



The Bribery Act

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Outline

- Bribery Act 2010
- Offences and defences
- Serious Fraud Office
- Prosecutorial discretion and guidance



Offences, defences and scope

Bribery Act 2010

- Bribing another person (section 1)
- Being bribed (section 2)
- Bribing a foreign public official (section 6)
- Failing to prevent bribery (section 7(1))
- Adequate procedures defence (section 7(2))
- Extraterritorial jurisdiction (section 12)
- Consent or connivance (section 14)
- Transitional provisions (section 18)

Public Contracts Regulations 2006, reg 23

EU Public Sector Procurement Directive 2004 (Article 45)

The Serious Fraud Office

Lead enforcement agency for England, Wales and Northern Ireland

SFO decisions to prosecute under the Bribery Act 2010:

- no need for the Attorney General's consent
- matter for the SFO's discretion, in accordance with guidelines

The SFO will

- work with companies that want to get things right
- vigorously pursue those who want to use, or are complicit in, bribery or corruption

Prosecutorial discretion

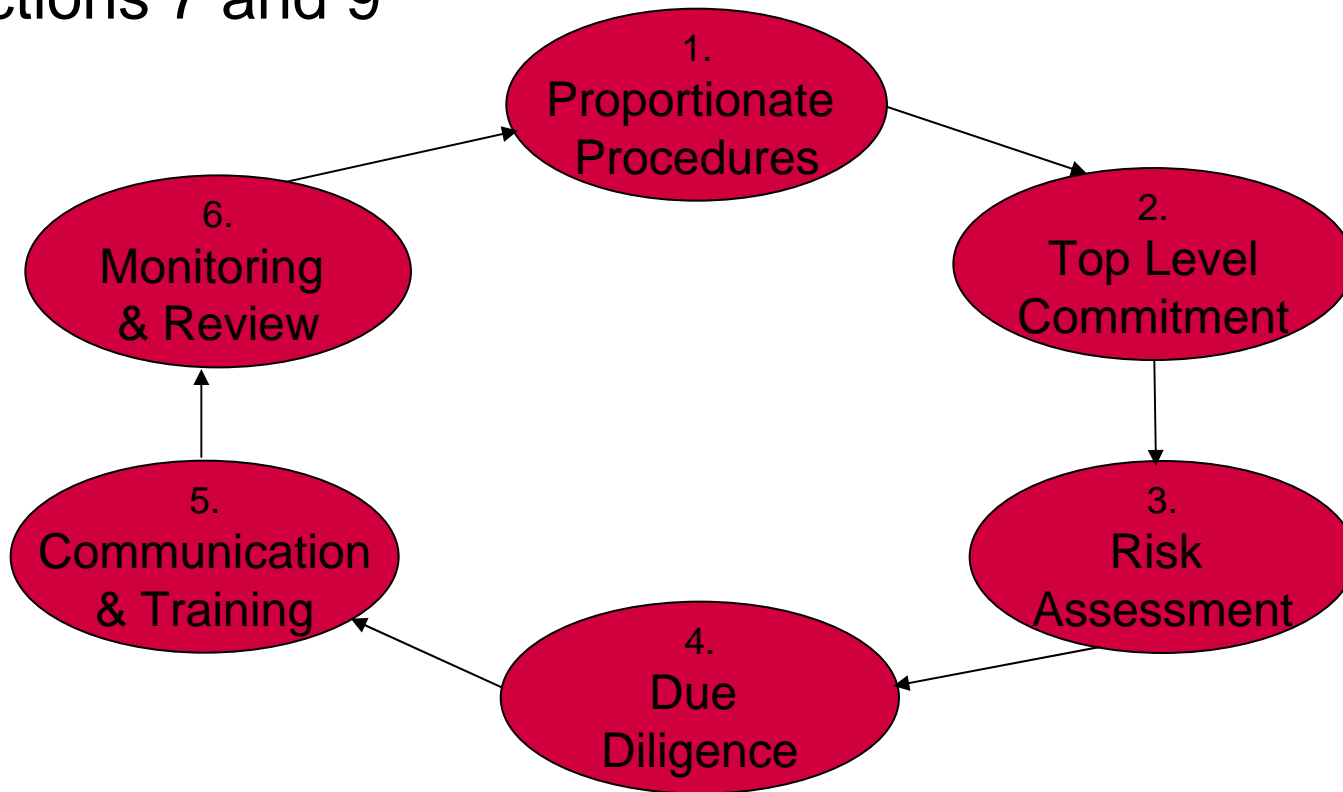
- Code for Crown Prosecutors
- Joint Prosecution Guidance
- MoJ Guidance (under section 9)
- SFO's Guidance on Corporate Prosecutions

Outcomes:

- some cases will result in a prosecution
- some cases may be suitable for civil disposal
- some cases may result in no action
- some cases may involve more than one outcome

Ministry of Justice Guidance

Sections 7 and 9



Corporate hospitality

- MoJ Guidance:
 - no binding legal effect
 - should not be followed slavishly
- Bribery Act not intended to encompass “reasonable and proportionate” expenditure aimed at improving image / better presentation of products or services / establishing cordial relations
- **But** the higher the expenditure
 - the greater the inference that it was intended to influence the recipient to grant business / business advantage
 - the greater the likelihood that it will be construed as bribery
- Prosecutorial discretion provides flexibility

Corporate hospitality and the SFO's discretion

The SFO considers the following factors to be relevant:

- clear issued policy regarding gifts and hospitality
- scale of the expenditure in question – is it within the confines of such policy (and, if not, whether special permission had been sought at a high level)?
- was expenditure proportionate with regard to the recipient?
- evidence that such expenditure had been recorded by the company
- recipient was entitled to receive the hospitality under the law of the recipient's country

The inference of bribery will be strengthened if:

- there are unjustifiable 'add-ons', e.g. with regard to travel / accommodation
- expenditure related in time to some actual or anticipated business with the recipient (particularly in a competitive context).

Facilitation payments – the SFO’s discretion

The SFO considers the following factors to be relevant:

- whether the company has a clear issued policy regarding such payments
- whether written guidance is available to relevant employees as to the procedure they should follow when asked to make such payments
- whether such procedures are being followed by employees
- whether there is evidence that all such payments are being recorded by the company
- whether there is evidence that proper action (collective or otherwise) is being taken to inform the appropriate authorities in the countries concerned that such payments are being demanded
- whether the company is taking what practical steps it can to curtail the making of such payments

Overarching principle:

Can the company demonstrate that it is actively working towards “zero tolerance”?

Corporate self reporting and the SFO's discretion

Prosecution or civil disposal?

The SFO considers the following factors to be relevant:

- the seriousness of the wrongdoing
- isolated incident / several incidents
- whether or not the wrongdoing is established practice for the corporate
- whether or not current Board members have personally profited
- whether warnings had previously been given as to the inadequacy of processes
- whether there was an unreasonable delay in self reporting
- the extent to which the report is detailed and complete



Thank you for the opportunity to share our perspective

Jane de Lozey – 11 September 2012 – Second Asia Pacific Pharmaceutical Compliance Congress