

# Bribery Act

## **Welcome**

Welcome to this course on Bribery Act 2010

"Bribery blights lives. Its immediate victims include firms that lose out unfairly. The wider victims are government and society, undermined by a weakened rule of law and damaged social and economic development. At stake is the principle of free and fair competition, which stands diminished by each bribe offered or accepted."

Kenneth Clarke, Secretary of State for Justice, March 2011

### **By the end of this course, you will:**

- Have an awareness of the background of the Act
- Have a broad overview of the implications of the Act
- Understand how the Act affects the way you need to work
- Understand the offences set out in the Act, as well as possible defences
- Understand what the University is doing to comply with the requirements
- Be aware of further sources of information

## **Background**

### **When was the Act passed?**

Before turning to the details of the Act, take a moment to consider the background on why this Act has been implemented.

The Bribery Act received Royal Assent on 8th April 2010. It was created to replace a complicated and confusing combination of legislation which had developed little by little over more than 100 years.

### **Why was the Act passed?**

The Act highlights the Government's commitment to tackling corruption both domestically and internationally. The need for reform has been widely acknowledged, and the Bribery Bill received cross-party support as it went through Parliament.

### **What does this mean for UK Universities?**

With the passing of the Act, all organisations in the UK, face a new exposure to criminal liability for failing to prevent bribery. This can include liability for the unauthorised actions of their employees, subsidiaries and agents.

This will make it easier for the Serious Fraud Office (SFO) to prosecute organisations when bribery has occurred. However, risk can be minimised by ensuring that appropriate anti-corruption policies are in place not simply to prohibit bribery but to actively seek to prevent it from arising.

### **Will it be difficult to adhere to?**

No; this Act is not intended to pose unnecessary difficulties. In the Foreword to The Bribery Act Guidance, the Secretary of State argues that combating the risks of bribery is about common sense and not about burdensome control. We will examine what this means in reality later in this course.

### **Why is it so important for us?**

It is University policy to comply with all applicable anti-bribery laws, and the University will not tolerate any form of bribery and corruption. Bribery or any form of corruption by a member of staff of the University will be considered gross misconduct and the member of staff may face dismissal. Agents, consultants and business partners who work with or on behalf of the University must act with integrity and behave ethically. The University will terminate agreements with such agents, consultants and business partners in the event of any breach of anti-bribery law, corruption or unethical behaviour.

## Who does the Act apply to?

Meet Ben and Isla, who live and work in the UK. Now explore the ways in which the Bribery Act is relevant for them.

**UK Citizen:** Meet Ben, who has been teaching at University for three years. As a citizen of the UK, the Bribery Act applies to Ben, which means that accepting or making any form of bribe for the good of his department could result in him going to jail! Ben is thinking about working in a University abroad. If he does, as the scope of the law is extra territorial, he could also be prosecuted for crimes committed abroad. This applies to any relevant person or company.

**UK Resident:** Isla came to the UK three years ago to marry her fiancée, who she met at University. She has therefore become a UK Resident, although has not yet gained citizenship. She works full time at the University in a Research Role. The Bribery Act applies to Isla as a Resident in exactly the same way it does to Ben. Both Isla and Ben would also be liable in non-UK organisations - providing the organisation was established under UK law.

## **Organisation liability**

You now know that both as a UK Citizen or Resident, you can be held accountable. However, it is important to know also when your organisation may be liable. Here, some common questions are answered.

### **Would a Vice Chancellor's actions be attributable to the University?**

Yes. Your University could be liable if a senior person, such as a Vice-Chancellor, commits a bribery offence. That person's activities would be attributable to the University.

### **Would the University still be liable if a junior employee or contractor committed bribery?**

Yes, the University could also be liable where someone who performs services for it, such as an employee or agent, pays a bribe specifically to get business, retain business, or gain a business advantage for the University. That means that if you or one of your colleagues commits bribery, you will be putting your University as well as yourself at risk of prosecution.

### **The University is very large with an extensive workforce; can we protect ourselves**

We can. Full defence is offered for bribery offences committed by someone who performs services for an organisation if it can be demonstrated that they have adequate procedures in place to prevent bribery. We will examine what these maybe later in the course.

## **Key Events**

**The Bribery Act is the result of many years' work. Use this timeline to review how it came about. Over 100 years ago**

Complicated and often confusing legislation relating to bribery prevention had been building up in the UK for over 100 years.

### **8th April 2010**

Designed to replace this, the Bribery Act received Royal Assent on 8th April 2010.

### **April 2011**

The Act was due for implementation in April 2011, but was subject to debate and delay pending the Government's publication of the guidelines for the Act.

### **1st July 2011**

The Bribery Act came into force on 1st July 2011.

## **What is covered by the Bribery Act?**

**Bribery, in the Guide to the Act, is defined as:**

Giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so.

**Put simply, it is giving or taking a reward in return for acting dishonestly or in breach of the law. This could cover seeking to influence a decision-maker by giving some kind of extra benefit to that person rather than by what can legitimately be offered as part of the tender process.**

**An example could be offering lavish holidays or hospitality to someone with responsibility for awarding major contracts.**

**One such case occurred shortly before the passing of the Act:**

Johnson and Johnson's DePuy International Ltd. unit agreeing to pay out £4.8 million after allegations it paid bribes to Greek medical professionals to win contracts to supply orthopaedic products.

Can you think of any other recent cases that have been in the news?

## **What is not covered?**

Before considering the detail of what is covered in the Act, it is important to know what is NOT covered. After all, the act is very narrow in what it addresses. Consider each of the options and try to work out which would not be covered in the Act.

Select ALL the options you think are correct.

- Money laundering
- Book offences
- NON-UK resident companies
- Theft

Answers are on the following page.



The act is not concerned with money laundering, books offences or theft.  
Additionally, it does NOT cover fraud, Record offences or competition law.

Continue to the following page for information on non-UK organisations.

## Offences under the Bribery Act

The Bribery Act 2010 creates these five offences. In this section, we will briefly examine each offence in turn, with a full explanation of each available here. First, see if you can match the offence to its correct description below, draw a line between the two.

Offence	Description
Facilitation payments	Promising or giving a financial or other advantage
Bribery prevention failure	Agreeing theatre tickets in return for access to lists of potential sponsors
Passive bribery	Promising cash to a foreign public official for some info
Active bribery	Small cash payment to a customs officer to expedite the release of equipment

Answers are on the following page.

Offence
Facilitation payments
Bribery prevention failure
Passive bribery
Active bribery

Description
Small cash payment to a customs officer to expedite the release of equipment
The failure of commercial organisations to prevent bribery
Agreeing theatre tickets in return for access to lists of potential sponsors
Promising or giving a financial or other advantage

## **Active Bribery**

First, let's consider active bribery. Below are parallel scenarios involving employees A and B; one involves bribery, and the other does not.

### **Rugby tickets offered**

**Employee A** offers a group of particularly important potential sponsors complimentary tickets to a 6 Nations rugby match at Twickenham to cement good relations.

**Employee B** offers similar tickets to her potential sponsors, who have in the past donated a lot of money to the University.

### **Offers accepted**

Both employee A and employee B's potential sponsors accept the offer and are grateful.

At this point, neither employee could be seen to be committing bribery. For this offence to be committed there needs to be evidence that the tickets were given out with the purpose of inducing the potential sponsors to act improperly.

### **And agreements reached**

Employee A receives a letter of thanks from his potential sponsors after the game, and a few weeks later, he successfully sets up a new project with them.

Employee B decides to hand-deliver the tickets to her potential sponsors' office before the game, where she lets the manager know that the tickets are in good faith that their project with the University will go ahead as planned.

### **Active bribery**

Employee A's act of hospitality is unlikely to be seen as bribery. However, employee B is clearly using active bribery to secure future donations.

Active bribery, as in Section 1 of the Act, occurs when a person offers, gives or promises to give a "financial or other advantage" to another individual in exchange for "improperly" performing a "relevant function or activity".

## **What would you do?**

Imagine you have been working closely on a successful project with someone from a major supplier to the University.

You want to send a gift to acknowledge their hard work but, knowing that the contract between them and your University is soon up for review, you're not sure whether it is appropriate to do so.

**Would it be appropriate to send a very low-value gift to ensure it was not seen as a bribe?**

- YES
- NO

**Instead, would you send the gift to that person's home address instead of their office to ensure it was seen as a personal gesture?**

- YES
- NO

**You decide that you still want to send a gift because of the hard work that was put in. What should you do?**

- Just don't send a gift
- Consult your University policy

Answers are on the following page.

**Would it be appropriate to send a very low-value gift to ensure it was not seen as a bribe?**

- YES
- NO**

Sending a small gift is less likely to be seen as bribery, but still may be seen as trying to sway the decision of whether or not to renew the contract. Therefore it's best not to send a gift at all.

**Instead, would you send the gift to that person's home address instead of their office to ensure it was seen as a personal gesture?**

- YES
- NO**

Unfortunately, sending a gift to someone's home address may be viewed as trying to hide the gift, and may therefore become suspicious.

**You decide that you still want to send a gift because of the hard work that was put in. What should you do?**

- Just don't send a gift
- Consult your University policy**

Sending gifts to retain good client relations may well be acceptable within your organisation – but always consult the most up-to-date policy before doing so, and ask your manager if you are still unsure.

## Passive Bribery

Passive Bribery refers to being bribed and is covered by Section 2 of the Act.

**Passive Bribery** - requesting, accepting or agreeing to accept such an **advantage**, in exchange for **improperly** performing such **function or activity**.

**Passive Bribery** - An example of being bribed would be if someone was to make a donation to the alumni fund on the understanding that his daughter's application to study there was treated preferentially.

**Advantage** - In the context of this definition, an advantage could be to accept hospitality on the condition that the individual uses their influence at the University to ensure that the University starts using a certain supplier. However, the Guidance to the Act makes it clear that its purpose is not to stop hospitality being offered on the basis of getting to know the clients, but care is required, and you should always consult your gifts and hospitality policy or seek advice if you are unsure

**Improperly** - Acting improperly will be any breach if what a reasonable person in the UK would expect in relation to performing of the function or activity. This offence applies even if the function or activity is not taking place in the UK.

**Function or activity** - A relevant function or activity includes any activity of a public nature or any activity connected to an organization.

Facilitation payments are payments made to induce officials to perform routine duties which they are obliged to perform and are therefore bribes.

If you are asked to make a payment on behalf of the University, you should always ask for clarification as to what the payment is for. If you have any concerns, you should raise these with the appropriate responsible person within the University. Remember: you could be at risk of prosecution if you don't.

**Further information on Facilitation payments is contained in the [Guide to the Bribery Act](#)**

## **Bribery of foreign public officials**

Bribery of foreign public officials is a distinct crime under Section 6 of the Act, in line with the OECD Anti-bribery Convention. A person is guilty of this offence if they promise, offer or give a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of his or her official functions.

### **Who counts as a foreign public official?**

A foreign public official includes all officials, whether elected or appointed, who hold a legislative, administrative or judicial position in any kind of a country or territory outside the UK.

### **Does this offence relate to any other person?**

It also includes any person who performs public functions in any branch of national, local or municipal government for such a country or territory, or who exercises a public function for any public agency or public enterprise of such a country or territory.

Examples include professionals working for health agencies, and officers exercising public functions in state-owned enterprises.

### **What about public international organisations?**

Foreign public officials may also be an official or agent of a public international organisation, such as the UN or World Bank.



## **Responsibilities for commercial organisations**

Section 7 of the Act creates the corporate offence of failure of relevant commercial organisations (including Universities) to prevent bribery on their behalf. Who do you think is covered in this offence?

- Vice-chancellors and Heads of Department
- Professors and lecturers
- Administrative and support staff
- Researchers

The answer is on the following page.

Commercial organisations can be liable for failing to prevent bribery by Vice-Chancellors and Heads of Department, professors and lecturers, administrative and support staff, or researchers, if those individuals were involved in accepting or receiving a bribe which resulted in the University gaining or retaining funding or other gain.

## **An Example of the Failure of commercial organisations to prevent bribery**

Stephan is a Dean of Life Sciences, who discovered that the Head of the Plant Science Department had been offering sums of University money to a company to ensure availability of lab specimens that would otherwise be withdrawn.

Stephan realised the University was liable for this offence under the Act as it is: “a body or partnership incorporated or formed in the UK irrespective of where it carries on business, or carrying on a business in the UK irrespective of the place of incorporation or formation”.

As a criminal offence was committed, Stephan was concerned that Senior post holders, as well as other employees, would suffer as the University could receive sanctions, including unlimited fines and up to a maximum of 10 years imprisonment for those involved. The University would also suffer in terms of reputation.

However, Stephan proved that, while bribery did take place, the organisation had in place adequate procedures designed to prevent associated persons from undertaking such conduct. This defence removed liability from him and his directors. We will examine these adequate procedures later in this course.

## **What are adequate procedures?**

**As stated in the last section, there is a defence against the offence of failing to prevent bribery; demonstrating that your organisation has adequate procedures in place.**

The Ministry of Justice has set out six outcome-focused principles of the Act which will help you to determine what we need to do in the University.

These six principles are:

- Proportionality – procedures proportionate to the level of risk
- Top-level commitment
- Risk assessment
- Due diligence
- Communication
- Monitoring and review

**These are not prescriptive and are intended to allow flexibility. What counts as adequate will depend on the bribery risks your organisation faces, which for small to medium sized, low risk organisations will be fairly minimal. Now let's take a look at each of these in turn.**

## **Proportionality**

Your University has procedures in place that prevent bribery by people who are associated with it. Such procedures must be proportionate with the bribery risks you face and the nature, size and complexity of your organisation.

**Policy** - For many organisations, this may be in the form of a straightforward policy and procedure on the receipt and provision of gifts and hospitality that sets out both clear guidance on what is and is not acceptable, and procedures for recording such gifts or hospitality. The policy extends to all University staff, contractors, associates, joint venture partners, consortium partners and agents, as well as operations anywhere in the world, including international agents, subsidiaries, subcontractors under commercial contracts, collaboration partners and consortium partners.

**Those in senior positions within the University are best placed to ensure that it conducts its business without bribery. Do you think it is true or false that creating a policy document for staff and associates is sufficient?**

- True
- False

The answer is on the following page.

Clear policies and procedures are very important. However, to demonstrate that you have made it clear to all staff and associates that bribery will not be tolerated, the policy must be made easily accessible and may need to be backed up with training within the University.

## Risk assessment

**Even organisations with little or no risk of bribery should be safeguarded by carrying out a risk assessment to determine the nature or extent of potential exposure to external or internal bribery. You need to consider the risks of any activities that you and your colleagues are involved in, as divided into five broad categories by Government guidance.**

**Country:** is there a culture of corruption in a particular country, or no anti-bribery legislation in place in that country? This is evidenced by perceived high levels of corruption and by a lack of Anti-Bribery legislation.

**Sector:** is your organisation operating in a sector where bribery is more common? Higher risk sectors include the extractive industries and the large scale infrastructure sector.

**Transaction:** is the transaction one where bribery is more common?

**Opportunity:** is the activity one of particularly high value, or involving a lot of different groups?

**Partnership:** are there a number of intermediaries involved in the transaction? Using these five categories, a risk assessment should be carried out on a regular basis and should be documented. More information on assessing risk can be found in the Government's [Quick Start Guide to The Bribery Act](#).

## **Due diligence**

Due diligence procedures are about having a proportionate and risk-based approach to all working relationships.

### **High risk**

Entering into a working relationship with a person or organisation that is completely unknown to you can result in potentially high bribery risk. You should never agree to this.

### **Medium risk**

Even if you are dealing with an organisation that you have worked with in the past, or that has worked with trusted associates of yours, you remain at risk if you don't carry out appropriate checks.

### **Low risk**

You can mitigate against potential bribery risks by knowing exactly who you are dealing with. This can take the form of having checks in place before engaging others to represent you.



## **Communication**

Good communication is important to ensure that you, all your colleagues and all those carrying out services on behalf of the University are clear on its stance on bribery.

These three colleagues each describe ways in which communication is effective at their workplace for minimising the risk.

**Colleague 1** - *"Communication in the form of raising awareness is very effective. My manager takes care to ensure we are all aware of the location of policy documents, and when they get updated"*

**Colleague 2** - *"Communication should extend to all business associates, not just staff. Ensuring that they have read policy and procedure documents means that they will understand exactly what is and is not acceptable."*

**Colleague 3** - *"As a new member of staff, I was pleased to receive training on anti-bribery as part of my induction. It is now clear to me, and everyone I work with, what to do in the event of finding myself a victim of potential bribery or corruption."*

Risks within the University will change as you develop new collaborations, recruit from different markets, or begin major procurement projects.

It is essential, therefore that regular reviews should be carried out.

## **Practical steps**

**Now that we have covered each of the six principles let's look at how to put these into practice. Lord Bach (the then Parliamentary Under-Secretary of State) set out some suggestions prior to the introduction of the Bribery Act.**

By taking these steps, the risk of bribery and corruption within the organisation will be minimised and, in the event of an incident occurring, it will be able to demonstrate that adequate procedures had been in place in accordance with the Bribery Act 2010.

## **Senior Management**

Practical steps within senior management include leading in the promotion of a culture whereby bribery is never acceptable.

## **Policies**

The importance of anti-bribery policy and procedure documents has already been covered.

## **Additional controls**

Additional controls can help tighten security measures. Control on employment contracts cannot cover a complete list of all potential examples of misconduct, but a specific clause relating to bribery and corruption can be included where this is appropriate.

## **Training**

Training is provided to all employees who may experience bribery. This course gives an overview of what is and is not acceptable and what to do in a situation where bribery is attempted. Disclosure under the Public Disclosure policy should be encouraged as part of a culture of openness. Staff may be worried about possible repercussions of reporting concerns, so anyone who raises concerns in good faith needs to be supported. Staff in high-risk areas will also be having more in-depth training. Any member of staff who has concerns regarding bribery and corruption should refer the matter to your HR Adviser.

## **Reviews**

In addition to reviewing all current policy, procedure and training, due diligence processes should be reviewed to ensure that they fully address potential bribery risks. Risk assessments relating to potential bribery and corruption situations can help with this, and these too should be regularly reviewed. This should be the responsibility of a nominated senior person within the University.

## **Conclusion**

You have now reached the end of this course. Hopefully, you have found it informative and thought-provoking. Please remember that this was intended to provide a general overview and awareness of the Bribery Act 2010 and is not intended to apply to specific circumstances or offer legal advice. If you have any concerns about the application of this, you should contact Maria Burquest (M.C.Burquest@ljmu.ac.uk ) who will be pleased to offer advice and support.

When you have read through the module workbook, there is an expectation for all staff to complete a short quiz online within LJMU E-Learning modules. Go to <https://www.ljmu.ac.uk/staff/df/elearning-modules> for how to access the modules and further details.