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Bribery Act 2010: Serious Fraud Office Convictions

The Serious Fraud Office (SFO) has announced three people have been convicted and sentenced in relation to various offences under the Bribery Act 2010. The three were sentenced to a combined total of 28 years imprisonment and each was disqualified from being a director.

This newsletter provides a brief overview of the law in this area.

What is bribery?

Transparency International (a non-governmental anti-corruption organisation) defines bribery as "**the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust**."

Why was the Bribery Act 2010 introduced?

The Bribery Act 2010 was introduced to strengthen the existing bribery and corruption laws in the UK. The Organisation of Economic Co-operation and Development (OECD) had repeatedly criticised the UK system for being weak and ineffective compared with the more robust regimes in other countries, such as the US Foreign and Corrupt Practices Act.

What are the offences under the Bribery Act 2010?

1. **Bribing another person:**

A person is guilty of this offence if they **offer, promise or give a financial advantage or other advantage**, to another person:

- to bring about improper performance of a relevant function or an activity; or
- to reward a person for the improper performance of a relevant function or an activity.

The **types of function or activity** that can be improperly performed include:

- all functions of a public nature;
- all activities connected with a business;
- any activity performed in the course of a person's employment; and
- any activity performed by or on behalf of a body of persons.

There must be an **expectation** that the functions are carried out in **good faith or impartially**, or the person performing them must be in a

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position of trust.

It **may not matter** whether the person offered the bribe is the same person that actually performs or performed the function or activity concerned.

The advantage can be offered, promised or given **by the person themselves or by a third party**.

2. **Being bribed**

The recipient or potential recipient of the bribe is guilty of this offence if they **request, agree to receive, or accept** a financial or other advantage to perform a relevant function or activity improperly.

It **does not matter** whether it is the recipient, or someone else through whom the recipient acts, who requests, agrees to receive or accepts the advantage. In addition, **the advantage can be for the benefit of the recipient or another person**.

3. **Bribing a foreign public official**

A person is guilty of this offence if they intend to **influence an official in their capacity as a foreign public official**. The offence does not cover accepting bribes, only offering, promising or giving bribes. It does not matter whether the offer, promise or gift is made directly to the official or by a third party.

4. Failing to prevent bribery

A **commercial organisation** is guilty of this offence if a **person associated with it** bribes another person, with the intention of obtaining or retaining business or a business advantage for the commercial organisation. The **offence can be committed in the UK or overseas**.

A business can avoid conviction if it can **demonstrate that it had adequate procedures in place designed to prevent bribery**.

What are the penalties for committing an offence?

- The offences of bribing another person, being bribed and bribing a foreign public official are punishable on indictment either by an **unlimited fine**, **imprisonment of up to ten years** or both. Both a company and its directors could be subject to **criminal penalties**.
- The offence of failure to prevent bribery is punishable on indictment by an **unlimited fine**.
- Businesses convicted of corruption could find themselves **permanently debarred from tendering for public sector contracts**.
- A business may also be damaged by **adverse publicity** if it is prosecuted for an offence.

Practical steps to help avoid liability under the Bribery Act 2010?

Top level commitment

All senior managers and directors must understand they could be **personally liable** under the Bribery Act 2010 for offences committed by the business. It is important that senior management lead the anti-bribery culture of a business, especially if the business wants to take advantage of the “adequate procedures” defence to the offence of failing to prevent bribery.

Risk assessment

- Consider **all the potential risks the business may be exposed to**. For example, certain industry sectors and countries are associated with a greater risk of bribery.
- Think about the **types of transactions** the business engages in, who the transactions are with and how the transaction is conducted. **High-risk transactions include**:
  - procurement and supply chain management;
  - involvement with regulatory relationships (for example, licences or permits); and
  - charitable and political contributions.
- Review **how the business entertains potential customers**, especially those from government agencies, state-owned enterprises or charitable organisations. Routine or inexpensive corporate hospitality is unlikely to be a problem, but **clear guidelines** should be put in place.
- If the business operates in foreign jurisdictions, always check **local laws**.

Implementing and communicating an anti-corruption code of conduct

Implement a code of conduct setting out **clear, practical and accessible policies and procedures** that apply to the entire business. Make sure the code is communicated effectively to all parts of the organisation.

Carry out background checks when dealing with third parties

A **business will be liable if a person associated with it commits an offence on its behalf**. Businesses should therefore review all their relationships with any partners, suppliers and customers. For example, if an agent or distributor uses a bribe to win a contract for a business, that business could be liable. Ensure that background checks are carried out on any agents or distributors before they are engaged by the business.

Policies and procedures

Review any existing policies and procedures and **decide whether they need to be updated**. If the business does not have any policies or procedures in place, consider preparing them as a matter of urgency.

Effective implementation and monitoring

Consider introducing a **compulsory training programme for all staff**. If only a few employees operate in a high-risk area, consider targeting the training at those employees.

Ensure anti-corruption policies and procedures are **continually monitored** for compliance and effectiveness, both internally and externally.