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AUDIT COMMITTEE REPORT

BORDERS COLLEGE REGIONAL BOARD

Subject: Updated Anti – Bribery Policy	**Purpose:** **For Approval** ☒ **For Discussion** ☐ **For Information** ☐
Prepared by: Kirsty Robb, Vice Principal – Finance & Corporate Services	**Date of Committee: 11 May 2023**

Purpose: To approve the updated Anti-Bribery Policy.

Executive Summary:
The Audit Committee provides assurance to the Board that "appropriate measures" are in place for a key number of governance and control activities. This includes the governance and oversight of any improprieties or fraud.

A key tool to reduce the risk of impropriety or fraud is the Colleges Anti-Bribery Policy which is required to be approved by the Audit Committee. The Policy ensures the College meets the requirements of the Bribery Act 2010.

The Policy is reviewed every 3 years, or when changes to legislation or corporate governance require it. The last review was undertaken in January 2019 and the revised Policy approved by the Audit Committee on 7th February 2019.

Key items:
Following discussion at the Audit Committee on 9 February a full review has been undertaken of the Policy and relevant legislation. The updated Policy is contained in Appendix 1 and shows all the changes made. The main changes are summarised

1.3 – Amended to further emphasis the College's reputational commitment to ethical behaviour, financial probity and reliability.

2.8 – Additional paragraph detailing investigations will be carried out in accordance with the Colleges Employee Disciplinary Policy and Procedure.

3.5 – Training awareness added to detail how the College will ensure staff are aware of the Policy

Section 4 expanded to provide clear guidance for donations, gifts, hospitality and sponsorship

Section 6 – Definitions section added

Appendix A – Examples of bribery provided
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Questions that Members should ask themselves when reading the paper: Does the policy meet the legislative requirements and are the controls included in the policy sufficient.	
Linked to Strategic Ambition(s): **Create high quality learning and training opportunities which are relevant, enabling and flexible** Choose an item. **Performance Measures:** An Agile & Creative Staff Body Choose an item.	
Linked to Strategic Risk Register: 4b - Governance Choose an item.	
Recommendation: It is recommended the Committee approve the updated Anti-Bribery Policy contained in appendix 1.	
Previous Committee Approvals: Audit Committee 7 February 2019.	
For publication ☒	**Not for publication** ☐ **If not, why not?**

BORDERS COLLEGE

Regionally Focused – Globally Engaged

Anti-Bribery Policy

May 2023

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History of Changes

Version	Description of Change	Authored by	Date
1.1	New Policy approved at Audit Committee	P Smith	January 2016
1.2	Minor terminology changes	H Robertson	January 2019
1.3	Public Contact regulations update and useful links section	K Robb	January 2023
1.4	Overall review, simplification and inclusion of definitions,	K Robb	May 2023

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Anti-Bribery Policy

1.0 Policy Statement

1.1 Bribery is a criminal offence. The College does~~We 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.

1.2 To use a third party as a conduit to channel bribes to others is a criminal offence. The College~~We~~ do not, and will not, engage indirectly in or otherwise encourage bribery.

1.3 The College values its reputation for ethical behaviour and for financial probity and reliability. It is~~We are~~ committed to the prevention, deterrence and detection of bribery. It has~~We have~~ a zero-tolerance towards bribery and aims~~. We aim~~ to maintain anti-bribery compliance 'business as usual', rather than as a one-off exercise.

2.0 Introduction

2.1 Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.

2.2 The Bribery Act 2010 (the Act) (www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1) defines four key offences:

- bribery of another person (section 1)
- accepting a bribe (section 2)
- bribing a foreign official (section 6)
- failing to prevent bribery (section 7)

The Act makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2). Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business. Under Section 7 there is also a corporate offence of failure by a commercial organisation to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation. An organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent bribery by or of persons associated with the organisation.

~~2.3 The guidance states that a 'commercial organisation' is any body formed in the United Kingdom and '...it does not matter if it pursues primarily charitable or~~

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~~educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made'. The College is a 'commercial organisation'.~~

2.3 Failure to comply with this Policy may lead to members of staff:

- Being held personally liable, such as fines or imprisonment potentially under the laws of more than one jurisdiction:
- Being subject to disciplinary action, up to and including dismissal; and
- Being subject to other sanctions imposed by regulators, including a ban from working in the financial services industry.

2.4 Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine proportionate procedures in the recommended areas of six principles. These principles are not prescriptive. They are intended to be flexible and outcome focused, allowing for the different circumstances of organisations. Small organisations will, for example, face different challenges to those faced by large multi-national enterprises. The detail of how organisations apply these principles will vary, but the outcome should always be robust and effective anti-bribery procedures.

2.4.1 Proportionate Procedures

The College must ensure it has~~An organisation's~~ procedures in place to prevent bribery by persons associated with it and that those procedures are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation's activities. They must~~are~~ also be clear, practical, accessible, effectively implemented and enforced.

2.4.2 Top Level Commitment

The Senior Leadership Team (SLT) is~~top-level management (Regional Board) are~~ committed to preventing bribery by persons associated with the College~~it~~. The SLT will~~y~~ foster a culture within the College ~~organisation~~ in which bribery is never acceptable.

2.4.3 Risk Assessment

The College~~organisation~~ will assess~~es~~ the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage.

2.5 Due Diligence

The College~~organisation~~ will apply~~ applies~~ due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate

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identified bribery risks.

2.6 Communication (including Training)
The College~~organisation~~will seek~~s~~ to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces. The College will ensure that appropriate reference is made to the College's Anti-Bribery Policy and related polices, e.g Procurement, Whistle-Blowing Anti-Fraud & Corruption Policy

2.7 Monitoring and Review
The College~~organisation~~ will monitor~~s~~ and review~~s~~ procedures designed to prevent bribery by persons associated with it and will make~~s~~ improvements where appropriate. The College will ensure that it takes appropriate action in response to any reported incidents of bribery.~~necessary.~~

2.8 Any allegations of bribery made will be investigated in accordance with the College's Employee Disciplinary Policy and Procedure. Such action may be considered not only against those found to have perpetrated bribery, but also against those whose negligence may have facilitated it.

2.9 The College is committed to proportional implementation of these principles.

2.10 An individual guilty of an offence under Sections 1, 2 or 6 of the Act is liable to imprisonment for a maximum term of ten years, or to an unlimited fine, or both. Organisations are liable for these fines and if guilty of an offence under Section 7 are liable to an unlimited fine.

2.11 Under the Public Contracts Regulations 2015~~06~~ (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. There are no plans to amend the 2015~~06~~ Regulations for this to include the crime of failure to prevent bribery. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. This College has the discretion to exclude organisations convicted of this offence.

3.0 Key Principles

3.1 Bribery is Not Tolerated

It is unacceptable to:

- give, promise to give, or offer a payment, gift or hospitality 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

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routine procedure;

- 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 us in return;
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy; or
- engage in activity in breach of this policy.

3.2 Facilitation Payments

Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions.

3.3 Commitment to Action

The College commits to:

- setting out a clear anti-bribery policy and keeping it up to date;
- making all employees aware of their responsibilities to adhere strictly to this policy at all times;
- training all 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 prosecution;
- taking firm and vigorous action against any individual(s) involved in bribery;
- providing information to all employees to enable the reporting of breaches and suspected breaches of this policy; and
- including appropriate clauses in contacts to prevent bribery.

3.4 Disciplinary Action and Legal Prosecution

Where a breach of this Policy is notified to the College, the College will investigate the circumstances under the Employee Disciplinary Policy and Procedures, reporting matters to the police if necessary and assist in any resulting criminal prosecution.

3.5 Training Awareness

The Vice Principal – Finance and Corporate Services will communicate the requirements of this Policy to employees at least once a year. Training and refreshers will be provided to all employees on a regular basis to accompany and supplement this annual communication.

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3.6 Whistleblowing Policy

Where any member has a suspicion that any breach of this Policy has occurred, they should report it under the College's Whistleblowing Policy.

4.0 Donations, Gifts, Hospitality & Sponsorship

4.1 The College does not make contributions to political parties. The College supports charitable giving and initiatives by students and staff. However, it is only open to the College to make charitable donations at an institutional level in limited prescribed circumstances, and any such requests should first be referred to the Principal.

4.2 Charitable donations must not be made for the purpose of influencing Public Officials or in exchange for obtaining or retaining business or other improper advantage for the benefit of the College (or for the improper advantage of any employee, any other entity of person). All College employees and related individuals are required to seek approval from the Principal prior to any donation being made. All College employees must also comply with local laws and regulations on Lobbying, including registration and reporting requirements.

4.3 College employees must ensure that charitable donations and sponsorships are not made as an inducement for the purpose of obtaining any improper advantage or favour. Therefore charities, organisations or individuals seeking charitable gifts (excluding employees for personal charitable activities) are subject to due diligence or enhanced due diligence as appropriate.

4.4 This policy is not meant to change the requirements of our gifts and hospitality detailed in the Financial Regulations. The policy allows, reasonable and appropriate hospitality or entertainment given to or received from third parties, for purposes of:

(a) – establishing or maintaining good business relationships;
(b) – improving or maintaining our image or reputation; or
(c) – marketing or presenting our products and/or services effectively

4.5 The giving and accepting of gifts is allowed if the following requirements are met:

(a) It is not made with the intention of influencing a party to obtain or retain business or a business advantage, or reward the provision or retention of business or a business advantage, or in explicit or implicit exchange for favours or benefits
(b) It is given or received in the College's name
(c) It does not include cash or a cash equivalent (such as gift vouchers)
(b) It is appropriate in the circumstance, taking account of the reason for the gift, its timing and value.
(e) It is given openly, not secretly
(f) It complies with any applicable local law.

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4.6 All offers of donations; gifts hospitality or sponsorship should be logged via email to PA Vice Principals. No offers should be accepted without the approval of the Principal or Vice Principal – Finance and Corporate Services.

5.0 Scope

5.1 This Policy forms part of the College's internal controls and corporate governance arrangements. This policy applies to all of the organisation's activities. For partners, joint ventures and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

5.2 Within the organisation, the responsibility to control the risk of bribery occurring resides at all levels of the organisation. It does not rest solely within assurance functions, but in all business units and corporate functions.

5.3 This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Board members (including independent members), volunteers and consultants.

6.0 Definitions

6.1 Bribery is the offer, promise, giving, demanding or acceptance of an advantage as an inducement for an action which is illegal, unethical, a breach of trust or the improper performance of a contract. Examples of bribery are contained in Appendix A

6.2 Corruption is the misuse of public office or power for private gain, or misuse of private power in relation to business outside the realm of government.

6.3 Acts of bribery or corruption are designed to influence the individual in the performance of their duty and incline them to act dishonestly. The person being bribed is generally someone who will be able to obtain, retain or direct business. This may involve initiatives such as buying or selling, or it may involve the handling of administrative tasks such as licences, customs, visas or taxes. It does not matter whether the act of bribery is committed before or after the activity has been undertaken.

6.4 Kickbacks are typically payments made in return for a commercial favour or advantage. These are typically small, unofficial payments made to secure or expedite a routine government action by a government official.

6.5 Illustrative case studies are available in Appendix A of the Bribery Act 2010 Guidelines available via the attached link here

7.0 Responsibilities

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7.1 The Audit Committee is responsible for ~~approving this Policy~~ considering the suitability and effectiveness of this Policy.

7.2 The Vice Principal – Finance and Corporate Services is responsible:

- -for implementing and reviewing the Policy, and
- ensuring adequate procedures to monitor the implementation of, and ongoing compliance with Policy.

7.3 All College managers are responsible for ensuring that staff are made aware of their obligations under the Policy.

7.4 The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the organisation or under its control. All staff members are required to avoid activity that breaches this policy. They must:

- ensure that they read, understand and comply with this policy; and
- raise concerns as soon as possible if they believe or suspect that a conflict with this policy has occurred or may occur in the future.

8.0 Related Documents and Useful Links

8.1 Financial Regulations

8.2 Anti-Fraud and Corruption Policy and Procedure

8.3 Whistleblowing Policy

8.4 Employee Disciplinary Policy and Procedure

8.5 Procurement Policy

8.6 Gifts and Hospitality Registers

8.7 Useful Links:

Bribery Act 2010
www.legislation.gov.uk/ukpga/2010/23/contents

Public Contracts Regulations 2015

https://www.legislation.gov.uk/uksi/2015/102/made
National Fraud Authority
www.gov.uk/government/organisations/national-fraud-authority

Transparency International UK

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www.transparency.org.uk

Protect – speak up, stop harm
www.protect-advice.org.uk

Department for Work 6: Pensions (Blowing the Whistle to a Prescribed Person)
www.gov.uk/government/publications/blowing-the-whistle-to-a-prescribed-person

9.0 Review

9.1 This Policy will be reviewed every 3 years or when changes to legislation or corporate governance require it.

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Appendix A

Example of Bribery

Receiving a bribe

A College employee who is currently involved in a tender procurement process for services is approached by a current supplier and offered a two-night break in an expensive hotel.

A College employee who is undertaking a performance review of a service provider is offered expensive tickets to an entertainment event.

It is an offence for a supplier to make such offers. It would be an offence for College employees to accept the offer as they would be doing so to gain a personal advantage. Suppliers who are found to have committed a bribery offence are automatically debarred from any future public authority tender process.

Offering a bribe

A College employee offers an external inspector tickets to an event but only if they agree to rate the College highly as part of their review.

This would be an offence as the employee is making the offer to gain commercial advantage. The College may also be found to have committed an offence because the offer has been made to obtain business. It would also likely be an offence for the external inspector to accept the offer.

Bribing a foreign official

An agency responsible for recruiting students pays a small bribe to an education department official to be allowed access to students in a highly rated school. The offence of bribing a foreign public official has been committed as soon as the offer is made. This is because it is made to gain a business advantage for you or for the College.

If the College is found to have connived in or consented to acts of corruption undertaken in its name, the penalties include personal liability for the senior managers and an unlimited fine and significant reputational damage for the College. Penalties from more than one jurisdiction may also apply in a single case of bribery or corruption.

Status:	Approved
Policy Dated:	~~January 2019~~May 2023
Author:	Vice Principal – Finance & Corporate Services
Review Date:	May~~January~~ 2026~~3~~
Equality Impact Assessed:	May 2023~~February 2016~~

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