



## **Anti-Bribery Policy**

## Version History:

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V.1.00	March 2013	Trust Secretary	Required as part of document set for CCG authorisation
V.1.01	19/12/2013	Information Governance Manager	Merged West Suffolk and Ipswich and East Suffolk policies and reformatted to organisational agree style.
V.1.02	12 /01/2016	Information Governance and Risk Manager	Scheduled review – CCG Governance Adviser
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## STATEMENT OF OVERARCHING PRINCIPLES

All Policies, Procedures, Guidelines and Protocols of the NHS West Suffolk and Ipswich and East Suffolk clinical commissioning groups (the CCGs) are formulated to comply with the overarching requirements of legislation, policies or other standards relating to equality and diversity.

### 1. Introduction

Bribery is a damaging practice that affects both private and public bodies. The Bribery Act 2010 ("the Act") imposes extensive obligations on all organisations, including those in the healthcare sector, to ensure that they have adequate procedures in place to prevent bribery from occurring. West Suffolk and Ipswich and East Suffolk Clinical Commissioning Groups (the CCGs) are committed to compliance with the Act and this policy explains the steps that the CCGs have put in place.

Acts of bribery are punishable for individuals by up to ten years' imprisonment and if the CCG is found corporately to have taken part in acts of bribery could face unlimited fines and incalculable damage to its reputation. The CCGs therefore take their legal responsibilities in regard to identifying potential or actual acts of bribery very seriously.

### 2. Policy Statements

It is the policy of the CCGs to conduct all of its business in an honest and ethical manner. The CCGs are committed to acting with integrity in all its business dealings and relationships and to implementing effective systems to prevent bribery.

The CCGs will uphold all laws relevant to countering bribery and corruption, including the Act, in every aspect of its conduct, including its dealings with public and private sector organisations.

The purpose of this policy is to:

- Set out the CCGs' responsibilities, and the responsibilities of employees, in preventing bribery
- Provide information and guidance to those working for the CCGs on how to recognise and deal with bribery

In this policy, "**third party**" means any individual or organisation with whom staff come into contact with during the course of their work for the CCGs and includes, but is not limited to actual and potential providers, clients, suppliers, distributors, business contacts, agents, advisers, and government and public bodies, including their advisors, representatives and officials, politicians and political parties.

The CCGs have published an Accountable Officer Statement regarding their zero-tolerance to bribery on their public web sites. In addition, it has issued formal Staff Briefings to outline its approach to bribery and corruption and to establish an anti-bribery culture within the Organisation. The staff briefing is at **Appendix 1**.

### 3. Scope

The policy applies to all individuals working at all levels and grades, including chief officers, senior managers, officers, employees (whether permanent, fixed- term or

temporary), contractors, trainees, seconded staff and agency workers, volunteers, agents, sponsors, or any other person associated with the CCG.

For the purposes of this policy, the CCGs have designated the Chief Corporate Services Officer as its "Compliance Officer". The Compliance Officer is responsible for ensuring that the CCGs implement the policy and for carrying out the various functions described in this and other associated policies.

## 4. What is Bribery

A bribe is an inducement or reward of a **financial or other advantage** that is offered, promised or provided to a person in order to gain a commercial, contractual, regulatory or personal advantage through the **improper performance** of a **relevant function or activity** as a result of the bribe.

**Financial or other advantage**, although not specifically defined in the Act, means payments, gifts, hospitality or anything else that could be reasonably perceived as an advantage as understood by the normal, everyday meaning.

**Improper performance** means performance in breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust.

**A relevant function or activity** means any function of a public nature, connected with a business, performed in the course of a person's employment or performed by or on behalf of an incorporated or unincorporated body of persons.

### 4.1. Example of Offering a Bribe:

A bribe would occur if:

A payment is offered to influence an individual who was responsible for deciding which provider the CCGs should select as the preferred bidder for the provision of services in a procurement process or;

### 4.2. Example of Receiving a Bribe:

A bribe would occur if:

A CCG staff member receives a payment (or other incentive) in order to influence their decision making in respect of the selection of a preferred bidder for the provision of services in a procurement process.

## 5. Gifts Hospitality and Sponsorship

It is not intended that genuine hospitality or similar business expenditure that is reasonable and proportionate be prevented by the Act, so the provision of bona fide hospitality, promotional or other business expenditure can continue.

This policy should be read in conjunction with the CCGs' **Standards of Business Conduct Policy**, which explains the reporting and approval procedures already in place.

## 6. Facilitation of Payments and Kickbacks

The CCGs do not make and will not accept, facilitation payments or "kickbacks" of any kind. Facilitation payments are typically small, unofficial payments made to secure or expedite a routine action by an official, which could include employees of the NHS. They are not commonly paid in the UK, but CCG staff must be aware that these types of payments are strictly prohibited. Kickbacks are typically payments made in return for a business favour or advantage. All staff must avoid any activity

that might lead to, or suggest, that a facilitation payment or kickback will be made or accepted by the CCGs.

### **6.1. Example of a Facilitation Payment:**

A facilitation payment would occur if:

A CCG staff member receives a payment (or other incentive) from a provider/contractor to speed up beyond the usual timeframe the procurement process to their advantage

If you are asked to make a payment on behalf of the CCG, you should always be mindful of what the payment is for and whether the amount requested is proportionate to the goods or services provided. You should always ask for an invoice or receipt, which details the reason for the payment. If you have any suspicions, concerns or queries regarding a payment, you should raise these with your Line Manager or the Compliance Officer.

## **7. Your Responsibilities**

You must ensure that you read, understand and comply with this policy.

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the CCGs or under its jurisdiction. All staff are required to avoid any activity that might lead to, or suggest, a breach of the policy.

You must notify the Local Counter Fraud Specialist or the Compliance Officer as soon as possible if you believe or suspect that this policy or any other associated policy has or may be breached. For example, if a third party offers you something to gain a business advantage, or asks for a gift or payment to secure their business, this must be reported. Further indicators of bribery or corruption are set out in Appendix 2.

Any employee who breaches this policy will face disciplinary action, which could result in dismissal. The CCGs also reserve the right to terminate its contractual relationship with other business partners if they breach this policy.

If considered appropriate, the matter will be reported to the Local Counter Fraud Specialist who may commence a criminal investigation that may result in criminal proceedings being commenced.

## **8. How to Raise a Concern**

This policy should be read in conjunction with the CCGs' **Whistle Blowing and Public Interest Disclosures Policy**. You are encouraged to raise concerns about any issue or suspicion of malpractice at the earliest possible stage. If you are unsure whether a particular act constitutes bribery or corruption, or if you have any other queries, these should be raised with your the Compliance Officer or the Local Counter Fraud Specialist.

## **9. Training and Communication**

Training on this policy forms part of the induction process for all new staff.

## 10. Business Partners

The CCGs' zero-tolerance approach to bribery and corruption must also be communicated to all service providers, suppliers, contractors and other third parties with whom the CCG has dealings at the outset of any business relationship including a requirement for all business partners to have their own Anti-Bribery Policies in place.

Good practice dictates that those business partners bidding to provide services should, as part of the procurement process, sign a Statement of Good Standing confirming that their organisation has anti-bribery arrangements in place and that the implications of the Bribery Act are understood. An example Statement of Good Standing is at **Appendix 3**.

## 11. Responsibility for this Policy

The CCGs Governing Bodies have overall responsibility for ensuring the policy complies with the organisations legal and ethical obligations, and that all those under its control comply.

The Compliance Officer has primary responsibility for implementing this policy across the CCGs as a whole, and for monitoring its use and effectiveness, dealing with any queries on its interpretation.

Management at all levels are responsible for ensuring that those staff reporting to them are made aware of and understand the policy and are given adequate and regular updates where necessary.

## 12. Monitoring and Review

The Compliance Officer will monitor the effectiveness and review the implementation of the policy, regularly considering its suitability, adequacy and effectiveness taking into account legal developments and forthcoming organisational changes within the NHS.

## 13. Related Policies

A number of other existing CCG policies also relate to the prevention of bribery and corruption and should therefore be read in conjunction with this policy. They include:

- Code of Conduct, Accountability and Openness
- Code of Conduct for NHS Managers
- Counter Fraud and Corruption Policy
- Commissioning Procurement Policy
- Standards of Business Conduct Policy
- Whistle Blowing and Public Interest Disclosures Policy

## Appendix 1

### Staff Briefing



# STAFF BRIEFING

## KEY FACTS

The Bribery Act received Royal Assent on 8 April 2010 and came into force on 1 July 2011 as the Government attempts to clamp down on business corruption

The Act extends to England & Wales, Scotland and Northern Ireland

The Act comprises 4 substantive offences

The Act applies to both individuals and companies and whilst aimed primarily at commercial organisations, has clear implications for the public sector including the NHS

Penalties for falling foul of the Act can be severe: fines and up to 7 - 10 years imprisonment for individuals whilst businesses face unlimited fines, in severe cases set at levels designed to drive companies out of business

Reputational damage to both individuals and their organisation were they to be convicted under the Act would be severe

The Act has a near-universal jurisdiction, allowing for the prosecution of an individual or company with links to the United Kingdom, regardless of where the crime occurred.

## WHAT COUNTS AS BRIBERY

Bribery is defined as: *Giving someone a financial or other advantage to encourage that person to act improperly or to reward that person for having done so*

The Act also covers *Facilitation Payments* whereby officials are paid to speed up services they are normally obliged to carry out

*Reasonable hospitality* is not prohibited by the Act

## THE ACT & THE NHS

The offences apply to bribery relating to *any function of a public nature, connected with a business, performed in the course of a persons employment or performed on behalf of a company or another body or persons*

Bribery in both the public and private sectors, including the NHS, is therefore covered

## THE OFFENCES

Broadly, the Act provides for four categories of offence:

Bribing another person (Active Bribery)

Being bribed (Passive Bribery)

Bribing a foreign public official

Failure of an organisation to prevent bribery by an associated person

Regarding the two offences of bribing another person or being bribed, there is a reliance upon *'Improper Performance'*

*'Improper Performance'* is defined as performance amounting to a breach of an expectation that a person will act in good faith, impartially or in accordance with a position of trust

## COMPLIANCE ACTIONS TAKEN BY THE CCG

AO Statement – Posted on the public web site at:

Production of a Bribery Act Policy & amendment of other relevant policies

Requirement for business partners to have Bribery Act policies in place

Addition of a clause on bribery to contracts of employment which states:

In the course of your employment with the Trust you must not offer, promise, give, request, agree to receive, or accept any bribes:

- when conducting company business; or
- when representing the CCGs in any capacity.

A bribe means a financial payment or other form of reward or advantage, whether direct or indirect, that is intended to induce or influence, or has the effect of inducing or influencing, an individual, company or public body to perform their functions, including business and public duties, improperly. For the avoidance of doubt, improper performance includes:

- not acting in good faith;
- not acting impartially; and
- not acting in accordance with a position of trust.

You must comply with the CCGs' anti-bribery policy and procedures that are in force from time to time and with all applicable bribery and corruption laws. You have a duty to report any suspicious conduct that may amount to a bribe being offered, promised, given, requested or accepted (either involving you or another employee or person acting for, or on behalf of, the organisation) immediately to the relevant individuals within the organisation in accordance with the anti-bribery policy and procedures.

If the CCG suspects you of bribery, it is entitled to invoke its disciplinary procedures and suspend your employment while carrying out its investigations. The CCGs' are entitled to terminate your employment in writing without notice or pay in lieu of notice, without prejudice to any rights or claims it may have against you, if it is found by the CCG or any other relevant public or legal authority, that you are guilty of bribery.

## WHAT YOU SHOULD DO

Read the Bribery Act Policy

Read the AO Statement

Read the Ministry of Justice Bribery Act Guidance at:

<http://www.suffolk.nhs.uk/LinkClick.aspx?fileticket=PN3cZmRFUM0%3d&tabid=3259&mid=6380>

Report any suspected or actual acts of bribery to your compliance manager or LCFS

Be alert to the possibility of bribery

Ensure that the acceptance of hospitality is always reasonable and proportionate

Be aware that your contract of employment has been amended to include a new clause on bribery

## Appendix 2

### ***Potential Alerts to Acts of Bribery***

The following is a list of possible issues that may alert you to the possibility of bribery. The list is not intended to be exhaustive and is for illustrative purposes only.

If you encounter any of these issues you must report them promptly to your Compliance Officer or LCFS or using the procedure set out in the CCGs' Whistle Blowing and Public Interest Disclosures Policy and Counter Fraud and Corruption Policy.

- You become aware or suspect that a colleague or third party engages in, or has been accused of engaging in, improper business practices
- You learn or suspect that a colleague or third party has a reputation for paying bribes, or requiring that bribes are paid to them
- A colleague or third party asks for a commission or fee payment before committing to sign up to a contract, or carrying out an agreed function or process
- A colleague or third party requests payment in cash and/or refuses to sign a formal commission or fee agreement, or to provide an invoice or receipt for a payment made
- A colleague or third party requests that payment is made to a country or geographic location different from where the colleague or third party resides or conducts business
- A colleague or third party requests that payment or other benefit is provided to a person other than the expected recipient, or to a person other than the expected provider of goods and services
- A third party requests an unexpected additional fee or commission to "facilitate" a service
- A third party requests entertainment or gifts before commencing or continuing contractual negotiations or provision of services
- A third party requests that a payment is made to "overlook" potential legal violations
- A colleague or third party requests that you provide employment or some other advantage to a friend or relative
- You notice that we have been invoiced for a commission or fee payment that appears large given the service stated to have been provided
- A colleague or third party requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used or known
- You are offered an unusually generous gift or hospitality by a third party
- You are asked to conceal the receipt of provision of hospitality or any other form of benefit or payment
- A colleague or third party exerts pressure for payments to be made urgently or ahead of schedule
- A colleague or third party conducts private meetings with public contractors or companies hoping to tender for contracts
- A colleague or third party never takes time off even if ill, or holidays, or insists on dealing with specific contractors him/herself
- A colleague or third party makes unexpected or illogical decisions accepting projects or contracts
- A colleague or third party abuses or ignores normal decision processes or delegated powers in specific cases

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- A colleague or third party agrees contracts not favourable to the CCG
  - A colleague or third party demonstrates an unexplained preference for certain contractors during a tendering period
  - A colleague or third party seeks to avoid independent checks on tendering or contracting processes
  - A colleague or third party requests that normal tendering/contracting procedure is bypassed
  - A colleague or third party reports missing documents or records regarding meetings or decisions.

## Appendix 3

### Template Statement of Good Standing

The Potential Bidder must complete and sign the declaration below

<p>1. I understand that it may be a criminal offence under the Bribery Act 2010, punishable by imprisonment, to promise, give or offer any gift, consideration, financial or other advantage whatsoever as an inducement or reward to any servant of a public body and that such action may result in the Trust excluding the organisation from the selected list of Potential Bidders, and potentially from all future public procurements.</p> <p>2. I confirm that the under-mentioned organisation has its own anti-bribery policy in place or is working towards the establishment of such a policy</p> <p>3. I hereby declare that I am authorised by the under-mentioned organisation to supply the information included in the tender bid and at the date of signing, the information given is a true and accurate record to the best of my knowledge and belief.</p>	
<b>Signed</b>	
<b>Print Name</b>	
<b>On behalf of</b> [ <i>insert name of Potential Bidder</i> ]	
<b>Position</b>	
<b>Date</b>	