

The Bribery Act 2010

Southampton Solent University Key Guidance

Bribery is a criminal offence in the UK and in most countries in which the University operates and from which our students come. Corrupt acts expose the University and its employees to the risk of prosecution, fines and imprisonment, as well as endangering the University's reputation.

1. What does the Law say about Bribery and Corruption?

Bribery is a criminal offence in most countries in which the University operates, and penalties can be severe. An individual who is convicted of an offence is liable to up to 10 years imprisonment or a fine or both. A company or partnership faces unlimited fines. In the UK the Bribery Act 2010 not only makes bribery and corruption illegal, but also holds UK companies liable for failing to implement adequate procedures to prevent such acts by those working for the University or on its behalf, no matter where in the world the act takes place. In addition, current US legislation (Foreign Corrupt Practices Act or FCPA) offers similar prohibitions and potential penalties and is enforced with vigour by the US authorities. It is therefore in your interests, as well as those of the University, that you act with propriety at all times. Corrupt acts committed abroad, including those by business partners working on our behalf, may well result in a prosecution in the UK.

The principal offences are:

- Offering, promising or giving a bribe (active bribery)
- Requesting, agreeing to receive or accepting a bribe (passive bribery)
- Bribing a foreign public official to obtain or retain a business advantage
- Corporate liability for failing to prevent bribery on behalf of a commercial organisation.

2. How is the Bribery Act relevant to me?

The University takes a zero tolerance approach to bribery and corruption and is committed to acting professionally and ethically in all its business dealings and relationships. The detection and prevention of bribery and other forms of corruption are the responsibility of all of those working with the University or under its control. Any employee who breaches the University anti-bribery policy will face disciplinary action.

Many serious bribery and corruption offences have been found to involve some degree of inaccurate record-keeping. We must ensure that we maintain accurate books, records and financial reporting within all operations. Our books, records and overall financial reporting must also be transparent. That is, they must accurately reflect each of the underlying transactions. False, misleading or inaccurate records of any kind could potentially damage the University.

Our University must maintain an effective system of internal control and monitoring of our transactions. Once bribery and corruption risks have been identified and highlighted via the risk assessment process, procedures can be developed within a comprehensive control and monitoring programme in order to help mitigate these risks on an ongoing basis.

3. Is the University a high risk organisation for bribery/corruption?

Effective risk assessment lies at the core of the University's bribery policy. Identifying the areas in which we face risks of bribery and corruption allows us to better evaluate and mitigate these risks and thereby protect ourselves. The risk assessment is intended to be an ongoing process within the Risk Management procedures of the University.

The University has conducted internal risk assessments and considers that, as an organisation, the University is at low risk of bribery and corruption. Certain areas such as recruitment through overseas agents and construction contracts need to take Bribery Act considerations into account.

4. What is a bribe?

A bribe is an inducement or reward for the improper performance of a function or activity, either personally or through a third party. The inducement or reward does not have to be financial; it can be any form of undue advantage. The function or activity will generally be of a public nature, or connected with a business, or performed in the course of a person's employment.

The function or activity is one which should be expected to be performed impartially or in good faith, and it will be improperly performed if it does not comply with what a reasonable person in the UK would expect.

The function or activity need not be performed in the UK or have any connection with the UK. Any local custom or practice should be disregarded unless it is specifically permitted under the written law of that country. So even in countries where bribery is endemic, it will not be a defence under the Act to ignore or condone acts of bribery because that is how things are done in that country.

5. What does the offence of corporate failure to prevent bribery involve?

A commercial organisation will be liable to prosecution if a person associated with it bribes another person, intending to obtain or retain business or a business advantage. The commercial organisation has a full defence if it can show that it had adequate procedures in place to prevent persons associated with it from bribing. An "associated person" is someone who performs services for or on behalf of the organisation and can be an individual or corporate body. The definition of "associated person" is broad, and could include students, customers, suppliers, agents, partner institutions and companies in the University's operations who act on behalf of the University. Whilst the use of "associated persons" can help us reach our goals, we need to be aware that these arrangements can potentially present the University with significant risks.

6. Who might engage in Bribery or Corruption?

In the eyes of the law, bribery and corrupt behaviour could be committed by:

- An employee, officer or director of the University;
- Any person acting on behalf of or providing services to the University (e.g. associated persons as defined in s.8 of the Act)
- Individuals and institutions where they authorise someone else to carry out these acts.
- Students and parents of students.

Acts of bribery and corruption may also involve public or government officials (or their close families and business associates). For the purposes of this policy, a government official could be:

- A public official, whether foreign or domestic;
- A political candidate or party official;
- A representative or an employee of a University.
- An individual who exercises a public function for or on behalf of a country or public agency or public enterprise of that country
- An official or agent of a public international organisation

7. What is a facilitation payment?

Facilitation payments are unofficial payments to induce officials to perform or expedite routine functions. These payments are bribes and are offences under the Bribery Act. However you can continue to pay for legally required administrative fees or fast-track services.

8. How do I recognise a bribe?

In its most simple and direct form, a bribe will be easy to identify. The problem is that many bribes or illegal transactions come in unusual or clever guises and it is not always possible to identify them when they are presented. Some examples include:

- Gifts - We should consider the appropriateness (including the value and timing) of giving and receiving gifts, hospitality and entertainment
- Facilitation payments - Such payments are often given to one individual and are hidden. They can be difficult to identify without proper checks e.g. an agreement to pay commission to an individual in return for the provision of certain non specific services
- Contract payment terms - Remember that bribes are often hidden in legitimate transactions. All payment terms should be justifiable on an arms length basis. Ensure payments are not made in cash and are made in the countries where the business takes place. All payment terms should be agreed and properly recorded. It might be good practice to ensure that contract terms provide for the immediate termination of a relationship where the other contracting party pays or receives bribes on your behalf.

Specific issues which might identify potentially corrupt conduct include:

- Unnecessary third parties performing similar functions with general and vague descriptions of services being provided
- Unusual financial arrangements, including request for credit by third party agents or distributors
- Lack of transparency in expenses or accounting records
- Large commission payments
- Knowledge of corrupt practices in the country where business is being conducted
- Use of consultancy agreements and
- Request for payment to a third party rather than an intermediary.

9. Gifts, Entertainment and Hospitality

Gifts, entertainment and hospitality include the receipt or offer of gifts, meals or tokens of appreciation and gratitude, or invitations to events, functions, or other social gatherings, in connection with matters related to our business. These activities are acceptable provided they are reasonable and proportionate.

If offered hospitality or gifts, first consider whether it is acceptable using the considerations set out below. Second, you should check with your line manager whether it is appropriate for you to accept the gift or hospitality.

If the gift or hospitality is a genuine token of appreciation or intended to foster goodwill in a business relationship, it is likely to be appropriate. If it makes you feel uneasy, it is unlikely to be appropriate. Use judgment and common sense.

How to evaluate what is 'acceptable'

- Made for the right reasons: the gift or hospitality should be given clearly as an act of appreciation
- No obligation: the gift, hospitality or the reimbursement of expense must not place the recipient under any obligation
- Creates a feeling of unease in the recipient: if the gift or hospitality creates a feeling of unease in the recipient or the recipient needs to justify receipt, then the purpose is likely to be suspect
- Made openly: if made secretly then the purpose will be suspect
- Accords with public perception: the transaction would not be viewed unfavorably by the media or general public if it became known to them
- Reported: the gift, hospitality or expense should be recorded
- Reasonable value: the size of the gift is small, or the value of the hospitality accords with general business practice
- Legality: it conforms to the laws of the country where it is made
- Infrequent: the gift or receipt is not a regular occurrence between the giver and the recipient
- Timing: gifts and hospitality offered or given after the conclusion of a contract are more likely to be viewed as an act of appreciation. Those offered or given during negotiations or prior to business arrangements being entered into are more likely to be perceived as a bribe.

Although no two situations are the same, the following guidance should be considered:

Never Acceptable

Circumstances which are never permissible include examples that involve:

- A 'quid pro quo' (offered for something in return)
- Gifts in the form of cash/or cash equivalent vouchers

As a general rule, University employees and associated persons as defined under s.8 of the Act should not provide gifts to, or receive them from, those meeting our definition of a government official as defined above (or their close families and business associates). However, we do understand that in certain countries gift giving and receiving with these individuals is a cultural norm. If you are faced with such a situation, please consult with the Compliance Officer before proceeding.

Usually Acceptable

Possible circumstances that are usually acceptable include:

- Modest/occasional meals with someone with whom we do business
- Occasional attendance at sports, theatre and other cultural events
- Gifts of nominal value, such as pens, or small promotional items

A variety of cultural factors such as customs, currency and expectations may influence the level of acceptability. If you feel uncertain at any time regarding cultural acceptability of gifts, entertainment or hospitality, please consult your line manager or the Compliance Officer. In addition, if an example does not fall under the above categories, please in the first instance seek guidance from the Compliance Officer.

Transparency is key

The Compliance Officer will maintain and monitor a gifts, entertainment and hospitality register. Any form of gift (>£25), entertainment or hospitality given (>£50), received or offered must be appropriately recorded in the register. A form can be found under 'my apps' on the portal.

The following information will be required:

- Date of offer/gift/event
- Description e.g. lunch at xxx restaurant
- Name of recipient (individual or faculty)
- Name of individual and organisation offering the gift/hospitality
- Estimated approximate cost or "unknown" if you are unable to estimate a cost
- Date of line manager approval

In the event that an impermissible form of gift, entertainment or hospitality has been accepted, you must appropriately record the transaction within the register and contact the Compliance Officer immediately.

The register will be inspected by the Compliance Officer on a twelve-monthly basis, or more frequently if s(he) considers it necessary or appropriate to do so.

What should you do when offering hospitality or entertainment?

Before offering any hospitality, first consider whether it is appropriate by using the questions set out above. There is nothing wrong with genuine relationship-building hospitality, but if you need to justify the hospitality to yourself or someone else, it is probably not acceptable. You should check before offering any kind of gift or entertainment. Some individuals or organisations may have rules requiring them to report and/or refuse such offers, and you must take care not to compromise their position.

The cost of entertainment should be approved in advance by the authorised budget holder/line manager.

10. What do I do if I suspect I am being offered a bribe or if a colleague reports their suspicions of bribery to me?

As individuals who work on behalf of the University, we all have a responsibility to help detect, prevent and report instances not only of bribery, but also of any other suspicious activity or wrongdoing. The University is committed to ensuring that all of us have a safe, reliable, and confidential way of reporting any suspicious activity.

If you are concerned that a corrupt act of some kind is being considered or carried out within the University, or by any of our business partners or our competitors, you should report the issue/concern to your line manager and Compliance Officer. If for some reason it is not possible to speak to your Line Manager, please report it to another Senior Manager.

If you are not able to speak to your Manager (or a more Senior Manager), or the Compliance Officer the University has an online reporting facility for all employees and relevant business partners/associated persons to use: bribery.act2010@solent.ac.uk.

What happens when I have reported my suspicions? What if my suspicions turn out to be mistaken?

In the event that an incident of bribery, corruption, or wrongdoing is reported, the Compliance Officer will act as soon as possible to evaluate the situation. The University has clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind. If you have any questions about these procedures, please contact the Compliance Officer or the Director of Human Resources.

The University aims to encourage openness and will support anyone who raises a genuine concern, even if they turn out to be mistaken. No one will suffer any detrimental treatment as a result of refusing to take part in bribery or corruption or because of reporting suspicions of bribery or corruption.

What happens if I do not report my suspicions?

Any employee who fails to report a genuine suspicion of bribery or corruption or otherwise breaches the University's anti-bribery policy may be subject to disciplinary action. Any breach of the policy may be treated as gross misconduct, which may result in dismissal without notice or payment in lieu.

11. What steps do I have to take to communicate the anti-bribery policy to other individuals? What due diligence measures do I have to undertake?

From 1 July 2011 the University's terms of business will advise third parties of the existence of the bribery policy. The University's website will also refer to the existence of the policy. If you are instructing an agent or third party to perform services on behalf of the University, you should consider what due diligence measures you need to take to ensure that they will not commit a bribery act offence. If you assess the risk as low or non-existent, then you need only satisfy yourself that the agent or contractor is genuine and someone you can trust to do business without bribing. Personal knowledge or enquiries of business contacts, local chambers of commerce or business associations or via the internet will be sufficient.

If you think the risk is higher, you may need to undertake more due diligence measures. The aim is to satisfy yourself that the person who is to represent the University can be trusted not to use bribery or corrupt practices on our behalf. For example, you may need to:

Evaluate the background, experience, and reputation of the agent or third party;

- Understand the services to be provided, and methods of compensation and payment;
- Evaluate the business rationale for engaging the agent or third party;
- Take reasonable steps to monitor the transactions of agents or third parties appropriately;
- Ensure there is a written agreement in place which acknowledges the agent or third party's understanding and compliance with this policy.

If you are instructing an agent or contractor who falls within a higher risk category, you should send that agent or contractor a copy of the University's anti-bribery policy, and request a copy of their anti-bribery policy. If you have any doubts, you should consult your line manager and/or the Compliance Officer. You should continue to monitor the agent or contractor on a regular basis to satisfy yourself that your initial due diligence remains unchanged.

Where a supply chain involves a prime contractor with a series of sub-contractors, we should supply the prime contractor with a copy of our policy and request the contractor to adopt a similar approach with the next party in the chain.

Facilities should consider whether it is necessary to send a copy of our anti-bribery policy to contractors and suppliers. As a general rule it is not necessary to send our anti-bribery policy to existing contractors or suppliers who are performing services or supplying goods to the University (rather than performing services or supplying goods to others on behalf of the University).

When renewing or negotiating new contracts for the supply of goods and services to the University with an estimated value in excess of £25,000, we should consider whether it is necessary to provide the potential contractor/supplier with a copy of our anti-bribery policy. Relevant factors include the identity of the contractor/supplier (individuals and small organisations pose a greater risk than listed companies), the nature of the services/goods, the value of the contract, and the perceived risk of bribery.

The University is ultimately responsible for ensuring that associated persons who act on our behalf are compliant with this policy as well as any local laws. Ignorance or "turning a blind eye" is both illegal and unacceptable. As the evaluation process will vary by type of agent or third party, faculties and services should consult in the first instance with the Compliance Officer.

Donations

The University does not make contributions to political parties. Gifts or donations to charities are permitted but should be kept to a minimum. No donation should be made in order to obtain or retain a business advantage. All charitable donations must be authorised by the appropriate Dean or Director.

How will our anti-bribery policy be communicated internally?

A copy of the anti-bribery policy will be made available on the staff intranet and be distributed to all current members of staff, and new staff as part of their induction process. Staff in higher risk categories will be provided with further training on the implications of the Bribery Act for the company. Any concerns or issues should be notified to the Compliance Officer immediately.

How will we monitor and review the implementation of our anti-bribery policy?

The Compliance Officer will monitor the initial implementation of our anti-bribery policy, and review its implementation on a twelve monthly basis, or more frequently if (s)he considers it necessary to do so. (S)he will do this by reviewing any reports of suspicions of bribery and the gifts, entertainment and hospitality register.

Individual faculties will be expected to record when Bribery Act training or discussions take place at team meetings, and to provide this information to the Compliance Officer on request. Additionally members of the Senior Management Team will, every twelve months, conduct a review of their teams' risk profile as regards bribery issues in order to assess whether their risk profile has changed. The results of this review will be passed to the Compliance Officer for review.

Where do I go if I have any questions?

A copy of the Bribery Act can be viewed on

<http://www.legislation.gov.uk/ukpga/2010/23/contents>

The Ministry of Justice Guidance on Compliance with the Bribery Act can be viewed on

<http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm>

To discuss these procedures, their implementations, or any areas of concern regarding bribery and/or corruption, please contact the Compliance Officer.