

ANTI BRIBERY POLICY

Report of the Director and Company Secretary

1. SUMMARY

The Anti Bribery Act 2010 came into force on 1 July 2011. Derby Homes needs to adopt a formal policy with respect to bribery and to make it known to all employees. This report proposes a policy to be adopted.

2. RECOMMENDATION

That the Board formally adopts the Anti Bribery Policy attached at Appendix 1.

3. MATTER FOR CONSIDERATION

- 3.1 The Anti Bribery Act 2010 came into force on 1 July. It places a criminal responsibility onto individuals and companies to avoid bribery. It tries to balance this with a reference to acceptable levels of hospitality and gifts that would not unduly influence any decision – it is the improper nature of a decision that would determine whether an action was bribery or not. In most cases, this will probably be determined by reference to the scale of the hospitality and whether this is offered to all or just to those who have determined a decision in a particular way.
- 3.2 In the case of public funds the need to be seen to be clean is even greater than for private companies, and in most cases is already operated to a high standard. Derby Homes general policies do not need specific amendment, but there is a need to add a formal Anti Bribery Policy in order to clarify the position as much as possible. A draft policy is attached at Appendix 1 for consideration.

4. CONSULTATION IMPLICATIONS

The Policy will be distributed to all employees by means of an email and paper copies where necessary.

5. FINANCIAL AND BUSINESS PLAN IMPLICATIONS

There is no material cost to the operation of this Policy unless the scale of whistleblowing became greater than it currently is as a consequence.

6. LEGAL AND CONFIDENTIALITY IMPLICATIONS

Having a formal policy would assist in defending any claims against Derby Homes in the event of bribery being accused or uncovered in future.

7. PERSONNEL IMPLICATIONS

Each employee will be liable individually for their actions or inactions under the Act as well as Derby Homes as a Company. It is therefore important that the changes are communicated to all employees.

8. RISK IMPLICATIONS

If Derby Homes did not adopt an Anti Bribery Policy, the chances of a challenge under the Act would be higher.

9. POLICY REVIEW IMPLICATIONS

This is a key policy of Derby Homes and will be included in the Key Policy Review Schedule. In accordance with minute 10/51 this policy will be reviewed no later than 3 years from the date of this meeting.

The areas listed below have no implications directly arising from this report:

- Environmental
- Equalities Impact Assessment
- Health & Safety

If Board members or others would like to discuss this report ahead of the meeting please contact the author, or Phil Davies, Chief Executive, phil.davies@derbyhomes.org – Phone: 01332 888528

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Background Information: Anti Bribery Act 2010
Supporting Information: None

Derby Homes

Anti-Bribery Policy

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Part A: Introduction

1. Our Commitment

- 1.1 As a Registered Provider and an Arms Length Management Organisation, Derby Homes ("the Company") is committed to eliminating corruption and bribery and achieving the highest standards of good governance in all its activities.
- 1.2 The Company wishes to carry out its business transparently and fairly and therefore operates a zero tolerance policy towards bribery by its board members, employees, contractors, agents and other associated persons. Incidences of bribery could lead to the Company's reputation being damaged and also lead to deterioration in its relationship with its tenants, customers, business colleagues and other stakeholders.
- 1.3 As explained below, your conduct can lead to prosecutions being brought against the Company and can impact directly on the Company's public reputation.
- 1.4 The Company is committed to avoiding working with other organisations or individuals who do not commit to doing business without bribery.

2. Background

(a) The Bribery Act 2010 ('the Act')

- 2.1 The Government passed the Act to simplify the law and assist the UK to combat bribery. The Act came into force in 1 July 2011 and it applies to the Company.
- 2.2 The Act contains four principal bribery offences:
 - 1) bribing someone to encourage or reward 'improper performance' of a function or activity – this includes offering, promising or actually giving a bribe;
 - 2) being bribed resulting in an activity or function being 'improperly performed' or resulting from an activity or function being 'improperly performed' – this includes requesting, agreeing to receive or receiving a bribe;
 - 3) bribing a foreign public official; and
 - 4) the corporate offence (see below).
- 2.3 A bribe is 'a gift or reward given, offered or received to gain any business, commercial or personal advantage'.

(b) The corporate offence

- 2.4 The Act introduces a strict liability offence for commercial organisations where someone associated with an organisation (including board members, employees,

agents or sub-contractors) commits an act of bribery to obtain or retain business or a business advantage.

- 2.5 Strict liability means that the Company may be liable in law without the finding of fault. At court, it need only be proved that a bribe was made by someone associated with the Company with the intention of giving the Company a business advantage, whether or not the Company encouraged such action or was aware of it. The responsibilities under the Act therefore need to be taken extremely seriously.

(c) Penalties

- 2.6 Prosecution under the Act could result in the Company receiving an unlimited fine and potentially the Company becoming debarred from tendering for public contracts.
- 2.7 Breaches of the Act could also lead to penalties for the Company's senior officers with whose "consent or connivance" bribery was committed. Individuals can be found guilty of bribery and, in the most serious cases, be liable on conviction to imprisonment for up to 10 years, to a fine, or to both.
- 2.8 In addition, individuals could be liable for bribing, receiving a bribe or bribing a foreign public official. Again, such individuals could be liable on conviction to imprisonment for up to 10 years, to a fine, or to both.

(d) Adequate procedures – the six management principles

- 2.9 There is a defence to the corporate offence if the Company can show it had "adequate procedures" in place, designed to prevent bribery.
- 2.10 The Ministry of Justice has issued guidance which sets out six broad management principles to assist organisations to put in place proper anti-bribery procedures.
- 2.11 The Company will be following these principles to show that it is committed to eliminating bribery within the Company.
- 2.12 The management principles the Company needs to follow are:
- **Proportionality** – anti-bribery policies and procedures should be proportionate to the activities and size of the Company, the sector in which it operates and the risks it faces;
 - **Top level commitment** – establishing a clear culture within the Company in which bribery is unacceptable;

- **Risk assessment** – understanding and keeping up to date with the bribery risks it faces by carrying out regular and comprehensive risk assessments;
- **Due diligence** – the Company needs to know about who it does business with, who it's paying money to and why – and make sure the Company's partners also have reciprocal anti-bribery agreements in place;
- **Communication** – so that all of the Company's employees, board members and business partners know the procedures to follow in situations which may be sensitive to bribery. The Company must ensure that its anti-bribery policies are embedded in the Company's culture, not just a "box-ticking" exercise; and
- **Monitoring and review** – through audit and other internal controls the Company must monitor its anti-bribery procedures to prevent and detect bribery – to make sure its procedures are working!

2.13 This Policy is designed to address these principles and, primarily, the second key principle of demonstrating top level commitment and the fifth key principle – having clear, practical and accessible policies and procedures properly communicated to people and organisations with the Company. This Policy complements the other procedures the Company has in place to avoid bribery and corruption in the Company.

3. Application of the Policy

- 3.1 The Company will apply the principles set out in this Policy fairly, openly and transparently.
- 3.2 The Policy applies to all board members, employees, committee members and volunteers of the Company at any time. The Company will apply the provisions of this Policy as they relate to all of its commercial and non-commercial arrangements and to individuals and organisations having a relationship with the Company, including contractors, agents and consultants.
- 3.3 All of the parties listed above are required by the Company to familiarise themselves with this Policy and the processes and procedures contained within it, and to make sure they follow it at all times throughout their relationship with the Company.
- 3.4 Section C of this Policy sets out how breaches of this Policy will be dealt with.

4. Other policies and procedures

4.1 This policy needs to be read alongside the Company's other policies and procedures from time to time including:

- staff terms and conditions including contracts of employment;
- board members' Code of Conduct;
- the Company's Gifts and Hospitality Policy;
- the Company's scheme(s) of delegation / standing orders and financial regulations;
- the Company's Whistleblowing Policy; and
- the Company's procurement strategy, policies and standing orders.

4.2 Where this Policy conflicts with any provision of the above policies and procedures, this Policy will prevail.

4.3 The Company will act at all times within its Articles. If anything within this policy conflicts with the Company's Articles, the Articles will take priority.

5. Mechanics of the Policy

(a) Who is responsible for keeping the policy up to date?

5.1 The Board has overall responsibility for ensuring that all of the Company's policies and procedures are kept up to date. It has delegated to the Company Secretary the specific responsibility for maintaining general awareness of and compliance with this Anti-Bribery Policy.

(b) Monitoring and review

5.2 This Policy will be reviewed by the Board periodically and no less frequently than every 36 months.

5.3 The Audit Committee will monitor the operation and adequacy of this Policy on a regular basis and will report to the Board on any problems.

5.4 The Audit Committee will report to the Board no less frequently than every 12 months on the Company's anti-bribery compliance.

5.5 If you have any questions on this Anti-Bribery Policy or any of the issues covered within it, please contact the Company Secretary.

5.6 This Policy may only be amended with the approval of the Board.

Part B: Anti-Bribery Requirements

1. Gifts and Hospitality

- 1.1 This Policy must be read in conjunction with the Company's Gifts and Hospitality guidance, in particular in relation to approval of levels of gifts and hospitality and the need to record gifts and hospitality.
- 1.2 This Policy does not prohibit the giving or receiving of reasonable, proportionate and appropriate hospitality or gifts to or from people and organisations the Company deals with. There are circumstances where the acceptance of hospitality or gifts is in accordance with established business practice, or where the acceptance of gifts or hospitality is difficult to avoid without causing offence. Any such gifts or hospitality should be given openly.
- 1.3 Employees and Board Members should generally not receive or offer hospitality and gifts from or to persons or organisations that may be in a position to benefit from actions or decisions taken by the Company.
- 1.4 Hospitality and/or gifts cannot be given or received if done so with the intention of influencing someone to give the Company business, influencing the Company to award business or to reward the provision or retention of business or business advantage.
- 1.5 Any hospitality or gifts given should be reasonable and proportionate and designed to:
- cement or improve relationships;
 - show genuine appreciation for services;
 - improve the Company's image; and/or
 - market products or services.
- Recipients should never be given the impression that they are under an obligation to confer a business advantage on the Company because of the gifts or hospitality offered.
- 1.6 Gifts should not be offered to, or accepted from, government officials or representatives, or politicians or political parties, without the prior approval of the Company Secretary.

- 1.7 You should never give, promise or offer a payment, gift or hospitality to a government official, agent or representative to expedite or “facilitate” a routine procedure (e.g. to speed up a planning application).
- 1.8 If you suspect that hospitality is being offered or provided with an expectation that a business advantage will be provided by the Company in return, then you must not accept it and you must report this to your line manager or the Company Secretary immediately.
- 1.9 Any hospitality or gifts offered or received should be declared appropriately. Unofficial payments or “kick backs” should not be offered or accepted under any circumstances.

2. Expenses

Any expenses claims you make must be in accordance with the Company’s Business Travel Policy, properly recorded and supported by receipts (other than in exceptional circumstances).

3. Dealings with third parties

- 3.1 If you make payments to third parties, details of such payments must be properly recorded and receipted.
- 3.2 In making any such payments, you should consider what these payments are for and whether they are reasonable and proportionate.
- 3.3 You must make all suppliers / contractors and business partners you deal with aware that the Company takes bribery and corruption very seriously and that it will not be tolerated.
- 3.4 No hospitality or gifts should be offered to any organisation for which the Company is tendering for a contract during the tender process.

4. Charitable donations

- 4.1 The Company only makes charitable donations that are legal and ethical. No donation should be offered or made without the prior approval of the Company Secretary. In making charitable donations there will be an assessment of whether it would be appropriate to make such a donation under a formal grant agreement.

5. Political donations

- 5.1 The Company does not make political donations.

6. Training

- 6.1 Board Members and employees will receive training on anti-corruption measures and the requirements of this Policy, and all new Board Members and employees will receive anti-bribery training as part of their induction.
- 6.2 You must attend any training you are required to attend and, where you cannot attend a session that has been organised; you must arrange to attend an alternative session.
- 6.3 Any training provided will be monitored and evaluated to ensure it is an effective method of communicating with employees and Board Members.

7. Advice

- 7.1 You should seek advice from the Company Secretary if you are unsure about how the provisions of this Policy should be applied.
- 7.2 Where appropriate, the Company Secretary should seek legal advice on anti-bribery issues.

8. Practical Procedures

You must make sure that no payments are left unrecorded; to make sure that there can be no concealment of improper payments.

9. Breaches

- 9.1 If you believe or suspect that a breach of this Policy has taken place, or may occur in future – for example if a contractor offers you something in return for business, you must notify your line manager & the Company Secretary immediately.
- 9.2 You must tell your line manager & the Company Secretary if you are ever offered a bribe, suspect that this may happen in the future or if you think you are a victim of another form of unlawful activity.
- 9.3 You must tell your line manager and / or the Company Secretary if you have any concerns or suspicions that any of your colleagues may be involved in bribery or corruption at the earliest possible opportunity. Alternatively, if you are uncomfortable in doing this, you should raise your concerns or suspicions following the procedure set out in the Company's Whistleblowing Policy or contact the Company's confidential helpline.

- 9.4 The Company is keen to encourage openness and will support you if you raise genuine concerns you have under this policy (even if they later turn out to be mistaken). The Company wants to ensure no one suffers detrimental treatment (including disciplinary action or dismissal, threats etc) because of such reporting or because of refusing to take a bribe – if you feel you have suffered such treatment contact the Company Secretary or the confidential helpline.

10. **Examples of Bribery**

The following list contains some examples of acts which should set alarm bells ringing and which should be reported to your line manager and the Company Secretary. These are to give you an idea of the sort of behaviour which is unacceptable and which could have serious consequences.

- you learn that one of the contractors you regularly deal with has a reputation for paying bribes or requiring that bribes are paid to them;
- a supplier asks you to provide an invoice or receipt when no money is payable or has been paid;
- a supplier insists on being paid in cash and/or refuses to sign a formal agreement;
- a contractor offers to pay you cash to provide employment for a friend or relative;
- you notice that we have been invoiced for a payment which seems large given the service / goods which have been provided;
- you are offered an unusually generous gift or lavish hospitality;
- you are offered substantially discounted fees for supply of goods to you as a private person; or
- you are offered a payment in cash if a contract is awarded to the contractor / supplier.

Part C: Dealing with Breaches

- 1.1 For the reasons outlined in Part A of the Anti-Bribery Policy, the Policy is crucial to the Company's ability to meet its legal requirements. Accordingly the Company will treat any breach of the Anti-Bribery Policy very seriously indeed.
- 1.2 Any alleged breach of the Policy will be investigated by the Company.
- 1.3 A breach of the Policy by an employee will be treated as a disciplinary matter under his or her contract of employment and an appropriate sanction may be applied. An investigation into any allegation of such a breach made against an Employee will be conducted in accordance with the Company's relevant policies for such investigations. This policy does not form part of any employee's contract of employment and it may be amended at any time.
- 1.4 A breach of the Anti-Bribery Policy by a board member will be treated as a breach of his or her duties and obligations to the Company. An investigation into any allegation of such a breach made against a board member will be conducted in accordance with the Company's relevant policies for such investigations and an appropriate sanction may be applied in accordance with the Company's board members' Code of Conduct, the Company's standing orders and the Company's Articles.
- 1.5 Where the Company discovers bribery has taken place, it will make a full disclosure of this to the Serious Fraud Office and co-operate fully in any investigation carried out by the Serious Fraud Office.

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