

UK Bribery Act 2010

A guide for UK firms and implications for effective training

The UK Bribery Act 2010 places new requirements on all UK companies to formulate adequate procedures to counter bribery and corruption within their business dealings.

This paper summarises the new legislation and explores the current guidance around what constitutes adequate procedures.

It then looks at implementation issues, and in particular, the implications for effective training to support communication of the procedures.



Contents

THE UK BRIBERY ACT 2010.....	3
SIX PRINCIPLES	5
RESOURCES	7
EFFECTIVE TRAINING.....	7
CONCLUSION.....	12

The UK Bribery Act 2010

Introduction

In one of the final acts of the outgoing Labour government, the UK Bribery Act received royal assent in parliament on 8th April 2010. Scheduled for full implementation in April 2011, this new law has been over ten years in the making.

It has been enacted to replace an incoherent mix of antiquated legislation that made it difficult to bring prosecutions, and as a result of some high profile corruption cases that have brought into question the standing of UK corporations in relation to this topic.

Recent Enforcement Activity

Prior to the introduction of the legislation, there has been some recent activity by the Serious Fraud Office (SFO) and by the Financial Services Authority (FSA) within the regulated financial services sector.

Summary of the Offences

The new Act applies to all persons (including both individuals and corporations) and once it comes into force, a person will be guilty of an offence if they;

- Bribe another person;
- Are in receipt of a bribe from another person;

These offences will apply whether the maker or recipient of the bribe is engaged in functions of either a public or a private nature and regardless of whether the bribery is direct or indirect (i.e. through an agent or other intermediary).

The Act includes provisions around extra-territoriality which means that it applies either if any part of the offence occurs in the UK, or even if all activities take place abroad provided the person is a British national (includes all UK registered companies as well as individuals) or is ordinarily resident in the UK.

The Act also creates a specific offence around bribing foreign public officials in which the definition of that public official is very widely defined. This will be of particular relevance to companies who operate in multiple jurisdictions around the world where “facilitation payments” are common.

Corporate Offence

Of greatest importance to most UK firms will be the new corporate offence in Section 7 of the Act. The law states that the offence will be committed if there is a failure of a “relevant commercial organisation” to prevent bribery by its employees, agents or subsidiaries.

This is a “strict liability” offence, meaning that there is no need to demonstrate intent to benefit from any bribe, or negligence in preventing it from occurring.

“This Act sends out a strong message to UK plc and the rest of the world – the UK will not tolerate bribery. Ethical practices must be firmly embedded in all echelons of business. The era of ‘business as usual’ is over.”

*Chandrashekhar
Krishnan, Executive
Director of Transparency
International UK*

“Bribery, if left unchecked, destroys the integrity and ethical foundations of all institutions, public and private.”

*UK Ministry of Justice,
Consultation Paper
CP11/10*

The defence for a commercial organisation will be for it to demonstrate that it had “adequate procedures” in place designed to prevent these offences being committed.

Penalties

Penalties for individuals who are found guilty of these offences include unlimited fines and up to ten years’ imprisonment. For firms found guilty of the corporate offence, the penalties also include unlimited fines, but may also extend to confiscation, compensation and disqualification orders. Possibly the most severe penalty for corporates is an automatic debarring from public contract tenders.

It should also be recognised that the reputational damage to a firm found guilty (or even just suspected) of bribery may have even more severe consequences. Negative press coverage may lead to a demotivated workforce, loss of customers and contracts, and a consequent fall in market capitalisation.

Adequate Procedures

Guidance around adequate procedures is currently proceeding through a consultation process with the Ministry of Justice (MoJ). Further guidance is scheduled to be released early in 2011 but companies looking for a directly implementable solution will be disappointed.

It is expected that this guidance will be broadly similar to the draft guidelines already in place, which are not prescriptive, are not universal in that they will vary from one firm to another, and provide no direct obligations. These guidelines will complement existing rules (such as those in place from industry regulators like the FSA) rather than replacing or superseding them. Above all, they will not be “definitive” – in other words, the question of whether or not the procedures in place were “adequate” or not, will ultimately be decided by the court.

“...by considering the general principles set out in this document, and establishing and maintaining policies and procedures in line with those principles, commercial organisations will do much to help prevent bribery from taking place on their behalf.”

*Ministry of Justice
Consultation Paper
CP11/10*

Six Principles

The MoJ consultation paper published in September 2010 provides outline guidance in the form of six principles to help firms develop their own adequate procedures. These principles are general in nature and outcome-focused with the intent that they can be tailored to the requirements of a variety of companies, both large and small.

Risk Assessment

Building adequate procedures should begin with a regular examination of your business to identify key bribery risks. Subsequent interventions can then be focused on high risk areas to make best use of your resources.

Risk assessment works best if it is part of the corporate strategy and planning process as the information gathered will be useful for commercial as well as compliance reasons. The anti-bribery procedure will then become embedded into the culture of the business.

- Risk assessments should include;
- General market and sector risks;
- Specific risks concerning countries in which it operates;
- Local business conditions and customs;
- The form and nature of its local business relationships with agents, distributors, suppliers, joint venture and partners.

Top Level Commitment

One of the key common elements that characterises companies who are leaders in the fight against bribery is the role of top management. A clear and unambiguous message made to staff that there is a zero tolerance policy on bribery is a critical starting point to establishing the right culture.

Another powerful symbol is the appointment of a board member to be responsible for the development and implementation of the anti-bribery programme.

Due Diligence

In its most basic form, this simply means make sure you know who you do business with.

While this is an essential part of any business relationship, its importance is paramount in the context of Bribery and Corruption. The scope of this should extend not only to a firm's clients and customers, but also to its partners, agents and intermediaries, and right along the supply chain.

In particular, the following areas should be reviewed and clear policies and procedures put in place accordingly.

- **Location:** Bribery risks will vary from country to country in their nature and severity. It is important to be aware of relevant local law, and any procedures for reporting bribery in those countries.
- **Projects:** Particular projects may raise their own risks associated with the nature of the bidding and contracting process, as well as the partners and customers involved.
- **Business Partners:** Due diligence is critical when establishing new business relationships to ascertain whether that new partner has been associated with corruption or bribery offences. Politically exposed persons (PEPs) pose a particular risk especially when they are associated with prominent public office.

Clear, Practical and Accessible Policies and Procedures

Once the risks have been assessed, and due diligence completed, the firm should be in a better position to develop its own specific policies and procedures to address these risks.

Policies need to be drafted to provide clarity and guidance which should include;

- An unequivocal statement of zero tolerance for all forms of bribery
- Practical guidance on appropriate levels of political and charitable contributions, gifts and corporate hospitality. (Note that the Act does not prohibit gifts and entertainment per se, but provides no definitive guidelines on what is appropriate so this needs to be determined by the firm according to the situation.)
- Practical guidance for individuals on how to deal with a blackmail or extortion situation.
- Speak-up / Whistleblowing procedures to report suspicions.

Firms may also want to include these elements in a Code of Conduct which can be issued to employees as part of their employment contract.

In addition, it may be useful to review operational procedures at high-risk areas of the business such as sales and procurement to ensure that incentives and penalties are consistent with a zero tolerance approach.

Effective Implementation

The best policies will not help to address bribery if they languish in a manual on a shelf. It is essential that the policies are embedded into the core of the business through communication and training. This should include;

- Clear roles and responsibilities for implementation.
- Project plans and milestones for each element of the process
- Internal communications through the corporate intranet, posters and other media.
- External communications through the company website and interactions with clients, partners and suppliers at meetings.
- Training to cover the basics of the legislation, company policies and procedures and examples of particular risks employees are likely to face. It may also be useful to extend the training to partners and suppliers as well.
- Systems and controls to monitor the effectiveness of the implementation.

Monitoring and Review

Finally, the firm needs to establish ongoing monitoring and review systems to ensure that policies and procedures are adapted to deal with changes in the bribery risks.

Regular monitoring in smaller firms can be provided through extensions to existing financial and auditing controls. For larger firms, periodic reporting to an internal audit committee and/or the Board of Directors may be appropriate.

External auditing by an independent body may be helpful for larger firms to provide a fresh insight, and to assure potential business partners.

In all cases, it is important to ensure that the monitoring is as transparent as possible, which may pose particular challenges in some overseas or remote locations.

Resources

Transparency International

Transparency International is a global charitable organisation founded with the goal of leading the fight against corruption around the world. TI produces a number of resources that are freely available to companies looking to introduce or amend their own policies and procedures against corruption.

The Corruption Perception Index published annually is an annual survey of surveys that ranks countries in terms of level of corruption. TI also produces National Integrity Studies that assess the specific risks within those countries.

TI has also published a comprehensive guide to help firms draft their own adequate procedures. Links to these publications are in the further information section at the end of this document.

Effective Training

Training is clearly identified in the principles as a crucial element in the implementation of the anti-bribery policies and procedures. It is also widely acknowledged as one of the things that sets apart firms who are recognised as leaders in their anti-bribery approach.

However, it is also apparent that the training will not achieve its goals unless it is effective in its design and implementation. This next section therefore provides some suggestions in how to optimise the training intervention to make it most effective.

Lessons from the FSA

The Financial Services Authority (FSA) is the regulatory body for the financial services sector in the UK. Prior to the introduction of the Bribery Act, the FSA had already put in place regulations to govern anti-bribery and corruption for the firms for which it is responsible. A review of its findings on effective training provides some useful lessons.

- **Reading the policy is not enough:** A policy is a document designed to set standards and provide guidance. It is not designed to convey learning. Employees who are simply provided with a policy and told to read it will not internalise the knowledge or modify their behaviours in the desired way.
- **Not legalistic:** Most employees are not lawyers, and so will find the details of the legal language difficult. Furthermore, they need to understand the implications of the law, not the law itself.
- **Appropriate to role:** Anti-bribery training will by necessity need to address all employees at some level. With such a broad audience, the extent to which the training needs to address the risks involved will vary widely with the role and responsibilities of the individuals. The training intervention needs to recognise this and be designed accordingly.
- **Practical:** To best absorb the lessons from the training, the learner needs to be able to relate to the content. Examples need to be practical and relevant to what they do.

“there were very few examples of training that gave practical examples of how to comply with policies and procedures, situations which might increase bribery and corruption risk and appropriate due diligence on third party relationships. Instead, it tended to focus on legislative and regulatory requirements, which front-line staff would find difficult to understand without further guidance.”

*Anti-bribery and corruption in commercial insurance broking.
Financial Services Authority, May 2010*

- **Case studies and scenarios:** These are recognised as the best way to provide practical examples, and can force learners to think about how they would approach a situation if they faced it in reality.
- **Test understanding:** Assessment of learning is important, but it must be more than just a test of factual knowledge alone. Knowing how to apply the lessons learned through a deeper understanding of the content is critical to changing behaviour.
- **Refresher training:** A best practice identified by the FSA was that firms followed up initial training by regular refreshers. This can include updates where circumstances have changed as well as further assessment to identify what knowledge and understanding has been retained several months after the initial training event.

Designing an Effective Training Programme

As with any broad training intervention, we would recommend a staged process to ensure that the training meets its objectives. This process is illustrated in the diagram below.



1. Training Needs Analysis (TNA)

At its core, a TNA needs to assess the competency requirements of the organisation and the individual employees within it, and then to determine the gap between this desired state and the existing situation.

In the context of anti-bribery training, for most large organisations, this will need to be broken down by role and location since the competency requirements for example of the field sales team operating in Lagos will be very different from those of the accounting team in London.

In simple terms, the TNA should be able to provide answers to three basic questions, namely;

- Who needs to be trained?
- Where are they based?
- What do they need to understand?

2. Training Design

The design of the training interventions should therefore reflect this training needs analysis, and be adapted to the needs of the organisation. The training should reflect the lessons outlined from the FSA, being non-legalistic in its language, pragmatic in its tone, and featuring lots of relevant examples of case studies and scenarios. The training should also be sympathetic to the need to accommodate a variety of learning styles that will be present in any large adult audience.

Educational learning theory as originally advocated by David Kolb and refined by Honey and Mumford suggests that there are four fundamental styles of learning for which we each have a preference. The model calls people who display these preferences Reflectors, Theorists, Pragmatists and Activists respectively.

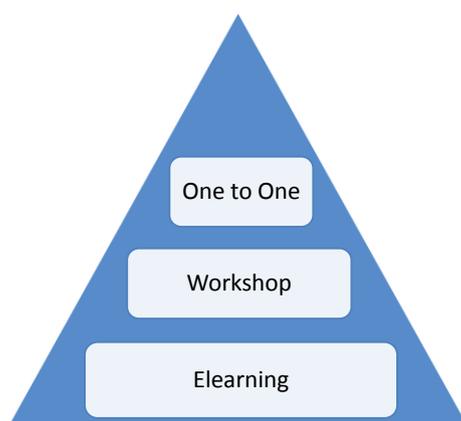
While all of us will demonstrate some of the characteristics of each style at some time, we each have a preference towards one of them, and will be looking for a training course to speak to our preferred style. Eukleia Training uses a simple structure in all of our online training that tries to address this by ensuring that the training course answers the following questions;

- **Why is this important?** (both to me as an individual and to my firm) (Reflectors)
- **What is this all about?** (give me the facts) (Theorists)
- **How do I put this into practice?** (show me the process and some examples) (Pragmatists)
- **What if...should happen?** (give me a scenario so I can practice what to do) (Activists)

3. Delivery and Support

In order to accommodate the different elements of the training needs analysis it is likely that the training will need to be delivered using a variety of media and approaches.

This may include a programme of elearning for wide awareness training across the organisation, followed by workshops to address local differences and the needs of high risk groups. Some companies will also want to have one-on-one training sessions for the most critical individuals who could include senior management or those employees who will be most likely to face difficult situations related to bribery.



The training delivery will need to encourage linkages with the policy documents on bribery, as well as specific related policies on gift and entertainments, political contributions and so on. It may also need to refer to any code of conduct or values statement that the firm may use.

One area in particular where related training may be relevant is for suspicions reporting and whistleblowing. Where firms have developed or deployed hotlines or online tools for anonymous reporting of suspicions, employees may need to be introduced to or reminded of these tools along with the core bribery training.

As highlighted in the sections above, the case studies and scenarios that are included in the training delivery are a critical element. These may also be cascaded in the same way, with general examples that are relevant to most employees being deployed in the elearning, supplemented by face to face training on specific local issues where necessary. An example of a general case study from Eukleia's elearning course is shown below.

Case Study 2

A relationship manager is pitching for business in the Gulf. The agent involved suggests that it would be very helpful for the firm to make a charitable contribution to a Gulf Education Project.

He says that this would demonstrate their commitment to the region and "grease the wheels" with the provision of the government approvals that are required.

What should the relationship manager do?

- ? Confirm that the agent has no interest in the charity and then make the donation
- ? Refuse to make the donation, ask the agent to seek the approvals using the normal channels
- ? Refuse to make the donation and report the incident in accordance with internal procedures



course progress: Part 24 of 30

© 2010, Eukleia Training Ltd. All rights retained and reserved

back next

Finally, it is also important to recognise that some of the issues and scenarios raised by this topic may require some additional "soft skills" training to help individuals handle them in the most appropriate manner.

4. Evaluation and Validation

An evaluation of the delivered training is important to assess its success or otherwise. It may also help to guide further interventions or refresher training that may be required downstream.

Eukleia advocates the use of the 4 level Kirkpatrick model as the ideal standard for training evaluation. These four levels are;

- Reaction to training
- Individual Learning
- Behavioural change
- Organisational learning

Initial assessment of user reaction to the training is relatively easy to deliver and measure. A simple survey distributed at the end of a workshop or resident on the learning management system can be used to assess this.

Measuring individual learning is harder to assess. While it is important to evaluate whether the training has met its learning objectives, simple multiple choice questions that test factual knowledge alone will not suffice. At the very least, such questions must attempt to assess application and understanding as well as knowledge. Ideally, case study scenario type questions that require the learner to evaluate options in a simulation of a potential risk situation are a better choice.

Levels 3 and 4 of the Kirkpatrick model cannot be assessed directly at the time of the training. There will be a period of time that must elapse before the effects begin to be seen. Evidence of behavioural change will be best collected through a performance management process during periodic appraisals. Organisational learning may be evidenced through some proxy measures such as the number of calls made to the whistleblowing hotline. Ultimately it will be reflected in the results of the control and monitoring systems in place, and through any auditing process that is being conducted.

Whatever methods are used to capture and measure the results, this is an important step to ensure the effectiveness of the training intervention. Analysis of the learning and behavioural changes can highlight continuing gaps between the desired and demonstrated competency levels and provide a second stage of training needs analysis. At this point, usually 6-9 months after the initial training has been deployed, a refresher training course may be appropriate. Alternatively, more narrowly focused training courses can be developed to address particular issues or risks.

Further Information

Hyperlink	Explanation
www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1	The UK Bribery ACT and explanatory notes
http://www.justice.gov.uk/consultations/docs/bribery-act-guidance-consultation1.pdf	Ministry of Justice consultation paper CP11/10
www.adequateprocedures.org.uk	Transparency International guide to Adequate Procedures
http://transparency.org/policy_research/surveys_indices/cpi/2009	Transparency International Corruption Perception Index (ranking of country risk)
http://www.transparency.org/policy_research/nis	Transparency International National Integrity studies (review of specific country risks)
http://www.fsa.gov.uk/pubs/anti_bribery.pdf	Financial Services Authority report on anti-bribery in commercial insurance broking

Conclusion

The UK Bribery Act 2010 places wide-ranging and challenging obligations on all UK firms. To meet these obligations it is vital that each firm develops its own set of adequate procedures in good time. While the consultation process and publication of guidance will not be complete until early 2011, the six principles presented here will form the core of this.

However, the best written policies will not prevent bribery if they are not put into action. Effective training as part of a wider communication plan is a critical element in ensuring that implementation of policies and procedures is completed successfully.

About Eukleia Training

Eukleia Training is a specialist provider of compliance and risk management training. Based in London, UK, we provide elearning and instructor led training to variety of corporate clients around the globe.

Our courses include the following topics;

- Financial Crime / Anti-money laundering
- Fraud
- Bribery and Corruption
- Information Security
- Data Privacy
- Business Ethics

Eukleia Training Limited

Birchin Court, 20 Birchin Lane, London EC3V 9DU

t +44 (0)20 7220 4050

f +44 (0)20 7220 4051

e eukleia-training.com