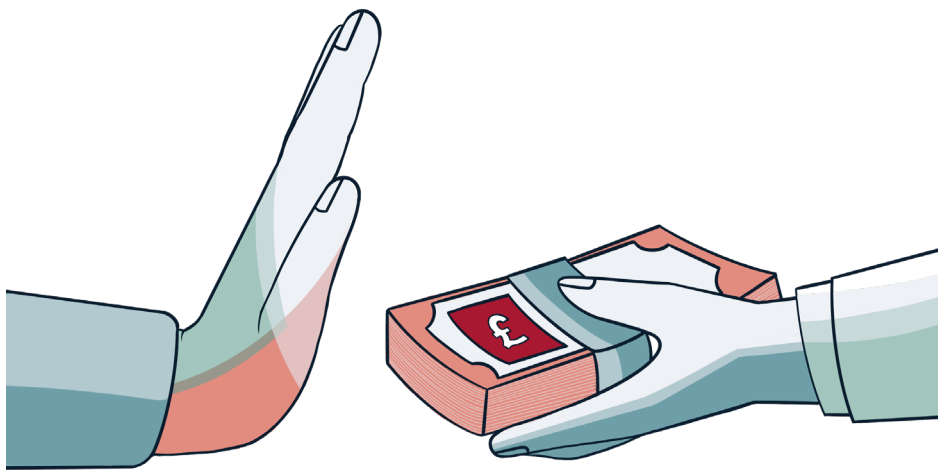


ANTI-BRIBERY & Corruption

Read time: 9 mins



Hello,

There is no explicit reference to bribery within the Financial Conduct Authority (FCA) Handbook.

Bribery is, however, covered under the general principles for firms to ensure that they have sufficient systems and controls in place to prevent financial crime.

As the FCA's statutory objective is to protect and enhance confidence in the UK Financial Services Market, the task of reducing financial crime forms part of this remit.

Therefore, the FCA views a firm's Anti-Bribery and corruption policies and procedures with the utmost importance.

This guide will explore what bribery is, the regulations in place to try and prevent bribery and the responsibilities we all have in preventing bribery and corruption.

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The Bribery Act 2010

Background

Before 2010, bribery laws in the UK were a complex and confusing combination of statutory and common law offences, which resulted from their piecemeal development over the last 150 years.

Before the Bribery Act of 2010, the primary statutory offences for bribery were outlined in the following Acts of Parliament:

- » 1889 - Public Bodies Corrupt Practices Act
- » 1906 - Prevention of Corruption Act
- » 1916 - Prevention of Corruption Act
 - » The 1916 Act amended the 1906 version
- » 2001 - Anti-Terrorism, Crime and Security Act
- » There was also a common-law offence of bribery
 - » Prosecutors rarely chose to prosecute using this route.

2010 - The Bribery Act

- » The 2010 Act consolidated existing bribery laws, ensuring they were fit for purpose for the 21st century.

The Bribery Act 2010

Timeline of reform

Before the Bribery Act 2010 became law, there was considerable consultation and debate to ensure the new regulations were fit for purpose.

On 20 November 2008, the Law Commission published a report setting out its reform proposals.

On 25 March 2009, the Government published the Bribery Bill:

- » This Bill's primary aim was to consolidate and update UK anti-corruption and bribery laws.
- » The Bill included many of the Law Commission's proposals as set out in its November 2008 Report.

On 8 April 2010, the Bill completed its passage through Parliament and received Royal Assent, becoming The Bribery Act 2010.

On 1 July 2011, the Bribery Act 2010 came into effect

- » The offences created by the Act came into force, and they apply to all firms in all sectors, not just financial services.

The Bribery Act 2010

What is a bribe?

The Act defines a bribe as a payment (or other advantages) given with the intention that a person will improperly perform a relevant function or activity.

It does not make a difference whether the advantage is given directly to the person who performs the activity or another person.

What is essential is that the payment is intended to produce the effect of improper performance or behaviour.

An essential fact about a bribe is that it must be improper. This is where there is a “financial or other advantage”:

- » Is intended to make someone perform a function or activity improperly, or reward them for having done so; or
- » Is offered or given knowing that it would be improper for them to accept it.

Improper performance means performing (or not performing) a function or activity in breach of an expectation of good faith or impartiality or an expectation arising from a position of trust (for example, an employee or public official).

The Bribery Act 2010

What is a bribe?

The types of bribery that take place in the commercial sector are numerous, for example:

- » Bribery in order to secure or keep a contract.
- » Bribery to secure an order.
- » Bribery to gain any advantage over a competitor.
- » Bribery of a local, national or foreign official to secure a contract.
- » Bribery to turn a blind eye to a health safety issue or poor performance or substitution of materials, or false labour charges.
- » Bribery to falsify an inspection report or obtain a certificate.



The Bribery Act 2010

What is a bribe?

Remember, as a broker, when arranging insurance for your customers, you will be acting as their agent.

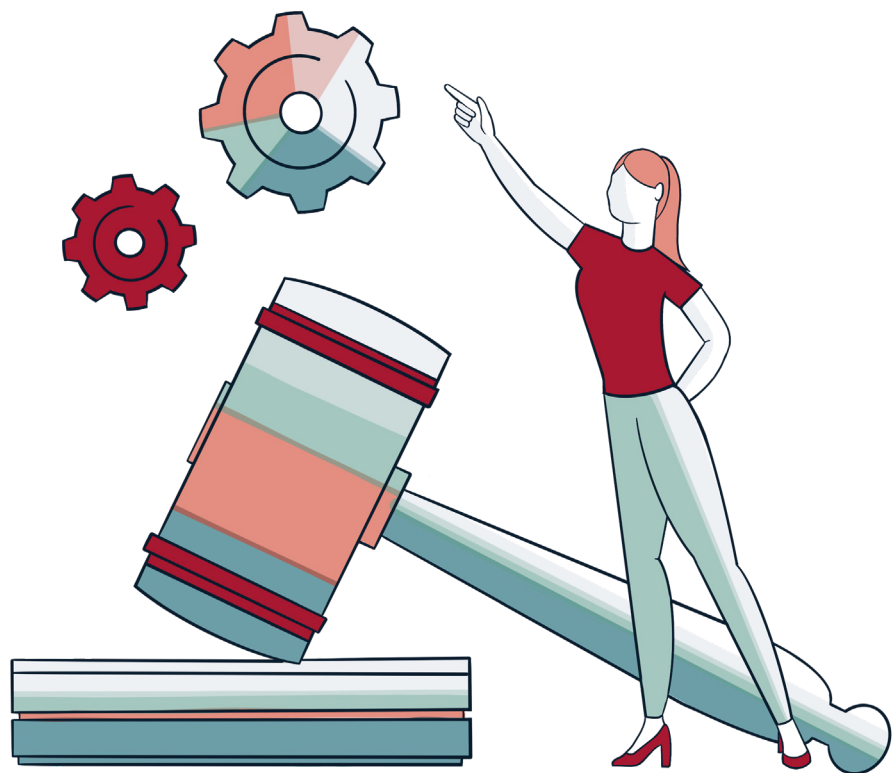
If you receive a payment in breach of your duty to your customer under the law of agency, that would likely be regarded as improper performance under the Bribery Act 2010.

The Act does not make all gifts or corporate hospitality illegal.

However, giving a substantial gift or providing extravagant corporate hospitality to someone you are trying to win business from might be considered improper and, therefore, a bribe.

There is no minimum value below which a financial or other advantage cannot be a bribe. However, the lower the value, the less likely a single gift or payment would influence someone's behaviour.

Many businesses and public sector bodies set limits on the value of gifts that an employee can receive without having to share them within the organisation.



OFFENCES UNDER
The Bribery
Act 2010

Offences Under the Bribery Act 2010



Bribery Offences

Sections 1-5 of the Bribery Act set out several cases that would constitute bribery and explains that an offence of bribery occurs when a person:

- » Offers a bribe; or
- » Promises to pay a bribe; or
- » Pays a bribe; or
- » Agrees to receive a bribe; or
- » Receives a bribe



Additional Bribery Offences

It also explains that it would be bribery to give, offer, promise, ask for, agree to receive or receive a payment as a reward for improper acts that have already happened.

It is also an offence to use bribery to reinforce negative behaviour and to act in an improper way in the expectation that a bribe might be paid, even if it has not been offered and the person has not asked.

The Act is enforced by the UK Serious Fraud Office, with strict penalties which take the form of unlimited fines and/or up-to ten years in prison.

Offences under the Bribery Act 2010

Failing to Prevent Bribery

The Bribery Act also introduces a strict liability offence on companies for failing to prevent Bribery.

A company will be guilty if an associated person carries out an act of Bribery with the intention of obtaining or retaining business or a business advantage.

Where a bribery offence is committed for the company's benefit, its only full defence is that despite the bribe having occurred, the company did have adequate procedures in place to prevent it!

Therefore, the Bribery Act 2010 puts a responsibility on every company, that in the event of an offence being committed, it must be able to show that it had sufficient procedures in place to prevent it.

What is an associated person?

An associated person is someone acting on behalf of the company.

It is determined by the circumstances, so a person could be considered to be acting on a firm's behalf, even if there is no official contract in place. In general, employees, agents, subsidiaries, and introducers are considered to be associated.





SIX PRINCIPLES OF ANTI-BRIBERY for Business

The six principles of anti-bribery for business

Overview

The Government considers that procedures put in place by commercial organisations wishing to prevent bribery from being committed on their behalf should be based on six principles. These are as follows:

- **Principle 1 - Proportionate Procedures**
- **Principle 2 - Top Level Commitment**
- **Principle 3 - Risk Assessment**
- **Principle 4 - Due Diligence**
- **Principle 5 - Communication & Training**
- **Principle 6 - Monitoring & Review**

The principles are not prescriptive; they are intended to be flexible and outcome-focused. This approach allows for the wide variety of circumstances that commercial organisations find themselves in.

Small organisations will, for example, face different challenges from those faced by large multi-national enterprises. Therefore, the detail of how organisations might apply these principles will vary, but the outcome should always be robust and effective anti-bribery procedures.

Principle 1

Proportionate procedures

A commercial organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and the nature, scale, and complexity of its activities.

They are also clear, practical, accessible, effectively implemented and enforced.

This approach considers the risks of bribery occurring in the economic sector the firm operates in and the size and complexity of the business itself.

A UK-based organisation will pose a lower risk than a multinational, and a smaller firm should be able to control bribery with fewer procedures than a large, multi-department firm.



Principle 1

Proportionate procedures

Your senior managers would undertake an initial risk assessment. They will look at all aspects of your business to determine if any processes could be seen to give rise to any form of bribery and assess how likely a bribe may be.

The risk assessment should be documented and form the basis of any anti-bribery and corruption policies and procedures developed.

Any policies and procedures that are designed should include, for example:

- » Anti-Bribery and Corruption Policy, which includes a commitment to preventing and eradicating bribery;
- » The general approach to mitigating risks such as hospitality and charitable or political donations;
- » The strategy for implementing the Anti-Bribery and Corruption Policy and Procedures



Principle 1

Proportionate procedures

When developing anti-bribery procedures, firms should consider the following areas:

- Involvement of all management in the process
- Risk assessment procedures
- Due diligence on existing and prospective associated persons
- Gifts and Hospitality procedures for those given and received (to include those offered but not taken)
- Guidelines for charitable and political donations
- Recruitment procedures
- How third-party relationships are dealt with
- Financial controls – expenditure approval, audits etc.
- Bribery reporting procedures
- Staff training
- Company controls including procedures for any breaches committed by staff

Principle 2

Top level commitment

The top-level management of a commercial organisation (be it a board of directors or the owners) must be committed to preventing bribery. The organisation should have a culture where bribery is never acceptable.

Senior management should take steps to ensure that the organisation's commitment to operating without bribery is embedded across all parts of the business and that all employees and relevant external stakeholders are aware of the anti-bribery and corruption ethos of the firm.

This can take the form of a formal statement or commitment that is readily available to all staff and drawn to their attention on a regular basis.

Such a statement should include, for example:

- » The training provided to senior managers in leading the anti-bribery work.
- » A code of conduct.
- » Review and circulation of all bribery prevention publications.
- » How the leadership raises awareness
- » How the firm will involve itself with relevant trade bodies and authorities.
- » How high-level critical decision making takes place.
- » Review and implementation of risk assessments.
- » How oversight of breaches and feedback takes place.

Principle 3

Risk assessment



Commercial organisations should assess the nature and extent of their exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment should be periodic, informed and documented.

This can be part of the general risk assessment process or a specific anti-bribery exercise.

Some commonly encountered external risks are:



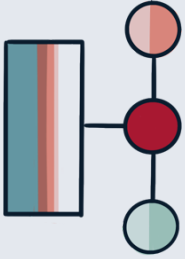
International Risk

There is potentially a higher risk if you operate in foreign countries where the culture is different. You may need to consider whether there is a culture of bribery in that country?

Some countries will have long-established customs or business practices that involve what we would classify as bribery, but for them, it is the way that business has always been done.

Principle 3

Risk assessment



Market Risk

Some markets pose a higher risk than others. For example, commercial insurance poses a higher risk than consumer insurance due to the higher premiums and potential commission earnings.



Internal Controls

Are there sufficient processes in place for expenses, business hospitality & entertaining and donations to third parties?

An absence of these financial control policies will mean that your firm would be unclear on how all money is being spent.

Principle 4

Due diligence

Commercial organisations should apply due diligence procedures, taking a proportionate and risk-based approach regarding persons who perform or will perform services for or on behalf of the organisation to mitigate identified bribery risks.

Due diligence procedures should take a proportionate and risk-based approach to people who perform services for a firm. This will help mitigate any identified bribery risks.

The matter of 'performing services' applies to employees of an organisation, so your firm should have HR procedures to ensure such information is obtained from new starters as they join the firm.

These matters should be reviewed regularly, and there should be some proportionate and appropriate monitoring to ensure continued compliance. Therefore, as an employee, you will probably have regular appraisals or 1-2-1s with your line manager.

Principle 5

Communication and training

Commercial organisations should seek to ensure that their bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

Firms must communicate effectively to ensure that everybody in the organisation is aware of the latest requirements and that the management team receives relevant details of any issues as they arise.

Training is critically important and should take place to address any of the perceived risks identified. Training activities should cover awareness of the risk of bribery in general, those specific to the firm, and those specific to the sector(s) in which it operates. Training should also include how the firm is addressing the identified risks. All new employees should undergo training early in their induction.

The ongoing regular training programmes should include all employees, whatever their position, as all staff members are responsible for ensuring that any potential exposure to bribery and corruption is kept to a minimum.

Principle 6

Monitoring and review

Commercial organisations should monitor and review procedures designed to prevent bribery by persons associated with it and, where necessary, make improvements.

It is essential that once procedures are put into place, they are fully embedded. Firms should review Bribery Act policies and practices annually with appropriate staff refresher training.

The senior management team should have regular reports detailing the current compliance with the legislation.





FCA PRINCIPLES for business

FCA's Principles for business

Anti-bribery procedures also relate to five of the FCA's principles for business:

- **Principle 1:** A firm must conduct its business with integrity.
- **Principle 2:** A firm must conduct its business with skill, care and diligence.
- **Principle 3:** A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. (Management and control)
- **Principle 6:** A firm must pay due regard to its customers' interests and treat them fairly.
- **Principle 8:** A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

FCA's Principles for business

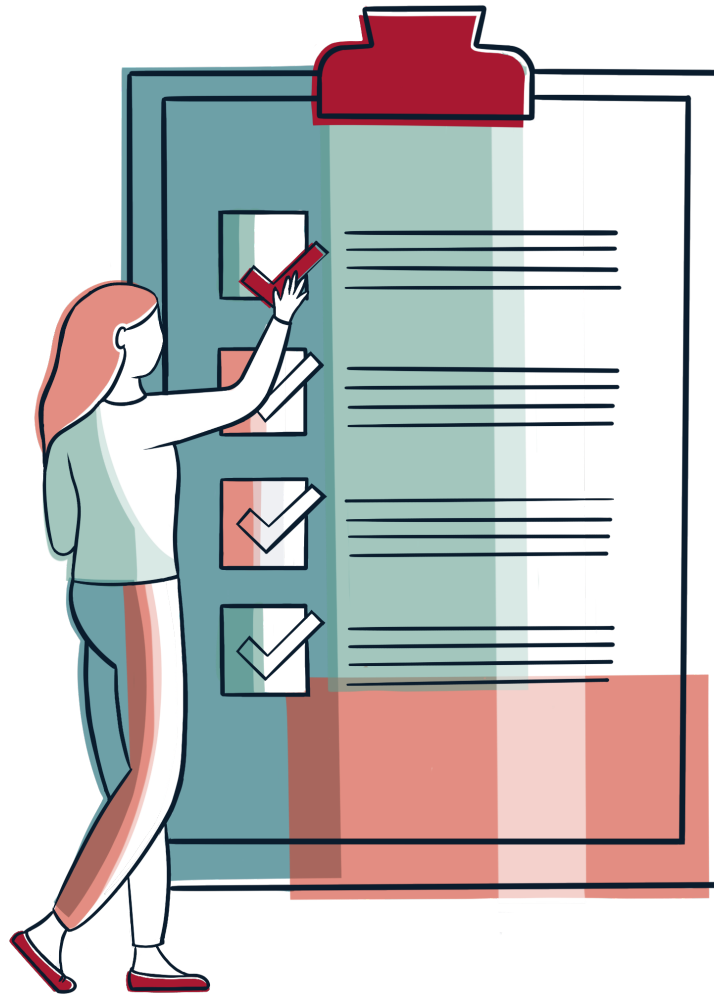
Failure to have adequate anti-bribery measures in place would mean a firm could not demonstrate adherence to the five principles outlined.

Without adequate anti-bribery and corruption policies and procedures, a firm would not be acting with diligence, care and integrity and would be seen to have insufficient controls in place.

In addition, a firm could not demonstrate that it had customers' interests at heart if it did not have adequate procedures to counter any potential bribery where somebody other than the customer would possibly benefit from an action.

Robust anti-bribery and corruption policies also directly relate to Treating Customers Fairly, particularly outcome one:

'Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.'



INTERNAL Controls

Internal Controls

Gifts & hospitality

The government doesn't intend for genuine hospitality or similar business expenditure that is reasonable, proportionate and justifiable to be prevented by the Bribery Act. Still, like with most regulations, it is not explicitly defined.

Each firm must determine what it considers reasonable, taking into account the value of the client and recording how it has arrived at its definition of reasonable.

Under the Bribery Act, hospitality must be controlled. Therefore organisations must monitor such expenditure and have a gift and hospitality register.

A firm should adopt a policy where all gifts and offers of hospitality should be notified to a senior person, approval sought and then the matter recorded on a Gifts and Hospitality register.

If anything is offered but cannot be accepted for whatever reason, it must also be recorded.



Internal Controls

Gifts & hospitality

Firms usually have a lower limit where no action is required, so anything up to a value of, for example, £25 does not have to be recorded. It is for each firm to decide how this would work.

More generous gifts such as theatre or sporting trips should be scrutinised in more detail. A firm must spot trends, such as the same people receiving hospitality or business transacted with a particular party, occurring for no specific reason.

Suppose hospitality was a cover for bribing someone. In that case, authorities will look at things such as the level of hospitality offered, the way it was provided and the level of influence the person receiving it had on the business decisions in question.

So, hospitality that is proportionate and reasonable given your business is unlikely to attract attention.



Internal Controls

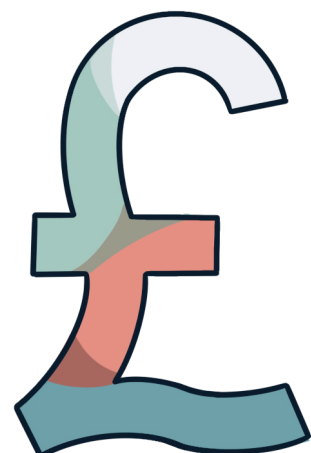
Expenses policies

Aside from Gift and Hospitality policies, firms also need to look at their expenses policies and systems.

- » Is there a formal monthly expenses procedure with a fully itemised claims form?
- » Must receipts accompany it?
- » Or is there a lower limit? For example, anything under £10 is acceptable.
- » Do claims have to be signed off by a director or partner before being submitted for payment?

Where more lavish entertaining takes place – meals at restaurants, for example, these should be fully itemised and receipted.

Some firms adopt a lifestyle accounting approach and need the credit card receipt and the original bill so they can see what has been spent on food and drink.



Internal Controls

Corporate governance

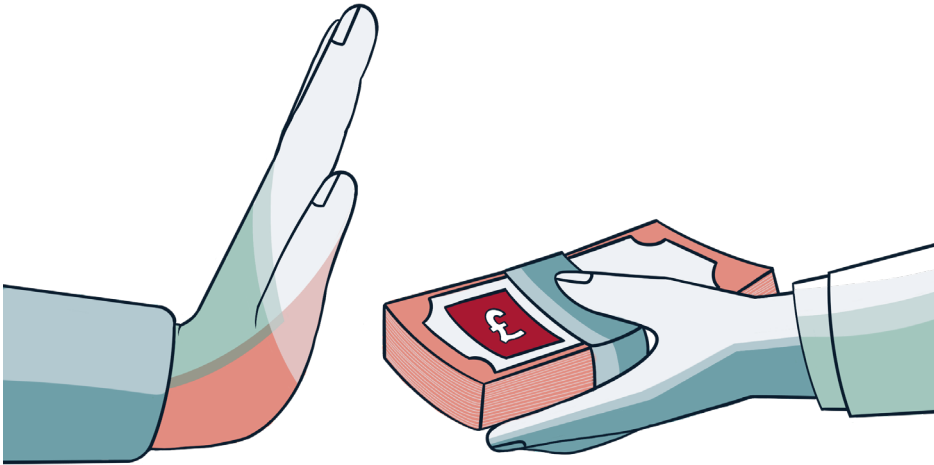
One of the primary defences available to a corporate body is demonstrating that it had adequate procedures designed to prevent bribery on its behalf.

Corporate governance is critical; it is how a firm demonstrates how it runs its business effectively and identifies and manages the risks it may be exposed to.

It doesn't just apply to big firms – it applies to all brokers, no matter how small and is a crucial issue for the FCA.

If a firm has an appropriate and proportionate procedure, it is protecting its employees and itself from any charges under the Bribery Act 2010.





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