any person of the public or private sector in order to induce that person to perform improperly the function 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.

- 7.3 Any donations and contributions must be ethical and transparent. The recipient's identity and planned use of the donation must be clear, and the reason and purpose for the donation must be justifiable and documented. All charitable donations will be publicly disclosed.

8. SPONSORING

- 8.1 Sponsoring means any contribution in the form of money or in kind by the Trust towards an event organised by a third party in return for the opportunity to raise Trust's profile. All sponsoring contributions must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the consideration offered by the event host. They may not be made towards events organised by individuals or organisations that have goals incompatible with the Trust's ethical standards or that would damage the Trust's reputation. All sponsorships will be publicly disclosed.
- 8.2 Where commercial sponsorship is used to fund the Trust's training events, training materials and general meetings, the sponsorship must be transparent, pursuant to a written agreement, for legitimate business purposes, and proportionate to the occasion. When meetings are sponsored by external sources, then that fact must be disclosed in the papers relating to the meeting and in any published minutes / proceedings.
- 8.3 Where sponsorship links to the development of guidelines and advice, this should be carried out in consultation with the Principal/Headteacher in conjunction with the Chief Executive Officer and the appropriate Trust working group independent of the sponsors. While it is recognised that consultation with the industry may be necessary when developing a guideline, the overall decision on what is included should lie with the Trust's working group.

9. DEFINITIONS

- 9.1 Definitions for bribery and corruption vary. Some common definitions are:
- 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". Appendix A is a summary of the Bribery Act 2010.
- Corruption** - This can be broadly defined as 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.

It is a common law offence of corruption to bribe the holder of a public office and it is similarly an offence for the office holder to accept a bribe.

- 9.2 The Trust has procedures in place that reduce the likelihood of bribery occurring. These include Financial Regulations, documented procedures, a system of internal control (including Internal and External Audit) and a system of risk assessment.

10 RAISING CONCERNS

- 10.1 The Trust wishes to encourage anyone having reasonable suspicions of bribery to report them. The Trust's policy, which will be rigorously enforced, is that no individual will suffer any detrimental treatment as a result of reporting reasonably held suspicions. The Public Interest Disclosure Act 1998 came into force in July 1999 and gives statutory protection, within defined parameters, to staff that make disclosures about a range of subjects, including bribery and corruption, which they believe to be happening within the organisation employing them. Within this context, 'reasonably held' means suspicions other than those which are raised maliciously and are subsequently found to be groundless.
- 10.2 Any unfounded or malicious allegations will be subject to a full investigation and appropriate disciplinary action.
- 10.3 The Mercian Trust expects anyone having reasonable suspicions of bribery to report them to the Chief Financial Officer who will then ensure that procedures are followed. Concerns can also be raised through the Trust's Whistleblowing Policy.

ROLES & RESPONSIBILITIES THE BOARD

- 11.1 The Trust's Board of Trustees has a duty to ensure that it provides a secure environment in which to work, and one where people are confident to raise concerns without worrying that it will reflect badly on them. This extends to ensuring that staff feel protected when carrying out their official duties and are not placed in a vulnerable position. If staff have concerns about any procedures or processes that they are asked to be involved in, the Trust has a duty to ensure that those concerns are listened to and addressed.
- 11.2 The Board will be liable to be called to account for failing to prevent bribery. The Mercian Trust therefore has a duty to ensure employees receive adequate training and support in order to carry out their responsibilities.

12 EMPLOYEES

- 12.1 For the purposes of this policy, 'Employees' include the Trust's staff, the Board of Trustees, and governors of the Local Governing Bodies of the schools within the Trust.

12.2 It is expected that:

- 12.3 Employees at all levels will lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures.
- 12.4 Employees must act in accordance with the Trust's Gifts and Hospitality Policy which include guidance on the receipt of gifts or hospitality.
- 12.5 Employees who are involved in receiving offers of sponsorship, funding or gifts from outside agencies also should comply with their own professional codes of practice. Employees with qualifications from professional bodies must also make themselves aware of their own professional body codes of conduct.

13 MANAGERS

13.1 All senior staff have a responsibility to ensure that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively. The responsibility for the prevention and detection of bribery therefore primarily rests with senior staff but requires the co-operation of all employees.

13.2 As part of that responsibility, senior staff need to:

- Inform staff of the Trust's code of gifts and hospitality, declaration of interest and counter fraud and Anti-Bribery policies as part of their induction process, paying particular attention to the need for accurate completion of personal records and forms;
- ensure that all employees for whom they are accountable are made aware of the requirements of the policy;
- assess the types of risk involved in the operations for which they are responsible;
- ensure that adequate control measures are put in place to minimise the risks. This must include clear roles and responsibilities, supervisory checks, staff rotation (particularly in key posts), separation of duties wherever possible so that control of a key function is not invested in one individual, and regular reviews, reconciliations and test checks to ensure that control measures continue to operate effectively;
- be aware of the Mercian Trust's Anti-Bribery Policy;
- identify sensitive / at-risk posts;
- ensure that controls are being complied with;

- contribute to their assessment of the risks and controls within their business area, which feeds into the Trust's statements of accountability and internal control.

13.3 All instances of actual or suspected bribery, which come to the attention of a manager, must be reported immediately. It is appreciated that some employees will initially raise concerns with their manager, however, in such cases managers must not attempt to investigate the allegation themselves, and they have the clear responsibility to refer the concerns to the Chief Finance Officer as soon as possible.

14. SENIOR COMPLIANCE OFFICER

14.1 The Mercian Trust has appointed the Chief Finance Officer (CFO) who will be responsible for implementing the Anti-Bribery Policy and these guidelines, providing guidance and training, monitoring compliance and sanctioning violation of the policy. The CFO will review annually the suitability, adequacy and effectiveness of Trust's Anti-Bribery arrangements and implement improvements as and when appropriate.

14.2 The CFO reports to the Accounting Officer, who is the Chief Executive Officer (CEO) of the Trust. Once a year, the CFO reports the results of the annual review to the Board.

14.3 Any incident or suspicion that comes to attention of the Senior Compliance Officer will be immediately investigated.

15 CHIEF FINANCIAL OFFICER

15.1 The CFO monitors and ensures compliance with anti-fraud and corruption measures and activity.

15.2 The CFO will decide whether there is sufficient cause to conduct an investigation, and whether the Police, External Auditors and the Education & Skills Funding Agency need to be informed.

15.3 The CFO will consult and take advice from the CEO if an employee is to be interviewed or disciplined. The CFO will not conduct a disciplinary investigation, but the employee may be the subject of a separate investigation by the CEO, or an independent investigator appointed by the CEO.

15.4 The CFO will, depending on the outcome of investigations (whether on an interim/ongoing or a concluding basis) and / or the potential significance of suspicions that have been raised, inform the Chair of Board of Trustees and the External Auditors of cases, as may be deemed appropriate or necessary.

16 INTERNAL AND EXTERNAL AUDIT

- 16.1 Any incident or suspicion that comes to Internal or External Auditor's attention will be passed immediately to the CEO.

17 HUMAN RESOURCES ISSUES

- 17.1 The CFO will liaise closely with Managers and from the outset, where an employee is suspected of being involved in bribery or corruption in accordance with agreed liaison protocols. The CEO is responsible for ensuring the appropriate use of the Trust's Disciplinary Procedure. The CEO will consult with the Trust's external HR adviser (HR) and shall advise those involved in the investigation in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures. Close liaison between the Police and HR will be essential to ensure that any parallel sanctions (i.e. criminal and disciplinary) are applied effectively and in a coordinated manner.
- 17.2 Schools will take steps at the recruitment stage to establish, as far as possible, the previous record of potential employees as well as the veracity of required qualifications and memberships of professional bodies, in terms of their propriety and integrity. In this regard, temporary and fixed term contract employees are treated in the same manner as permanent employees.
- 17.3 Schools will ensure that applicants are vetted before they are employed to ascertain, as far as is reasonable, that they are the type of person who is likely to comply with the Trust's Anti- Bribery Policy.
- 17.4 New joiners will be bound by a contractual obligation in the employment contracts not to engage in bribery as defined in the Anti-Bribery Policy

18. INFORMATION MANAGEMENT & TECHNOLOGY

- 18.1 The Trust IT Lead will contact the CEO immediately in all cases where there is suspicion that IT is being used for bribery purposes. This includes inappropriate internet / intranet, e- mail, mobile telephones or telephones. The CFO will be informed if there is a suspicion that an employee is involved.

19 PROCUREMENT

- 19.1 Procurement practices will be conducted in a fair and transparent manner and not deal with contractors or suppliers known or reasonably suspected to be paying bribes. Before engaging contractors and suppliers, the Trust will undertake properly documented due diligence. Agreements with contractors and suppliers may include provisions regarding the Trust's Anti- Bribery arrangements. The Mercian Trust will monitor performance and, in case of non-compliance, require the correction of deficiencies, apply sanctions, or eventually terminate the agreement.

20. EXTERNAL COMMUNICATIONS

- 20.1 Individuals (be they employees, agency staff, contractors, customers or suppliers) must not communicate with any member of the press, media or another third party about a suspected act of bribery as this may seriously damage the investigation and any subsequent actions to be taken. Anyone who wishes to raise such issues should discuss the matter with either the CEO or the Board of Trustees.

APPENDIX 1

Offences under the Bribery Act 2010

The following business practices constitute criminal offences under the Bribery Act 2010 and are therefore prohibited:

Offences of bribing another person

Case 1 is where a Mercian Trust employee offers, promises or gives a financial or other advantage to another person *and* intends the advantage (i) to induce that or another person to perform improperly a relevant function or activity, *or* (ii) to reward that or another person for the improper performance of such a function or activity.

Case 2 is where a Mercian Trust employee offers, promises or gives a financial or other advantage to another person *and* knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity by that person.

The bribery must relate to (i) a function of a public nature, (ii) an activity connected with a business, (iii) an activity performed in the course of a person's employment, *or* (iv) an activity performed by or on behalf of a body of persons (whether corporate or unincorporate). The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust. It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is / are in the public or private sector and whether the advantage is offered, promised or given directly by the Mercian Trust employee or through a third party, e.g. an agent or other intermediary.

Offences relating to being bribed

Case 3 is where a Mercian Trust employee requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by him / herself or another person).

Case 4 is where a Mercian Trust employee requests, agrees to receive or accepts a financial or other advantage, *and* the request, agreement or acceptance itself constitutes the improper performance by him / herself of a relevant function or activity.

Case 5 is where a Mercian Trust employee requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by him / herself or another person) of a relevant function or activity.

Case 6 is where, in anticipation of or in consequence of a Mercian Trust employee requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly (i) by that Mercian Trust

employee, or (ii) by another person at his / her request or with his / her assent or acquiescence.

Again, the bribery must relate to (i) a function of a public nature, (ii) an activity connected with a business, (iii) an activity performed in the course of a person's employment, or (iv) an activity performed by or on behalf of a body of persons (whether corporate or unincorporate). The person performing the function or activity must be expected to perform it in good faith, impartially or in a position of trust.

It does not matter whether the function or activity is performed inside or outside the UK, whether the other person(s) involved is / are in the public or private sector, whether the Mercian Trust employee requests, agrees to receive or accepts the advantage directly or through a third party, e.g. an agent or other intermediary, and whether the advantage is for the benefit of a Mercian Trust employee or another person.

In Cases 4 to 6, it does *not* matter whether the Mercian Trust employee knows or believes that the performance of the function or activity is improper.

Bribery of foreign public officials

Case 7 is where a Mercian Trust employee bribes a foreign public official and intends (i) to influence that official in his / her capacity as a foreign public official *and* (ii) to obtain or retain a business or an advantage in the conduct of business. A foreign public official is someone who holds a legislative, administrative or judicial position of any kind or exercises a public function of a country outside the UK, or is an official or agent of a public international organisation.

The following paragraph will apply if any part of the organisation is considered as a 'commercial' one.

Failure of commercial organisations to prevent bribery (applicable only to corporates and partnerships - included for information)

A corporate or partnership is guilty of a corporate bribery offence if an employee, agent, subsidiary or any other person acting on its behalf bribes another person intending to obtain or retain business or an advantage in the conduct of business for the corporate or partnership. For a definition of bribery, please refer to Cases 1, 2 and 7 above.

It should be the policy of a corporate or partnership not to tolerate any bribery on its behalf, even if this might result in a loss of business for it. Criminal liability must be prevented at all times.

APPENDIX 2

Examples of potential situations in which a bribe or inducement may be offered:

Example 1

An employee is responsible for issuing a tender for services from a supplier. The supplier is awarded the contract. Later in the year the supplier provides the employee with a bottle of whisky as a Christmas gift.

Action: The employee must assess whether the gift exceeds the amount in the gifts & hospitality policy (currently £50). If so this must be reported to the Head Teacher of the school and logged in the school's register of gifts.

Example 2

An employee is responsible for issuing a tender for services from a supplier. Prior to the result of the tender, the supplier invites the employee and their partner to a football game with corporate hospitality.

Action: Employees should not accept any gifts or corporate hospitality from suppliers who are actively involved in tendering for work at that time. The offer should be declined. It should also be reported to the CFO as this may constitute bribery on the part of the supplier.

Example 3

Having already had quotes for the costs of a tour from a number of tour operators the employee selects the tour operator and informs the school that the trip will take place. The trip is approved and the location agreed. The tour operator suggests that the employee and another member of staff visit the location as part of a pre-trip investigation.

Action: The employee should ascertain from the tour operator the cost of the pre-inspection visit if it were being paid for. The employee should then report the offer of the pre-inspection visit to the CFO. The employee must report the trip and the value in the school's register of gifts and justify the reason why a pre-inspection visit is required. The CFO will confirm if it is acceptable to go on the trip in consultation with the Head teacher of the school concerned.

Example 4

An employee is seeking quotes from several tour operators for a school trip. One of these includes an offer for a pre-investigation visit for the employee and a member of staff, which is not offered by the other tour operators. The cost of the trip is more expensive than others.

Action: This could be conceived as an inducement or a bribe and the employee may have difficulty in making an objective decision. The employee should ask the tour operator offering the pre-trip investigation to provide a cost of the trip without the pre-investigation visit and the value of the pre-inspection visit. The employee must

record this in the Trust's register of gifts together with a justification for the reasons for the visit. They should inform the CFO providing them with all details of costs.

Example 5

An employee is seeking quotes from a number of tour operators for a school trip. One of the tour operators includes an offer for a pre-trip investigation for the employee and their family, or a friend. This will include a small amount of time at the resort.

Action: The employee must report this to the CFO immediately and record the offer in the Trust's register of gifts together with details of costs. It is likely this may constitute an inducement or bribe (notwithstanding a taxable benefit on the employee). The CFO will advise the employee of the appropriate action.