

Anti Bribery Policy

Introduction

In 1998 the UK ratified the OECD Anti-Bribery Convention¹ criminalising the bribery of foreign public officials but relied on a patchwork of existing legislation, specific amendment to this legislation and the common law for the Convention to be applied.

The UK Bribery Act 2010 came into force in June 2011 and overhauled all the existing legislation and introduced four new bribery offences:

- Making a bribe – the promise of giving of an advantage with the intention of inducing or rewarding the improper performance of a relevant function or activity. It is sufficient for the offeror of the bribe to intend to influence improper action for an offence to arise; the bribe does not need to be accepted.
- Accepting a bribe – the receipt or acceptance of an advantage for the improper performance of a relevant function or activity.
- Bribery of a foreign public official where the intention is to influence an individual in their official capacity in order to win or retain business.
- Failing to prevent bribery – a strict liability corporate offence where an organisation fails to prevent bribery by those performing on its behalf. This will not only relate to the employees of the organisation but agents, partners or consultants acting on its behalf.

For the avoidance of doubt charities and non-governmental organisations are firmly within the scope of the Act.

It is increasingly a requirement of funding and governmental organisations, such as DFID and others, that their civil society partners have an anti-bribery policy in place, and appropriate risk management occurs to ensure the law is not broken.

Extraterritoriality

It is very important to understand that section 12 of the Bribery Act 2010 introduces extraterritoriality over a crime of foreign bribery. This means that:

- If a person's act or omissions outside of the UK would be considered part of a foreign bribery offence if it had taken place within the UK, and
- The person at the time of the act or omission had a close connection to the UK² then
- The act or omission will fall within the scope of UK bribery law.

¹ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

² Close connection to the UK means a British citizen, British overseas territories citizen, a British National (Overseas), a British overseas citizen, a person who under the British Nationality Act 1981 was a British subject, a British protected person within the meaning of the British Nationality Act 1981, an individual ordinarily resident in the United Kingdom, a body incorporated under the law of any part of the United Kingdom or a Scottish partnership

Conciliation Resources' Commitment

The Board and the EMC fully endorse this anti-bribery policy and are committed to ensuring that the business of Conciliation Resources is conducted without bribery.

Neither the Board nor the EMC will tolerate active, passive or any other forms of bribery by any member of staff, volunteer or board member or any person representing Conciliation Resources either as a consultant, partner, agent or similar when carrying out activities for and on behalf of Conciliation Resources.

What is Bribery?

Bribery is usually associated with cash payments. Facilitation payments (small payments to public officials designed to ensure the prompt performance of duties) remain illegal. It is believed, although there is no case law to support this as yet, that the UK prosecution policy will focus on proportionality so that a common sense view is taken.

However bribes also comprise non-monetary gifts, hospitality and other favours where the amount involved is disproportionate to the circumstances and where the level seems, or is, unreasonable. This can be subjective and you must seek advice from either the Director of Operations, the Executive Director or the Chair of the Board as to whether what is being offered is reasonable.

Conciliation Resources can be liable if a person or organisation associated with it pays a bribe even if Conciliation Resources knows nothing about the bribe. This could have implications for Conciliation Resources' funding relationships with partner organisations and it will be important to stress Conciliation Resources' zero tolerance on the payment or receipt of any form of bribe.

The Conflict of Interest and Reporting of Gifts policy clearly states that all cash or cash equivalent gifts are to be refused or politely turned aside, but in all circumstances reported. It also requires that individual or collective gifts over the value of GBP50 or local currency equivalent are, where possible, to be handed over to Conciliation Resources and again in all circumstances must be reported. Customary courtesy gifts of small value may be accepted.

It is recognised that there are circumstances in which individuals are left with no alternative but to make payments in order to protect against loss of life, limb or liberty. In these circumstances it is thought possible, but there is no current case law to support this, that the common law defence of duress will be available and also the Ministry of Justice may consider payment to be "extortion"³ as opposed to a "bribe". **If this should occur it is essential that the payment is reported immediately to either the Director of Operations, or the Executive Director and a full incident report, see [appendix 3](#), completed as soon as possible after the initial report has been made and forwarded to the Director of Operations or Executive Director.**

³ A definition of extortion is "to get something by force or threat". <http://dictionary.cambridge.org/dictionary/british/extort> accessed 28th February 2012

Implications and Penalties

Both from a wish to prevent bribery and as a defence against the potential corporate offence of failing to prevent bribery, Conciliation Resources must have in place an effective anti-bribery policy and associated risk management procedures.

The negative reputational impact for Conciliation Resources being linked in any way to either a bribery prosecution or investigation could be enormous, deterring donors, jeopardising influence with policy makers and maybe even being disbarred from participating in future public contracts.

If Conciliation Resources becomes aware, in its honest held belief, that any one associated with it might have been soliciting or offering bribes it will, under the lead of the Director of Operations or the Executive Director, carry out an immediate investigation of the circumstances the purpose of which will be to:

- Seek to confirm whether or not a bribe has taken place.
- To identify who was responsible.
- Confirm whether the internal controls and procedures have worked in practice.
- Identify any improvements.
- Determine whether the matter should be referred to the appropriate authorities for possible further investigation leading to legal action.

Whatever the outcome of these investigations Conciliation Resources reserves the right to initiate disciplinary action that may result in dismissal or terminate any contract that may be in place with a third party.

For anyone charged under the Bribery Act 2010 the legal penalties are:

- Prison sentences up to 10 years imposed on any individual if found guilty.
- Individual senior managers or board members may be prosecuted if a corporate body has committed an offence and those senior managers or board members knew bribery was happening and did nothing to stop it.

For an organisation charged under the Bribery act 2010 of failing to prevent bribery the legal penalty is:

- An unlimited fine.

Bribery is illegal in many countries not just the UK. The US also claims extraterritoriality for bribery offences wherever committed. The penalties for being found guilty of bribery also vary and do extend up to and include the death penalty in certain countries.

Key Risk Areas for Conciliation Resources

Below is a non-comprehensive list of bribery risk areas of which we all need to be aware:

Geographical

Certain countries and regions within countries have a higher risk tendency than others. The 2011 Corruptions Perception Index published by Transparency International is at <http://cpi.transparency.org/cpi2011/> and is

updated annually. You are encouraged to consult this information source as well as using the local UK Embassy or High Commission to gather information.

Cultural

In certain cultures and work environments, bribes may be seen as “business as usual” but they should be politely resisted.

Partners and Consultants

Conciliation Resources works through many partners and consultants. Factors that may influence Conciliation Resources’ view of the bribery risk include, but are not limited to:

ed to:

- Size / structure / governance.
- Adequacy of control systems.
- Selection process.
- Supporting contracts and agreements.
- Monitoring and support processes.
- Political involvement or political connections.
- Location.

Procurement

A potential high risk area where processes may not be fair or transparent. This is particularly true where funds are being distributed by Conciliation Resources to partner organisations. Funders are increasingly seeking reassurance that Procurement policies are in place delivering value for money both for Conciliation Resources and the funder.

Transactions

Transactions that are high-risk areas are payments to government officials, payments on major contracts, and payments to third parties or beneficiaries in a different country to both the source of the goods or services, and the recipient of those goods or services.

As stated above in the “[What is Bribery?](#)” section, facilitation payments have always been illegal and remain illegal.

Recruitment

Bribes can be offered or sought as part of a recruitment process. This may be for the recruiting of staff on a contract or permanent basis or where a consultant is being recruited or retained or a relationship with a partner is being initiated, extended or reviewed.

New activities

Increased risk to Conciliation Resources will arise if it seeks to start a new project in a new country or seeks to expand existing activities into a new country. It may apply if Conciliation Resources expands activities within an existing programmatic or thematic area.

Risk Mitigation

Geographical

It is a requirement of each Programme Team to periodically, but no less frequently than annually, undertake a security review for each of their programmes and the countries and areas in which they operate. It is a requirement of this policy that as part of the security review the following is covered:

- There is specific consideration given to bribery and corruption in the respective spheres of operation.
- If bribery and corruption are present the issues posed for Conciliation Resources and its work, whether that work is Conciliation Resources lead to partner lead.
- How Conciliation Resources should, or continue to, protect itself its people and the partners through which it works from being exposed to corruption or bribery.

Each security review will be considered by the EMC and if necessary, the board.

Partners and Consultants

Conciliation Resources should regularly communicate with its partners and consultants its zero tolerance position on bribery. All partnership and consultancy agreements will include a clear statement on Conciliation Resources' position in this regard and Conciliation Resources' expectations of the partner or consultant.

A review of the partners anti bribery policies and procedures is now a part of the Financial Assessment Checklist completed as part of taking on a new partner or as part of the periodic review of existing partners. Dissatisfaction with a partner's anti-bribery policy and procedures may give rise to consideration of the future of the relationship, if the partner is unable to unwilling to improve its capabilities.

Conflicts of Interests and Gifts

Conciliation Resources has a policy on the handling of Conflicts of Interest and Reporting of Gifts providing clear guidance on how conflicts should be handled, reported and recorded and also provides clear guidance on the handling, reporting and recording of gifts. The policy clearly states that cash or cash equivalent gifts are not to be accepted under any circumstances.

The Register of Interests and Gifts is kept in paper copy by the Director of Operations and electronically stored on the Shared Drive.

Public Interest Disclosure

Conciliation Resources has a policy on Public Interest Disclosure providing a clear structure for reporting concerns to the organisational "designated person". If you honestly believe that a bribe might have been paid or requested of Conciliation Resources and that the incident might not have been reported to Conciliation Resources' EMC you should use the reporting structure within this policy to report your concerns. The policy also provides information on making a disclosure to a "prescribed person" as defined by the Public Interest Disclosure Act 1998 if you feel unable or are unwilling to report your concerns to Conciliation Resources' "designated person".

Financial Controls

Conciliation Resources has tiered levels of financial controls and sign off which scrutinises all financial transactions. But it remains the responsibility of each person working for and associated with Conciliation Resources to reject demands for or offers of bribes. Conciliation Resources' anti-bribery policy should be made clear at all times.

Under no circumstances should a financial or non-financial bribe be offered by anyone associated with, or connected too, Conciliation Resources.

Recording of Bribes or Facilitation Payments

All instances must be reported to the Director of Operations, using the form at [appendix 3](#), where any one believes they have been offered a bribe or been asked to pay a bribe. If Conciliation Resources becomes aware that there has been a failure to report any offer of a bribe or request to pay a bribe, disciplinary action maybe taken which could result in dismissal. In addition it may also leave you exposed to future criminal action by the UK authorities if it emerges that you were aware of a potential bribe being offered or requested and no internal incident report was made.

Training

Transparency International is the world's leading non-governmental anti-corruption organisation with 90 chapters world-wide. The UK chapter has produced training material that is freely available for all organisations and their staff. It is required that you study this material which can be found at <http://www.doingbusinesswithoutbribery.com/>.

You are **must** make the time to study this training material to help develop your understanding of the issues of bribery and corruption as it provides practical pointers as to how difficult situations maybe handled and what evidence you should gather and record.

END / March 2012

Potential Indicators of Corruption

- Abnormal cash payments.
- Pressure exerted for payments to be made urgently or ahead of schedule.
- Payments being made through a 3rd party country (e.g. goods or services supplied to country “A” but payment is being made, usually to a company in country “B”)
- Abnormally high commission percentage being paid to a particular agency. This may be split between two accounts in two countries for the same agent.
- Private meetings with public contractors or companies hoping to tender for contracts.
- Lavish gifts being received.
- Individual never takes time off even if ill, or holidays, or insists on dealing with specific contractors him/herself.
- Making unexpected or illogical decisions accepting projects or contracts.
- Unusually smooth process of cases where individual does not have the expected level of knowledge or expertise.
- Abusing decision making process or delegated powers in specific cases.
- Agreeing contracts not favourable to the organisation either with terms or time period.
- Unexplained preference for certain contractors during tendering period.
- Avoidance of independent checks on tendering or contracting processes.
- Raising barriers around specific roles or departments which are key in the tendering / contracting process.
- Bypassing normal tendering / contracting process.
- Invoices being agreed in excess of contract without reasonable cause.
- Missing documents or records regarding meetings or decisions.
- Company procedures or guidelines not being followed.
- The payment of, or making funds available for, high value expenses or school fees etc on behalf of others.

Source: Serious Fraud Office - <http://www.sfo.gov.uk/bribery--corruption/corruption-indicators.aspx>

Definitions

Corruption

The abuse of entrusted power for private gain.

Extortion

The unlawful use of one's position or office to obtain money through coercion or threats. One example would be when customs officials request undue "customs duties" from importers as a condition to clear their goods.

Facilitation payments

These are bribes and are usually small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

Foreign Public Official

Foreign public official means anyone employed by the state – this can include, but is not limited to:

- Civil servants
- Local government officials
- Government ministers
- Health official including medical staff
- Customs officials
- A judge
- A member of the legislature

Employees of state-owned companies

Solicitation

The act of a person asking, ordering or enticing someone else to commit bribery [or another crime].

Conciliation Resources – Anti-Bribery Reporting Form

PLEASE SEND TO THE DIRECTOR OF OPERATIONS AS SOON AS POSSIBLE AFTER A “BRIBERY” EVENT HAS OCCURRED

<p>Board Member / Member of Staff / Consultant / Volunteer</p> <p><i>[Please delete as appropriate]</i></p>	
<p>Description of bribe requested or offered</p>	
<p>Value/Estimated value of bribe requested or offered</p>	
<p>Please provide a background to the request and give details as to why the request or offer was made.</p>	
<p>Date and location the request or offer was made:</p>	
<p>Person / organisation requesting or offering the bribe</p>	
<p>Was any one else present when the request or offer was made and if so who?</p>	
<p>If a request or offer was made did any of the others present, accept or appear to accept the request or offer. If so please provide full details of the name/s and their organisation/s.</p>	
<p>Outline the current or potential future relationship which you or Conciliation Resources has with the person or organisation offering or requesting the bribe</p>	

P/04/12 – Appendix 3

<p>Board Member / Member of Staff / Consultant / Volunteer</p> <p><i>[Please delete as appropriate]</i></p>	
<p>Was the bribe accepted or paid?</p> <p>If so please provide full details as to why and include details of what has happened to the bribe to the best of your knowledge.</p> <p>If not please provide full details as to the immediate and longer term impact that refusal has, and might have, for yourself, your relationship with the person or organisation and the impact for Conciliation Resources and its work.</p> <p><i>This is very important information in the event Conciliation Resources has to report the incident to the relevant authorities and/or defend itself and the actions of its staff/volunteers/consultants/board members as there maybe circumstances where bribes have to be paid particularly under duress.</i></p>	

Signed:

Dated:

Entered in Register:

Dated:

Reviewed by the Director of Operations:

Comments: