

Report to Partnership Meeting 26 April 2013

PARTNERSHIP

HITRANS Anti-Bribery and Anti-Fraud Policies and Procedures

SUMMARY

The Report seeks approval from the Partnership for three new policies and procedures that HITRANS should have in place in relation to Bribery, Corruption and Fraud Prevention.

BACKGROUND

The requirement for public sector bodies to have rigorous policies covering financial management, control and personnel means that HITRANS as a statutory Regional Transport Partnership is required to have the same range of policies as much larger organisations. In complying with this requirement HITRANS receives support from Comhairle nan Eilean Siar on legal and personnel matters while Highland Council provide support to our finance functions.

HITRANS work closely with our partner Councils and the other model 1 Regional Transport Partnerships in meeting our obligations in producing policies and procedures to support the work of the Partnership. Recent discussion at the Regional Transport Partnership lead officers meetings has identified a need for HITRANS to establish new policies and procedures to guide the work of the Partnership in managing the risk of Bribery, Fraud and Corruption.

This report asks Members to consider and approve the following policies and procedures:

- Anti-Bribery Policy
- Anti-Bribery Procedure
- Anti-Fraud and Corruption Policy.

ANTI BRIBERY POLICY

HITRANS is wholly committed to preventing bribery and corruption in all our dealings and relationships, and upholding all relevant laws, including the Bribery Act 2010.

Bribery and corruption in any form are unacceptable and will lead to disciplinary action where allegations are substantiated. HITRANS operates a zero tolerance approach to these matters. The Anti-Bribery Policy included as Appendix A to this report sets out key principles to achieve these aims, and details HITRANS's corporate and employee responsibilities required to ensure compliance with the Act.

The Policy applies to all employees and covers all activities undertaken by HITRANS. In our dealings with third parties, we will promote the adoption of practices and arrangements consistent with the principles set out in this policy.

ANTI BRIBERY PROCEDURE

The Anti-Bribery Procedure should be read in conjunction with HITRANS's Anti Bribery Policy and Anti-Fraud and Corruption Policy. The procedure is intended to provide a tool for assessing and mitigating risk of bribery.

The Government has commented that such procedures should be informed by six principles:

Top Level Commitment
Risk Assessment
Proportionate procedures
Due Diligence
Communications
Monitoring and Review

The following procedural steps embody these six principles:

- Step 1 – Establish responsibility for bribery prevention measures
- Step 2 – Carry out a risk assessment
- Step 3 – Put in place proportionate bribery prevention measures
- Step 4 – Review due diligence measures
- Step 5 – Communication and training
- Step 5 – Monitoring and review

The full Procedure is included as Appendix B to this report.

ANTI FRAUD POLICY

The Anti-fraud and Anti-corruption policy forms part of the HITRANS's governance arrangements. Its aim is to ensure that the Partnership's resources are used for their intended purpose and that any losses through fraud and corruption are minimised.

This policy outlines the Partnership's commitment to creating an anti-fraud culture and maintaining high ethical standards in the administration of public funds. It is part of the framework, which will:

- Encourage fraud deterrence and prevention;
- Ensure that there are adequate arrangements in place to prevent the bribery of Partnership staff and Members;
- Raise awareness of fraud and corruption and promote their detection;
- Govern the performance of investigations and facilitate recovery of any losses to the Partnership;
- Invoke disciplinary proceedings and referral to the Police and/ or Procurator Fiscal as appropriate;
- Regularly review the policy and update as required.

The policy outlines the approach within the Partnership, and defines the roles and responsibilities for dealing with the threat of fraud and corruption, both internally and externally. It applies to:

- Employees
- Members
- Agency staff

- Contractors
- Consultants
- Suppliers
- Service users
- Staff and committee members of organisations funded by the Partnership
- Staff and principals of partner organisations.

The Anti-Fraud and Corruption Policy is included as Appendix C to this report.

RECOMMENDATIONS

The Partnership is asked to

1. Approve the Anti-Bribery Policy included as Appendix A to this report.
2. Approve the Anti-Bribery Procedure included as Appendix B to this report.
3. Approve the Anti-Fraud Policy included as Appendix C to this report.

Risk	impact	Comment
RTS delivery	-	
Policy	√	These Policy documents provide a framework for the Partnership to manage risk.
Financial	√	These Policy documents provide a framework that will manage risk against mis use of HITRANS finances.
Equality	√	These Policy documents are designed to apply fairly and equally to all staff, Members and stakeholders.

Report by: Ranald Robertson
Designation: Partnership Director
Background Papers: Appendix A, Appendix B and Appendix C
Date: 28th March 2013

APPENDIX A – ANTI BRIBERY POLICY



ANTI-BRIBERY POLICY

(covering all employees)

Contents

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6. Preventing Bribery – Adequate Procedures
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8. Consequences of Improper Behaviour
9. Gifts & Hospitality
10. Review

April 2013

1 Introduction

- 1.1 HITRANS is wholly committed to preventing bribery and corruption in all our dealings and relationships, and upholding all relevant laws, including the Bribery Act 2010.
- 1.2 Bribery and corruption in any form are unacceptable and will lead to disciplinary action where allegations are substantiated. HITRANS operates a zero tolerance approach to these matters.
- 1.3 This Policy sets out key principles to achieve these aims, and details HITRANS's corporate and employee responsibilities required to ensure compliance with the Act.
- 1.4 This Policy should be read in conjunction with HITRANS's Anti Bribery Procedure, Anti-Fraud and Corruption Policy and the Employee Code of Conduct.
- 1.5 This Policy and associated Procedure also provide information and guidance for employees on how to prevent, recognise and deal with bribery and corruption issues.

2 Scope

- 2.1 This Policy applies to all employees and covers all activities undertaken by HITRANS.
- 2.2 In our dealings with third parties¹, we will promote the adoption of practices and arrangements consistent with the principles set out in this policy.

3 Compliance

- 3.1 In order to ensure all employees are aware of their responsibilities under this Policy, each employee will be required, at the point of commencing employment with HITRANS, and annually thereafter to confirm that they have read and understood the requirements of this Policy and related Anti-Bribery Procedure.
- 3.2 Failure to adhere to this Policy may result in disciplinary action being taken against you, up to and including dismissal.

4 What is Bribery?

- 4.1 Bribery is an inducement or a reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage and can take various forms such as
 - bribery of another individual or organisation;
 - accepting a bribe from an individual or organisation.
- 4.2 Bribes may not always be monetary and may include gifts or hospitality.
- 4.3 Bribery is a criminal offence.

¹ A "third party" is an individual or organisation that engages for business with HITRANS e.g. external service providers, suppliers and contractors.

- 4.4 Additionally, failure by HITRANS to put in place adequate procedures to prevent bribery can also constitute an offence.
- 4.5 The maximum penalty for individuals under the Act is 10 years imprisonment and/ or unlimited fines. Failure by an organisation to prevent bribery carries an unlimited fine.

5 What is HITRANS position on Bribery?

- 5.1 HITRANS expressly forbids employees or associated persons² from offering or accepting bribes or unlawful inducements to or from anyone for any purpose.
- 5.2 The use of an associated person or third party as a 'go-between' to channel bribes to others is also unacceptable.
- 5.3 HITRANS is committed to the prevention, deterrence and detection of bribery by:
- ensuring procedures are in place to prevent bribery;
 - making all employees aware of their responsibilities through this Policy, the associated Anti-Bribery Procedure, and the Employee Code of Conduct;
 - training all employees so that they can recognise bribery and corruption and enable them to take any subsequent action that may be required;
 - ensuring training on this policy forms part of the induction process for all new employees, and that all employees are reminded annually of their responsibilities regarding bribery as part of the Performance, Review and Development process.
 - encouraging employees to be vigilant and to report any reasonably held suspicions of bribery or corruption, using HITRANS's Public Interest Disclosure (whistleblowing) policy if necessary;
 - investigating instances of alleged bribery and assisting police and any other appropriate authorities in any resultant prosecution;
 - taking disciplinary action up to and including dismissal against any individual involved in bribery or other corrupt activity;
 - including appropriate clauses in employment and commercial contracts to prevent bribery.

6 Preventing Bribery – Adequate Procedures

- 6.1 An organisation will have a statutory defence against prosecution for bribery offences if it puts in place "adequate procedures" designed to prevent bribery. What is "adequate" depends on the bribery risks, the nature, size and complexity of the business. Adequate procedures need to be applied **proportionately**, based on the level of risk.

² An "associated person" is a person who performs services for or on behalf of HITRANS, and can therefore include agents, suppliers and contractors.

6.2 In determining such procedures, the Government has indicated that organisations should be informed by six principles:

- Top Level Commitment
- Risk Assessment
- Proportionate Procedures (proportionate to the bribery risks faced).
- Due Diligence
- Communications (the anti-bribery policy and procedure are embedded and understood).
- Monitoring and Review

HITRANS's arrangements embody these six principles.

6.3 A separate **Anti-Bribery Procedure** has been developed which provides a tool for assessing and mitigating risk of bribery, and reflects these principles.

7 **Employee Responsibilities**

7.1 Employees must read and understand this Policy and the Anti-Bribery Procedure Management will ensure that all employees are given a copy for this purpose.

7.2 The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all employees working for HITRANS.

Therefore, all employees **must**:

- comply with this policy;
- avoid any activity that breaches this Policy or could be seen as a breach of this Policy;
- Seek advice **before** accepting gifts or hospitality;
- Raise any concerns as soon as possible if you believe or suspect that a breach of this policy has occurred or may occur in the future.

Employees **must not**:

- give or promise to give, or offer a payment, gift or hospitality with the expectation or hope that a personal, commercial, regulatory or contractual advantage will be received, or to reward any such advantage already given;
- give or promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to facilitate or speed up a 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 the Partnership in return;
- retaliate against, threaten or victimise anyone who has refused to be involved in bribery or corrupt practices, or who has raised concerns under this policy.

7.3 The list above is not exhaustive but is intended to provide examples of conduct likely to breach this policy.

7.4 If employees have any doubt at all about circumstances that they find themselves in, advice should be sought from their line manager **before** it becomes an issue to be dealt with.

8 Consequences of Improper Behaviour

8.1 All allegations relating to bribery or corrupt practices will be investigated.

8.2 Where the investigation concludes that improper behaviour may have occurred, HITRANS's Disciplinary procedures will be applied. This may result in dismissal.

8.3 In all circumstances where a criminal offence may have been committed, HITRANS will notify the Police.

8.4 HITRANS will seek, wherever possible, to recover any losses suffered as a result of an act of bribery or corruption.

9 Gifts & Hospitality

9.1 Gifts, offers of hospitality or favours from or to a third party, a contractor, client or partner organisation of HITRANS are capable of being perceived as constituting a bribe.

9.2 Therefore, you should never accept or offer a gift, hospitality, favour or any other form of inducement which may influence or be perceived as influencing actions or decisions related to your job.

9.3 In certain limited circumstances, and in connection with your official duties, it may be appropriate for you to offer or receive gifts of low value or small tokens of gratitude, such as merchandise / branded items which have been designed for the purpose of being given away e.g. pens, post-its etc. Similarly, small gifts such as sweets etc given to a team at Christmas will be acceptable.

9.4 Gifts of alcohol or offers of hospitality, however small, should not be automatically accepted by HITRANS employees. Similarly, such gifts or offers should not be made by HITRANS employees.

9.5 Advice should be sought from your manager on the appropriateness of offering or accepting **any** such hospitality or gifts. Other than in circumstances similar to those set out in paragraph 9.3 you should not accept a gift unless you are satisfied, following discussion with your manager, that to do so would not lead to your actions as a HITRANS employee being called into question.

9.6 Other than the small gifts indicated in paragraph 9.3 all gifts and hospitality received should be recorded in the register of gifts and hospitality, in accordance with arrangements.

10 Review

10.1 The procedure and associated policy will be reviewed by our HR advisor from Comhairle nan Eilean Siar periodically, to reflect organisational changes, best practice, operational experience and legislative updates, in order to maintain its effectiveness.

APPENDIX B – ANTI – BRIBERY PROCEDURE



ANTI-BRIBERY PROCEDURE

(covering all employees)

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5. Step 3 – Put in place proportionate bribery prevention measures
6. Step 4 – Review due diligence measures
7. Step 5 – Communication and training
8. Step 5 – Monitoring and review

APRIL 2013

1 Introduction

- 1.1 This Procedure should be read in conjunction with HITRANS's Anti Bribery Policy and Anti-Fraud and Corruption Policy.
- 1.2 This procedure is intended to provide a tool for assessing and mitigating risk of bribery.

2 The Bribery Act 2010

- 2.1 The Act came into force on 1 July 2011.
- 2.2 Under the Act HITRANS must ensure that we have put in place adequate procedures designed to prevent bribery by or of persons associated with the organisation. This includes anyone who performs services for or on behalf of HITRANS.
- 2.3 Failure to do so could result in liability for both individuals and HITRANS as a whole, and could result in custodial sentences and / or severe fines.
- 2.4 The government has commented that such procedures should be informed by six principles:
 - Top Level Commitment
 - Risk Assessment
 - Proportionate procedures
 - Due Diligence
 - Communications
 - Monitoring and Review

The following procedural steps embody these six principles:

3 Step 1 – Establish responsibility for bribery prevention measures

- 3.1 The Partnership Director has overall corporate responsibility for ensuring that HITRANS complies with the Act.

4 Step 2 – Carry out a Risk Assessment

- 4.1 A risk assessment must be carried out to understand the level of risk attributable to bribery. This should highlight areas where effort needs to be focussed and ensure that procedures are proportionate to the risks faced.
- 4.2 The risk assessment must be carried out on an annual basis.
- 4.3 The list below provides the basis of a generic assessment that may highlight areas where further enquiries are necessary to identify exposure to risk:

- Transactions
 - are there any significant / high value transactions that HITRANS enters into on a regular / irregular basis?
 - Do any transactions involve third parties or associated persons?
 - Who approves these transactions, and are adequate control procedures in place?
- Business areas
 - Does HITRANS undertake business in business areas known to have general or specific bribery risks?
 - What (if anything) has been done to mitigate these risks?
- Contractors / Suppliers / Partner organisations
 - Does HITRANS carry out business in conjunction with contractors / suppliers / partner organisations?
 - Who can approve the creation of such business arrangements, and are adequate control procedures in place?
 - What (if any) due diligence has been undertaken into any such partner organisations?
 - Are any partner organisations required to “sign up” to equivalent anti-bribery policies / procedures?
 - What are the sanctions (if any) that can be taken against a partner for a breach of the bribery Act?
- Known Bribery Risks
 - Has HITRANS faced any bribery incidents in the past?
 - What has been done to prevent such incidents happening again, and has this been successful?
- Financial Controls
 - Are financial controls in place that adequately audit / check for unusual / suspicious transactions?
 - What financial controls are imposed on expenses / hospitality / regular and irregular payments?
 - What financial controls are in place to review approval of new business arrangements / payments?
- Procurement

- Are adequate controls in place within procurement arrangements, and are staff adequately trained in following procurement procedures?
- Are procurement transactions subject to regular audit / spot checks to identify unusual / suspicious transactions?
- Training
 - Are adequate controls in place within operational systems, and are staff adequately trained in operating these systems and associated procedures?
 - What recent training has been given to staff on bribery? Is this ongoing / repeated on a regular basis?
- Recruitment
 - Are adequate proportionate recruitment checks carried out to ensure the risk of bribery is minimised?
 - Is a clear position on bribery and the consequences of bribery written into contractual documentation?
 - Do current induction procedures adequately state the organisation's position on bribery and how to report it?
- Staff Performance Review & Development
 - Are employees reminded annually of their responsibilities regarding bribery as part of the PRD process?

5 Step 3 – Put in place proportionate bribery prevention measures

- 5.1 Having identified the relevant areas of risk, HITRANS must put in place adequate measures and controls that address the potential areas of bribery. These need to be applied **proportionately**, based on the level of risk.
- 5.2 These should be reviewed on a regular basis to ensure they are effective, especially if new practices or business arrangements are put in place.

6 Step 4 – Review Due Diligence measures

- 6.1 Due diligence involves assessing a proposed or existing business relationship or transaction, and ensuring any risk is mitigated by putting in place appropriate procedures and checks.
- 6.2 It involves checking the businesses or people with whom we work to ensure they are trustworthy, solvent and have a good reputation for doing business.
- 6.3 Where a process is already in place to do this (e.g. tendering processes) managers and employees must ensure that all steps outlined in the process are followed correctly and completed fully.

- 6.4 HITRANS should carry out and fully document thorough due diligence checks to satisfy themselves that any risk is mitigated.

7 Step 5 – Communication and Training

- 7.1 The Monitoring Officer should ensure that HITRANS's position on bribery is clearly communicated both internally and externally.
- 7.2 HITRANS may wish to consider briefing employees on the policy and procedure through a variety of means. Possible methods include Team Briefings, emails / letters from the Director and can range to specific training for staff in identified high risk areas.
- 7.3 HITRANS may also wish to consider how they communicate the policy and procedures, and any measures to be imposed on third parties, to those partner organisations.

8 Monitoring and Review

- 8.1 The procedure and associated policy will be reviewed by the Partnership Director periodically, to reflect organisational changes, best practice, operational experience and legislative updates, in order to maintain its effectiveness.

APPENDIX C – ANTI FRAUD POLICY

HITRANS – Anti-fraud and Anti-corruption Policy

Introduction

The Anti-fraud and Anti-corruption policy forms part of the HITRANS's governance arrangements. Its aim is to ensure that the Partnership's resources are used for their intended purpose and that any losses through fraud and corruption are minimised.

This policy outlines the Partnership's commitment to creating an anti-fraud culture and maintaining high ethical standards in the administration of public funds. It is part of the framework, which will:

- Encourage fraud deterrence and prevention;
- Ensure that there are adequate arrangements in place to prevent the bribery of Partnership staff and Members;
- Raise awareness of fraud and corruption and promote their detection;
- Govern the performance of investigations and facilitate recovery of any losses to the Partnership;
- Invoke disciplinary proceedings and referral to the Police and/ or Procurator Fiscal as appropriate;
- Regularly review the policy and update as required.

The policy outlines the approach within the Partnership, and defines the roles and responsibilities for dealing with the threat of fraud and corruption, both internally and externally. It applies to:

- Employees
- Members
- Agency staff
- Contractors
- Consultants
- Suppliers
- Service users
- Staff and committee members of organisations funded by the Partnership
- Staff and principals of partner organisations.

The Partnership expects a high standard of conduct from its employees and Members. It also requires all individuals and organisations with whom it deals, in any capacity, to behave towards the Partnership with integrity, and without intent or actions involving fraud or corruption.

Definitions

For the purposes of this policy, the following definitions are used:

Fraud – “the intentional distortion of financial statements and other records, and the misappropriation of assets.” This may include:

- Falsification or alteration of accounting records or other documents
- Misappropriation of assets or theft
- Suppression or omission of the effects of transactions from records or documents

- Recording transactions which have no substance
- Wilful misrepresentation of transactions or the Partnership's state of affairs.

Corruption – *“the offering, giving, soliciting or accepting of any inducement or reward (bribe) which could influence the actions taken by the Partnership, its members or staff.”* Activities, which may be susceptible to corruption and bribery, include:

- Contracts
- Disposal of assets
- Planning consents and licences

Benefit fraud – *“knowingly obtaining housing and/ or Partnership tax benefit to which there is no, or a lesser entitlement.”*

Prevention

The Partnership recognises that everyone has a role in preventing fraud and corruption, and the key groups of people involved in prevention are listed below.

Employees

Employees are often the first line of defence in preventing fraud and corruption and a key component is the effective recruitment of staff.

Staff recruitment will be undertaken in accordance with the Partnership's policy for the Recruitment and Selection of staff. Suitable references will be obtained, and Disclosure Scotland checks undertaken, where appropriate, before a formal offer of employment is made.

Employees should be alert to the possibility of fraud and corruption, and report any concerns to their Line Manager. Where the employee is of the opinion that this cannot be done, but has concerns of malpractice or wrongdoing, alternatively, they can report this through the Partnership's HR Advisor

Deterrence

In order to deter possible fraud and corruption, the Partnership will have appropriate systems of internal control.

Section 95 of the Local Government (Scotland) Act 1973 requires all Local Authorities to have adequate systems and controls to ensure the proper administration of their financial affairs. The Partnerships' Financial Regulations, supported by the relevant guidance notes, Contract Standing Orders, and Scheme of Delegation provide the framework to address this.

Management must ensure that sound financial systems and procedures, incorporating efficient and effective internal controls, are in place. This may include documented working manuals and operating procedures, which should be issued to relevant staff. Separation of duties is a fundamental internal control, and should be in place to act as a deterrent against fraud.

The Partnership may share information with other authorities and agencies for the purposes of preventing and detecting fraud. This may include participation in the National Fraud Initiative.

Detection and Investigation

Where fraud or corruption is suspected this should be reported to the Partnership Director, in accordance with the Partnership's Financial Regulations.

This is essential to ensure that a consistent approach is followed with regard to suspected fraud and corruption, and a proper investigation is undertaken.

Where the investigation identifies any wrongdoing on the part of a Partnership employee, this will be dealt with in accordance with the Partnership's Disciplinary Procedure.

Where the investigation identifies any control weaknesses in the Partnership's procedures or non-adherence to the Partnership's policies and procedures, this will be addressed through the production of a "control weaknesses" audit report, which will make the necessary recommendations to address the identified weaknesses.

Awareness and Training

This policy will be communicated to all employees, Members and external stakeholders, and published on the Partnership's website to ensure awareness.

The Partnership Director is responsible for ensuring that employees are aware of this Policy and the need for adherence.