

The Bribery Act 2010 – Policy and Procedure for the British Dietetic Association

Background

The Bribery Act (the Act) creates a new offence which can be committed by commercial organisations which fail to prevent persons associated with them from committing bribery on their behalf. It is a *full defence* for an organisation to prove that despite a particular case of bribery it nevertheless had *adequate procedures* in place to prevent persons associated with it from bribing.

Ministry of Justice guidance makes it clear commercial organisations should adopt a risk-based approach to managing bribery risks. Procedures should be proportionate to the risks faced by an organisation. No policies or procedures are capable of detecting and preventing all bribery. A risk-based approach will, however, serve to focus the effort where it is needed and will have most impact. A risk-based approach recognises that the bribery threat to organisations varies across jurisdictions, business sectors, business partners and transactions.

What is Bribery?

In general terms, this is defined as giving or promising someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. So this could cover seeking to influence a decision-maker by giving some kind of extra benefit to that decision maker rather than by what can legitimately be offered as part of a tender process.

In simpler terms the offer, promise or giving of any advantage to a person who can influence a business decision improperly, is a bribe.

How could it apply to the BDA?

The risk is relatively low for an organisation such as the BDA. The opportunities for bribery as an advantage to bring about a benefit such as business, or contract, or organisational decision in favour of the person offering the bribe, are limited.

The Act applies to all staff and all Council, as each individual has a role to play in the running of the organisation. It also applies temporary workers, consultants, contractors, agents and Members acting for, or on behalf of, the Association. As a responsible organisation and as a defence to any allegations of bribery, we seek to ensure that simple but effective policies and procedures are in place.

The occasions where we may be at risk would include: a competitive tendering exercise; a policy debate which could benefit commercial partners; a product endorsement; a sponsorship arrangement; or, an association with another company which could damage reputational risk but brought financial benefit to an individual.

The BDA's position

Whilst the BDA does not consider there will be much scope to offer or receive bribes, for the avoidance of any doubt, the BDA will not tolerate any form of bribery by, or of, its employees, agents or consultants or any person or body acting on its behalf.

Gifts and hospitality

Individuals working on behalf of the BDA sometimes receive hospitality or gifts from partner organisations or sponsors. Any gift or hospitality that exceeds £100 in value must be reported to the Chief Executive Officer within a week of receipt who will record it on the 'Register'. In certain circumstances, it may not be appropriate to retain such gifts or be provided with the entertainment and the Association may ask you to return the gift to the sender or refuse the entertainment, for example, where there could be a real or perceived conflict of interest.

The Association permits entertainment, gifts, hospitality and promotional expenditure that is:

- to establish or maintain good business relationships;
- to improve the image and reputation of the Association; or
- to present the Association's services effectively;

provided that it is:

- arranged in good faith, and
- not offered, promised or accepted to secure an advantage for the Association or any of its employees or associated persons or to influence the impartiality of the recipient.
- proportionate and reasonable to the relationship

The Association will authorise only reasonable, appropriate and proportionate entertainment and promotional expenditure. This principle applies to employees, Council members, contractors and Members acting on behalf of the Association.

So we can provide or receive tickets to sporting events, take clients to dinner or be taken to dinner, offer gifts to clients as a reflection of good relations, or pay for (or receive) reasonable travel expenses in order to demonstrate our goods or services to clients if that is reasonable and proportionate.

In order to amount to a bribe there must be an intention for a financial or other advantage to influence the official (staff or Council member or a contractor working for the BDA) in his or her official role and thereby secure business or a business advantage. There may be circumstances where the gift or hospitality could amount to a bribe. If there was a tendering exercise and one of the companies offered an incentive to an official associated with the awarding of the contract, this may bring about improper performance.

An example of a bribe leading to reputational risk may be where endorsement of a product or brand is influenced by hospitality or a gift, or a personal financial advantage, with the intention that the BDA will provide endorsement and this in turn will provide a business advantage.

Are the risks real?

The risks for the BDA are minimal. This is because we do not have many circumstances where contracts, decisions or services lie in the hands of one individual. In organisations like the BDA a Board or Committee structure allows for governance systems to review such decisions before they are made. We have a management structure for approving decisions and no-one acts in isolation. We also have procedures in place for sponsorship, financial payments and contracts being signed.

The risk of not preventing bribery is as great, if not greater, than any bribery allegations could be. It is important that we not only acknowledge the Act but also ensure that proportionate systems are in place. This would provide a defence to the BDA so that, if bribery took place, the individual and not the BDA would be at risk of prosecution. A commercial organisation will have a full defence if it can show that despite a particular case of bribery it nevertheless had adequate procedures in place to prevent persons associated with it from bribing.

So what should we do?

All employees, members of Council and other persons working on behalf of the BDA are required to familiarise themselves and comply with this policy, including any future updates that may be issued from time to time. This policy is designed to ensure that key people know about the Associations position on Bribery and understand it, and that simple systems to declare any gifts or hospitality are available to Council and staff.

Transparency of crucial decision making and systems to investigate allegations are also important.

Most of our systems already manage to provide such assurances. Our investigatory committee can investigate allegations against members. Our disciplinary procedures can consider improper conduct by staff. Our sponsorship policy sets out how sponsorship or endorsement is managed. We have a register for conflicts of interest (Council).

Induction for Council and staff should include a copy of this policy. It will become part of the Council induction pack and a policy agreed by both staff and management side and, therefore, part of the general staff handbook.

A 'register' of gifts, hospitality or other items which have been given or offered to staff and Council members will be available for inspection by the Chairman, Chief Executive and the Investigatory Committee. While this will not catch all gifts, some will clearly fall outside the intentions of the Act, all Council and staff will be encouraged to register anything which they feel is in doubt.

Reporting suspected bribery

If a member of staff or Council suspect that bribery might have taken place, they are obligated to report these suspicions to the Chief Executive or Chairman as soon as possible. Issues that should be reported include:

- any suspected or actual attempts at bribery;

- concerns that other employees or others working on behalf of the Association may be being bribed; or bribing third parties.

Any questions of doubt should be discussed with the Chief Executive at the first available opportunity. Further legal advice will be taken if necessary, but this is unlikely.

Employees, or others working on behalf of the Association, who report instances of bribery in good faith will be supported by the Association. The Association will ensure that the individual is not subjected to detrimental treatment as a consequence of his/her report. Any instances of detrimental treatment by a fellow employee because an employee has made a report will be treated as a disciplinary offence.

Review of procedures

The Chief Executive Officer will ensure that the Association regularly reviews relevant policies which are designed to minimise risk. For example, our register of conflicts of interest must be updated each year by Council members. Our sponsorship policy must be reviewed at least every two years. This will ensure we manage risk appropriately.

Policy Date: August 2017

Review date: August 2019

Much of this policy is informed by Ministry of Justice guidance, contained within the documents The Bribery Act 2010 – A Quick Start Guide and Guidance for commercial companies. Further information can be found at <http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm>

Draft register of gifts, hospitality, etc.

The table below should be completed by staff and Council members alike. The events or occasions listed are broadly ones where an external organisation or company has provided a gift, invitation, hospitality or other such offer (without prior or contractual agreement). It is up to the individual to declare such events or occasions, even if there is any doubt as to whether they should be declared. If you have any questions or wish to discuss whether a declaration should be made, then please discuss this with the Chief Executive.

Name of person	Date of entry onto this register	Date of offer, gift, event, etc	Brief description of the offer, gift, event, etc.	Name of company, person or organisation who offered it.