

## BRIBERY POLICY

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### Version Control

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Equality Impact Assessment Summary					
	No impact	Adverse	Differential	Positive	Statement
					<p><b>Please provide supporting narrative for any adverse, differential or positive impacts that may arise from the implementation of this policy</b></p>
<b>Age</b>					
<b>Disability</b>					
<b>Gender reassignment</b>					
<b>Pregnancy and Maternity</b>					
<b>Race</b>					
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<b>Sex</b>					
<b>Sexual Orientation</b>					
<b>Marriage and Civil Partnership</b>					
<b>Welsh Language</b>					
Risk Assessment Summary					
<p><b>Have you identified any risks arising from the implementation of this policy / procedure / written control document?</b></p> <p>No</p>					
<p><b>Have you identified any Information Governance issues arising from the implementation of this policy / procedure / written control document?</b></p> <p>No</p>					
<p><b>Have you identified any training and / or resource implications as a result of implementing this?</b></p> <p>No</p>					

## **1 Introduction**

1.1 Bribery is a damaging practice that affects both private and public bodies. The Bribery Act 2010 ("the Act") which came into effect on 1<sup>st</sup> July 2011, made it a criminal offence to give, promise or offer a bribe, or to request, agree to receive or accept a bribe, either at home or abroad. **Appendix 1** highlights the offences that can be committed under the Bribery Act.

1.2 In addition, the Act introduces a corporate offence of failing to prevent bribery, due to an organisation not having adequate preventative procedures in place. Known as the "Section 7 offence", this is not a stand-alone offence, but always follows on from a bribery and/or corruption offence committed by an individual associated with the company or organisation in question. An organisation may avoid conviction for the Section 7 offence however, if it can show that it had procedures and protocols in place to prevent bribery.

1.3 The Act imposes extensive obligations on all organisations, including those in the healthcare sector, to ensure that they have adequate procedures in place to prevent bribery from occurring within their organisation. The Health Board is committed to compliance with the Act and this policy explains the procedures that have been put in place.

## **2 Objective**

2.1 Powys Teaching Health Board ("the Health Board") will not tolerate bribery or corruption, and aims to establish a strong anti-bribery culture within the organisation. It is the policy of the Health Board to conduct all of our business in an open, honest and ethical manner, to act with integrity in all our business dealings and relationships, and to implement effective systems to prevent bribery.

2.2 The Health Board will uphold all laws relevant to countering bribery and corruption as outlined in the Act in every aspect of our conduct, including our dealings with public and private sector organisations and the delivery of treatment and care to patients.

2.3 The Health Board will put systems and processes in place which are designed to prevent and deter bribery from occurring, and to deal with any bribery allegations received or concerns identified. These systems and processes will be proportionate to the potential risks faced, taking into account the nature, scale and complexity of the organisation.

#### 2.4 The purpose of this policy is to:

- set out the Health Board's responsibilities, and the responsibilities of those working for the Health Board, in preventing bribery and corruption;

and

- provide information and guidance to those working for the Health Board on how to recognise and deal with bribery and corruption issues.

#### 2.5 The Health Board will implement an awareness-raising programme within the organisation, designed to make staff aware of:

- The existence of this Policy and how to access it
- How this policy interacts and links with other key policies, such as the Counter Fraud Policy and Response Plan and Standards of Behaviour Framework Policy
- The bribery and corruption risks faced by the organisation
- How to report any suspicions or concerns they may have
- Their responsibilities and obligations as Health Board employees

2.6 An employee found guilty of committing an offence under the Bribery Act, is liable to be punished by up to ten years' imprisonment. If the Health Board is found to have failed to implement adequate procedures to prevent individuals associated with it from engaging in bribery, or to have taken part in bribery or corruption, the organisation could face an unlimited fine and incalculable damage to its reputation. The Health Board therefore takes its legal responsibilities very seriously.

2.7 In addition to the legal implications for individuals as set out under the Bribery Act, the Health Board may also deal with issues of concern under the Disciplinary Policy. Bribery is considered as gross misconduct, the penalty for which may include dismissal (see section 8.4 below).

### 3 Definitions

- **"The Health Board"** – Powys Teaching Health Board
- **"The Act"** – Bribery Act 2010
- **"Third party"** - any individual or organisation employees come into contact with during the course of their work for the Health Board, and includes actual and potential clients, suppliers, distributors, business contacts, agents, advisers, and government and public bodies, including their advisors, representatives and officials, politicians and political parties.

<b>4 Responsibilities</b>	
<b>4.1</b>	This policy applies to all individuals working at all levels and grades, including senior managers, officers, directors, employees (whether permanent, fixed-term or temporary), consultants, contractors, trainees, seconded staff, home workers, casual workers and agency staff, volunteers, interns, agents, sponsors, or any other person associated with the Health Board, or any of our clinics or their employees, wherever located (collectively referred to as " <b>workers</b> " in this policy). This includes primary care practitioners.
<b>4.2</b>	For the purposes of this policy, the Health Board has designated a member of its senior management team as "Compliance Officer". The Compliance Officer will be responsible for ensuring that the Health Board implement this policy and for carrying out various functions as described in this policy and other policies referred to within this policy. Within Powys Teaching Health Board, the Compliance Officer is the <b>Director of Finance</b> .
<b>5 What is Bribery?</b>	
<b>5.1</b>	A bribe is an inducement or reward of a financial or other advantage that is offered, promised or provided to a person in order to gain any commercial, contractual, regulatory or personal advantage through the improper performance of a relevant function or activity as a result of the bribe.
<b>5.2</b>	"Financial or other advantage", although not defined in the Act, means payments, gifts, hospitality or anything else that could be reasonably perceived as an "advantage" as understood by its normal, everyday meaning.
<b>5.3</b>	"Improper performance" means performance in breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of Health Board.
<b>5.4</b>	A "relevant function or activity" means any function of a public nature, connected with a business, performed in the course of a person's employment or performed by or on behalf of an incorporated or unincorporated body of persons.  <b>Examples:</b>  <b>Offering a bribe:</b>

	<p>A bribe would occur if:</p> <ul style="list-style-type: none"> <li>• A payment was offered, promised or made to influence an individual who was responsible for deciding whether the Health Board should be selected as the preferred option for the provision of services;</li> <li>• A payment was offered, promised or made by a contractor instructed by the Health Board to a 3<sup>rd</sup> party, in order to facilitate or obtain enhanced services from that 3<sup>rd</sup> party.</li> </ul> <p><b>Receiving a bribe:</b></p> <p>A bribe would occur if:</p> <ul style="list-style-type: none"> <li>• A member of Health Board staff requests, agrees to receive or receives a payment (or other incentive) from an individual or company, in order to influence decision making in respect of a competitive tender or quotation exercise relating to the provision of goods or services.</li> <li>• A member of Health Board staff requests, agrees to receive, or receives a payment (or other incentive) from a patient or relative, to speed up beyond the usual timeframe the provision of a particular aspect of care.</li> </ul>
<b>6 GIFTS, HOSPITALITY AND SPONSORSHIP</b>	
<b>6.1</b>	All staff must take great care over offering or accepting offers of gifts, hospitality and/or entertainment that are in any way linked or may be perceived to be linked (currently or prospectively) to the organisation's business. This is to avoid anyone being put in a position where there is potential or actual conflict of interest, or which might be construed in that light.
<b>6.2</b>	The guiding principle is that you must not accept gifts, hospitality or other benefits of any kind from a third party, which might be seen to compromise your personal and professional integrity. Corruptly soliciting or receiving any gift or favour is a criminal offence.
<b>6.3</b>	Guidance in relation to the acceptance of Gifts and Hospitality can be found in the Standards of Behaviour Framework Policy, which can be accessed via the Health Board Intranet site.
<b>7 FACILITATION PAYMENTS AND KICKBACKS</b>	
<b>7.1</b>	The Health Board does not make, and will not accept, facilitation payments or "kickbacks" of any kind. Facilitation payments are

	typically small, unofficial payments made to secure or expedite a routine action by an official, including any employee of the NHS. They are not commonly paid in the UK, but the Health Board’s staff must be aware that these types of payments are strictly prohibited.
<b>7.2</b>	If you are asked to make a payment on the Health Board’s behalf, you should always be mindful of what the payment is for and whether the amount requested is proportionate to the goods or services provided. You should always ask for an invoice or receipt which details the reason for the payment. If you have any suspicions, concerns or queries regarding a payment, you should raise these with the Compliance Officer or Health Board Local Counter Fraud Specialists.
<b>7.3</b>	Kickbacks are typically payments made in return for a business favour or advantage. All workers must avoid any activity that might lead to, or suggest, that a facilitation payment or kickback will be made or accepted by the Health Board.
<b>8 Your Responsibilities</b>	
<b>8.1</b>	You must ensure that you read, understand and comply with this policy.
<b>8.2</b>	The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Health Board or under our control. All workers are required to avoid any activity that might lead to, or suggest, a breach of this policy.
<b>8.3</b>	You must notify your Compliance Officer or the Health Board Local Counter Fraud Specialists as soon as possible if you believe or suspect that this policy or any other has or may be breached. For example, if a third party offers you something to gain a business advantage with the HB, or asks for a gift or payment to secure their business, this must be reported. <b>Further indicators of bribery or corruption are set out in Appendix 2.</b>
<b>8.4</b>	Any employee who breaches this policy will face disciplinary action which could result in dismissal for gross misconduct, and a potential criminal investigation which may lead to a criminal conviction. The Health Board reserves the right to terminate its contractual relationship with other workers if they breach this policy.
<b>9 Record Keeping</b>	

<b>9.1</b>	The Health Board must keep financial records and have appropriate internal controls to ensure and demonstrate proper business reasons for payments to third parties.
<b>9.2</b>	You must refer to the Standards of Behaviour Framework Policy in respect of any gift, hospitality or sponsorship that is accepted or offered.
<b>9.3</b>	All accounts, invoices, memoranda and other documents and records relating to dealings with third parties, such as clients, suppliers and business contacts, should be prepared and maintained with strict accuracy and completeness. No accounts may be kept "off-book" to facilitate or conceal improper payments.
<b>10 How to Raise a Concern</b>	
<b>10.1</b>	<p>This policy should be read in conjunction with the Health Board's <b>Policy &amp; Procedure for NHS Staff Raising Concerns</b> and <b>Counter Fraud Policy and Response Plan</b>. You are encouraged to raise concerns about any issue or suspicion of malpractice at the earliest possible stage. If you are unsure whether a particular act constitutes bribery or corruption, or if you have any other queries, these should be raised with your Compliance Officer or the Local Counter Fraud Specialist. Staff should report any suspicions or allegations of bribery immediately to one of the following:</p> <p>The Local Counter Fraud Specialists (LCFS) – 01874 712419        powys.counterfraudteam@wales.nhs.uk</p> <p>The NHS Fraud and Corruption Reporting Line – 0800 028 40 60</p> <p>On-line at <a href="https://cfa.nhs.uk/reportfraud">https://cfa.nhs.uk/reportfraud</a></p> <p>The Director of Finance &amp; IT (Compliance Officer) – 01874 712721</p>
<b>11 Awareness and Communication</b>	
<b>11.1</b>	All staff will be made aware of the policy through normal internal communication mechanisms. Primary Care practitioners and contractors will also be made aware of the policy.
<b>11.2</b>	The fact that the Health Board will not tolerate bribery and corruption must be communicated to all suppliers, contractors and other third parties with whom the Health Board has dealings at the outset of our business relationship with them including a requirement for

	compliance in all contracts with Suppliers. Details of proposed contract clauses are set out in <b>Appendix 3</b> .
<b>11.3</b>	If you have any suggestions about how the Health Board can improve or develop its anti-bribery prevention procedures and/or you want further advice in relation to bribery prevention, please contact the Compliance Officer or the HB Local Counter Fraud Specialists.
<b>12 Who is Responsible for this Policy?</b>	
<b>12.1</b>	The Board has overall responsibility for ensuring this policy complies with our legal and ethical obligations, and that all those under our control comply with it.
<b>12.2</b>	The Compliance Officer has primary responsibility for implementing this policy across the Health Board as a whole, and for monitoring its use and effectiveness and dealing with any queries on its interpretation.
<b>12.3</b>	Management at all levels are responsible for ensuring those reporting to them are made aware of and understand this policy and are given adequate and regular training on it.
<b>13 Monitoring Compliance, Audit &amp; Review</b>	
<p>13.1 The Compliance Officer will monitor the effectiveness and review the implementation of this policy, regularly considering its suitability, adequacy and effectiveness taking into account legal developments and changes in the Health Board's business. Any improvements identified will be made as soon as possible. Internal control systems and procedures will be subject to regular audits to provide assurance that they are effective in countering bribery and corruption.</p> <p>13.2 Health Board staff are invited to comment on this policy and suggest ways in which it might be improved. Comments, suggestions and queries should be addressed to the Compliance Officer.</p>	

## **THE BRIBERY ACT 2010 – A SUMMARY**

### **There are four main offences in the Act:**

1. Making bribes
2. Receiving bribes
3. Bribery of foreign public officials
4. Corporate offence of failing to prevent bribery

The Act introduces two new general criminal offences of bribery: one of giving bribes and one of receiving them.

### **Giving bribes**

It will be an offence to offer or give a financial or other advantage to a person, with the intention of inducing that person to perform a relevant function or activity improperly, or to reward that person for doing so.

### **Receiving bribes**

It will be an offence to request, agree to receive or accept a financial or other advantage intending that a relevant function or activity should be performed improperly as a result.

These apply equally to public and private functions. Improper performance will be judged by whether it breaches what a reasonable person in the UK would expect in relation to performance of the type of function or activity concerned. However, the function or activity need have no connection to the UK – it will apply if either of the parties is a UK resident or citizen, or a UK company.

### **Bribery of foreign public officials**

This offence will be committed if a person offers or gives a financial or other advantage to a foreign public official with the intention of influencing the official and obtaining or retaining business or a business advantage, where the official is neither permitted nor required by written law to be so influenced. It is also an offence if the financial or other advantage is provided to a third party or an agent at the request of the official. This offence only covers the offering of bribes not the acceptance of them.

## **Corporate Offence of failing to prevent bribery**

A “commercial organisation” will commit the corporate offence of failing to prevent bribery if an associated person performing services on the organisation’s behalf offers, promises or gives a financial or other advantage to another person with the intention of obtaining or retaining business or a business advantage for the organisation. An associated person is anyone who performs a service for or on behalf of the organisation which could include an employee, agent, joint venture partner, franchisee, introducer or subsidiary.

The Act provides a defence for the organisation if it can prove it had adequate procedures in place designed to prevent bribery being committed by those performing services on its behalf. The burden of proof is on the organisation to demonstrate this. This provision is designed to ensure organisations have effective compliance systems in relation to their business in the UK and internationally.

### **What are “Adequate Procedures?”**

The Ministry of Justice has produced guidance documents designed to help people and organisations understand just what the Bribery Act 2010 means to them. These can be found at [www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf](http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf)

### **Penalties**

A business found guilty of an offence may receive an unlimited fine. An individual faces imprisonment for up to ten years, an unlimited fine or both. Where a person or corporation has been convicted of a corruption offence they face perpetual debarment from tendering for EU public contracts. Directors may also be subject to disqualification proceedings – potentially leading them to be disqualified from being directors of any company for up to 15 years. Bad publicity and reputational damage will also ensue.

### **Jurisdiction**

The Act has wide jurisdiction. It covers any offence committed in the UK but proceedings can also be brought if a person who has a close connection with the UK commits the relevant acts or omissions outside the UK. The Act defines a person with a close connection as including British citizens, individuals ordinarily resident in the UK and bodies incorporated in the UK. The Act also provides that any business which conducts part of its business in the UK can be prosecuted for the corporate offence even if it is not incorporated in the UK.

## **Potential risks (“Red Flags”)**

The following is a list of possible issues which may raise concerns under various anti-bribery and anti-corruption laws. The list is not intended to be exhaustive and is for illustrative purposes only.

If you encounter any of these issues while working for the Health Board, you must report them promptly to the Compliance Officer, Local Counter Fraud Specialist, or via the NHS Fraud and Corruption Reporting Line or Online Reporting Tool.

- 1.1 You become aware or suspect that a colleague or third party engages in, or has been accused of engaging in, improper business practices;
- 1.2 You learn or suspect that a colleague or third party has a reputation for paying bribes, or requiring that bribes are paid to them;
- 1.3 A colleague or third party asks for a commission or fee payment before committing to sign up to a contract with us, or carrying out a government function or process for us;
- 1.4 A colleague or third party requests payment in cash, and/or refuses to provide an invoice or receipt for a payment made;
- 1.5 A colleague or third party requests that payment is made to a country or geographic location different from where the colleague or third party resides or conducts business;
- 1.6 A colleague or third party requests that payment or other benefit is provided to a person other than the expected recipient, or to a person other than the expected provider of goods and services (unless part of an open and transparent contractual arrangement such as subcontracting or factoring);
- 1.7 A third party requests an unexpected additional fee or commission to "facilitate" a service;
- 1.8 A third party requests lavish hospitality (or entertainment or gifts) before commencing or continuing contractual negotiations or provision of services;

- 1.9 A third party requests that a payment is made to "overlook" potential legal violations;
- 1.10 A colleague or third party requests that you provide employment or some other advantage to a friend or relative;
- 1.11 You receive an invoice from a colleague or third party that appears to be non-standard or customised;
- 1.12 A colleague or third party insists on the use of side letters or refuses to put terms agreed in writing;
- 1.13 You notice that we have been invoiced for a commission or fee payment that appears large given the service stated to have been provided;
- 1.14 A colleague or third party requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used by or known to us;
- 1.15 You are offered an unusually generous gift or offered lavish hospitality by a third party;
- 1.16 You are asked to conceal the receipt of provision of hospitality or any other form of benefit or payment;
- 1.17 A colleague or third party exerts pressure for payments to be made urgently or ahead of schedule;
- 1.18 A colleague or third party conducts private meetings with public contractors or companies hoping to tender for contracts;
- 1.19 A colleague or third party never takes time off even if ill, or holidays, or insists on dealing with specific contractors him/herself;
- 1.20 A colleague or third party makes unexpected or illogical decisions accepting projects or contracts;
- 1.21 A colleague or third party abuses or ignores normal decision processes or delegated powers in specific cases;
- 1.22 A colleague or third party agrees contracts not favourable to the Health Board either with terms or time period;
- 1.23 A colleague or third party demonstrates an unexplained preference for certain contractors during a tendering period;

1.24 A colleague or third party seeks to avoid independent checks on tendering or contracting processes;

1.25 A colleague or third party requests that normal tendering/contracting procedure is bypassed;

1.26 A colleague or third party reports missing documents or records regarding meetings or decisions.

## **CONTRACT CLAUSES**

### **Contract clause notes:**

- Please note that the Health Board will need to ensure that the "Supplier" is defined according to the terms of the specific contract and that appropriate defined terms are used throughout which are consistent with the remainder of the contract.
- **Clause 1.1.3** requires that the Anti-Bribery Policy is annexed to the specific contract.
- The "Confidentiality Clause" referred to at clause **1.5.3**, and the "Termination for Material Breach Clause" at **1.8** will need to be drafted and defined within the specific contract if the Health Board wish to rely on these particular provisions.

The Health Board will insert some or all of the following clauses into contracts with suppliers, where appropriate:

### **1. COMPLIANCE WITH RELEVANT REQUIREMENTS**

1.1 The Supplier shall:

- 1.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
- 1.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 1.1.3 comply with the Health Board's Anti-Bribery Policy (annexed to this agreement at schedule [INSERT]) ("**Relevant Policy**").
- 1.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and

- clause 1.1.2, and will enforce them where appropriate;
- 1.1.5 in addition to its obligations under clause 1.1.2, report to and acquire authority from the Health Board before providing any form of gift, gratuity or hospitality to any party in connection with this agreement;
- 1.1.6 ensure that any offer or provision of any form of gift, gratuity or hospitality complies with the Standards of Behaviour Framework Policy.
- 1.1.7 promptly report to the Health Board any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement
- 1.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 1 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Health Board for any breach by such persons of any of the Relevant Terms.
- 1.3 For the purpose of this clause 1, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 1 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.
- 1.4 The Supplier shall indemnify the Health Board against any losses, liabilities, damages, costs including but not limited to legal fees and expenses incurred by, or awarded against, the Health Board as a result of any breach of this clause 1 by the Supplier or any breach of provisions equivalent to this clause 1 in any Subcontract by any Subcontractor.
- 1.5 Additional audit and record keeping

1.5.1 The Supplier shall keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by the Supplier in connection with this agreement and the steps taken by the Supplier to comply with the Relevant Requirements, the Relevant Policies and clause 1.1.2, in each case during the previous six years. The Supplier shall ensure that such records and books of accounts are sufficient to enable the Health Board to verify the Supplier's compliance with its obligations under this clause 1.

1.5.2 The Supplier shall permit the Health Board and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause 1 to access and take copies of the Supplier's records and any other information held at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 1. Such audit rights shall continue for three years after termination of this agreement. The Supplier shall give all necessary assistance to the conduct of such audits during the term of this agreement and for a period of three years after termination of this agreement. The Supplier shall give all necessary assistance to the conduct of such audits during the term of this agreement and a period of three years after termination of this agreement.

1.5.3 Audit access by any third party representative of the Health Board shall be subject to such representative agreeing confidentiality obligations equivalent to those in clause [**CONFIDENTIALITY CLAUSE**] in respect of the information obtained, always provided that all information obtained may be disclosed to the Health Board.

1.6 The Supplier warrants and represents that

1.6.1 neither the Supplier nor any of its officers, employees or other persons associated with it:

(a) has been convicted of any offence involving bribery or corruption, fraud or dishonesty;

- (b) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or
  - (c) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible or potentially ineligible for participation in government procurement programmes or other government contracts;
- 1.7 The Supplier shall promptly notify the Health Board if, at any time during the term of this agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 1.6 at the relevant time.
- 1.8 Breach of this clause 1 shall be deemed a material breach under clause [**TERMINATION FOR MATERIAL BREACH CLAUSE**].
- 1.9 If the Health Board terminates this agreement for breach of this clause 1, the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

Regardless of any other provision in this agreement, the Health Board shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Require