

Compliance Alert - UK Bribery Act Issued, June 2011

On 1st July 2011, the UK Bribery Act comes into force to replace the existing bribery laws which date back to 1889. There has been a lot of debate about where the line will be drawn between 'a bribe' and 'an act of legitimate corporate hospitality' and the big question for many sport and recreation organisations is how will the UK Bribery Act impact on corporate hospitality in the sporting arena?

This guidance note sets out the background and the changes that the UK Bribery Act will bring in and provides suggested action points for you to consider in preparing your organisation to remain on the right side of the law. Please note the guidance offered is an interpretation on current legislation, and the Government's own guidelines, and should not replace bespoke legal advice where required.

Special thanks to Farrer & Co for their assistance in reviewing this guidance note.



What has changed?

The UK has long been criticised for being too soft on corruption and the current laws on bribery have been said to be insufficient and out-dated. They evolved in a piecemeal fashion as common law and statute were patched together to deal with a changing environment. The UK Bribery Act is a conscious effort to put in place more stringent and coherent anti-corruption legislation and it is viewed as going further than other countries (such as the 'Foreign Corrupt Practices Act' in the US) and as one of the most stringent pieces of anti-corruption legislation in the world.

The aim of the UK Bribery Act is to make life difficult for the minority of organisations involved in corruption and it is not intended to impose undue burdens on the majority of businesses and organisations. It tightens up the rules on what will constitute bribery by creating four main offences:

First Offence: Offering a Bribe

It is a criminal offence to give, promise or offer another person an advantage or incentive (which need not be financial) with the intention of improperly influencing a business activity or function. A business activity or function could include a wide range of circumstances, both in the UK and abroad.

Second Offence: Receiving a Bribe

It is a criminal offence to request, agree or accept an incentive or reward with the intention of performing an activity or function improperly or otherwise to affect the result of a decision.

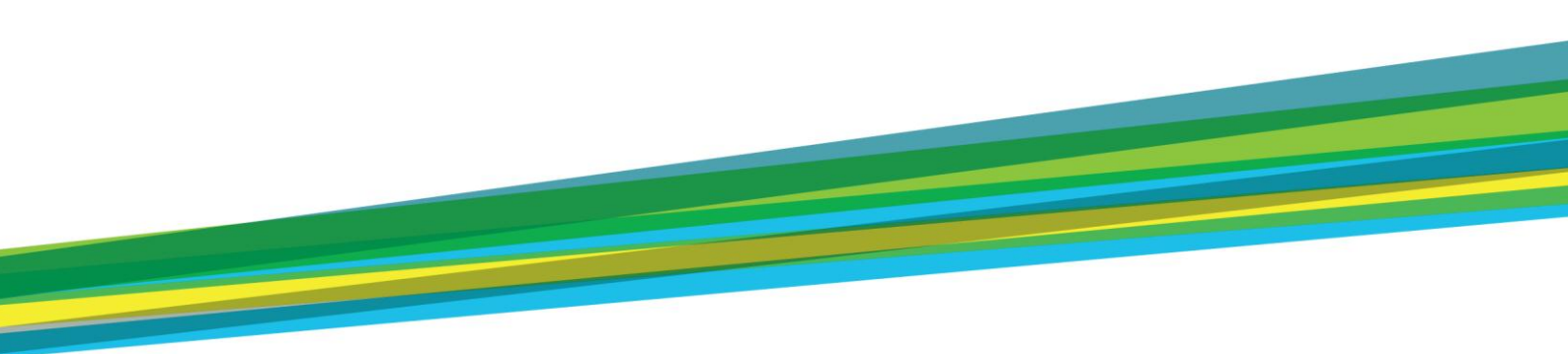
The test for whether an offence is committed in relation to the first two offences is whether a reasonable person in the UK would consider that an act (e.g. a gift) was intended to induce a breach of an expectation of good faith, trust or impartiality

Third Offence: Bribing a Foreign Official

It is a criminal offence to bribe a foreign official with the intention of obtaining or retaining business or a business advantage.

Fourth Offence: 'The Corporate Offence'

It is a criminal offence if an organisation fails to prevent any 'associated persons' working on their behalf offering a bribe (the first offence).



'Associated persons' are defined as those who perform services for or on behalf of an organisation and will therefore include not just employees, but also group members, joint venture partners, agents, board members and counterparties.

Under the fourth offence the only way an organisation can avoid conviction is if they can demonstrate they had adequate procedures in place to prevent bribery.

The UK Bribery Act also increases the maximum penalty for individual bribery from seven to 10 years imprisonment, with an unlimited fine for both individuals and organisations.

What are adequate procedures to prevent conviction?

Given that defence is limited to showing that adequate procedures are in place to prevent bribery, the obvious question is 'what are adequate procedures?' It is acknowledged by the government that what is adequate will be dependent on the size, sector, resources and degree of risk each organisation faces. However all organisations will need to be able to provide evidence of processes used to scrutinise those associated with it if an offence occurs.

The government has issued guidance on the UK Bribery Act stating six principles to be followed in order to prevent bribery.

First Principle: Proportionality of procedures

The procedures an organisation puts in place to prevent bribery should be proportionate to the risks they face and based on size, scale and area of activity. e.g if your organisation offers limited hospitality then it is expected that your procedures will not need to be as extensive as an organisation that operates an extensive corporate hospitality programme, involving the award of tickets, trips abroad and event offers.

Second Principle: Top level commitment

All staff should be aware that bribery is not tolerated and this should be led from the top of the organisation, including through the appointment of a senior anti-bribery officer.



Third Principle: Risk Assessment

An organisation should assess the people it deals with and the market it operates in. A thorough landscaping of the opportunity for bribes within your organisation should be undertaken to ensure you are aware of the areas that need protecting, and procedures implemented to regulate those risk areas.

Fourth Principle: Due diligence

An organisation should make sure that the people and organisations it works with are reputable and understand their anti-corruption policies, as well as continually assessing areas of risk within the organisation.

Fifth Principle: Communication

All staff should be aware of the policies and procedures that operate in relation to anti-corruption and, where necessary, be given appropriate training.

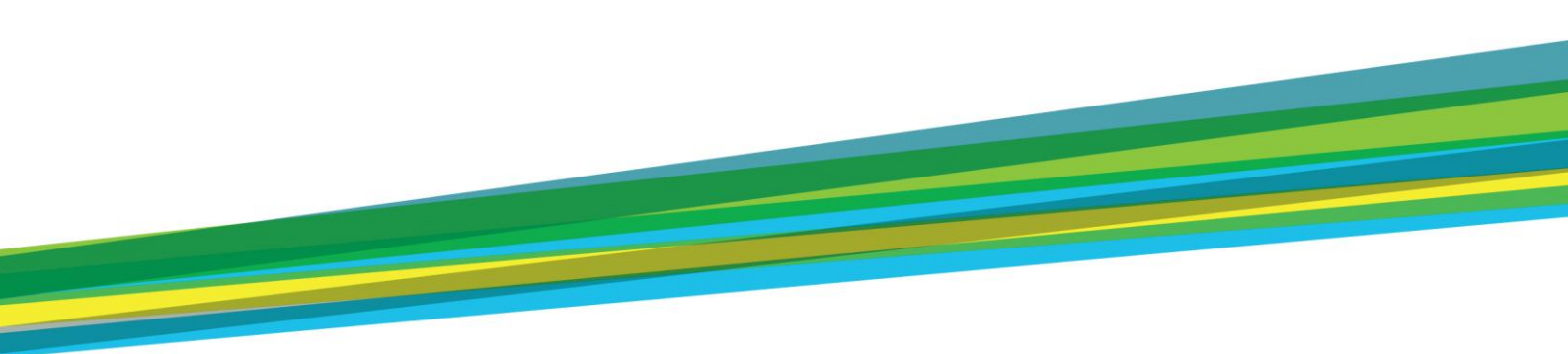
Sixth Principle: Monitoring and Reviewing

There must be a system in place that periodically reviews the policies and checks that they are working. It is not good enough to just have a policy. It must be a policy that people are aware of and one which is followed exactly.

How will the UK Bribery Act affect sport and recreation organisations?

Entertainment packages are the bread and butter gifts for sponsors and the government are firm that they do not want to stop organisations getting to know their sponsors or clients by taking them to sporting events.

The guidance issued by the government also states that they do not intend the UK Bribery Act to prohibit reasonable and proportionate hospitality and promotional or other similar business expenditure intended for these purposes. This is very positive for sport and recreation organisations and it means that there are a whole host of commercially acceptable scenarios that have the intention of influencing without coming close to the conduct the UK Bribery Act is designed to prevent. The main issue for sport and recreation organisations to consider is whether their hospitality is proportionate – for example are you offering your sponsors an all-expenses paid trip to the Alps



or are you offering a day out at a local rugby club. It may also help to consider whether the hospitality is relevant to the organisation and its business aims.

In short, the UK Bribery Act is likely to affect sport and recreation organisations in three ways:

1. As a provider of gifts and corporate hospitality

If your organisation offers gifts and hospitality to sponsors or other third parties (whether directly or through an agent) then you will have a responsibility not to break the law yourself. You may also wish to ensure (for example through the sale contract) that any party who buys a hospitality package from you uses that hospitality appropriately, but this is not a requirement,

2. When awarding or applying for (major) contracts or funding

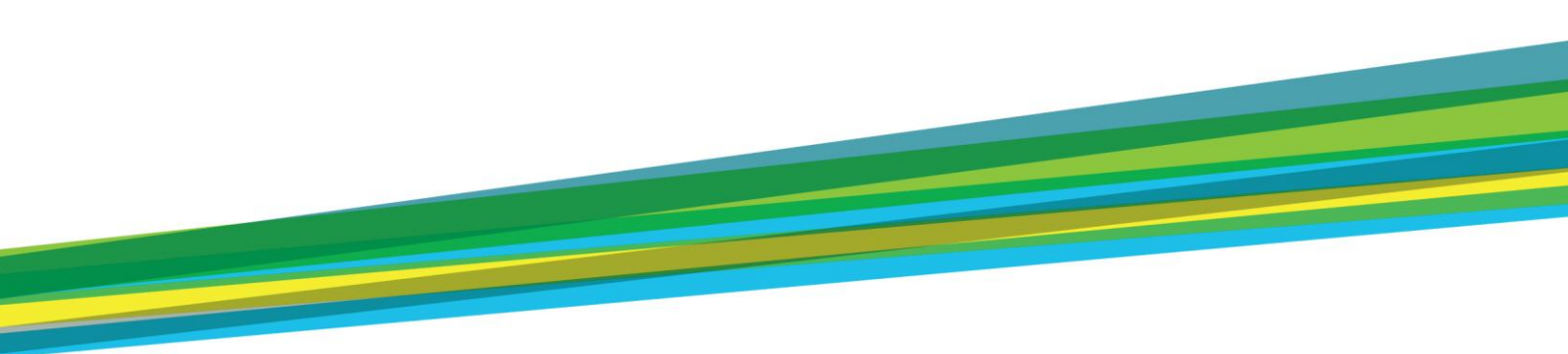
The risk of bribery is likely to rise before (or after) the award or application for a major contract or a funding arrangement. Care should be taken to avoid inappropriate involvement with the bidders or contract holders.

3. As a recipient of gifts and corporate hospitality

If your organisation receives gifts from another organisation, such as your international federation, you will need to ensure that they are not received on condition of your organisation performing an action or function e.g. tickets to an event if you vote a certain way in international elections.

What should sport and recreation organisations do to prepare for the UK Bribery Act?

You can continue to provide tickets to sporting events, take clients to dinner, offer gifts to clients as a reflection of your good relations, or pay for reasonable travel expenses in order to demonstrate your goods or services to clients if that is reasonable and proportionate for your business.



The guidance issued by the government states that there is no need for businesses to implement new systems and procedures if they deem it to be unnecessary, or are very small in size and the risks of bribery are low.

The following Action Points are recommended as ways of ensuring your organisation keeps its nose clean and is as prepared as possible for the new legislation.

1. Consider areas of risk

Included in this might be a review of current procedures on ticket distribution, entertaining prospective sponsors/suppliers, promotional activities and overseas operations and the control you have over them.

2. Check that existing policies refer to anti-bribery stance

Included in this you may want to check that your complaints and whistle blowing policies refer to anti-bribery stance and allow employees to report conduct that breaks the UK Bribery Act in a confidential manner.

3. Create a 'Corporate Gifts and Hospitality Policy'

Ensure that your policy covers all areas of potential risk. See [toolkit](#) below for creating a 'Corporate Gifts and Hospitality Policy'.

4. Review sponsorship contacts

You may want to review your current sponsorship contracts to ensure you have appropriate clauses relating to the use of hospitality packages.

5. Maintain a register of hospitality and gifts

The register should include both gifts received and given and the amount of hospitality provided to each sponsor. You may want to consider an aggregate amount of hospitality that can be provided to any one source or a financial limit above which gifts should be disclosed.

6. Assign responsibility to an individual

Assign responsibility for reviewing and monitoring anti-corruption policies to an individual either by appointing an Anti-corruption Officer or by building this responsibility into an existing individual's portfolio.



7. Communicate your anti-corruption stance to employees, board members and wider membership

You should make everyone aware of the policies you have created and the codes of conduct in relation to corporate hospitality. You may want to put in place a training programme for existing members and insert a training session into induction for new members. It will be important to show top level commitment and it may be worth using a board member as an Anti-Corruption Champion.

8. Carry out due diligence on business partners, suppliers and prospective employees

Ensure that you investigate and research all new contacts in relation to anti-corruption

9. Prohibit gifts to public officials (or at the very least ensure such gifts are closely monitored)

10. Monitor and audit your anti-corruption policies

Put in place a system that allows you to monitor how effective your policies are. You could monitor how often your policy is viewed by members or you could chose to put in place a sign-off form that allows central control over corporate hospitality



Toolkit: Creating a 'Corporate Gifts and Hospitality Policy'

The following should be included in your 'Corporate Gifts and Hospitality Policy':

1. Recipients

Reference should be made to the categories of people who will be considered eligible to receive corporate hospitality and like benefits. You may want to list the different groups that will be eligible to receive corporate hospitality and why.

2. Purpose

The different purposes for which corporate hospitality can be used should be referenced. This may include a list of the intentions of corporate hospitality within your organisation such as maintaining good relationships or getting to know your sponsors better.

3. Conditions of use

Once you have outlined what you will use corporate hospitality for then you may also want to consider stipulating what sponsors can do with such hospitality. For example you may consider seeking assurances that the hospitality is used for entertainment purposes only, with no right of resale or use for unconnected promotional purposes and restricted to whom it is given.

4. Timing and Structure

Your policy should state when it is appropriate to use corporate hospitality. It is recommended to state that all corporate hospitality must be part of a sponsorship package over the course of a sponsorship relationship rather than an inducement to enter into the contract or as a reward after a contract is secured. The timing of a gift could result in it being viewed as a bribe and so this area of your policy is critical to get right. You may want to list the different types of sponsorship packages you offer and what can be expected through each of them.

5. Proportionality

Your policy should take into account proportionality - you may have separate levels of corporate hospitality appropriate for different circumstances or different relationships. You may want to develop principles to help individuals make their own decisions about the proportionality of corporate hospitality offered.

6. Authorisation

You may want to detail the process of authorisation (and when higher authority needs to be sought) to ensure that there is a central control system for corporate hospitality and a way of identifying if a gift has been given in a secretive way.

7. Penalties

You should reference not only the legal penalties if the UK Bribery Act is broken, but also your internal penalties if the policy is broken – for example a right of immediate termination in the event of breach by a sponsor, or the termination of employment in the event of a breach by an employee.

8. Whistle-blowing

You may wish to refer people to the specific policy you have for whistle-blowing. However you may also wish to detail how to report a breach of this particular policy. You may have set up an anti-corruption mailbox or helpline.

Relevant Links:

[Ministry of Justice Quick Start Guide to the UK Bribery Act](#)

[Ministry of Justice Guidance for Commercial Organisation on the UK Bribery Act](#)