



HOW TO BRIBE

A TYPOLOGY OF BRIBE-PAYING
AND HOW TO STOP IT

Supported by:



Pinsent Masons

thebriberyact.com

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 Chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

Acknowledgements

We are grateful to the following for supporting this project throughout as members of the project's Advisory Committee: Peter Burrell, Laurence Cockcroft, Chandrashekhar Krishnan, Tony Parton and Bertrand de Speville. We would also like to thank Barry Vitou and Anne-Marie Ottaway for contributing their specialist expertise and knowledge to this project.

This publication has been kindly supported by Pinsent Masons, a global law firm specialising in white collar crime: www.pinsentmasons.com

Lead author: Julia Muravska

Editors: Robert Barrington and Barry Vitou

Publisher: Transparency International UK

Published: January 2014

ISBN 978-0-9573410-5-0

© 2013 Transparency International UK. All rights reserved. Reproduction in whole or in parts is permitted providing that full credit is given to Transparency International UK and provided that any such reproduction, whether in whole or in parts, is not sold or incorporated in works that are sold. Written permission must be sought from Transparency International UK if any such reproduction adapts or modifies the original content.

Disclaimer

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of November 2013. Nevertheless, Transparency International UK cannot accept responsibility for the consequences of its use for other purposes or in other contexts. Policy recommendations and best practice guidance reflect Transparency International UK's opinion. They should not be taken to represent the views of those quoted or interviewed or of members of the Advisory Committee or of Pinsent Masons. Transparency International UK assumes no liability to any third party for the information contained herein, its interpretation or for any reliance of any third party. The document should not be construed as a recommendation, endorsement, opinion or approval of any kind. This Guidance has been produced for information only and should not be relied on for legal purposes. Legal advice should always be sought before taking action based on the information provided.

CONTENTS

FOREWORD	3
INTRODUCTION	4
SECTION 1: WHAT IS A BRIBE?	5
1.1 Cash is (still) King - Direct cash payments	6
1.2 Junkets and jollies - Excessive hospitality	8
1.3 It's like Christmas. All over again.	10
1.4 In-kind Benefits as Bribes: You scratch my back. I'll scratch yours.	12
1.5 Grease is the word - Facilitation Payments	14
1.6 Charity. What's not to like?	16
1.7 You say lobby. I say bribery.	18
1.8 Mr Five percent	20
SECTION 2: HOW BRIBES ARE PAID	22
2.1 Bribery through Associates: Middlemen	23
2.2 Bribery through the supply chain: Sub-contractors and Distributors	26
2.3 False or inflated invoicing and product pricing. AKA: Fraud. Plain and simple.	29
2.4 Sunny places for shady people. Off-shore arrangements and off balance-sheet payments	31
2.5 Joint Ventures. For better for worse.	33
2.6 They taught me everything I know! Training Courses	34
2.7 Pocket money. Per diems and expenses.	36
2.8 Rebates and discounts or kickbacks	37
2.9 Employment contracts and consulting agreements	38
SECTION 3 - BRIBERY ON YOUR DOORSTEP	40
Not just a problem over there: examples in the United Kingdom	40
SUGGESTED READING	43

FOREWORD

This handbook should be a must-read for businesses serious about their anti-bribery programme. It is often said that you learn from your mistakes. But there really is no need. Plenty of other people have made them for you. Read this handbook and you can learn from them, there really are no excuses.

This handbook is perfect for General Counsel, Chief Compliance Officers and anyone in any company responsible for anti-bribery compliance from the Board of Directors, down.

The purpose is to show how people pay bribes in practice. The examples are based on realistic experiences or real cases.

Many bribery cases receive little attention. Often the focus is on the international examples in far away places where, it is sometimes said, you have to 'pay the man' to get business done. The impression given is that it would never happen at home. Yet it does. While the first two sections focus on the how, why and when bribes are sometimes paid in a short final section the handbook covers some examples of more prosaic bribery, at home. Who said it could never happen here?

Transparency International deserve credit, once again, for putting together a document designed to be practical and helpful for those keen to avoid falling into the trap of bribery.

Barry Vitou
Partner
Pinsent Masons

INTRODUCTION

The purpose of this document is to illustrate how bribes are paid in practice, based on legal cases and realistic experiences. We hope that it will provide information that is useful to organisations and individuals in raising awareness and training, and to those designing an anti-corruption system that is flexible enough to take into account the many forms of bribery.

The target audience of this publication is anyone who is affected by the UK Bribery Act and similar legislation. Transparency International's overall objective in producing this guidance is to help reduce supply-side bribery. This document is one of a suite of tools to help individuals and companies anticipate, recognise, avoid and resist bribery.

It is important to note that all the examples in this document are examples of bribery – they are not intended as 'dilemma' scenarios, but as illustrations of how bribes are actually paid in practice.

Bribery

The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust.

Business Principles for Countering Bribery

In this document we have tried both to identify and categorise some of the different types of bribe, and the ways in which bribes are commonly demanded or paid. Bribes are often indirect - channelled through agents or intermediaries, off-shore arrangements, joint-ventures, and sub-contractors. Frequently, the payment of bribes involves more than one of these methods, and could even encompass all of them. Often, the mechanisms involved in routing bribes to their recipients are complex. While acknowledging the complexity of many bribery schemes, we have also tried to present them as simply as possible.

Bribe-paying remains widespread. In a recent global survey by Transparency International, more than a quarter of citizens told us that they had paid a bribe at least once in the past year. In some countries, the figure was as high as three people in every four. This clearly presents a major challenge for companies that operate in, or wish to operate in, those markets. However, before becoming complacent, have a look at section three of this publication. Bribe-paying also happens here today in the UK.

Although we give some simple guidance in each section, and outline certain red flags, the ultimate purpose of this document is to describe how bribes are paid and not to provide detailed anti-bribery guidance. There are several other good guides to designing anti-corruption procedures, produced by Transparency International and others. A key element is a robust bribery risk assessment for each entity and business unit that is regularly updated, as bribery is not static.

At the heart of any such anti-corruption system lies a requirement to be able to recognise what a bribe is, and it is that niche which this document is seeking to help fill.

The examples we have used are based on real cases – either known legal cases, or cases that have come to light in the course of our research. All cases have been anonymised, for two reasons. The first is that it is not our intention to name and shame. The second is we have at times simplified and clarified certain complex cases, so that they remain realistic but do not exactly replicate the legal cases from which they were derived.

Finally, we should point out that this typology of bribery is not intended to be comprehensive. It is a source book for training, avoidance and for designing adequate procedures to prevent bribery. As the global legal framework has tightened, ways of paying bribes have become more inventive – although a surprisingly large number still involve straightforward cash payments. This short booklet is intended to add to the body of existing knowledge.

SECTION ONE – What is a bribe?

1. Cash is (still) King – Direct cash payments	6
2. Junkets and Jollies – Excessive hospitality	8
3. Bribery in the form of gift-giving	10
4. Favours to friends or relations	12
5. Facilitation payments	14
6. Bribes disguised as charitable donations	16
7. Bribes disguised as political donations	18
8. Bribes masked as commissions	20

1.1 CASH IS (STILL) KING

Direct Cash Payments as Bribes

DESCRIPTION

Although an apparently blatant form of bribe-paying, many bribes globally still come in the form of cash payments, alongside “in kind benefits”, such as luxury goods.

This is especially true in countries with cash economies. Even though cash is the most straightforward means of bribery, the way that the bribe money is routed can be quite complex and involve several stages.

EXAMPLE 1: Grease payment

One-off payment to secure an import permit

- A company providing oil services needs to import a spare part into a Caribbean country. Without it, a drilling rig faces shutdown at a cost of hundreds of thousands of dollars per day. The part is held up in customs.
- A local customs official handling the transaction refuses to release the component, saying that the company’s license only permits temporary imports, and that this spare part is a permanent import.
- This is the first time that the company had heard of this, and it had no previous issues with importing similar parts.
- Still, the customs official assures he can provide a permanent import licence, but to process it would take three weeks unless he worked late each night and all weekend on the paperwork. He does not get paid overtime, he adds pointedly.
- A delay could mean the oil services company losing an important client as well as facing additional storage charges, so the company offers to make a cash payment to the official as ‘overtime’.
- To avoid awkward questions over the payment, the company records the payment in the books as ‘consulting fees’.

EXAMPLE 2: The out and out bribe

Single payment to obtain a contract

- A bank in a Western European country is competing for a mandate to privatise a state-owned utility company.
- It is a competitive tender and to win the mandate it has to put together a consortium of partners with the right capacity.
- The government officials running the tender hint that the bank’s bid would get much more favourable consideration if it appointed a particular broker.

- The bank appoints the broker named by the officials. The public officials also note that it is normal business practice for cash payments to be transferred to the personal Swiss bank accounts of the CEO and senior management of the broker. They say it is an unofficial but expected ‘token of appreciation’ of the broker’s great work.
- A senior manager with the bank finds out that the broker is in fact partly owned by the officials, and realises that transferring the cash would amount to a bribe. But he is under pressure to win the mandate and feels that since they have come this far already, and there is no turning back. He agrees to make the payments.

EXAMPLE 3: Bribery on the never never

Regular payments to retain a contract

- A management consulting firm has won business from a state-owned energy company in Eastern Europe.
- Six months into the project, at the contract review date, the energy company threatens to terminate the contracts blaming the unsatisfactory progress made by the management consultants.
- At the same time, some energy company officials let it be known that the contracts could be extended for three years if certain key executives start to feel a greater personal attachment to the management consultancy.
- To keep the business, the lead consultant on the project starts to transfer monthly cash payments of USD 5000 each to 4 senior employees of the energy company. He has dummy contracts drawn up saying that the executives are providing private advice on local “laws and customs” involved in doing business.
- After all, USD 20,000 monthly expenditure seems small when compared to the monthly revenues. It is booked as ‘advisory service fees’.

EXAMPLE 4: Never too late...?*Taking a short-cut to achieve a target*

- An importer receives a late consignment of seasonal products for export. They will help him retain the business of a major supermarket client.
- The products have a short shelf life and require various permits from three Ministries in the relevant country – food, exports and customs.
- The process to obtain the permits normally takes 8-12 weeks. But this is too long for the shelf life of the goods.
- A local intermediary hears of the predicament and offers to speed up the process but the cost is USD6,000.
- A payment this size would eat into the profit margin for the consignment but help to retain the longer-term relationship. The importer agrees to pay the intermediary, who uses the cash to bribe the mid-level officials who can issue the permits.

GUIDANCE – LOOK OUT FOR RED FLAGS AND FACT PATTERNS*Avoid getting into a situation when a bribe may be solicited or demanded*

- For example, be aware of red flags such as whether demands for cash bribes are prevalent in this country or industry.
- Build in longer lead times to avoid being exposed to 'offers' to speed up a lengthier process with the use of unofficial 'rush' or 'express' services.
- Avoid using procedures that require cash as much as possible, especially when paying suppliers. Refer all emergencies requiring cash payments to compliance.

Know how to deal with it if asked for a bribe

- Make sure key staff are trained in techniques to avoid paying bribes.
- Ensure that any staff who withdraw from a business opportunity because they refuse to pay a bribe know they will have the support of their line managers and senior managers

Be alert to others who may be paying bribes

- Are there significant cash transfers that are booked under generalised cost headings?
- Does the company appear to be retaining a particular contract even when under-performing or in a market where competitors might be pricing more keenly?

SOURCES OF FURTHER GUIDANCE

- *Adequate Procedures and the UK Bribery Act* – p. 27 Section 5: Detailed Policies and Procedures <http://www.transparency.org.uk/working-with-companies/adequate-procedures>
- *Doing Business Without Bribery* – Section 2: Common bribery challenges www.doingbusinesswithoutbribery.com
- *Resisting Extortion and Solicitation in International Transactions* – scenario 12 & 13, pp. 26 – 28 http://www.transparency.org/whatwedo/pub/resist_resisting_extortion_and_solicitation_in_international_transactions

1.2 JUNKETS AND JOLLIES

Excessive Hospitality as Bribery

DESCRIPTION

Offering and receiving corporate hospitality is a widespread business practice. It can be an effective way to create, build and strengthen relationships that are an important part of many business operations. The danger is when it becomes excessive or lavish, or is offered in situations such as a restricted period during a tender, hospitality can easily cross the line from an acceptable business practice into an illegal bribe. Regulators are likely to ask whether hospitality is 'reasonable, proportionate and bona fide'. Any hospitality, offered or received, that might not pass this test should be treated as a red flag.

EXAMPLE 1: Hospitality offered in breach of company policy

- A cosmetics company relies on door-to-door sales. It is trying to expand into a large developing country, but direct sales are strictly regulated through licenses there.
- Licenses usually take up to a year to get, and meanwhile the country manager has obtained a quasi-legitimate 'interim' licence from a senior official.
- To avoid the rigorous inspections needed for official license, the company's country manager tells salespeople to "treat" junior inspectors to free company merchandise in return for their "leniency". He gives them each \$1,000 worth of merchandise to dispense.
- At the same time, the country manager decides to take care of the senior inspectors and licensing officials through a hospitality "programme" including dinner invitations to exclusive restaurants.
- Although company policy prohibits gift-giving and hospitality to government officials, the salespeople agree to since a senior manager suggested it.

EXAMPLE 2: Hospitality offered to an individual with decision-making power and influence over new business

- A company specialising in surveillance technology would like to make sure that its contract with the city police force is extended.
- The company buys high-value Formula One tickets for two senior police officers who join company staff at the event.
- In casual conversation at the event, the company's employees hint to the police officers that there would be more such invitations for them in the future if the city police force were to remain a client.
- The officers convince their colleagues in the procurement department to extend the company's contract, even though another company submitted a bid that represented better value for money.

EXAMPLE 3: Hospitality used as a facilitation payment to secure a permit

- A company selling specialist road equipment in an Asian country needs safety certification for its products from a government agency.
- The government agency is under-resourced and has a backlog of applications, but the company needs to move quickly to consolidate the market.
- The country manager offers officials from the agency a series of overseas training trips, in return for a "rush job" in processing the license application.
- Although described as training trips, the trips are in reality an excuse to offer the officials hospitality in the form of hotels, per diems and tourist activities.
- The officials make sure the company jumps the application queue.
- The company's country manager arranges the overseas trip through a local travel agent, concealing the expenses as corporate travel costs.

EXAMPLE 4: Excessive hospitality for a senior government official

- A telecommunications company is competing for a lucrative tender announced by a state-owned Railway Authority of an African country.
- The Railway Authority is part of the Ministry of Transportation, and the Minister of Transportation has a decisive say over who wins the contract.
- The telecommunications company hires local consultants, who organise a week's luxury trip in Europe for the Minister as part of a 'relationship-building' exercise. One day of the trip involves seeing the company's communications equipment in action in another railway company.
- To keep the expenses of the luxury trip out of the books, the consultants submit inflated bills to the telecommunications company for their services.
- The telecommunications company approves and pays the invoices. It then wins the contract.

GUIDANCE – LOOK OUT FOR RED FLAGS AND FACT PATTERNS

Some red flags:

- Is it in line with company policy?
- Who is being given hospitality?
- Could the hospitality influence the award or extension of business or a contract?
- The recipient says they'll have to take the day off. They'd never be allowed to go 'officially'.
- Might competitors or a regulator think it is a bribe?
- How would this be perceived by others (e.g. the media)?

Set reasonable, clear limits

- These should set out precisely how much is acceptable to spend on corporate entertainments and hospitality in a given situation and/or country
- These should be recommended by country managers and reviewed regularly

Implement a review and approval process

- All entertainment should be authorised by management
- Ensure that requests outside of set parameters in the policy require a detailed application and rigorous approval process.

SOURCES OF FURTHER GUIDANCE

- *Adequate Procedures and the UK Bribery Act* – pp. 11 & 33 - 40 <http://www.transparency.org.uk/working-with-companies/adequate-procedures>
- *Doing Business Without Bribery* – Section 3: Bribery challenges in business - scenario: 'Doing business without inducements' www.doingbusinesswithoutbribery.com
- David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption*, pp. 374-375
- US Department of Justice (DOJ) Opinion Procedure Release 07-01 and 07-02 <http://www.justice.gov/criminal/fraud/fcpa/opinion/2007/0701.pdf> ; <http://www.justice.gov/criminal/fraud/fcpa/opinion/2007/0702.pdf>
- FCPA Guide – pp. 15-16 & 17-18
- <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>

1.3 IT'S LIKE CHRISTMAS. ALL OVER AGAIN.

Bribery in the form of Gift-Giving

DESCRIPTION

As with hospitality, gifts can be an important way to build and strengthen relationships that are essential to smooth business operations. In some countries, low-level gift-giving is a normal part of doing business.

The problem is that when gift-giving starts to become excessive or lavish, it can easily cross the line and turn an acceptable business practice into an illegal bribe. Regulators are likely to ask whether a gift is 'reasonable, proportionate and bona fide'. Any gift, offered or received, that might not pass this test should be treated as a red flag – particularly if it is offered in secret or is hidden in some way. Some companies have banned the giving and receiving of gifts altogether. However, such a strategy is likely simply to force the practice 'underground'.

After all, bribes do not necessarily have to involve cash to be considered a criminal act or to breach a company's policy. For example, gift-giving to potential clients, business contacts, or government officials may also be bribery. Sometimes, those wishing to disguise bribery may give an extravagant gift because they feel it is easier to hide than a straightforward cash bribe. Such gifts may be of relatively large value – for example, a luxury car, or an expensive watch.

EXAMPLE 1: Excessively lavish gifts offered to government officials

- A subsidiary of a major global defence company wins a contract to supply the security services of a country in the Middle East.
- The security services are in charge of protecting the Royal family, and all of its suppliers need to be vetted and approved by the Ministry of Interior.
- The defence company's regional sales agent uses the corporate 'business development fund' to buy luxury cars for Interior Ministry officials in charge of approving suppliers, and designer jewellery for their wives.
- The agent then tells the defence company that such gifts are a "normal" part of doing business in the region, and they are proportionate to the size and value of the contract. The regional director feels the gifts are probably too excessive to be "routine" but decides not to enquire too deeply as the revenue from the contracts is too large to lose. Instead, he signs off on the gifts.

EXAMPLE 2: Gifts offered to an individual with decision-making power and influence over new business

- A multi-national company selling power and automation technologies is bidding for contracts from the energy ministry of a Central American country, through its local subsidiary.
- The competition is tough, and the subsidiary's management follows the advice of its local 'fixer' to make 'suitable' gifts to the procurement officials from the Ministry. This will enable them to obtain confidential information on rival bids.
- The fixer explains that is how business is normally done in this market, and the rival companies will be doing the same thing.
- Through the fixer, the local subsidiary's management arrange a gift, the latest iPad, to each of the Energy Ministry's key officials.
- The company receives information on the bids of its competitors and submits a bid with "better" specifications.

GUIDANCE – LOOK OUT FOR RED FLAGS AND FACT PATTERNS

- Could the gift(s) be considered excessive in value?
- Is the giving of gifts in line with company policy? e.g. does the gift exceed the company's upper value limit for the giving of gifts?
- Who is being given a gift? e.g. is the recipient a foreign public official?
- Can the giving of a gift be seen as seeking to gain influence/favourable treatment, or perceived by others as a bribe? e.g. competitors, regulators or the media
- Could the nature of the gift or the timing of the gift-giving influence the award of business or a contract?
- Are agents or other intermediaries involved in the gift-giving?
- Is giving a gift the cultural norm in a specific country – and if so is it possible to give the minimum acceptable gift without breaching company guidelines?

Set reasonable, clear limits

- Ask the country manager to recommend limits on how much a gift may be worth
- Ensure managers approve all gifts
- Report all gifts to foreign officials to the compliance department or equivalent

SOURCES OF FURTHER GUIDANCE

- *Adequate Procedures and the UK Bribery Act* – pp. 11 & 33 - 40 <http://www.transparency.org.uk/working-with-companies/adequate-procedures>
- David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption*, p. 379
- FCPA Guide – pp. 14-15 & 17-18
- <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>

1.4 IN-KIND BENEFITS AS BRIBES: YOU SCRATCH MY BACK. I'LL SCRATCH YOURS.

Favours

DESCRIPTION

Bribery takes many forms and one of the most difficult to pin down is the exchange of favours. There will always be some individuals or organisations that can promote the interests of a public official or a business person through privileged connections or status. This person is then expected to “return the favour” – for example, providing potential contractors with confidential bidding information on rival bids, choosing a particular contractor rather than other more suitable ones, or granting an export license. The common theme is that favours are often secured with reciprocal favours and money does not necessarily change hands. Cronyism and nepotism are also examples of these types of bribery, where favours are given to decision-makers’ friends or relations to extract unfair advantage. Such favours may come in many forms, including jobs, residence permits, or the provision of education and healthcare.

Variations: Clientelism and patronage are situations similar to cronyism and nepotism, in which there is a systematised exchange of favours between a “patron” and his/her “clients,” dependents or protégés.

EXAMPLE 1: Individual using connections or position as a bribe

- A provincial bank in southern Europe would like to fill in a vacant position on its board. One of the current board members is very well connected and wields a great deal of influence over the decisions of the board appointments.
- He proposes for the vacant position a soon-to-be retired CEO of a mortgage brokering firm of his acquaintance, who is a reasonably suitable but not exceptional candidate.
- As a mark of gratitude, the mortgage broker’s CEO arranges an unusually low-cost mortgage for the bank’s board member who is buying an investment property.

EXAMPLE 2: Favour to a personal contact in exchange for a business investment

- A UK private equity firm urgently needs to raise a capital pool through attracting investment.
- The business development director believes that a North African sovereign wealth fund would be the ideal source for this.
- However, competition is high and the private equity firm is relatively small.
- The business development director realises that the father of one of his childhood friends has just been appointed the deputy CEO of the sovereign wealth fund.

- The business development director asks his friend to convince his father to approve the investment.
- In return, the business development director offers his friend’s sister a job in his expanding company, ensuring that she will be granted a residence permit in the UK.

EXAMPLE 3: It’s not what you know – it’s who you know. Giving favours in a rigged procurement process.

A company manufacturing urban waste management equipment is expanding into a former Soviet Union country.

- The company aims to supply infrastructure projects there, which are managed by state-owned entities. These outfits have to date relied on state-owned civil engineering institutes to construct and develop their projects.
- Breaking into this market is tough, as the civil engineering institutes have a virtual monopoly, but projected profits are a big incentive to try and there are opportunities to become major sub-contractors to the civil engineering institutes.
- The wife of the manufacturing company’s country manager is a local and a former civil engineer. She is still well-connected to the directors of several state engineering institutes.

- She asks the directors of the two main engineering institutes to design and construct projects that would explicitly favour her husband's company by incorporating elements of the specification which only her husband's company can meet and rigs the procurement process as a result.
- In return, she promises to use her husband's connections to secure enrolment of the directors' children in exclusive European schools.

EXAMPLE 4: Jobs for the boys. And girls.

- A bank expanding into a new country has identified very high potential profits from corporate services, but market entry is more difficult than expected.
- To attract corporate clients, the country business director decides to draw on his extensive social network in the local business sector. He has decision-making power over hiring staff and interns in his own operating unit, and can make strong recommendations for hiring of his own staff and interns elsewhere in the bank's global operations.
- He asks his contacts (who are at senior-executive and senior-management level) to persuade their operating units to switch their corporate accounts to his bank.
- In return, he promises to hire their children and relatives for internships and entry-level positions through the bank's work experience and graduate recruitment scheme. For particularly good corporate clients, he assures them that friends or relatives would be hired for more senior roles in the business development department of his own operating unit.

GUIDANCE – LOOK OUT FOR RED FLAGS AND FACT PATTERNS

Some red flags:

- Is there an improper advantage being offered in return for a service? e.g. privileged access to a service otherwise difficult to obtain.
- Are family, friends, or the company gaining an exclusive advantage through the exchange of favours?
- Are normal, fair or regulated selection processes being circumvented by the exchange of favours?
- Are certain business decisions, such as employment decisions, being made without apparent regard to merit?
- Is privileged access being offered to a particular service through a person's connections or status, where it is clear this person is exploiting his or her power and authority?

SOURCES OF FURTHER GUIDANCE

- *FCPA Guide* – pp. 14-15 <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>
- Alexandra Addison Wragge, *How to Pay a Bribe: Thinking Like a Criminal to Thwart Bribery Schemes*, Chapter 1 by Ken Silverstein, pp. 9-11.

1.5 GREASE IS THE WORD – FACILITATION PAYMENTS

Direct Cash Payments as Bribes

DESCRIPTION

Facilitation payments are small bribes, also called a ‘facilitating’, ‘speed’ or ‘grease’ payment, made to secure or speed up a routine or necessary process to which the payer is entitled anyway. In this way, a transaction is “facilitated.” For instance, paying off a customs official to release held goods (which he/she is obligated to do anyway) would be considered a facilitation payment, as would a bribe paid to obtain a routine government stamp. They are usually bribes to get things done quickly. These are also covered earlier in the section dealing with payments in cash.

Variations: queue jumping; speeding things up; releasing a “blocked” transaction

EXAMPLE 1: Payment to complete a “blocked” transaction

- A biochemical pesticide company operating a factory in a North American town has its stores of corrosive chemicals guarded at all times.
- The local police provide this service but the officer in charge requests ‘special allowances’ from the operator.
- Without payments from the operator, the police refuse to allow the chemicals to be moved from the storage bunkers to the production line citing safety concerns.
- Concerned with resolving the delays in production quickly rather than increasing them even further by reporting this incident, the site manager authorises cash payments of travel and meal allowances in cash to the senior police officer.

EXAMPLE 2: Queue jumping – regular payment to ensure a company’s operations are handled more quickly/efficiently than competitors’

- A railway parts manufacturer has a contract for sales of brake blocks to the Ministry of Transportation of a Central European country.
- Before the blocks can be delivered, a government agency must inspect and certify them for standards and safety. The inspections are conducted at the company’s warehouses.
- In order to make sure that the government inspectors, who are known for delays and missing appointments, would conduct the inspections regularly and on time, the warehouse manager pays them USD 2,000 each month.
- This helps the manufacturer to gain a reputation for reliability and become the preferred supplier to the Ministry of Transportation.

- As it is illegal for public officials to receive additional payment for performance of their routine duties, the manufacturing company recorded payments in its books as consulting expenses and supplies.

EXAMPLE 3: Queue jumping – utilities connection

- A drinks distribution company has just opened a new sales and distribution office in the provincial capital of a South Asian country.
- The General Manager is told by his local staff that it will take 12 months to obtain a phone and broadband connection, which is necessary to communicate both to his field agents and head office. Mobile and satellite alternatives either do not work or are significantly beyond the budget.
- After complaining to the landlord of his office suite, the General Manager is told that a connection can be made within the next week for a one-off payment of \$500. The General Manager asks whether it is an official fast-track service, and is told that it is an unofficial service but quite usual.
- He agrees to pay the \$500 and the line is connected.

EXAMPLE 4: Getting what you are entitled to

- A middle manager of a North American spare parts manufacturing company arrives off a flight at an airport in a South American country where the company would like to set up a manufacturing plant.
- He is entitled to obtain a visa on arrival, which the country’s embassy has told him will cost US\$75.
- However, the immigration official at the airport demands US\$250 insisting it is the usual fee for a visa obtained on entry.
- The manager pays the fee as he is tired, does not want to ask annoying questions, and he can re-claim it on expenses.

GUIDANCE – LOOK OUT FOR RED FLAGS AND FACT PATTERNS

Some Red Flags:

- Is a payment being requested or solicited for the purpose of expediting or facilitating a service to which there is a legal entitlement, e.g. by a public official for a routine governmental action?
- Is the company gaining business preferential treatment through making the payment?
- Does the payment appear to be unofficial or covert in any way?
- Is the payment higher than or over and above the standard fee?

Know the local rules – when requested to make a payment for a routine action such as the issuance of licenses or permits, check whether such a payment is official.

SOURCES OF FURTHER GUIDANCE

- *Adequate Procedures and the UK Bribery Act* – pp. 11 & 33 - 40 <http://www.transparency.org.uk/working-with-companies/adequate-procedures>
- *Doing Business Without Bribery* – Section 3: Bribery challenges in business - scenario: 'Doing business without grease' www.doingbusinesswithoutbribery.com
- *Resisting Extortion and Solicitation in International Transactions* – scenarios 8-13, pp. 19 – 28 http://www.transparency.org/whatwedo/pub/resist_resisting_extortion_and_solicitation_in_international_transactions
- David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption*, p. 284

1.6 CHARITY. WHAT'S NOT TO LIKE?

Bribes Disguised as Charitable Donations

DESCRIPTION

Corporate involvement in charities is widespread; it can benefit communities and good causes, and provides good PR. However, charitable donations can also be used as vehicles for bribes. For example, the charity may be connected to an individual (such as a government official) who then uses his or her influence to give special preference to the donor.

Trustees and board members of charities may be politicians, officials, and other highly placed and influential people. The donations they ask for may directly or indirectly benefit them personally, such as suggesting a hospital should be built using a relative's construction company. Sometimes, a charity may be simply a front for hiding or receiving bribes.

Variations: donations as political favours; donations that result in budget diversion; donations with strings attached.

EXAMPLE 1: Donations as political favours

- A Central European subsidiary of an American pharmaceutical company supplies drugs to state hospitals.
- In recent months its sales have been threatened by competitors selling generic drugs at lower prices. The company's contracts are due to expire soon, and management fears they will not be renewed.
- The company's local director has his staff organise a large donation to a series of healthcare charities being set up by an official running for local office.
- The official's community involvement and commitment to healthcare is a major part of his campaign. In return for the donation, the official promises to make sure that when he is elected the pharmaceutical company's contracts with state hospitals will be renewed.

EXAMPLE 2: Donations that result in budget diversion

- An oil company is after an exploration license in the former Soviet Union.
- It agrees with the local authority that a permit will be granted and as part of an 'offset' arrangement, money will be donated to a local charity to build two new schools.
- The oil company's negotiators are pleasantly surprised about the ease with which the permit was promised, but are happy to have it, and knowing the difficult politics of the region certainly do not want to make any further enquiries.
- The schools are built and get great publicity; there is full transparency over the oil company's contribution; the company receives the exploration permit.

- Unfortunately, the local authority had already budgeted for the building of the two schools. The funds for these are then siphoned off from the education budget by the local officials who agreed the permit.

EXAMPLE 3: Queue jumping – utilities connection

- A company operates a series of casinos under a government-granted gaming license, which is set to expire soon.
- The company is also in the middle of an investigative audit regarding potential accounting irregularities.
- A senior operations manager at the gaming company has been notified by the finance department that the auditors are likely to turn up indications of book keeping "oversights".
- The senior manager approaches a partner at the auditing firm at a business breakfast and "casually" mentions that his company could be glad to make a USD 250,000 donation to the education charity that the auditing firm has recently helped to set up.
- This is well received, but the operations manager says that it will be paid in instalments - the largest of which, USD 150,000, will be transferred after the audit of her company is completed.
- The operations manager makes it clear that the audit is unwelcome, and that the final instalment of the donation depends on a favourable audit report.
- As the charity is an important part of the audit firm's own CSR programmes and positioning as an auditor of educational establishments, the partner agrees to accept the donation in return for a favourable audit report.

GUIDANCE – LOOK OUT FOR RED FLAGS AND FACT PATTERNS

- Disclose all charitable contributions
- Exercise caution when making charitable donations where public officials are involved.
 - Can a donation be seen as influencing a public official in some way?
 - Consider avoiding donations to organisations where foreign officials are patrons.
- Ensure that effective controls are implemented, including enforcement of adequate approval processes and monitoring of use of funds.
- Ensure donations are made according to company policy.
 - If donations are made through intermediaries, ensure company policy is understood and adhered to.

SOURCES OF FURTHER GUIDANCE

- *Adequate Procedures and the UK Bribery Act* – pp. 44 - 47 <http://www.transparency.org.uk/working-with-companies/adequate-procedures>
- *Resisting Extortion and Solicitation in International Transactions* – scenario 15, p. 30 http://www.transparency.org/whatwedo/pub/resist_resisting_extortion_and_solicitation_in_international_transactions
- *FCPA Guide*, pp. 16-19
- <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>

1.7 YOU SAY LOBBY. I SAY BRIBERY.

Bribes Disguised as Political Donations

DESCRIPTION

Although corporate political contributions are permitted and regulated in many countries, as with donations to charities, donations to a political party or a political campaign can also be used as bribes. The simplest and most common scenario is when individuals, businesses, or other special interest groups find a way to “donate” large amounts of money to a political party or an election campaign. In return, the politician(s) are expected to promote the interests of whoever made the contribution, potentially in violation of their official duties.

EXAMPLE 1: Political donation used as a bribe in a specific procurement bid/contract

- A consortium of telecommunications companies is in the process of applying for a mobile phone license from the Ministry of Information of a Western European country. Winning such licenses is usually very competitive.
- The Minister of Information has decisive influence of which company is granted the license.
- One of the companies in the consortium proposes that they make a donation to the re-election campaign of the ruling party, of which the Information Minister is a member.
- The consortium contacts the Minister’s Special Advisor and offers the donation. The conversation clearly implies that the Minister is expected in return to favour the consortium’s bid.
- The Special Advisor accepts the donation and assures the consortium that the Minister will support its bid, as long as it is not unreasonable in value for money or technical specifications.

EXAMPLE 2: Political donation made to the party of politicians with decision-making power over an ongoing contract

- A metal trading company holds a contract to refine and trade iron ore that a Caribbean country receives under concessions from another country.
- The two government ministers overseeing the contract falls both belong to the ruling party of the country.
- Before the contract is due to expire, the CEO of the metal trading company meets with the two ministers.
- He offers to make a USD 550,000 donation to sponsor their party’s annual conference, in exchange for renewal of the contract.
- The conversation also implies that a blind eye will be turned to a profit-share arrangement from selling concessionary iron ore that disproportionately favours the company over the Treasury.
- The ministers accept the donation.

GUIDANCE – LOOK OUT FOR RED FLAGS AND FACT PATTERNS

- Have a clear policy and criteria for political contributions, including a definition of what is meant by a political contribution.
- Where policy is not to make contributions, ensure there are procedures in place to prevent contributions being made.
- Where policy is to make political contributions, the company should be able to answer the following:
 - Has the board and compliance function approved your contribution?
 - Can the donation to a political party, politician, or candidate running for office, be seen as an attempt to gain a business or other advantage?
 - Is the donation in line with company policy?
 - Has the donation been reviewed and approved by senior management?
 - If there are agents or intermediaries that act on the company's behalf, do they know and observe the organisations guidelines on political contributions?
 - Are all political contributions publicly disclosed and transparent? This includes donations to trade associations and payments associated with lobbying, as well as fees paid to consultants.
 - Have donations been made via trade associations or similar bodies, and if so were they in line with company policy?

SOURCES OF FURTHER GUIDANCE

- *Adequate Procedures and the UK Bribery Act* – pp. 41 - 43 <http://www.transparency.org.uk/working-with-companies/adequate-procedures>

1.8 MR FIVE PER CENT

Bribes Masked as Commissions

DESCRIPTION

Paying commissions to an agent or intermediary as reward for bringing in new business is widespread in commercial transactions, and is usually perfectly legitimate. However, there are situations in which commissions are used as bribes, and these are usually secret or not properly disclosed. For example, an intermediary can pay a bribe to win business for its corporate client out of the commission, and recover the money through an inflated invoice.

EXAMPLE 1: Sum paid for non-existing services to agents/consultants, intended to be passed on to the recipient as a bribe

- An oil services company puts in a bid to the government of a Central Asian country for a gas and oil field development project.
- The project is managed by a state-owned company. After the bids are submitted, its officials let the oil services company know that to win the lucrative deal, it has to "show generosity."
- The state-owned company officials then "strongly encourage" the oil services company's country sales manager to hire a consulting company registered in the British Virgin Islands as an "agent" and pay annual commissions of USD 1.3 million into its account for providing consultancy services.
- Nothing is actually known about the BVI outfit's business, and it is likely that the only work it will be doing, consultancy or otherwise, is channelling the money to the state-owned company's officials.
- Yet, because BVI is out of the reach of regulators and the business opportunity is just too good to pass up, the agent is hired and arrangements for the "consultancy" payments are made.

EXAMPLE 2: Sum described as commissions paid directly to officials to obtain contracts

- A global financial services firm is setting up its real estate investment business in a South Asian market.
- The managing director has good long-standing personal relations with one particular government official, who is the director of the state-owned real estate development body.
- The managing director and government official agree to seek real estate development opportunities in which the firm can invest with joint venture partners. The state body will be seen to be attracting foreign investment, while the firm will access local knowledge of deal-making opportunities.

- The managing director and government official agree that in return for a small share in real estate ventures, the state entity would help the firm to obtain the necessary licenses from the local government.
- Under the scheme, the managing director offers the government official an opportunity to make personal investments in five real estate deals at a reduced rate.
- Specifically, the firm would sell the official a 5% interest in each deal, but only charge the cost of 4%; the remaining 1% would go to the official as a "finder's commission".
- The government official accepts this scheme, even though he is legally prohibited from making personal investments with firms because of his position.

EXAMPLE 3: Payment for legitimate services (to agents/consultants) is disproportionate to those services so as to conceal a bribe

- A large electronics company would like to acquire a state-controlled firm put up for privatisation in the former Soviet Union. It hires a local consultant to assess the financial health and prospects of its potential purchase.
- Senior officials in the Ministry of Infrastructure, which used to control the firm, have a decisive say over who is allowed into the privatisation process. The officials are known to be eager to supplement their salaries.
- The electronics company's regional business development team pays the local consultant unusually high fees for his services, knowing that he will pass on a proportion of the fees to the Ministry of Infrastructure officials.

GUIDANCE – LOOK OUT FOR RED FLAGS AND FACT PATTERNS

- Refuse any request for excessive commission payments to intermediaries or 'advisors' who claim they are able to secure business advantages.
- When entering business dealings that contain commission related fees, ensure these agreements set a maximum commission, and include a description of services as well as prohibition against payments to public officials.
- When faced with demands for large commission payments, determine whether meeting such a demand would constitute behaviour that would violate relevant legislation, regulation, industry codes or standards.

SOURCES OF FURTHER GUIDANCE

- FSA, *Anti-Bribery and Corruption in Commercial Insurance Broking: Reducing the Risk of Illicit Payments or Inducements to Third Parties*, http://www.fsa.gov.uk/pubs/anti_bribery.pdf

SECTION TWO – How bribes are paid

1. Associates – Agents, Intermediaries, Introducers	23
2. Associates - Sub-contractors and Distributors	26
3. False or inflated invoicing or product pricing	29
4. Off-shore arrangements and off-balance sheet payments	31
5. Joint ventures	33
6. Training	34
7. Per diems and expenses	36
8. Rebates and discounts or kickbacks	37
9. Employment contracts and association agreements	38

2.1 BRIBERY THROUGH ASSOCIATES: MIDDLEMEN

Agents, Intermediaries and Introducers

DESCRIPTION

The use of intermediaries, sometimes also called introducers or agents, is widespread and legitimate in global business. They provide local knowledge, legal advice, market research, sales, and logistics, and are particularly useful in new or unfamiliar markets. However, the channelling of bribes through intermediaries is a common feature of bribery schemes. To hide bribes, a chain of intermediaries is often used to disguise the link between the recipient of the bribe and the bribe-paying company. It is not unusual for intermediaries, or some links in a chain of intermediaries, to be professionals such as lawyers, accountants or bankers. They can be used to add a veneer of respectability to a corrupt transaction.

Variations: Five types of common bribery scenario via intermediaries are:

- Intermediaries acting on their own initiative: intermediaries may decide to pay bribes of their own accord and without the knowledge of the company that contracted them. The amount of the bribe would be “included” in the commissions they receive for bringing in business.
- Intermediaries providing both legitimate business services and a bribery service: routing bribes may be one of the services the intermediary is hired to provide. For instance, an existing consultant may be tasked with bribing a public official to rig the bid specifications of a procurement contract so that it favours the company.
- Fake intermediaries: rather than providing a legitimate or commercially-justifiable service to the company, the intermediary, often hired for “consulting,” can be controlled by whoever will receive the bribe. The consultant is often paid through fraudulent invoices and/or for non-existent services. This may also happen in situations where local government insists that companies have to work with one of a list of ‘approved’ domestic agents – who may be linked to public officials – and these approved agents are then used to intermediate the bribery transactions.
- Appointment of an intermediary specifically to facilitate a bribe payment: the payer of the bribe (such as a sales manager) and the recipient of the bribe (such as a government procurement officer) agree that the payment will be made through a designated third party, who will be appointed as an intermediary in a transaction. The third party may be a relative, spouse, or associate of the recipient.
- Fake invoices. There are several variants of schemes in which fake invoices are used to generate slush funds that can be used for bribe-paying. For example, a so-called supplier can be set up which in fact only exists to provide fake invoices generating cash which can be repaid to employees in order to provide them with a slush fund for paying bribes; or a legitimate third party on the approved supplier list agrees to render a false invoice which is paid but later refunded. The refund is paid in cash enables the third party to pay the bribe.

EXAMPLE 1: Inflated invoices: bribes paid by intermediaries masked as payments for unspecified services

- An oil services company is working on behalf of a major state-owned oil corporation.
- The services company hires a local consultant to help with routine business tasks in the country. The consultant then bills the services company for 'in-country consultancy services'.
- The consultant submits inflated invoices to the oil services company, and channels the difference to the private accounts of the officials working at the state-owned company. This helps to guarantee that the services company will be retained as a prime contractor despite international competition for the contracts.
- The London HQ of the services company discovers the bribery scheme when profit-margins decline in the country. An internal investigation reveals that the state company has been demanding ever-increasing pay-offs, while the service company's Head of Operations in the country has been signing off ever-increasing fees for the consultant.

EXAMPLE 2: Intermediary provides no services to the company, but is controlled by the recipient of bribes

- A wholesale telecom services company needs access to local telecommunication lines for its business in a South-East Asian market.
- The lines are notoriously difficult to access due to local bureaucracy and red tape, and the government is known to be hostile to foreign companies.
- To get around this, the telecom services company decides to pay over USD 1 million in kick-backs to a handful of senior officials at the state-owned telecoms company that assigns the lines.
- To channel the payments, the wholesale telecom company hires a "local consultant" at the suggestion of the state-owned company. The consultant is actually owned by the brother of the Chief Financial Officer at the state-owned company.
- The consultant provides no actual consulting services, but the wholesale telecoms company pays it USD 1 million for "management consulting" in 4 instalments. The consultant then transfers the money to the state-owned company's CFO, who distributes it to selected senior colleagues.

EXAMPLE 3: Family member acting as intermediary

- A former prime minister of a Latin American country, who still serves as an influential cabinet minister, is approached by a well-known foreign businessman.
- The businessman is after political backing for his resort development project.
- In return, the politician is promised a "generous contribution" to his sizeable debt and large tax liabilities.
- The proposition is appealing and the two devise a plan, in which the politician's daughter will be paid for resort development consulting services' she will allegedly provide. These are entirely fictitious, and she has no experience in this sector.
- Several million US dollars are deposited in her bank account, and which she then transfers to the family's joint account.

EXAMPLE 4: Professionals as intermediaries

- An insurance broking firm specialises in finding private insurers for government entities, and has a good network of contacts in both public and private spheres.
- The broker knows of an insurance company that would like to expand its sales quickly, and in time for the next quarter's results.
- A sales manager of the insurance company has already made contact with an official in the Ministry of Infrastructure who would help direct a number of lucrative contracts to the insurance company in return for a cash payment equal to 10% of the business the company receives
- The sales manager of the insurance company approaches the insurance broking company with a proposition to act as a conduit for the payment to the official: the company would include the 10% bribe in the broker's fee.
- The official would see to it that the brokerage would be contracted by the Ministry, while the broker would transfer the bribe to the official's Swiss bank account.

EXAMPLE 5: Professionals as intermediaries

- A family-owned multinational luxury goods company based in a Mediterranean country has been concealing some of its profits abroad in order to avoid paying taxes.
- When the local tax authority presents the chief accountant with a hefty fine for years of tax evasion, she and the Vice President approach the tax officer with a proposal.
- They ask the tax official to negotiate a 40% reduction in their fine with a “favourably disposed” senior tax official.
- In return, they let the tax official know that he could help himself to another 40% of their fine, keeping half for himself and passing on the other half to the more senior tax official in return for his “cooperation.”
- The tax authority would still receive a fine, albeit only 20% of the original.
- The proposed bribe is significant, so the tax official is unable to resist the temptation and agrees to the proposition.

GUIDANCE

Intermediaries are a high-risk area. It is important to minimise and manage the risk.

- Monitoring and sufficient due diligence are key:
 - Due diligence should be carried out on intermediaries before appointment – for example, to check whether the agent has faced allegations for involvement in corruption, or requests payments to be made in unusual ways such as via a tax haven.
 - Enhanced or additional due diligence may at times be required.
 - The purpose of due diligence is to identify and avoid dealing with questionable third parties. Look out for key red flags, such as whether an intermediary is resistant to formal written agreements, appears able to bypass legal or bureaucratic hurdles more easily than others, or charges fees or commissions that are well above the market norm.
 - Monitor the conduct of agents and intermediaries. If an intermediary is suspected of bribe-paying, it is sensible to suspend the relationship immediately and make appropriate investigations.
- Communicate to all agents and intermediaries the company’s anti-corruption standards as well as international regulations and ensure that they are contractually obliged to abide by these standards.
- Ensure that the market rate for their services is paid, that nothing “extra is included” and that the agent delivers the services that are paid for.
- Do not use third parties as a conduit for making unethical payments.
- When employing public officials as consultants, extra care needs to be taken that the service is genuine and all payments are properly recorded and disclosed:
 - It should be clear that there was a legitimate business reason to contract the official (e.g. for technical expertise).
 - It should be clear why that particular official was selected.
 - The appointment should be permissible under the official’s employment contract as an official, and transparent to is/her employer.
 - Fees should be based on market rates.
 - Services provided should be recorded in detail.

SOURCES OF FURTHER GUIDANCE

- *Adequate Procedures and the UK Bribery Act* – pp. 68 - 74 <http://www.transparency.org.uk/working-with-companies/adequate-procedures>
- *Business Anti-Corruption Portal: Due Diligence Tools, Agent Screening Process* <http://www.business-anti-corruption.com/en/due-diligence-tools/agent-screening-process/>
- David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption*, p. 371

2.2 BRIBERY THROUGH THE SUPPLY CHAIN: SUB-CONTRACTORS AND DISTRIBUTORS

DESCRIPTION

In today's globalised economy, corporations often rely on large supply-chains, made up of sub-contractors based in a number of countries. However, complex networks of sub-contractors also increase the risk of bribery. Any link, or sub-contractor, in the chain may be approached for a bribe or decide to pay a bribe. Complex supply chains represent a high risk of corruption since they are local, often made up of small and medium-sized sub-contractors that have less power to resist demands for bribes, or simply have more "contact" with centres of bribery.

Moreover, sub-contractors are of course also interested in maintaining profits, and could bribe the prime contractor to keep them on the suppliers' list.

When operating overseas or fulfilling complex orders, corporations often hire local sub-contractors as they lack local knowledge, expertise, or capacity in house. Selecting a sub-contractor with close links to an official who is in a position to favour the main company over its competitors is a common way of disguising a bribe. It enables the official to benefit directly or indirectly, while the company can claim it was simply tapping into local expertise.

EXAMPLE 1: Sub-contracting to a company connected to a public official as part of an offset or industrial participation agreement

- A large defence company is bidding for a contract to sell submarines to the Ministry of Defence of a European country
- As part of its defence offset regulations, the country requires that whoever wins the tender generates local sub-contracts amounting to 30% of the value of the main submarine contract
- The tender is in the final stages, and the company is competing with just one other.
- Each company is trying to put together the more attractive offsets and local production package.
- The senior sales manager in the large defence company finds out that the brother of one of the chief Ministry of Defence Procurement officials owns an electronics company that manufactures radar systems that could be adapted for the submarines.
- The sales manager assures the official that the sub-contract for the manufacture and subsequent maintenance of the radar systems would be granted to the brother's company.
- Even though the submarine produced by the rival company is an overall better fit for the specifications given by the Navy, the official successfully pushes for the award of the submarines contract to the large defence company.

EXAMPLE 2: Sub-contract directed to an official's business interest

- A group of energy and petrochemical companies is setting up operations in a new market via a consortium.
- It will need to import a large number of materials and equipment, so the consortium management decides to hire a local logistics and freight forwarding sub-contractor.
- It is well known that the customs service is very slow and inefficient, while the customs officials purposefully delay imports to solicit bribes.
- The consortium's management know that the deputy director of customs secretly co-owns a logistics company.
- To ensure that its imports are given priority, the consortium management lets the deputy director of the customs service know that the consortium is keen to sub-contract its logistics and freight forwarding services to the company that he secretly co-owns.

EXAMPLE 3: Distributors acting as intermediaries for bribe payment

- A company manufacturing medical equipment has a local distributor in one of its countries of operation.
- When the company's sales begin to dwindle, the regional sales manager instructs the distributor to make 'incentive' payments to the personal accounts of doctors with whom it has contacts.
- In return, the doctors agree to steer "their" hospitals to purchase the company's products.
- The company also uses the distributor to channel bribes to the country's Intellectual Property Board which approves patents of the company's products.

EXAMPLE 4: Sub-contractor paying a bribe to retain business

- A multinational manufacturer of fighter jets wins a lucrative contract with an overseas Ministry of Defence.
- However, according to the contract specifications, 15% of the fighter jet components must be produced locally.
- To fulfil these terms, the company hires a manufacturer of ejector seats as one of its subcontractors.
- However, due to continuous delays and cost-overruns by the ejector seat company, the fighter jet manufacturer soon considers terminating the contract and switching to a competitor.
- To avoid losing this lucrative contract, the ejector seat manufacturer's head of business development promises a manager of operations at the jet-maker a "commission" equal to 10% of future orders of the ejector seats for the duration of the contract.

EXAMPLE 5: Distributor paying bribes to increase remuneration

- A multinational FMCG company selling alcoholic beverages in Eastern Europe appoints a local distributor.
- The distributor is responsible to generating sales from supermarkets, off-licences, and specialised shops catering to government orders-- all a particularly lucrative business area.
- The distributor's fee directly depends on the order volumes, and when government purchases begin to decline, the distributor decides to protect his own compensation.
- He offers the purchasing officials and shop managers cash and free premium beverages in return for authorising increased purchases of his principal's products and placing them in the most attractive location on the shelves.
- The distributor then "recovers" the expense by masking it as expenses for "special promotions".

EXAMPLE 6: Going the extra mile for a customer

- An engineering consultancy has a customer in the construction sector, for which is working on a stadium-building project in the Middle East.
- The construction company wishes to free up some cash that it can use to pay a bribe for work permits related to the stadium-building project.
- Although the work permits are not directly related to the engineering consultancy's work, the construction company's project manager asks the engineering consultancy to issued him with an invoice for services that have not been provided so that he can create a slush fund to pay bribes.
- The engineering consultancy wants to help put an important client, and issues the false invoice; the construction company pays the invoice.
- After the invoice is paid the construction company asks the engineering consultancy for a credit note. The credit note is raised for the invoice value and the corresponding cash is returned to the construction company.
- The construction company uses the cash to pay an official for the work permits it needs.

GUIDANCE

- Ensure that all associates, sub-contractors, and distributors are well aware of the company's anti-bribery and anti-corruption policies, as well as local and international anti-corruption laws.
- Try to make sure that there are anti-corruption provisions in agreements and that associates, sub-contractors, and distributors are obliged to abide by the company's anti-bribery policies.
- As with agents and other intermediaries, due diligence and risk assessment should be carried out on associates, sub-contractors, and distributors before these are appointed.
- The purpose of due diligence is to identify any risks associated with associates, sub-contractors, and distributors. Look out for key red flags - particular attention must be paid to ownership of companies and organisations, for example to ensure that sub-contracts are not unwittingly granted to public officials or persons who may have a conflict of interest.

SOURCES OF FURTHER GUIDANCE

- *Adequate Procedures and the UK Bribery Act* – pp. 75-76
<http://www.transparency.org.uk/working-with-companies/adequate-procedures>
- *Business Anti-Corruption Portal: Due Diligence Tools, Contractor Procedure*
<http://www.business-anti-corruption.com/en/due-diligence-tools/contractor-procedure/>

2.3 FALSE OR INFLATED INVOICING AND PRODUCT PRICING. AKA: FRAUD. PLAIN AND SIMPLE.

DESCRIPTION

The payment of a bribe is usually hidden or disguised within the organisation's accounting records, or paid off balance sheet (e.g. through bank accounts which are not recorded in the organisations' accounting records). Fake or inflated invoices provide a common veneer of legitimacy to conceal bribery. An inflated invoice can be generated by a supplier, which covers both the fees legitimately due, and an additional amount to be used as a bribe. An invoice can also be entirely false, and represent no legitimate service whatsoever.

EXAMPLE 1: Customs agent pays bribe and re-charges client using inflated invoice

- A manufacturing company is setting up factories in Latin America and must import all of its manufacturing equipment into its various countries of operation.
- It hires a former customs agent to handle the paper work – filling out the paper work, tracking the shipments, and dealing with customs officials when necessary.
- The company's imports into one Latin American country are held up because the local customs officials "discover" a previous customs violation punishable by a "fee."
- The manufacturer's chief logistics officer for the region instructs the former customs agent to pay any necessary fees and expenses to get the equipment moving.
- She pays the customs officials USD 5000-7000 each to overlook the past violation and expedite the approval for future imports.
- To conceal the actual purpose of these expenses, the former customs agent presents invoices for unspecified services with no supporting documentation, which are promptly paid.

EXAMPLE 2: Supplier over-charges its customer to pay bribes to customer's corrupt employees

- A company supplying vegetables to a major supermarket chain in the UK is facing the renewal of its GBP 45 million supply contract.
- Unfortunately, the senior accounts manager is fearful that this profitable business will be lost.
- He invites the head buyer of the supermarket chain, known for his love of luxury, to an expensive restaurant, and over dinner offers him a monthly "allowance" of GBP 20,000, to be spent on restaurants, exclusive hotels, luxury goods and travel.

- In return, the head buyer was to make sure that the supply contract is renewed for an even longer period than is on the table.
- The head buyer agrees.
- The senior accounts manager then takes his plan to his company's finance director, who agrees to the bribes in principle, but insists that their company does not have enough cash at its disposal to make the payments.
- The senior accounts manager then takes the second part of his proposal to the supermarket chain buyer. He asks him to approve inflated prices for the vegetables, after lower rates had already been negotiated with the supermarket chain.
- The excess money would then be transferred to a secret "fund" in an offshore bank account, for which the buyer would be given a credit card. The senior accounts manager assures him that the natural variation in vegetable prices would allow them to conceal the inflated prices.
- The head buyer feels even more secure agreeing to this scheme.

EXAMPLE 3: Company creates fake invoices to disguise slush fund used for bribes

- A company manufacturing pesticides that supplies the Ministry of Agriculture needs to register its products with the government's new Insecticides Board.
- However, as the company does not have the necessary environmental impact assessment certification, registration could be problematic.
- To secure registration despite the missing paperwork, the company asks an old and trusted supplier to submit a series of fake invoices totalling USD 50,000, explaining they are 'for tax reasons'.
- The USD 50,000 is used to create a slush fund to pay officials in the Insecticides Board who then grant a licence.

GUIDANCE

- Ensure that all invoices are properly accounted for with supporting documentation.
- Carry out investigations and audits into any payments that do not have sufficient information or are supported by suspicious invoices.
- Ensure that managers and employees are aware of forecasts for costs associated with future business, allowing any 'unforeseen' costs to be flagged and evaluated.
- Ensure there is a regular audit to monitor accounting practices that pays specific attention to irregularities or eccentric spending. Particular attention should also be paid to accounts related to the granting and renewal of contracts.

SOURCES OF FURTHER GUIDANCE

- Alexandra Wragge, *How to Pay a Bribe: Thinking like a Criminal to Thwart Bribery Schemes*, Chapter 3 by Amy Sommers, pp. 26-28
- Guide to Combating Corruption & Fraud in Development Projects <http://guide.iacrc.org/potential-scheme-false-inflated-and-duplicate-invoices/>

2.4 SUNNY PLACES FOR SHADY PEOPLE. OFF-SHORE ARRANGEMENTS AND OFF BALANCE-SHEET PAYMENTS.

DESCRIPTION

In addition to, and often in conjunction with, the use of intermediaries, bribes are often transited through a number of bank accounts or front companies. It is useful for those engaged in bribery if these are located in foreign countries with lax regulation, poor transparency, or favourable secrecy laws. The goal is to distance the bribe from both the payer and the recipient, and also to conceal the identities of both. Slush funds can also be located offshore. Profits from legitimate company business may be directed into offshore slush funds through fictional or vague invoices and using a chain of agents. Once these are set up, bribes may be paid from the slush funds at any time – to develop a relationship, obtain a specific contract, as a ‘thank you’, to maintain favourable relations, etc.

EXAMPLE 1: Bribery through an off-shore registered company

- A software company has a contract to supply the state-owned telecommunications corporation of a southern European country.
- To retain this business and to attract more orders from the numerous subsidiaries controlled by the telecommunications company, executives in the software company’s regional sales division devise an illegal payments scheme.
- A consultant is hired to facilitate sales in the region. He says that the best way forward is to have the company make unofficial payments to key officials when necessary.
- The consultant sets up an off-shore company to make these unofficial payments. Neither the offshore company, nor its owner, provide any actual business development or retention services for the software company. Instead, their sole purpose is to funnel payments to employees of the state-owned telecommunications provider.
- Once a bribe has been agreed between the software company and an employee of the state-owned telecoms company, the consultant is instructed to submit an invoice for consultancy services.
- The invoices are then paid directly into the bank account of the offshore company; 85% of the amount is channelled to the employees of the state-owned company, while 15% is kept by the consultant.

EXAMPLE 2: Bribery through an off-shore registered company 2 (bribery between private individuals not involving public officials)

- A Western European food and drink company has a lucrative supply contract with a wholesale cooperative that brings in GBP 250 million annually.
- The contract is due to expire, and there are disputes regarding future terms that may make it difficult to renew.
- The CEO of the food and drink company, who started it and built it up himself, however, would like to make sure that it is extended for the next 30 month period.
- He hires a broker with whom he had worked in the past, to negotiate the deal and iron out any disagreements.
- The broker tells the CEO that there is a faster and more certain way to make sure that the supply contract is extended. He proposes paying to some influential directors of the wholesale cooperative owner a “success fee” of GBP400,000 each.
- The broker adds that he has a company registered in the Bahamas, which can issue invoices for “expert advisory services.” The food and drink company would then make cheques payable to this offshore business, they would be deposited in its bank accounts, and money transferred to the directors.
- The broker says that it is unlikely that the wholesale cooperative will go for the deal without these extra “incentives” and assures the CEO that he would never be connected to the transfer, as he would handle everything himself through his company.
- The CEO does not want to risk the supply contract not being renewed and agrees to the scheme.

EXAMPLE 3: Bribery using an off-shore bank account

- An investment bank is contracted to represent and advise the government of a Central Asian country in the sale of rights to its oil fields. The director and controlling shareholder of the bank is also given a quasi-official advisory role to the president of the country in connection with oil and gas transactions.
- The investment bank is due a “success fee” to the amount of USD 67 million over five years, after the sales are successfully closed.
- As the adviser on sale of rights, the investment bank is in charge of collecting fees from the sales.
- To ensure that he remains in the privileged advisory position that has allowed him to close so many successful deals, the director of the bank transfers USD 70 million from the fees paid by a number of energy companies for oil and gas rights in the country into a bank account in Switzerland, via several “investments” into companies in the British Virgin Islands.
- From the diverted funds, he then transfers payments to four senior government officials in the Ministry of Oil and Gas Industries, who have the power to authorise his hire as adviser and to approve his success fees.

EXAMPLE 4: Bribery using investment in off-shore enterprises

- An US-based IT company is about to make its first initial public offering, and is facing scrutiny and pressure to meet earnings forecasts.
- The director, and majority owner, has a strong reputational and financial stake in the success of the IPO. To condition the market and hit various targets, he transfers a significant proportion of last year’s profits to a Swiss bank account and “saves” the taxes he would have paid on the funds in the US.
- However, questions are raised during an internal audit, and US authorities request Swiss tax officials to disclose the accounts.
- To avoid detection the IT company director enlists the help of his friend, a former investment banker with a multinational bank, who is very well connected.
- The banker proposes to make the tax official assigned to the case more “disposed” through making him a large personal payment.
- The banker offers to route the money directly to the tax official’s account—funds that his friend will have first “invested” in a small Swiss bank the banker had just joined.

GUIDANCE

- The use of off-shore accounts to pay bribes and off balance sheet payments is often linked to agents and intermediaries. Apply relevant due diligence on intermediaries before appointment.
- Specifically check whether the agents or intermediaries have faced allegations for involvement in corruption. Monitor the conduct of agents and intermediaries.
 - Be on your guard if they request payments to be made in unusual ways such as via a company in a tax haven.
 - If they are suspected of bribe-paying through a number of bank accounts or front companies it is sensible to suspend the relationship immediately and make appropriate investigations
- Investigate any suspicions of payments being made that are outside the scrutiny of regulators.
- Always question whether funds routed via tax havens are legitimate in origin or objective.

SOURCES OF FURTHER GUIDANCE

- United States Securities and Exchange Commission (SEC), “Report and Recommendations Pursuant to Section 401(c) of the Sarbanes-Oxley Act of 2002 on Arrangements with Off-Balance Sheet Implications, Special Purpose Entities, and Transparency of Filings by Issuers,” pp. 98-103 <http://www.sec.gov/news/studies/soxoffbalancerpt.pdf>
- The BriberyAct.Com <http://thebriberyact.com/2011/06/15/the-bribery-act-the-view-from-offshore/>
- *FCPA Guide*, p. 65 <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>

2.5 JOINT VENTURES. FOR BETTER FOR WORSE.

DESCRIPTION

Joint venture structures can be used to channel bribes, with or without the knowledge of all the partner companies in the enterprise. Sometimes, a joint venture structure may be created specifically to distance a company from illegal practices such as bribery.

EXAMPLE 1

- A joint venture is created by four companies to bid for natural gas projects of a Middle Eastern country.
- Each of the four partner companies has designated a senior executive to be on the joint venture board.
- The four senior executives conspire to bribe government officials in order to win contracts in the project.
- The bribes are routed through the joint venture's agents, one of whom is a UK citizen and certified solicitor.
- To pull this off, the joint venture concludes contracts with a consultancy company operated by the intermediary in Gibraltar, and transfers USD145 million to his bank accounts in Switzerland and Monaco.

EXAMPLE 2

- A European state-owned shipbuilding company enters into a joint venture agreement with a European defence company.
- The joint venture puts in a bid to supply three submarines to an East Asian government.
- To win the contracts (valued at close to USD 1 trillion), the JV pays USD160 million in "commissions" to a "local business practices consulting" company.
- The company is in fact owned by an aide to the defence minister at the time of the sale, with a brief to advise on naval purchases.

GUIDANCE

- Carry out due diligence on relevant companies before entering into a joint venture or consortium.
- Be confident that the prospective partners do not have a history of bribery.
- Ensure that other entities in a joint venture either have anti-corruption/anti-bribery policies in accordance with your own, or communicate these policies and encourage all partners to adopt them.
- Monitor the performance of joint venture partners with regard to these policies, and take appropriate action where there are discrepancies, including termination of contracts if necessary.
- Ensure that contracts with joint venture partners allow them to be terminated on ethical grounds such as significantly breaching a code of conduct or credible allegations of corruption.
- Ensure that the joint venture company itself has in place appropriate anti-bribery policies and procedures.

SOURCES OF FURTHER GUIDANCE

- Adequate Procedures and the UK Bribery Act – p. 71, <http://www.transparency.org.uk/working-with-companies/adequate-procedures>
- Business Anti-Corruption Portal Due Diligence Tools: Vetting of Partners, <http://www.business-anti-corruption.com/en/due-diligence-tools/joint-venture-consortium/>

2.6 THEY TAUGHT ME EVERYTHING I KNOW! TRAINING COURSES.

DESCRIPTION

Customer training can be used to provide a cover for bribery. For instance, a company can create a “training fund” or “training budget” out of which it can pay bribes in the form of travel, entertainment, per diems, and gifts. Hospitality amounting to a bribe, such as lavish vacations organised for officials, and clients as well as their friends and families, can also be recorded in the company’s books as “customer training”. Those actually attending the “training” could be different from the list that was approved by management, to get around company limits on hospitality. Another scenario is “recording” more participants than actually attended, and then using the surplus training course funds to create a slush fund.

EXAMPLE 1: Training fund set up for clients

- A Western European manufacturing company is keen to secure a new contract in Asia.
- After months of negotiation, it becomes clear that the customer wants the contract to include a visit to Europe for 10 senior executives and their families.
- The manufacturing company writes a ‘training budget’ into the contract under which, at its own expenses, it will bring ten officials to the UK to be trained in its equipment and processes.
- Once the contract is signed, the ten senior executives are invited to the course. Their flights are routed via Paris. A London hotel is booked for them to stay in, where the training course will take place. Since they will be away for two weeks, tickets are also provided for their partners. They are each given a per diem allowance of USD500 to cover ‘out of pocket expenses’.
- 8 of the executives fly to the UK via Paris, with their partners. The remaining 2 do not come, but have already been sent their per diem.
- On the first day of the course, one executive turns up and signs in for the whole group. Nobody attends the course from then on.

EXAMPLE 2: Holidays disguised as training workshops

- A multi-national company is supplying radiopharmaceutical products to state-owned hospitals in a South American country.
- It operates a system of “support provision” to doctors in the hospitals which it supplies.
- As part of this, the company establishes a fund, by setting aside 3% of profit from the sales of equipment, apparently to finance doctors’ attendance at training workshops and educational seminars.
- In reality, the fund was used to fly the doctors for “training” at top tourist destinations, and to pay for their administrative fees, travel expenses, accommodation, meals and entertainment. They were also provided with “travel allowances” while on training, and supplied with “professional necessities” such as laptops.
- In return, the doctors were incentivised to ensure that their hospital kept up its orders with the company, even when there were more cost effective providers.

GUIDANCE

- Increase accountability with regards to funds spent on training and workshops. Create mechanisms for regular monitoring and auditing on all training courses.
 - Senior management or supervisors can request regular reports on training sessions including feedback on effectiveness of training and details of completed courses by attendees.
 - Approval procedures for training courses could be multi-level.
 - Verification of a random selection of events would enhance the audit procedure.
- Set a standard or guidelines on how training courses and workshops must be run, and ensure compliance by creating oversight positions/bodies.
- Limit overseas training to occasions where there is a clear and justifiable business rationale for both the people involved and the location.
- Avoid paying large per diems; ideally per diems should only be of nominal value and designed to cover small out of pocket expenses.
- Ensure that hotel bills and other expenses are picked up directly and avoid reimbursing or providing allowances to individuals.
- Consider insisting on post training reports (which could include photographs of the attendees) to verify the training took place and place it in the training record.

SOURCES OF FURTHER GUIDANCE

- FCPA Guide pp. 17-18 & 24 <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>
- U.S. Department. of Justice, FCPA Opinion Release 96-01 (travel, lodging, and meal expenses of regional government representatives to attend training courses in United States) <http://www.justice.gov/criminal/fraud/fcpa/opinion/1996/9601.pdf>
- U.S. Department. of Justice, FCPA Opinion Release 04-01 (seminar expenses, including receptions, meals, transportation and lodging costs) <http://www.justice.gov/criminal/fraud/fcpa/opinion/2004/0401.pdf>
- Alexandra Addison Wragge, *How to Pay a Bribe: Thinking like a Criminal to Thwart Bribery Schemes*, Chapter 3 by Amy Sommers, pp. 24-28

2.7 POCKET MONEY, PER DIEMS AND EXPENSES.

DESCRIPTION

Paying per diems can at times be equivalent to paying a cash bribe. Per diems are effectively a payment to an individual for attending a meeting, course or event. Likewise, generous reimbursement of expenses can also be a means of disguising a bribe. What may be considered to be reasonable, and therefore not potentially a bribe, can be difficult to determine. Therefore, the safest option would be to avoid cash per diems all together, when clients, officials, or business decision makers are involved.

EXAMPLE 1: Customers' generous expenses claims reimbursed

- A European manufacturer is negotiating a sales contract for the supply of products to the municipal government of a North American country.
- The municipal government officer responsible for procurement negotiates a clause in the contract providing Euros 400 per person per day as an allowance while attending technical training on the product. The contract specifies that training will be provided for 18 individuals, covering a 3 week period.
- The training place takes place in Europe shortly after the contract has been signed. The air tickets are provided by the manufacturing company.
- The technical element of the training takes 2 days.
- For the rest of the three weeks, the visiting party spent their time as they wish. Some travelled to 3 European capitals, with logistical support from the manufacturing company.
- The per diems were paid in cash to the head of the municipal government delegation on the first day of their visit.

EXAMPLE 2: Providing improper travel per diems

- A company specialising in bespoke software for deepwater oil drilling operations wants to win new contracts from state oil companies in a country beginning to increase its oil exploration.
- Through its local representative office, the company begins paying the employees of the state-owned companies to act as internal consultants to evaluate the software and then convince the procurement department of the oil companies to buy it.
- In addition to the "consultancy" fees the regional head sales manager of the software company signed off on travel for the "internal consultants".
- The trips were masked as customer training, and while there, the employees of state-owned companies would be paid USD400 cash per diems.

GUIDANCE

Cash per diems should be avoided, or if they are paid, be of low or nominal value. Any larger per diems that are deemed necessary should be strictly limited and monitored – for example:

- Implement transparent and efficient policies to decrease opportunities for abuse, including setting low maximum values for per diems and expenses.
- Increase supervision and audit functions. This can include policies such as not paying full per diem amounts in advance.
- Increase accountability. Require regular reports from staff about where per diems have been used and why.
- Always confirm that any per diem being paid is in line with the local laws and policies of the recipient.

SOURCES OF FURTHER GUIDANCE

- U4 Anti-corruption resource centre: Per diem policy analysis <http://www.u4.no/publications/per-diem-policy-analysis-toolkit/>

2.8 REBATES AND DISCOUNTS OR KICKBACKS

DESCRIPTION

Rebates and discounts are commonly used as incentive schemes in business, particularly when they are linked to a customer increasing the quantities it purchases. However, rebates and discounts may also be diverted to the individuals who are responsible for procurement decisions, thus becoming a kickback to the vendor, and a bribe in order to secure a contract.

EXAMPLE 1: Customer rebate paid in cash to client account manager

- A credit manager in a large company would like to find a debt collection agency which his company could use on a regular basis to recover money from defaulting customers.
- The credit manager has an introductory meeting with a sales agent from a debt collections agency.
- During the meeting, the sales agent proposes a fee scheme, in which the credit manager's company would pay the collection agency a "success fee" of 15% of the debt value when the debt is recovered.
- In addition, the agent promises that a 3% rebate of the total amount of debt collected by the debt collection agency during the month would be transferred back to the credit manager's company as a rebate.
- The agent also adds that the usual means of paying this would be in cash, directly to the credit manager. He would then be at liberty to deposit it in the firm's account or treat it as a "contribution towards personal discretionary business spending", as the agent puts it.
- To receive the rebate, the credit manager would of course have to use this agency, rather than its competitors.

EXAMPLE 2: Rebates used as kickbacks

- A German copper trading company would like to increase its copper sales in one of its countries of operation.
- Together with the executives of its local subsidiary, the company's regional sales director sets up a kickback scheme to channel payments to purchasing managers of the state-owned copper wire and electronics manufacturer.
- The copper trading company would charge inflated amounts for the copper supplies, and the purchasing managers would then be "refunded" through rebates equivalent to 5-10% of the purchasing price, which would be transferred into their personal accounts.

GUIDANCE

- Make sure it is clear that these schemes are labelled as bribes/kickbacks in company compliance and training.
- Incorporate the concept of bribing through rebates, discounts, and refunds into anti-bribery and anti-corruption policies.
- Be on the alert when potential business partners offer or request exclusive benefits in return for business decisions.
- Know how to deal with it if you are offered or requested suspicious rebates or discounts.

SOURCES OF FURTHER GUIDANCE

- Corruption Prevention Department Independent Commission Against Corruption, Governance and Internal Control : A Best Practice Checklist, pp. 23-27 http://www.icac.org.hk/filemanager/en/content_1031/sme.pdf

2.9 EMPLOYMENT CONTRACTS AND CONSULTING AGREEMENTS

DESCRIPTION

While it may make business sense to hire candidates whose background is known, offering jobs or internships to relatives or associates of clients or officials can also become a form of bribery. For example, hiring the children or relatives of a client or an official, whether for an internship, a job, or work experience, could unduly influence contract awards or other business decisions. Therefore, although there is no legal prohibition on this, it is a risky area. There is also the possibility that a new 'employee' may never actually work for the company and only be a 'ghost' employee purely created in the accounting records as a means to extract cash. The paperwork for the individual can be fabricated to give the impression that the appointment was via a proper process.

EXAMPLE 1: Fictitious employment contracts used as vehicle for bribery

- A high end leather goods manufacturer just breaking into the market is desperate to conclude a supply contract with a luxury Western European retail chain.
- However, the barriers to entry in the upmarket retail industry are high and competition is fierce.
- The business development manager of the leather goods company feels the chances of winning the supply deal are slim.
- Over lunch with the retailer's supply manager, who is known to struggle to finance his lavish lifestyle from his earnings, the business development executive offers to retain him as a "consultant" after the contract is concluded.
- The supply manager's contract would say that he is responsible for evaluating and inspecting the product, which is entirely credible.
- The supply manager is promised cash payments, an expense account and reimbursement of his 'out of pocket expenses' to an agreed annual limit.

EXAMPLE 2: Specific partner mandated by local government and used as a conduit for payments

- A North American FMCG company is looking to expand into a new market in the Gulf.
- Before commencement of trading, a local government official with some clout insists on a specific local agri-company becoming the company's sole and exclusive supplier of certain products in the local market.
- While looking into the local agri-company, the director of local operations finds out that it is owned by relatives of the government official.
- This is clearly a breach of corporate policies and due diligence regulations, so the operations manager phones the government representative with his concerns.
- However, the official not only dismisses these worries, he openly admits that the agri-company will steer a percentage of the profits from the deal in his immediate family's direction. The official explains patiently that this is how business is done in his country, and his official salary is insufficient to support his large family.
- The operations manager is of course aware that his actions amount to bribery, but he feels the projected profits are just too large to lose, and if he walks away from the deal his own job will be in jeopardy.
- The operations manager therefore agrees to this arrangement as a condition of doing business in the country.

GUIDANCE

- Ensure that any employment contracts or consulting agreements are open and transparent – for example, not hidden or disguised internally.
- It must be clear that any employee has the skills/knowledge required for the position.
- Ensure there are policies in place to monitor and evaluate performance of employees and associates, and these are applied across the board.
- Associates or relatives of clients or officials should be paid what other employees in a similar position are paid, and separated from the business that deals with their high-placed relative or associate.
- Ensure that employees know that they will not be punished in any way for refusing to pay a bribe or favour colleagues' connections with business.

SOURCES OF FURTHER GUIDANCE

- David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption*, p. 381

3 BRIBERY ON YOUR DOORSTEP

Not just a problem over there: examples in the United Kingdom

DESCRIPTION

Although, bribery is illegal across the board in the UK, experience shows that bribery also happens in the UK. For example:

- a recent report by Transparency International showed that 5% of citizens polled in the UK said they had paid a bribe at least one on the past twelve months¹
- the first three prosecutions under the UK Bribery Act were for bribes paid in the UK
- a survey of the construction sector found that more than a third of the industry professionals surveyed stated that they had been offered a bribe or incentive on at least one occasion. ²

It is fair to say that in common with many other countries, UK public officials are susceptible to bribery. Public officials are almost all, universally, paid less than their peers may be paid in the private sector but in many cases in their hands rests the power to make decisions which have huge financial consequences for others. All the ingredients for paying a bribe exist. Likewise, bribes may be paid in the private sector, and there is increasingly a grey area between public and private sector as government services are contracted out.

The examples in this section are derived from real cases and illustrate how bribes can be paid within the UK.

EXAMPLE 1: Inflated invoices on a local authority contract

In the world of bribery, the bribe payer rarely pays the cost of the bribe. It will almost certainly be passed onto the customer. The upshot is that the cost of providing the goods or services agreed to be paid is increased in order that the supplier can make the secret payment to the person in charge of procurement. The result is that the local authority, and ultimately the taxpayer, foots the bill for the bribe. This example highlights the practice and the risks associated with dealing with local authorities.

- A lift engineer working on behalf of several local authorities is in charge of authorising lift maintenance contracts for three authorities. He has considerable discretionary decision making power as it is a specialist area and nobody else seems to know what such a service should cost or what the specification should be.
- The lift engineer agrees a deal with a lift maintenance company, awarding it a contract to service the lifts for three authorities.
- In return, the lift maintenance company makes payments to the engineer.
- In order to fund the payments to the engineer, the local authorities are overcharged for work done and charged for work that has not been done at all.

In this example, various individuals involved were convicted and sent to prison.

EXAMPLE 2: Local authority planning departments. Bribes can be small and a competitor smells a rat.

Planning consent is an area particularly ripe for bribery. The decision to grant planning permission for real estate to be developed can render a comparatively worthless piece of scrubland into a valuable development site.

- A property developer is concerned that his planning applications are turned down a disproportionate number of times
- He arranges with an associate to record meetings with an elected councillor to create some evidence that the councillor is unethical.
- In two recorded meetings the councillor accepts payments of £250 and another of £500 plus a bottle of wine to improperly influence planning decisions.

In this example, the councillor was sent to prison.

1. Global Corruption Barometer, Transparency International, Berlin 2013

2. Chartered Institute of Building (CIOB) Corruption in the UK Construction Industry report 2013, <http://www.cio.org/sites/default/files/CIOB%20Corruption%20in%20the%20UK%20Construction%20Industry%202013.pdf>

EXAMPLE 3: Local authority planning - again

- A property developer wishes to gain the support of a councillor for planning applications.
- He arranges for the councillor to live rent-free at one of his properties, running up arrears of £34,000 in unpaid rent.
- In exchange, the councillor lends his support for the property developer's planning applications.

EXAMPLE 4: Local authority planning – yet again

- A property developer wishes to develop a piece of land, but it has a restrictive covenant on it that needs to be lifted in order to allow the development.
- The local council has the power to lift the covenant, and the property developer approaches to relevant official to discuss how this can be arranged.
- The council official demands a personal payment of £1,000 in order to release the restrictive covenant over the piece of land.

In this example, the council employee received a prison sentence of 8 years.

EXAMPLE 5: Hospital Pass. The bribe that was never paid results in guilty verdict.

- An NHS Trust's Project Manager has a contract to award.
- He approaches one of the bidders and offers to award the contract at a favourable rate, if he is paid £1,500 in return.
- The bidding company refuses to pay the £1500 and reports the approach to the police.

In this example, the Project Manager was tried and found guilty.

EXAMPLE 6: Even the Police are not immune

- A police force employee is in charge of awarding refurbishment contracts.
- He awards a contract to a construction company.
- In return, he is paid around £30,000 as well as receiving lavish Christmas hampers for himself and certain colleagues.

EXAMPLE 7: Train company employees go off the rails

- An employee of a UK rail company is responsible for awarding contracts.
- His decision is clearly influenced by bribery in the form of gifts and hospitality.
- In a similar case, another employee in a similar position receives cash payments made into a private bank account.

In this example, the bribery was identified in each case and the punishments included prison sentences.

SUGGESTED READING

Adequate Procedures and the UK Bribery Act, <http://www.transparency.org.uk/working-with-companies/adequate-procedures>

Alexandra Addison Wragge, *How to Pay a Bribe: Thinking Like a Criminal to Thwart Bribery Schemes*, Chapter 1 by Ken Silverstein, 2012

Business Anti-Corruption Portal, <http://www.business-anti-corruption.com/en/du-diligence-tools/agent-screening-process/>

Corruption Prevention Department Independent Commission Against Corruption, *Governance and Internal Control: A Best Practice Checklist*, http://www.icac.org.hk/filemanager/en/content_1031/sme.pdf

David Lawler, *Frequently Asked Questions in Anti-Bribery and Corruption*, 2012

Doing Business Without Bribery, www.doingbusinesswithoutbribery.com

FCPA Guide, <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>

FSA, *Anti-Bribery and Corruption in Commercial Insurance Broking: Reducing the Risk of Illicit Payments or Inducements to Third Parties* http://www.fsa.gov.uk/pubs/anti_bribery.pdf

Guide to Combating Corruption & Fraud in Development Projects, <http://guide.iacrc.org/potential-scheme-false-inflated-and-duplicate-invoices/>

Resisting Extortion and Solicitation in International Transactions, http://www.transparency.org/whatwedo/pub/resist_resisting_extortion_and_solicitation_in_international_transactions

The BriberyAct.Com, <http://thebriberyact.com/2011/06/15/the-bribery-act-the-view-from-offshore/>

US Department of Justice (DOJ) Opinion Procedure Release 07-01 and 07-02, <http://www.justice.gov/criminal/fraud/fcpa/opinion/2007/0701.pdf> ; <http://www.justice.gov/criminal/fraud/fcpa/opinion/2007/0702.pdf>

U.S. Department. of Justice, *FCPA Opinion Release 96-01 (travel, lodging, and meal expenses of regional government representatives to attend training courses in United States)* <http://www.justice.gov/criminal/fraud/fcpa/opinion/1996/9601.pdf>

U.S. Department of Justice, *FCPA Opinion Release 04-01 (seminar expenses, including receptions, meals, transportation and lodging costs)* <http://www.justice.gov/criminal/fraud/fcpa/opinion/2004/0401.pdf>

United States Securities and Exchange Commission (SEC), *“Report and Recommendations Pursuant to Section 401(c) of the Sarbanes-Oxley Act of 2002 on Arrangements with Off-Balance Sheet Implications, Special Purpose Entities, and Transparency of Filings by Issuers”*, <http://www.sec.gov/news/studies/soxoffbalancerpt.pdf>

U4 Anti-corruption resource centre: *Per diem policy analysis*, <http://www.u4.no/publications/per-diem-policy-analysis-toolkit/>

This document is part of series of tools and indices published by Transparency International that can help companies reduce corruption.

INDICES AND CORRUPTION ASSESSMENTS

Bribe Payers Index
Corruption Perceptions Index
Global Corruption Barometer
National Integrity System assessments

GUIDANCE

Adequate Procedures – Guidance to the UK Bribery Act
Anti-Bribery Due Diligence for Transactions
Business Principles for Countering Bribery
Diagnosing Bribery Risk
Doing Business Without Bribery
RESIST

All these documents are available free of charge from
www.transparency.org
www.transparency.org.uk

£25

This publication has been provided free of charge by Transparency International UK. We depend on donations to allow us to continue our work. A contribution of £25 per reader will enable us to do so. If you would like to make a donation of any size, please visit:

www.transparency.org.uk/donate



Transparency International UK
32-36 Loman Street
London SE1 0EH
Tel: 020 7922 7906
Fax: 020 7922 7907
info@transparency.org.uk
www.transparency.org.uk