

Anti-Criminal Finances Policy

1.1 Purpose of Policy

The University of Bath is committed to ethical standards of business conduct, and adopts a zero-tolerance approach to tax evasion and corruption in all jurisdictions. The University will uphold relevant laws for countering tax evasion and corruption, particularly the Criminal Finances Act 2017. This policy is intended to set out the University's approach to monitoring, identifying and ultimately avoiding incidents and/or risks of criminal tax evasion.

1.2 Scope

1.2.1 This policy applies to all members of University staff, members of the University Council and Council Committees and all students.

1.2.2 In addition, this policy also applies to other associated persons, which are defined by the Act as the University's officers, employees, workers, agents, sub-contractors or other people or organisations that provide services for or on the University's behalf.

1.2.3 To the fullest extent permissible by law, this policy shall apply in all jurisdictions in which the University and its subsidiaries operate. Tax evasion is a criminal offence in most countries and failure to comply with this policy may expose the University, its employees and representatives to the risk of prosecution, as well as to reputational risk and loss of trust.

1.2.4 Countering tax evasion and reporting suspected cases in line with this policy is the responsibility of all those outlined in paragraphs 1.2.1 and 1.2.2 above.

1.2.5 Breach of this policy may constitute a disciplinary offence for staff and students and will be subject to investigation under the University's disciplinary procedures. In the most severe instances this could result in dismissal / exclusion. For other associated persons, breach of this policy may result in other contractual or legal or other sanction. Criminal penalties may also apply (see below).

1.2.6 Individuals found guilty of tax evasion can face unlimited fines and/or a prison sentence.

1.2.7 The University may face unlimited fines if it is found to have "failed to prevent" tax evasion taking place. This is why this policy extends to individuals and companies who, whilst not directly employed by the University, are acting on its behalf. The University may also find itself excluded from certain public contracts, potentially affecting its income

2 Policy

The Criminal Finances Act (CFA) 2017 came into force on 30 September 2017.

2.1 What is a Criminal Finances Act?

2.1.1 One part of the Act introduces a new 'corporate criminal offence of failure to prevent the facilitation of tax evasion by another party'.

There are two corporate offences:

1) The UK offence

There are three stages to the UK offence:

- **Stage 1** The criminal tax evasion by a taxpayer (either an individual or a legal entity) under existing law
- **Stage 2** The criminal facilitation of the tax evasion by an 'associated person' of the University who is acting in that capacity
- **Stage 3** The University or its subsidiaries failed to prevent its representative from committing the criminal facilitation act.

2) The Overseas offence

The three stages for the overseas offence are the same, albeit with the additional requirement for dual criminality, except that the tax evaded is non-UK tax:

- **Stage 1** The criminal evasion of non-UK tax by a taxpayer (either an individual or a legal entity)
- **Stage 2** The criminal facilitation of the tax evasion by an 'associated person' of the University who is acting in that capacity

In addition to tax evasion and facilitation being criminal offences in the foreign jurisdiction (Stages 1 and 2), they must also be criminal offences under UK law if they were to be committed in the UK (the 'dual criminality' requirement) and part of the facilitation must have been performed in the UK.

- **Stage 3** The University or its subsidiaries failed to prevent its representative from committing the criminal facilitation act.

The University and its subsidiary companies are committed to ensuring that its employees, agents and other associated persons acting on the University's behalf are not facilitating tax evasion by another party.

2.2 What steps can we take to prevent tax evasion?

2.2.1 Risk Assessment

The University regularly reviews its risks and associated processes and procedures to ensure that all steps are taken to prevent facilitation of tax evasion.

The University maintains a register of possible risks of the facilitation of tax evasion by its staff and associates, as well as listing controls to mitigate those risks, and any actions required to improve those controls. This register is regularly reviewed and updated (at least annually) as and when required in relation to the nature of the specific risks.

The University reviews its policies and guidance in relation to the Criminal Finances Act on an annual basis alongside similar Business Conduct policies.

2.2.2 Standard clauses in contracts

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The University includes a standard anti-tax evasion clause in relevant contracts to reflect its zero tolerance approach to tax evasion in the conduct of its business. Where it is not possible to use the standard clause in relevant contracts, alternative wording providing the University with equivalent protection will be approved by the Standing Group on Financial Probity.

2.2.3 Training

The University provides training in the form of an online Criminal Finances Act module. This is mandatory for all staff identified as being of higher risk in relation to tax evasion. This includes all members of the University Executive Board and senior staff in all departments of the University but in particular the following departments where training may be more extensive:

Finance & Procurement

Human Resources

Research & Innovation Services

Development & Alumni Relations

2.3 What do I do if suspect tax evasion is taking place?

The University's procedure for reporting financial irregularities, including tax evasion, can be found in University's Financial Regulations under the heading 'Irregularities' (<http://www.bath.ac.uk/finance-procurement/regulations-policies-procedures/other-regulations/index.html#id13>)

Our Financial Regulations state that:

- Any person (staff and associate) who has reason to believe that an irregularity with financial implications for the University has or is about to take place, is required to inform their Head of Department and the Head of Internal Audit immediately.
- The Head of Department will in turn notify the Director of Finance immediately.
- If it is suspected that the Head of Department is involved in the irregularity, the matter should be notified to the Director of Finance or Internal Auditor directly. If it is suspected that the Vice-Chancellor or Director of Finance are involved in the irregularity the matter should instead be notified to the Treasurer.
- Failure to inform the appropriate person immediately may mean that further losses are incurred or that evidence is lost.

Staff and associates are reminded that they are required at all times to abide by the University's policies and procedures on Business Conduct.

Failure to comply with these policies and the obligations detailed may result in disciplinary action for staff and termination of contract for associated persons.

2.4 What if I am worried about reporting?

The University encourages everyone to speak up and report any concerns they may have about bribery activity. This is a key part of the University's commitment to ethical and legal

UNIVERSITY OF BATH

compliance. The University is committed to ensuring that individuals making reports in good faith do not suffer detriment as a result.

Members of staff may also raise concerns under the whistleblowing procedures as set out in the University's Public interest disclosure procedure

<https://www.bath.ac.uk/announcements/public-interest-disclosure-whistle-blowing-procedure/>

If a person feels they are not able to report their concerns through the route detailed above, they should still consider reporting them by means of the University's Public Interest Disclosure Policy (Whistleblowing Policy), which can be found at:

<http://www.bath.ac.uk/university-secretary/pdf/public-interest-disclosure.pdf>

3 Roles and Responsibilities

3.1 In accordance with the Office for Students' Terms and Conditions of funding for higher education institutions (March 2018), University Council has responsibility for ensuring that the University "has a robust and comprehensive system of risk management, control and corporate governance. This should include the prevention and detection of corruption, fraud, bribery and irregularities." Council has overall responsibility for approving the Anti-Criminal Finances Policy and for ensuring that it complies with the University's legal and ethical obligations. The University Executive Board exercises responsibility for the implementation, monitoring and review of the Anti-Criminal Finances Policy, for the periodic review of the institutional risk assessment, and for providing such assurance as Council requires to discharge its responsibilities.

3.2 The University Executive Board has established a Standing Group for Financial Probity which is responsible for preparing an annual report to the University Executive Board on the implementation and monitoring of the Anti-Criminal Finances Policy and its annual review of the associated risk assessment. The Standing Group is chaired by the Director of Policy, Planning and Compliance and includes the Deputy Director of Finance, Head of Procurement, Senior Legal Adviser and Head of Internal Audit. The Standing Group will also lead the review of the Anti-Criminal Finances Policy on a 3-year cycle, unless legislative changes prompt an interim review.

3.3 For guidance on any aspect of the University's Anti-Criminal Finances Policy, colleagues can contact the Standing Group using the e-mail address, financial-probity@bath.ac.uk.

4 DOCUMENT CONTROL INFORMATION

Owner	Director of Policy, Planning and Compliance
Version number	V1
Approval Date	18 July 2019
Approved By	Council
Date of last review	July 2019
Date of next review	July 2022

EXAMPLES OF AIDING AND ABETTING CRIMINAL TAX EVASION

For illustration purposes, examples are given below of when an Employee or Associate of the University might themselves be guilty of committing an offence of criminal tax evasion, and thus also the University itself:

1) Deliberately entering false or misleading information on the NESA (Employment Status Questionnaire):

A Supplier wishes to be treated as a self-employed contractor so that payments made to them by the University are gross, and they can evade paying appropriate income tax and national insurance liabilities. Knowing this, a University employee helps the Supplier to evade tax by providing false information on the NESA questionnaire used by the University to assess whether such a Supplier may be considered as self-employed for tax purposes. By supplying false information in this way, the University employee is committing a criminal offence as they have assisted a third party in criminal tax evasion.

2) Colluding with another University to artificially document services supplied to that University as outside the scope of VAT:

A University has asked a staff member from the University of Bath to supply data analysis services to them in respect of some grant funding they are receiving, where the grant funding is outside the scope of VAT. As such University X is unable to recover any VAT University might charge them for the data analysis service. University X asks the University of Bath to state falsely in the Agreement between them, that the 2 Universities are acting as Collaborators on the project, (when this is contrary to what is actually happening in practice). The University conclude that University X are asking this to evade paying VAT but go ahead and sign the document regardless without making any further enquiries or seeking help internally. The University research employees are committing a criminal offence as they have agreed to sign an Agreement, where they know the information provided is false and was done so that University X could evade paying the associated VAT liability on their services.

3) Helping another employee or third party claim a payment due to them as an expense rather than another type of payment which would be subject to tax:

A University Head of Department agrees to allow one of their members of staff to claim home to University (place of work) mileage through an expense form. However, knowing that is against University policy and to help their member of staff evade paying tax which is properly due on the claim, they allow the staff member to describe the travel as being for fictitious journeys away from the office.

The Head of Department is knowingly allowing a member of staff provide false information on their expense claim to evade tax and is committing a criminal offence of assisting criminal tax evasion.