University of Suffolk

UNIVERSITY OF SUFFOLK ANTI-CORRUPTION POLICY

Introduction

This policy provides guidance to staff concerning the relevant legislative requirements of The Fraud Act 2006, The Bribery Act 2010 and the Criminal Finances Act 2017. It also sets out the expectations of employees and others working on behalf of the University of Suffolk, and provides a framework for reporting and responding to suspected fraud or bribery.

Contents:

Section A: Bribery

The Bribery Act 2010 came into force in April 2011. The key objectives of the Act are to repeal and replace a number of old laws and to create a comprehensive new anti-bribery code.

Four key offences exist within the Act:

- active bribery (the offence of offering to bribe another);
- passive bribery (the offence of accepting or requesting a bribe);
- bribery of a foreign public official;
- failing to prevent bribery (the offence by a commercial organisation of failure to prevent bribery by any person associated with it).
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The penalties that can be imposed under the Act are severe, including a maximum sentence of 10 years for individuals and an unlimited fine for organisations. The Act has a very broad geographical reach, including the international activities of organisations and encompasses agents or associates acting on the organisations' behalf.

The Act is not simply about paying or receiving bribes or other corruption in public office: it also considers corporate hospitality, gifts and incentives. Therefore University of Suffolk staff and officials need to consider what current activities might constitute an offence under the Act. It does not only apply to direct actions by University of Suffolk employees but also includes anyone acting on behalf of the University of Suffolk.

Contraventions of this Policy or of the law will be treated as a disciplinary offence which may result in dismissal.

Bribery Definitions

Bribery or corruption can be defined as follows:

- the receiving or offering of an undue reward by or to any holder of public office, private employee, colleague, or representative of another organisation, designed to influence them in the exercise of their duty and to incline them to act contrary to accepted standards of honesty and integrity;

- the misuse of public office or public power for private gain by offering or promising something of value, whether directly or indirectly, to a public official or a political candidate, party or party official in order to obtain, retain or direct business, or to secure any improper business advantage. Also included is the demanding or accepting of anything of value by such a person as a condition to conferring an improper business advantage, whether directly or indirectly.

The Bribery Act introduces the central concept of 'improper performance' in relation to any 'relevant function or activity'. This is effectively designed to cover all the public functions or business activities of an organisation.

The test for such situations is that no University of Suffolk employee or official should materially and personally gain from the duties they perform in the course of their work for the organisation. In addition, all employees and officials should comply with current statutory requirements in their daily actions and should be able to provide transparency over decisions where required.

Bribery Policy Statement

The University of Suffolk Anti-corruption Policy applies to all staff and officials, including directors of the company. This includes agency workers, consultants, sub-contractors and others working on behalf of the University, irrespective of their place of work, function, grade or standing. Where the University of Suffolk is not the controlling partner in a venture the other parties should be encouraged to apply this Policy.

The University of Suffolk expects our business partners, suppliers and contractors to act with integrity and without thought or actions that might be regarded as improper performance within the meaning of the Bribery Act 2010. Clauses to this effect are to be included in relevant contracts where appropriate.

University of Suffolk employees or any other person working on behalf of the University must not:

- offer or make any bribe, unorthodox or unauthorised payment or inducement, of any kind to anyone;
- solicit business by offering any bribe, unorthodox or unauthorised payment or inducement to customers or potential customers;
- accept any kind of bribe, unorthodox or unauthorised payment or inducement that would not be authorised by the University in the proper performance of its business.

University of Suffolk employees or any other person working on behalf of the University must:

- refuse any offered bribe, unorthodox or unauthorised payment or inducement, and do so in a manner that is not open to misunderstanding or gives rise to false expectation;
- report all such offers received to the Vice-Chancellor;
- report all perceived, potential or actual breaches of this Policy or of the Bribery Act 2010 to the Vice-Chancellor.

Facilitation Payments

Facilitation payments are those payments made or received to secure or expedite the performance of routine or necessary actions to which the payer has a legal or other entitlement. The University of Suffolk regards such payments as being in breach of this Policy, unless required for medical or safety emergencies relating to University of Suffolk staff or officials in jurisdictions where such payments are considered unavoidable. In all normal circumstances such payments would be authorised by a University of Suffolk Director or an Executive Committee member, who will pay due regard to this Policy and to the Bribery Act 2010. Where such payments are made, this should be reported immediately to the Director of Finance and Planning who will maintain a record.

Hospitality and Gifts

The advantages of networking and developing good working relationships with suppliers, customers and contractors are acknowledged. However, corporate hospitality (whether received or provided) must be transparent, auditable and proportionate. In all cases it should be recorded and reported to the Director of Finance and Planning as in some circumstances such hospitality can have tax implications for the University of Suffolk or for individual members of staff and officials.

Any gift offered or received could be regarded as an inducement to improper performance under the provisions of the Bribery Act, and might result in the imprisonment of the individuals involved or an unlimited fine for the organisation. Traditionally, minor gifts given and received have been regarded as token gestures that do not affect the normal performance of an individual's duties. This may include gifts given at Christmas or welcome gifts at a conference. In recognition of this, the University of Suffolk acknowledges that gifts not exceeding £25 in value would not automatically be refused, unless an inducement is intended or suspected. The offeror should not be allowed to misunderstand, or to have raised expectations as a result of the acceptance.

Section B: Fraud

Definition

The Fraud Act 2006 defines fraud as the intention to obtain a gain for oneself or for another, or to cause or expose another to the risk of a loss by:

- dishonestly making an untrue or misleading representation; or
- dishonestly failing to disclose information which one is legally bound to disclose; or
- dishonestly abusing a position of trust, in which s/he is expected to safeguard, or not to act against, the financial interests of others.

Gains and losses are restricted in the Act to gains and losses of money or property.

Corruption is the giving or obtaining of an advantage through means which are inconsistent with duties or obligations to the University of Suffolk.

Fraud Policy Statement

All cases of suspected fraud, or attempted fraud, will be thoroughly and promptly investigated. Any University of Suffolk employee against whom evidence of fraud is found, will be subject to the University of Suffolk's disciplinary procedures which may result in dismissal. In such cases the University of Suffolk will normally involve the police and may also institute civil proceeding to recover any losses.

University of Suffolk Control Framework

The University of Suffolk takes reasonable steps to ensure that there are appropriate financial and management controls in place to safeguard University funds and assets and to prevent and detect fraud.

The Director of Finance and Planning is responsible for:

- the design and efficient operation of the University of Suffolk's internal financial procedures and controls, including their review in the light of reported frauds;
- providing material assistance in the investigation of fraud and suspected fraud;
- liaison with the external auditors about issues relating to fraud and fraud prevention.

The internal auditors are responsible for:

- providing advice and assistance on control issues as necessary;
- reviewing systems for the control, prevention and detection of fraud;
- the investigation of fraud at the request of the University of Suffolk.

Responsibilities of Individual Members of Staff

The University of Suffolk expects staff to conduct themselves at all times having regard to the very highest standards of conduct, probity and confidentiality. Employees must not only be honest in fact, but must also take reasonable measures so as to not lay themselves open to suspicion of dishonesty or perception of conflict of interest and/or of impropriety.

Employees with any involvement in financial transactions are also responsible for familiarising themselves with, and complying with, the University of Suffolk's financial regulations and procedures. Financial transactions include ordering, receiving and approving payment of invoices in relation to the purchase of goods and services, initiating sales invoices, payment and receipt of monies.

All staff are encouraged to bring to management's attention areas of weakness that they may have identified in the procedures they use which could allow opportunities for fraud, and to suggest improvements to these procedures to reduce the possibility of fraud.

Responsibilities of Managers

Employees with managerial responsibility are additionally responsible for:

- identifying the risks to which systems and procedures are exposed;
- ensuring that an adequate system of internal control exists within their area of responsibility to minimise the identified risks and that controls operate effectively and are complied with.

Fraud prevention is a component of risk management: managers should pay greatest attention to those areas where they perceive the greatest risk of fraud lies and ensure that controls in these areas are robust.

The simplest and best way of preventing fraud losses is by ensuring that all the prescribed University of Suffolk controls are understood and enforced by all relevant staff.

Managers should seek to reduce the risk of fraud by ensuring that:

- undue reliance on specific individuals is avoided - this can be mitigated by job rotation so that more than one member of staff becomes proficient in a particular role;
- the necessary supervisory procedures and checks are carried out;
- internal control instructions and reference documents are up to date;
- staff are adequately trained for the role they perform;
- the segregation of duties is not compromised during staff vacancies or absences.

The Director of Finance and Planning can provide assistance to those line managers who require guidance in this area.

Section C: Criminal Finance

The Criminal Finance Act 2017 came into force with effect from 30 September 2017. Part 3 of the Act introduces a new corporate criminal offence of failure to prevent the facilitation of tax evasion. The legislation applies to all businesses and all taxes. This particular offence is not about the university itself avoiding, evading or underpaying tax, but about the university failing to prevent its employees/agents/associates from facilitating the evasion of tax by another party. All corporates are affected and can be subject to prosecution for the facilitation of tax evasion by 'associated persons'.

It has always been a criminal offence for anyone to assist a third party in criminal tax evasion; the corporate offence of failure to prevent the facilitation of tax evasion is when all of the following circumstances apply:

- Stage 1: There is criminal evasion by a taxpayer;
- Stage 2: There is the criminal facilitation of that evasion by an 'associated person' (e.g. an employee) acting for or on behalf of the 'relevant body' (the university); and
- Stage 3: The relevant body failed to prevent that facilitation.

An associated person is an employee, agent or other person who performs services for or on behalf of the relevant body. The associated person can be an individual or an incorporated body. The contractual status or label of a person performing services for or on behalf of the organisation does not matter, so, for example, employees, agents and sub-contractors can be associated persons.

If any University employee, agent or subcontractor (including those based at other campuses) is found guilty of assisting a third party to evade tax in the course of their duties, the University will automatically be charged with 'facilitating criminal tax evasion', and be liable, if found guilty, to unlimited fines, damage to reputation and loss of rights to bid for government contracts.

Examples of Corporate Criminal Offence are as follows:

- Making a payment overseas, for example to an overseas agent, in the knowledge that the agent intends to use the method of payment to evade tax;
- Colluding with another university / third party to misdescribe services as outside the scope or grant funding rather than a taxable supply of research services where VAT cannot be recovered. Generally agreeing to misdescribe services provided to a third party in order to facilitate a VAT reclaim by them;
- Allowing a payment for goods/services to be described as a donation so that the donor can claim tax relief;
- Agreeing to misdescribe an income stream to take the payment outside with-holding tax obligation;
- Accepting a request to pay one entity knowing that the goods/services have been provided by another entity and that the purpose of the change is to evade tax;
- Buying goods for personal use through a university account and issuing a certificate for charitable relief;

- Assisting an academic to facilitate his/her personal use of department research accounts (or 'personal earning accounts') or the backdating of a waiver, resulting in a loss of income tax to HMRC;
- Making a royalty payment in the knowledge that the recipient intends to use the method of payment to evade tax;
- Agreeing to misdescribe goods being exported so that a lower rate of Customs duty becomes payable on import by a customer.

Policy statement

The University's Board and management team are committed to preventing the facilitation of any form of tax evasion. We will not engage in or with any business that does not share our values and this commitment to prevention.

The University of Suffolk recognises the importance of fostering positive business relationships and the need to maintain the confidence of the many organisations with which it does business. We have a zero tolerance approach to the facilitation of tax evasion and will not work with any individual or organisation that is not committed to preventing the facilitation of tax evasion, in compliance with the Criminal Finances Act 2017.

All cases of suspected facilitation of tax evasion by an associated person will be thoroughly and promptly investigated. Any University of Suffolk employee against whom evidence of facilitation is found, will be subject to the University of Suffolk's disciplinary procedures which may result in dismissal.

Responsibilities of Individual Members of Staff and associates

Staff and associates are reminded that they are required at all times to abide by the University's policies and procedures and must not assist a third party with evading tax.

Section D: Reporting suspected fraud, bribery or facilitation of tax evasion

If an employee suspects that improper, fraudulent or corrupt behaviour has occurred within the University of Suffolk, the following action should be taken:

- the employee should make an immediate note of their concerns, including relevant details of events, conversations, dates, times and names of those involved;

- the employee should discuss their concerns with their line manager, or if this is not appropriate, the employee should report their concerns in accordance with the University of Suffolk's Whistleblowing Policy. Specifically:

    The individual should make the disclosure in writing to the Vice-Chancellor (vice-chancellor@uos.ac.uk) (the designated person). If, however, the disclosure is about the Vice-Chancellor or a member of the University of Suffolk Board then the disclosure may be made to the Senior Independent Director of the Board (seniorindependentdirector@uos.ac.uk). If the disclosure is about the Senior Independent Director of the Board, then the disclosure should be made to the Chair of the University of Suffolk Board (chairoftheboard@uos.ac.uk). If any individual other than those listed above should receive a disclosure, it should be referred to the Vice-Chancellor or the Senior Independent Director.

The names and contact details of the members of the University of Suffolk Board are published on the University website (http://www.uos.ac.uk).

University of Suffolk managers or officers to whom reports of fraud are made should follow the action plan shown in Appendix A.

Policy Review

This Policy will be reviewed by the University of Suffolk Director of Finance and Planning annually or as legislation requires.

Director of Finance and Planning

11 October 2017

Executive Committee review: 16 October 2017

Board approval: 23 October 2017

Appendix A

Action Plan in Response to Suspected Corruption

Corruption for these purposes covers fraud, bribery and facilitation of tax evasion.

Initiating Action

1. Suspicion of fraud or irregularity may be captured through a number of means, including:
   - a report from a University of Suffolk employee or other individual;
   - planned audit work;
   - the operation of proper procedures.

2. The manager or officer receiving the report (usually a line manager or members of the Executive Committee) should discuss the report with the Director of Finance and Planning, and the Director of Human Resources (or in each case their representative) to decide on an initial response.

3. The action taken will normally be to initiate an investigation led by the internal auditor. Where there is clear *prima facie* evidence, the police will usually be informed.

4. Some fraud investigations may require the use of technical expertise which the internal auditor does not possess. In these circumstances, external specialists may be appointed to lead or contribute to the investigation.

5. The Director of Human Resources will be closely involved in the management of the investigation in order to ensure appropriate steps are taken with regard to employment matters.

Prevention of Further Loss

6. Where there are grounds for suspecting a member or members of staff of corruption, the group will consider how to prevent further loss. As a precautionary measure, and without prejudice to any future procedures, this may require the suspension of one or more members of staff. The Director of Human Resources is responsible for determining cases of suspension. Staff should be supervised at all times before leaving University of Suffolk premises. They should normally be allowed to collect personal property under supervision, but should not be able to remove any property belonging to the University. Any security passes and keys to premises, offices and furniture should be returned.

7. In accordance with normal suspension procedures, steps should be taken to deny further access to the University of Suffolk while staff remain suspended (for example by changing locks and informing security staff not to admit the individuals to any part of the premises). Similarly, the head of information services should be instructed to withdraw without delay access permissions to the University of Suffolk's computer systems.

8. The internal auditor shall consider whether it is necessary to investigate systems other than those which have given rise to suspicion, including where the suspect may have had opportunities to misappropriate University of Suffolk assets.

Establishing and securing evidence

9. The University of Suffolk will follow disciplinary procedures against any member of staff who has committed fraud. The University of Suffolk will normally pursue the prosecution of any such individual.

10. The internal auditor will:

    - establish and maintain contact with the police, following approval from a nominated University of Suffolk senior officer;
    - ensure that staff involved in fraud investigations are familiar with and follow rules on the admissibility of documentary and other evidence in criminal proceedings;
    - refer any media interest to the University of Suffolk.

Recovery of losses

11. Recovering losses is an objective of any fraud investigation. The internal auditor shall ensure that in all fraud investigations, the amount of any loss is quantified. Repayment of losses should be sought in all cases.

12. Where the loss is substantial, legal advice should be obtained without delay about the need to freeze the suspect's assets through the court, pending conclusion of the investigation. Legal advice should also be obtained about the prospects for recovering losses through the civil court, where the perpetrator refuses repayment. The University of Suffolk would normally expect to recover costs of recovery in addition to any losses.

Reporting

13. Any material suspicion of fraud should be reported to the Chair of the Board and to the Chair of the Audit and Risk Committee.

14. The circumstances in which the University of Suffolk must report actual or suspected frauds to HEFCE are detailed in the Memorandum of Assurance and Accountability.

15. On completion of a fraud investigation, a written report shall be submitted to the Audit and Risk Committee containing:

    - a description of the incident, including the value of any loss, the people involved, and the means of perpetrating the fraud;
    - the measures taken to prevent a recurrence;
    - any action needed to strengthen future responses to fraud, with a follow-up report on whether the actions have been taken.

    This report will normally be prepared by the internal auditor.