

EXECUTIVE DIRECTOR SPONSOR: AMELIA MORGAN

**ANTI-BRIBERY POLICY, ANTI-BRIBERY CONTROLS
AND GIFTS AND HOSPITALITY REGISTER**

Purpose

The Board to review and approve the anti-bribery policy, controls and Gifts and Hospitality Register for the financial year ending 31st March 2021 in accordance with the Matters Reserved to the Board.

Priority

Routine.

Background

Under the Bribery Act 2010 organisations can be convicted of the criminal offence of failing to prevent persons that provide services on its behalf (which include employees, agents, and other service providers) from bribing another person. It is a defence for the organisation to demonstrate that it had in place adequate procedures to prevent bribery. Guidance on the adequate procedures that are necessary to prevent bribery are built around six principles:

1. Monitoring and review:
2. Proportionate procedures:
3. Top level commitment:
4. Risk assessment;
5. Due diligence; and
6. Communications.

Key Points for Noting

Anti-Bribery Policy

The Anti-Bribery policy, in accordance with the terms of the Bribery Act 2010, is attached as appendix 1 for review and approval. There are no substantive amendments to highlight. All references to the Director of Policy & Governance have been replaced with a reference to the Director of People, Safety & Governance.

Anti-Bribery Controls

An annual report on the implementation of Scottish Canals' anti-bribery controls is attached as appendix 2 for noting.

Gifts and Hospitality Register

The Gifts and Hospitality Register for the financial year ending 31st March 2021 is attached as appendix 3 for noting.

Corporate Implications

- Strategic Priorities: The annual review of the anti-bribery standard ensures stewardship of internal controls in accordance with the Corporate Plan 2020-23 key aim to excel in governance.
- Health & Safety: There are no Health & Safety issues to report
- Risk/Risk Appetite: there are no new risks to raise.
- Legal: The Anti-Bribery Policy and controls review is in accordance with the terms of the Bribery Act 2010.
- Financial: There are no financial implications for Scottish Canals' budget.
- Human Resources: There are no HR issues to report.
- Fair Work First: There are no Fair Work First issues to report
- Communication: The Anti- Bribery Standard will be communicated to all staff via NETconsent.
- Community & Third Sector: There are no Community & Third Sector issues to report.
- Commercial: There are no Commercial issues to report.
- Asset: There are no Asset issues to report.
- Environment: There are no Environment issues to report.
- Health & Safety: There are no Health & Safety issues to report.

Conclusions and Recommendations

It is recommended that the Board:

- approve the Anti-Bribery Policy in the format attached as appendix 1 for circulation to all staff.
- note the anti-bribery controls and Gifts and Hospitality Register in appendices 2 and 3.

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ANTI-BRIBERY POLICY

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Anti-Bribery Policy

1.0 Introduction to the Anti-Bribery Policy

Bribery is a criminal offence. The Bribery Act 2010, which came into force in the UK on 1 July 2011, is amongst the strictest legislation internationally on bribery.

Scottish Canals do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we, accept bribes or improper inducements.

Scottish Canals and its employees may be guilty of a criminal offence if a third party that provides services on its behalf bribes another person with the intention of obtaining or retaining a business benefit for Scottish Canals. It is a defence for Scottish Canals to demonstrate that it had in place adequate procedures to prevent bribery. This Policy is an element of Scottish Canals' anti-bribery procedures. Scottish Canals does not, and will not, permit, engage indirectly in or otherwise encourage acts of bribery on its behalf (Requirement 1). Further Scottish Canals will investigate all suspected cases of bribery (Requirement 12).

Scottish Canals is committed to the prevention, deterrence and detection of bribery and has a zero-tolerance towards bribery. We aim to maintain anti-bribery compliance "business as usual", rather than as a one-off exercise.

To ensure Scottish Canal's staff is aware of and compliant with both the Bribery Act 2010 and Scottish Canals Anti-Bribery Policy, all staff will be given access to the Policy and training offered in its interpretation. (Requirement 1)

All Scottish Canals employees must complete a yearly 'Declaration of Interest'. This will be circulated to all employees. (Requirement 2)

2.0 What is Bribery?

There are four key criminal offences in the Bribery Act 2010, which are: bribing, receiving a bribe, bribing a foreign public official or failing to prevent bribery (Requirements 3, 4, 5 and 7). The first three of these offences can be committed by an individual or corporate entity and if anyone at senior management level consents to, or turns a blind eye, to the committing by Scottish Canals of any of these offences, they can also be prosecuted with a criminal offence. The fourth offence can be committed only by a corporate entity.

Bribery can take many forms and is broadly an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage. It is unacceptable to:

- give, promise to give, or offer a payment, gift, hospitality or other benefit with the expectation or hope that a business advantage will be received, or to reward a business advantage already given
- give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure

- offer, promise or give a thing of value to someone when you know or believe that acceptance of that thing is in itself improper, for example because the relevant rules of that persons' employment prohibit them from accepting gifts or hospitality in the context of their employment
- accept, or agree to accept, payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them
- accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by Scottish Canals in return
- offer or give anything of value to a foreign public official with the intention of influencing them to obtain or retain a business advantage (note there is no requirement for an intention for the official to exercise their role improperly)
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this Policy
- engage in any activity in breach of this Policy

2.1 Facilitation Payments

Facilitation payments are not tolerated and are illegal (Requirement 3). Facilitation payments are typically small unofficial payments made to public officials in order to secure or expedite actions (for example to secure planning consent, to obtain clearance through customs or speed up an administrative process). Facilitation payments are more common overseas, but it is possible that they could arise in the UK.

2.2 Public Contracts

It should be noted that under the Public Contracts (Scotland) Regulations 2015 and the Procurement (Scotland) Regulations 2016 (which gives effect to EU law in the UK), a company is automatically debarred from competing for public contracts where it is convicted of an offence of bribing, receiving a bribe or bribing a foreign public official. It is permissible to request this information for a period not exceeding three years. A company is also permitted to declare the steps taken to address the issues if they have been guilty of any of these offences.

There are currently no plans to amend these Regulations to include an automatic debarment when a corporate entity is convicted of the criminal offence of a corporate failure to prevent bribery. This means that organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. However, many Public Bodies have exercised the discretion to exclude organisations convicted of this offence from doing so (Requirement 6).

Scottish Canals terms and conditions for procuring goods and services include controls to prohibit any offence or breach of the Bribery Act 2010.

3.0 Objective

This Policy provides a coherent and consistent framework to enable Scottish Canal's employees to understand and implement arrangements enabling compliance with the Bribery Act 2010. It also enables employees to identify and effectively report a potential breach of the Bribery Act 2010. All staff, including those permanently employed, temporarily employed, apprentices, temporary agency staff, contractors and any third party providing services on Scottish Canal's behalf are required to:

- abide by the procedures and requirements laid out in this Policy
- act honestly and with integrity at all times and to safeguard the company's resources for which they are responsible
- comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the company operates, in respect of the lawful and responsible conduct of activities
- report any instances or suspicions of bribery to their line manager and/or the Director of People, Safety & Governance (in the absence of the Director of People, Safety & Governance, the Head of Legal Services) within 2 working days

4.0 Scope

This Policy applies to all of Scottish Canals' activities. For partners, contractors and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this Policy.

Within Scottish Canals, the responsibility to control the risk of bribery occurring resides at all levels of the organisation. This Policy covers all staff, those permanently employed, temporary staff, temporary agency staff, contractors, agents and consultants.

5.0 Scottish Canals' Commitments

Scottish Canals commits to:

- Setting out a clear anti-bribery Policy and keeping it up to date.
- Making employees aware of their responsibilities to adhere strictly to this Policy at all times.
- Training employees so that they can recognise and avoid the use of bribery by themselves and others
- Encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.

- Rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant investigation and/or prosecution.
- Taking firm and vigorous action against any individual(s) involved in bribery.
- Provide information to all employees on how to report breaches and suspected breaches of this Policy.
- Include appropriate clauses in contracts to prevent bribery.

6.0 Your Responsibilities

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for Scottish Canals.

All staff are required to avoid activity that breaches this Policy.

You must therefore:

- Ensure that you read, understand and comply with this Policy (Requirement 1)
- Raise concerns as soon as possible if you believe or suspect that a conflict with this Policy has occurred, or may occur in the future.

As well as the possibility of civil and criminal prosecution, staff that breach this Policy will face disciplinary action, as described in Scottish Canals - Disciplinary Procedure which could result in summary dismissal for gross misconduct.

7.0 Process for Dealing with Cases of Bribery

The following section outlines the process by which potential cases of bribery are reported and subsequently dealt with by Scottish Canals

7.1 Raising a Concern

All staff have a responsibility to help detect, prevent and report instances of bribery. Staff that have a concern regarding suspected instances of bribery have a duty to report these concerns.

Scottish Canals is committed to and has a Whistleblowing Policy to ensure that Scottish Canals employees all have a safe, reliable, and confidential way of reporting any suspicious activity. Staff reporting cases of suspected bribery and those investigating reports of bribery will follow the procedures laid out in the Whistleblowing Policy (Requirement 12).

If a Scottish Canal employee suspects that a bribery offence has been committed either by a Scottish Canals employee or a third party they have a duty to report this to their line manager and/ or Director of People, Safety & Governance (in the absence of the Director

of People, Safety & Governance, the Head of Legal Services) within 2 working days of their initial suspicion (Requirement 7).

If the case of suspected bribery involves the whistleblowers line manager or the Head of Legal Services then they will report their suspicions to another senior manager or director within 2 days of their initial suspicion. (Requirement 8).

All cases of suspected bribery will be reported to Scottish Canals Chief Executive by the manager or Head of Legal Services or whom first received a report of suspected bribery (Requirement 9).

Scottish Canals Chief Executive will appoint an employee to lead bribery investigations. This will usually be the Head of Legal Services (Requirement 10)

7.2 Informing the Police

As an act of bribery is a criminal offence Scottish Canals have an obligation to report cases of bribery to the police. Failing to prevent bribery is also a criminal offence (Requirement 6).

All cases of suspected bribery will be reported to the police by the Head of Legal Services, or whoever is leading the bribery investigation (Requirement 11).

7.3 The Investigation Process.

Scottish Canals will investigate all reported cases of bribery following the procedures laid out in Scottish Canals Disciplinary Policy and Scottish Canals Anti-bribery Policy (Requirement 13).

All documentation arising from the investigation will be handled in line with both Scottish Canals Data Protection and Freedom of Information policies (Requirement 14).

If Scottish Canal's employees are found to have committed an offence of bribery they will be subjected to the procedures outlined in Scottish Canals Disciplinary Policy as well as those instigated by the police and the Procurator Fiscal Services. (Requirement 15).

VERSION CONTROL

Title:	<i>Anti-Bribery Policy</i>
Project Number:	N/A
Version:	3.0
Date Created:	August 2021
Review Date:	August 2022
Description:	This document sets out the anti-bribery policy for Scottish Canals
Source:	This document has been written with reference to the Bribery Act 2010
Status:	Operational
Coverage:	Organisation Wide
Update Procedure:	Updated on an annual basis or if an amendment to legislation
Number of Pages:	6
Author:	Nicola Christie
Position:	Head of Legal Services
Last Updated by:	Nicola Christie
Date of Last Update:	August 2021
Updates Made:	Annual review and update: changes to document template and minor edits to content
Owner:	Scottish Canals
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Access Conditions:	Internal
Authorised By:	Scottish Canals Board
Date:	August 2021

Appendix 2 - ANTI-BRIBERY CONTROLS

Internal and External Risk Factors	Current Controls
<p>1. Policies & Procedures - clear and accessible policies for:</p> <ul style="list-style-type: none"> - corporate hospitality and gifts; - travel and subsistence; - reclaiming of expenses; - conflicts of interest; - charitable & political donations; - selection of services providers; - recruitment of employees (including checking of references); - the conduct of transactional risk assessments; and - whistleblowing 	<p>Scottish Canals has an Anti-Bribery Policy providing an overview of what constitutes bribery and setting out the organisation's commitment to, and its employee's responsibilities in respect of, anti-bribery compliance.</p> <p>Scottish Canals has a Code of Conduct for the Scottish Canals Board and a Code of Conduct for its employees. These Codes address a range of bribery risk areas including:</p> <ul style="list-style-type: none"> • Principles and rules relating to good conduct; • Remuneration, Allowances and Expenses; • Gifts and Hospitality; • Use of Public Body Facilities; and • Requirements regarding the Registration and Declaration of Interests. <p>Scottish Canals has a Whistleblowing Policy setting out a process for communicating suspicions or instances of malpractice.</p> <p>A Counter Fraud Policy is in place emphasising the requirement to act honestly and with integrity.</p> <p>An annual review of the Counter Fraud Policy, Anti-Bribery Policy, Whistleblowing Policy and Codes of Conduct are included in the Board Annual Work Programme.</p> <p>There are procedures and processes in place for the recruitment of employees (including checking of references). The Anti-Bribery and Counter Fraud Policies together with the Code of Conduct and whistleblowing procedures are highlighted as part of the induction.</p> <p>Scottish Canals Framework Document governs charitable and political donations with requisite controls included in Scottish Canals internal Finance Manual.</p> <p>In addition to Scottish Canals specific policies and procedures, the activities of the organisation and certain of its personnel are governed by the:</p> <ul style="list-style-type: none"> • Ethical Standards in Public Life etc. (Scotland) Act 2000; • On Board – a Guide for Board Members of public bodies in Scotland; and • Scottish Public Finance Manual. <p>Combined, these codes, manuals provide a further layer of control measures that assist with anti-bribery compliance.</p>
<p>2. Knowledge - level of knowledge within Scottish Canals of the UK's bribery laws and the consequences of breaching those laws</p>	<p>All staff are required to complete refresher training on an annual basis of the Scottish Canals Anti-Bribery and Counter Fraud Policies, Code of Conduct via NETconsent, our policy management tool. All new employees also undertake this training as part of their induction process.</p> <p>Staff reminders sent via email and internal staff newsletters about the requirement to record gifts and hospitality</p>
<p>3. Bribery risk perception</p> <p>Potential risk areas</p> <ul style="list-style-type: none"> - improper payments connected to deals; - perceived conflicts of interest; - improper interactions with Ministers or Councillors; - risk of third-party service providers engaging in bribery; - corporate hospitality being an improper inducement; - improper building or services, e.g. building an extension for a planning officer or land agent; - colleagues being bribed, e.g. homers; and/or - facilitation payments. 	<p>Scottish Canals faces the same procurement risks as other public and private organisations. There are a range of control measures in place to minimise such risks.</p> <p>Scottish Canals is subject to all rules laid out in the Scottish Public Finance Manual (SPFM) in demonstrating and accounting for value for money. Scottish Canal's commitment to anti-bribery compliance is incorporated within its procurement process for third party service providers and suppliers which apply throughout the lifetime of the contract.</p> <p>Scottish Canals has internal governance structure to review all projects and challenge where necessary, the actions and judgements of Scottish Canals' management in relation to the management of transactions which have a commercial and/or reputational element. Contractor and supplier information is verified through Company checks and requesting banking details. In respect of any commercial property transactions/overage arrangements, due diligence is carried out through legal advisors.</p> <p>If the purchase is valued between £1,000 and £50,000 then three quotes are required before the contract is awarded (With procurement activity up to £25k being typically managed locally by the business areas in line with Scottish Canals Procurement Policy) . Any purchase £25,000 and £50,000 is required to go through a tender or quotation process and are typically managed by the Procurement team in line with the Scottish Canals Procurement Policy Procurement and any application legislation. Purchases above £50,000 (Goods and Services) and £2M (Works) are governed by the Procurement (Scotland) Regulations 2016 while purchases above the OJEU threshold (currently £189,330 for Goods and Services, and £4,733,252 for Works) are governed by The Public Contracts (Scotland) Regulations 2015. These regulations require the exclusion of bidders who cannot successfully answer a number of business probity questions including questions on bribery.</p> <p>Scottish Canals tendering processes utilise electronic tendering through the Scottish Government web portal (Public Contracts Scotland) to provide a secure, auditable mailbox with no access to received tenders until after the closing date. This portal also allows control of questions and the publication of additional information during the tender to ensure a fair and transparent tender takes place.</p> <p>Tender documents submitted to service providers include an anti-collusion form with specific bribery related questions and financial due diligence questionnaire. Credit reference agencies are instructed to undertake requisite financial checks for any new suppliers and prior to any contract extensions.</p>

	<p>Tender evaluation is carried out by people with the appropriate technical knowledge (checked for compliance by the Procurement team) and financial evaluations being separated to avoid any potential for evaluation bias. This reduces the impact that any one person can have on the outcome of any tender exercise. For complex tenders, a number of evaluators are involved in evaluating the different elements of the tender responses.</p> <p>Scottish Canal's Procurement</p> <ul style="list-style-type: none"> • carry out tendering procedures for larger value contracts, typically those above £25,000; • provide an efficient service to customers within Scottish Canals to meet their purchasing requirements; • meet savings targets through efficient purchasing activities; • provide procurement procedures for use throughout Scottish Canals and awareness training and • provide specialist procurement advice for dedicated contract managers responsible for contract delivery. <p>As a policy Scottish Canals does not make compensation payments to planning permission objectors. Funding is sourced from third party investors, for example charities, lottery.</p> <p>Scottish Canals does not enter into commission arrangements.</p> <p>The potential for conflicts of interest and improper interactions with Ministers or Councillors are addressed in the Codes of Conduct described above. Scottish Canals' register of interests is published on our website and updated quarterly.</p>
<p>4. Culture - Commercial culture balanced by an ethical culture? How is this evidenced?</p>	<p>Scottish Canals is subject to all rules laid out in the Scottish Public Finance Manual. The organisation comprises individuals from different, private, public and third sector backgrounds, bringing their own personal experience from working in a variety of fields.</p> <p>An Audit and Risk Committee reports into the Board on matters of risk, control, and governance. The Terms of Reference of this Committee are wide ranging and publicly available.</p> <p>An annual review of the Counter Fraud Policy, Anti-Bribery Policy, whistleblowing policy and complementary ethical standards is a Matter Reserved to the Board and is included in the Board Annual Work Programme.</p> <p>The Executive Management Team assesses whether the culture, from an anti-bribery perspective, requires to be reassessed periodically and advises the Boar</p>
<p>5. Top level commitment - is there a clear top-level commitment to preventing bribery? How can you evidence that commitment?</p>	<p>The Board of Scottish Canals supports and participates in periodical and proportionate anti-bribery training by external specialist advisors.</p> <p>The Board reviews the Anti-Bribery Policy and Codes of Conduct annually in accordance with Scottish Canals Corporate Governance Arrangements.</p>
<p>6. Remuneration - could the remuneration structure act as an incentive for bribes to be offered or received?</p>	<p>Scottish Canals' rewards system is not based on sales. There is no rewards system in place. Scottish Canals is subject to the Scottish Government policy on public sector pay.</p>
<p>7. Business development - what is the approach to business development? Does it involve entertainment? If it does, what type of entertainment?</p>	<p>Scottish Canals balances sustainable income and working capital for reinvestment. Scottish Canals undertakes business development as an income generating organisation.</p> <p>Limited and targeted events for developing collaborative working with partners and promoting business development for proper business purposes are held from time to time. Internally required prior approvals must be obtained.</p>
<p>8. Financial controls - what is your assessment of how effective your financial controls would be in identifying an improper or questionable payment?</p>	<p>A range of financial controls are in place to minimise the risk of bribery: double signatures required for all payments, expense claims reviewed and sign off process for payments made.</p> <p>Scottish Canals is audited in respect of all funding that it receives that has been awarded for a specific purpose; these funds are not to be used for any other purpose than that for which they are granted.</p>
<p>9. Country Risk – do you transact/deal with foreign officials or business people? From where? How do you factor in bribery risks associated with those interactions?</p>	<p>The Executive Management Team keep under review whether Scottish Canals commences transacting with foreign public officials and follows controls as required in the SPFM.</p>

10. Transaction/Business Partner risk - types of transactions/business partner and any perceived bribery risks	See 3 above related to bribery risk perception for details on transactional/business partner risks and controls.
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Appendix 3 GIFTS AND HOSPITALITY REGISTER April 2020 – March 2021

NAME	DATE RECEIVED	DATE OF EVENT	HOSPITALITY / GIFT OFFERED	ACCEPTED / DECLINED	Value	AUTHORISATION
NIL	NIL	NIL	NIL	NIL	NIL	NIL