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Smart Energy Code

SECCo Probity Policy

Version 1.0

23/01/2024

Change History

VERSION	STATUS	ISSUE DATE	AUTHOR	COMMENTS
0.1	Draft	10/01/2024	SECAS	Initial Draft release
1.0	Final	23/01/2023	SECAS	Final Version following SECCo Board Approval

Document Controls

REVIEWER	ROLE	RESPONSIBILITY	DATE
SECCo Board	Document Approver	SECCo Probity Policy Owner	23/01/2024

Date of next review: 23/01/2025

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1. Overview

This policy outlines the processes and principles the SEC Panel, SECCo Board, and Sub-Committee members should observe to ensure relevant SEC duties are undertaken with 'Probity'.). This policy has been created to support SECCo Ltd in ensuring SECCo's activities are conducted in accordance with sound and good business practice, in particular where entering into contracts where necessary or desirable in order to implement any Panel decision.

For the purpose of this document, 'Probity' refers to:

1) the conduct of ethical behaviour when performing SEC functions and duties; and
2) the expectation that members will act in accordance with the principles of integrity, honesty, transparency and accountability.

2. Objective & Scope

The objective of this policy is to provide guidance to the SEC Panel, SECCo Board, and Sub-Committee members on the following matters to enable members to act with 'Probity' and covers the following:

- Anti-Bribery and Corruption
- Gifts and Hospitality
- Competition Law
- Conflict of Interest

This policy will provide an overview of each matter, including definitions and penalties, and where appropriate will set-out processes for members to follow to ensure transparent and ethical conduct.

This policy is guided by existing legislation and does not replace existing legal obligations or requirements that members are bound to.

3. Roles and Responsibilities

Section C of the Smart Energy Code (SEC) sets out the duties of Panel and Sub-Committee Members and general SEC principles. These duties and principles should be adhered to in conjunction with this policy.

3.1 Anti-Bribery and Corruption

3.1.1 Definition

Bribery is the offering, promising, giving, accepting, or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards, or other advantages (taxes, services, donations, etc.). Bribes can take on many different shapes and forms, but typically they involve corrupt intent.

Corruption is the abuse of entrusted power for private gain. Corruption can be classified as grand, petty, and political, depending on the amounts of money lost and the sector where it occurs. Acts of bribery or corruption are designed to influence the individual in the performance of their duty and incline them to act dishonestly.

3.1.2 Process

Should it be disclosed that a member has acted corruptly or accepted a bribe, the SECCo Board will act ethically and responsibly in accordance with laws in force at that time.

To prevent participation in any corruption or bribery, any member of the SECCo Board, SEC Panel, or Sub-Committees *should not* knowingly or recklessly be involved in, or do any of the following:

- Offer, give, demand or accept any bribe or other improper advantage.
- Participate in any dishonest or deceptive activity, including in relation to any selection, certification, approval or management process.
- Provide, conceal, or approve work, materials, equipment or services which are not of the quality and quantity required under contract.
- Provide false, inaccurate or misleading information.
- Dishonestly withhold information.
- Make or submit false, inaccurate, misleading or exaggerated records, invoices, claims, applications for variations or extensions of time, or requests for payment.
- Dishonestly refuse or fail to approve, or delay in approving, work, materials, equipment, services, invoices, claims, applications for variations or extensions of time, or requests for payment.
- Dishonestly refuse or fail to pay, or delay in paying, sums due

The SECCo Board *should*:

- Not instruct, authorise or condone, expressly or impliedly, any corrupt activity.
- Make proper enquiries regarding any suspicion of corruption of which you become aware.
- Take reasonable preventive measures to stop corruption for which the Board may be liable.
- Report any suspicion of corruption to the Board and act in accordance with relevant legislation.

3.1.3 Penalties

Bribery is a criminal offence and penalties can be severe. The Bribery Act 2010 not only makes bribery and corruption illegal, but also holds the employer liable for failing to prevent such acts by those working for or on its behalf, no matter in which country the act takes place. The penalties for individuals include up to 10 years in prison and unlimited fines. Organisations risk unlimited fines, debarment from EU contracts and the confiscation of the value of corruptly obtained contracts.

3.2 Gifts and Hospitality

3.2.1 Definition

Offers of gifts and hospitality may include items ranging from boxes of chocolates, wine, to free international travel and accommodation. For the purpose of this policy, “Hospitality” is where the host is present for the whole event; otherwise, the event is a “gift”. Therefore, any travel expenses to/from the event for members are also either “hospitality” or “gifts”, and in addition must comply with the SEC Panel Expenses Policy. The SEC Panel Expenses Policy can be accessed on the SEC Website here.

3.2.2 Process

It is the individual member of the Panel, SECCo Board or Sub-Committee’s responsibility to ensure that they are not placed in a position that risks, or appears to risk, their role and responsibility while acting under the SEC. Members should not be seen to be securing valuable gifts and hospitality by virtue of their job. Members should not accept or provide any gift or hospitality if acceptance/provision will give the impression that they have been influenced/are deemed to be influencing while acting in their SEC duties.

Consideration should be given when dealing with situations relating to Gifts and Hospitality:

- They must not be used to influence business decisions or gain an unfair advantage. Gifts and Hospitality must be about creating goodwill and building sound working relationships – it cannot be a bribe.
- Gifts or hospitality should not be given/received if you are involved in on-going commercial negotiations / a tendering process or if it could be perceived to influence the business decision / outcome.
- Gifts or hospitality need to be reasonable and proportionate. It must also be a one-off.
- Gifts in the form of cash, shares or the equivalent must never be accepted or given.

When deciding whether it is appropriate to accept or provide a gift, members should consider the following:

- *Influence*: Is there an expectation, or a possibility, that the gift/hospitality will alter or influence the business relationship? If yes, it's not appropriate.
- *Scale*: Is the value of the gift/hospitality appropriate for the recipient?
- *Reciprocity*: A useful check to see if the gift/hospitality is appropriate is to ask whether the receiving it would be able to reciprocate. For example, could they return the offer with something of similar value? If not, it's inappropriate. If you know the recipient is not allowed to receive it, then you shouldn't offer.
- *Situation*: All gifts and hospitality should have a clear business reason and you should be able to fully explain and justify the gift/hospitality.

Hospitality offered should only be accepted where there is a direct link to working arrangements and a genuine business reason can be demonstrated. It is recognised that, in the course of carrying out SEC duties, members may need on occasion to ensure good relationships with existing and future stakeholders and that this may involve for example, the receipt of modest working lunches and dinners. These are acceptable where there is a genuine business reason.

Gifts and hospitality that are in complete accord with the above guidance may be authorised for individual acceptance up to the value of £100. Gifts and hospitality over and above £100 need to be approved by the SECCo Board prior to acceptance.

All Gifts and Hospitality must be registered by notification to SECAS to be captured in the "Gifts & Hospitality Register". Registering gives complete transparency and provides full records of all transactions. All occurrences should be registered on the day of receipt or as soon as possible thereafter, with a copy of the authorisation for acceptance included.

The declaration will need to include the following information:

- date of offer of gift or hospitality, and date of event where relevant;
- name, title and organisation of recipient / provider;
- nature and purpose of gift or hospitality received or declined;
- the name of any other person/organisation involved;
- estimated value.

3.2.3 Penalties

If used inappropriately or to gain influence, gifts and/or hospitality can be considered a bribe and relevant legislation, including the Bribery Act 2010, and criminal sanctions may be applied.

3.3 Competition Law

3.3.1 Definition

The principal aim of competition law is to promote and maintain fair competition in the market.

An anti-competitive agreement is an agreement, arrangement or business practice between undertakings which may affect trade within the UK or EU, which has the object or effect of preventing, restricting or distorting competition. Cartel behaviour between competitors is the most serious form of anti-competitive behaviour. Under the Enterprise Act 2002 as amended by the Enterprise and Regulatory Reform Act 2013, participation in a cartel may amount to a criminal offence, punishable by a prison sentence, a fine or both.

Under UK and EU competition law, the following behaviour is prohibited: Abusive conduct by one or more undertakings which, on their own or together, hold a dominant position in the market which may affect trade in the UK or EU.

3.3.2 Process

SECCo Board, SEC Panel, and Sub-Committee members should not knowingly or recklessly be involved in:

- Activities to restrict market competition or result in an anti-competitive agreement;
- unauthorised use of trade secrets & marketing, operational, personnel, financial, source code, and technical information which is integral to the success of the SEC.

The SECCo Board should:

- Not instruct, authorise or condone, expressly or impliedly, any anti-competitive behaviour;
- Make proper enquiries regarding any suspicion of anti-competitive behaviour of which you become aware;
- Take reasonable preventive measures to stop anti-competitive behaviour for which the Board may be liable; and
- Report any suspicion of anti-competitive behaviour to the Board and act in accordance with relevant legislation.

3.3.3 Penalties

There are various penalties for businesses, individuals, and company directors (or equivalent) to breaching competition laws.

- The consequences of breaching competition law for businesses can be:
- Fines of up to 10% of group worldwide turnover;
- Possible damages actions from clients;
- Damage to reputation with the ensuing loss of business; and
- Criminal sanctions such as confiscation of assets if they are found to have engaged in cartel activity.

The consequences for individuals can be:

- Damage to personal reputation;
- Criminal sanctions if they are found to have engaged in cartel activity, including up to 5 years' imprisonment, an unlimited fine, and confiscation of assets;
- Liability for actions of the company; and

- Disqualification from being a director.

3.4 Conflict of Interest

3.4.1 Definition

A conflict of interest may be seen as a situation in which an individual's ability to exercise judgement or act in one role is, could be, or is seen to be impaired or otherwise influenced by their involvement in another role or relationship.

Even a perception of competing interests, impaired judgement or undue influence may be damaging to a members' reputation.

Generally, conflicts might occur if individuals have:

- a direct or indirect financial interest;
- non-financial or personal interests; or
- competing loyalties between an organisation they owe a primary duty to or some other person or entity, or both.

The existence of an actual, perceived or potential conflict of interest does not necessarily imply wrongdoing on anyone's part. However, any private, personal or commercial interests which give rise to such a conflict of interest must be recognised, disclosed appropriately and either eliminated or properly managed.

3.4.2 Process

As per SEC Section C3.10, 'Panel Member(s) shall, at the time of his appointment and upon any relevant change in circumstance, disclose, in writing to the Panel, the name of each Related Person who is a Party, a DCC Service Provider, or is otherwise likely to be materially affected by the SEC Arrangements (other than in the capacity of Energy Consumer).

The SEC Panel Secretary should also be notified in writing of any notable interest that could be perceived as a conflict and this recorded in a Record of Interests Log. As per SEC Section C6.8(a), Sub-Committee Members shall 'act independently, not as a delegate, and without undue regard to the interests, of any Related Person.' The relevant Sub-Committee Secretariat should also be notified in writing of any notable interest that could be perceived as a conflict and this recorded appropriately.

Where a conflict of interest cannot be managed by Members absenting themselves from a meeting or decision and abstaining from any conflicted vote, the SECCo Board should be notified in writing.

Upon declaration of a conflict, the SECCo Board should consider the following:

- Assessment – Using guidance to define possible conflict of interest scenarios relating to this policy, there will be consideration of future likelihood of the conflicts taking place and whether it is likely to be exceptional or frequent whereby consideration should be given to an alternative individual, operational separation or not to conduct some or all the work. Identified (potential) conflicts will be assessed both in terms of contractual and reputational factors.
- Mitigation – Following assessment, if required, mitigating actions will be recorded and implemented to address the conflict, including options to remove individuals from the situation or raise directly with clients.

3.4.3 Penalties

Where a member fails to declare a conflict of interest or act in accordance with the SEC, the Panel may opt to take disciplinary action and relieve that Member from their duties.

4. Recording and Sanctions

All breaches of this policy will be documented by the SECCo Board, however minor or severe. Any violations of this policy may lead to disciplinary action, as set out in the SEC, or further legal action.

The SEC sets out the following processes for the removal of Panel or Sub-Committee Members.

A Panel Elected Member may:

- be removed from office by the other Panel Members (acting unanimously) if such other Panel Members consider that the Elected Member is in breach of the confirmation given by that Elected Member pursuant to Section C3.8 (Panel Member Confirmation).
- becomes prohibited by law from being a director of a company under the Companies Act 2006; and/or is convicted of an indictable criminal offence.

The Panel may remove any person from that Sub-Committee as the Panel considers appropriate (including on the application of any Party or any member of the Sub-Committee).