

A vertical signpost with four directional signs pointing to the right. The signs are labeled 'INFORMATION', 'NOTE', 'BRIBERY', and 'ACT 2010' from top to bottom. The signpost itself is a simple vertical line with a small crossbar at the top.

INFORMATION

NOTE

BRIBERY

ACT 2010

Background information

The Bribery Act 2010 came into force on 1 July 2011. Its aim was to modernise the law on bribery. The Act is not concerned with fraud, theft, books and records offences, Companies Act offences, money laundering offences or competition law. There is also a detailed guidance produced by the Government. This information note aims to assist employers in understanding their obligations and risks, and what steps they should take to protect their organisations.

The essence of the Act

Bribery is defined as a financial or other advantage intended to persuade or reward someone to perform improperly a function or activity. The penalties are significant; an organisation and/or an individual can be fined an unlimited amount and individuals may also be imprisoned for up to 10 years. An organisation may be liable for an individual accepting or giving a bribe but only if the individual performs services for the business. Business partners and suppliers would therefore only present a risk if a bribery act takes place in relation to the service provided for the organisation. Government guidance distinguishes bribery from corporate hospitality. The latter is still allowed so long as it is reasonable and is used to *cement good relationships* or *enhance knowledge in the organisation's field*. However where it is intended to induce improper conduct or is a reward for doing so, it will be viewed as a bribe. There is also clear liability upon senior officers and Board members who have knowledge of bribery occurring in an organisation.

The organisational defence

Where a bribery crime has been committed, the organisation will be able to defend itself if it can demonstrate that an adequate procedure has been put in place to prevent bribery. What's "adequate" will depend on the risk of bribery (mainly the environment than the organisation operates within) as well as the company size and available resources. Small or medium sized employers who do not operate in high risk environments will require relatively simple procedures to mitigate the risk of bribery. Each organisation should therefore assess the risk and put in place an adequate procedure. The Government is suggesting six principles to follow when deciding what action is necessary and appropriate.

The six principles

1. Proportionality

The action a business takes should be proportionate to the risks it faces and its size and available resources. Expectations on what action a large organisation operating in an overseas market where bribery may





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be prevalent will be different to a small organisation operating in environments where bribery is not common.

2. Top level commitment

It is expected that a message of zero tolerance towards bribery will come from the Board and most senior officers. They should demonstrate to their staff and partners/suppliers that they have been active in taking appropriate steps to prevent bribery.

3. Risk assessment

Each business should assess the risk that it faces. This includes the markets that it operates in, customers/clients it deals with, partners and suppliers it co-operates with and staff it employs. It would be perfectly reasonable to ask any organisation tendering for a piece of business what policies and procedures they have in place to prevent bribery.

4. Due diligence

Officials making decisions who the organisation employs and has partnerships with should show due diligence in the selection process. Appropriate questions should be asked and information requested and verified before an informed decision is taken. Such processes could form part of a firm defence in event of a bribery liability claim.

5. Communication

The presence of policies/procedures alone would never be considered as an appropriate defence. The organisation has to demonstrate that the commitment lives and breathes. The best way to show this is to communicate to staff and all partners/contractors that the policy is in existence and that the Board and senior management take it seriously. This can be done by way of a memo or a training session. Some organisations may also wish to have their partners/contractors acknowledge and commit to their policies.

6. Monitoring and review

Things change. Organisations can expand or contract, business partners may change as will staff. It is therefore important to keep a radar on the issue and ensure the bribery policy and its communication is still fit for purpose by re-visiting the risk assessment previously performed.

What employers should do

Each organisation should perform a risk assessment of potential exposure to bribery. The six principles outlined above should be helpful in conducting a risk assessment and deciding on appropriate steps to follow. A full blown bribery policy may be appropriate where the risks identified are significant. Where this is not the case, a section in the code of conduct and/or the terms and conditions of service may be sufficient.

Further information

The Government guidance on Bribery Act can be found on:

www.justice.gov.uk/guidance/bribery.htm.