

Protecting your business

Bribery prevention

Key contact



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"Its 'highly professional and knowledgeable' team is led by the 'thorough and friendly' Catherine Daw."

The Legal 500

Introduction

Bribery is very much a current issue with allegations of corruption and bribery becoming the stuff of daily news. Bearing in mind that bribery has probably existed for as long as commerce has, it is surprising that it took until 2010 before we received the parliamentary wisdom that is the Bribery Act 2010.

The Bribery Act 2010

The UK Bribery Act 2010 has been described as the toughest anti corruption legislation in the world. It is not, however, a masterpiece in clarity.

Whilst acknowledging that bribery is not always black and white the Bribery Act does a great job of making the proverbial grey area, very grey indeed. This is far from ideal for any act that applies serious criminal sanctions. It applies worldwide to UK citizens, nationals, residents and various others and to UK businesses.

Controversially it applies UK ethical standards to business practices worldwide with very limited exceptions for local practices and customs permitted by local written laws.

An individual convicted of offering or giving or requesting, taking or accepting a bribe can face up to 10 years imprisonment.

An unlimited financial fine can also be applied along with confiscation of criminal earnings.

Businesses convicted of failing to have in place adequate procedures to prevent bribery from taking place by its employees, officers, agents etc. can face unlimited fines and confiscation of criminal earnings under proceeds of crime legislation. That is without factoring in the massive potential reputational and commercial damage.

What is a bribe?

The act defines a bribe as a financial or other incentive given, offered or promised with the intention of inducing another person to improperly perform a relevant function or activity.

In broad terms a relevant function covers any employment duties being carried out and any duties being carried out by partners, members, officers or directors of a business. It is not limited to cash in proverbial brown paper envelopes but can cover non cash advantages such as preferential treatment on waiting lists, government approvals or the provision of services or goods.

The grey area is that it all comes down to intent. What is the intention of the person offering the incentive? This is judged against the "reasonable expectation test" i.e. what would a reasonable UK person think. There will be various cases that prompt furious debate and differences of opinion as to whether any incentives offered should reasonably be seen to have the necessary intent.

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The Bribery Act sets out four main offences:

- Giving, offering or promising bribes
- Requesting, agreeing to take or accepting bribes
- A specific offence of bribing foreign public officials
- A corporate offence of failing to have in place adequate procedures to prevent bribery.

The act is supplemented by official government guidance including the “Six Principles” designed to counter and prevent bribery in corporate organisations.

Cases to date

Actual prosecutions under the Bribery Act 2010 have been limited to date.

The first case under the Act was Munir Patel a clerk at a magistrates court. He was convicted of taking bribes (along with offences of misconduct in a public office) of up to £500 to help up to 50 offenders avoid motoring offences. He got 3 years in prison for the bribery aspects to run concurrently with 4 years for the misconduct in public office.

In another case Mr Yang Li attempted to bribe his Bath University professor with £5,000 during a meeting in which an imitation gun fell out of his pocket as he left the meeting. Mr Li had failed his dissertation and approached his professor in attempt to obtain a pass mark. Mr Li was given 12 months for bribery and 6 for a firearms offence.

Mr Mawia Mushtaq needed a tax licence. He failed the test. He repeatedly asked the officer to pass him, offering him £200 or £300 to pass him. A jury at Manchester Crown Court unanimously found him guilty and he got 2 months imprisonment suspended for 12 months.

As a business what do you need to do?

To protect your business you need to ensure that you have in place adequate procedures to prevent bribery by and of your employees, agents and business partners. This can include steps such as:

- Clear policies including a top level commitment within the organisation;
- Clear procedures particularly in the main grey area around corporate entertaining and hospitality;
- Proper risk assessment to identify and mitigate bribery risks taking into account amongst other factors the risks posed by your industry sector risk and the specific geographical risks arising from the places you do business;
- Proper due diligence on your agents, contractors, distributors etc. to ensure that they understand your obligations under the UK Bribery Act and are committed to upholding those standards when acting for you.

Ultimately spotting and avoiding bribery is more often than not common sense.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.