

## The UK Bribery Act 2010

### A briefing paper for senior management at East London NHS Foundation Trust

This briefing sets out the background to the Bribery Act 2010 ("the Act") and details practical pointers for East London Foundation Trust's (ELFT) directors, non-executives and senior management who wish to understand the implications of "the Act", their responsibilities and the procedures in place at the Trust to prevent bribery and corruption.

#### **Our Approach**

ELFT is committed to the highest standards of openness, integrity and accountability. It has always been, and will continue to be, the Trust's policy to conduct its business in an honest way and to reject the use of corrupt practices or acts of bribery to obtain an unfair advantage.

#### **UK Bribery Act 2010**

The Bribery Act 2010 ("the Act") came into force on 1 July 2011 and is amongst the toughest anti-corruption legislation in the world. There have been an increasing number of successful prosecutions to date under the 2010 Bribery Act.

#### **What is Bribery?**

Bribery is defined as giving someone a financial or other advantage (not necessarily cash, and not necessarily of significant value) to encourage or influence that person to perform their functions or activities improperly or to reward that person for having already done so.

#### **Summary of the Key Provisions of the Act**

The Act takes a "zero tolerance" approach to bribery and sets out four offences:

1. A general offence covering offering, promising or giving a bribe.
2. A general offence covering requesting, agreeing to receive or accepting a bribe.
3. Bribing a foreign public official to obtain or retain business.
4. A strict liability offence for companies where they fail to prevent bribery by those acting on their behalf (Section 7 of the Act).

Corporate bodies are liable to prosecution and may suffer reputational damage if a person/organisation **associated** with them bribes another person/organisation intending to obtain or retain business for them or an advantage in the conduct of business. The Trust must therefore brief all suppliers, agencies and contacts associated with it about the Act, the Trust's expectations of their conduct and the implications if these standards are not met.

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The only defence available to companies found to have failed to prevent bribery being carried out by those acting on their behalf, is to show that 'adequate procedures' designed to prevent bribery were in place in their organisation.

The Ministry of Justice has published guidance (the Guidance) on procedures companies can put in place to prevent bribery. The Guidance sets out six principles to help companies decide on the bribery prevention procedures that they need to have in place. This guidance is general and companies therefore need to develop their own approach, as experience of complying with the spirit as well as the letter of the law is interpreted by the UK courts.

The Guidance sets out six principles intended to aid companies in establishing a bribery free culture. These are:

1. Anti-bribery procedures proportionate to the bribery risks a company faces and the nature, scale and complexity of the organization.
2. Top level commitment: Successful implementation and ongoing compliance will depend upon the extent to which the underlying policies and procedures have the support of the Board of Directors and Senior Management Team and an effective cascade of the 'tone at the top' attitude. They are responsible for establishing a zero tolerance attitude to bribery and must ensure that appropriate policies and procedures are developed and rolled out.
3. Risk Assessment to understand the nature and extent of risk.
4. Due diligence on persons who perform services for the company so that companies know who they are doing business with.
5. Communicating the procedures throughout the organisation: Meeting the requirements on paper is insufficient, companies need to consider how they communicate and reinforce the policies and practices by creating effective training programmes. Training should be continuous and regularly monitored and evaluated.
6. Monitoring, reviewing and improving the procedures periodically: This may involve using the Audit Committee to review the results of reviews. Transparency International, an international organisation focussed on fighting corruption, has published a Checklist which provides a useful starting point ([www.transparency.org](http://www.transparency.org)). The NHS Counter Fraud Authority has issued a Bribery Act 2010 Guidance Document.

### **Penalties and Consequences**

The penalty for any organisation found to have committed a bribery offence under UK law is an unlimited fine. Individuals could face a ten-year prison sentence and an unlimited fine. The Trust also risks serious reputational damage if it, any of its staff or any supplier, agency or contact they work with were to be accused or found guilty of bribery or corruption.

### **Adequate Procedures at ELFT**

ELFT have put procedures in place, in a risk-based and proportionate manner, to seek to prevent bribery by its own employees and by anyone associated with us. The measures put in place include the following:

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- Top level commitment for anti-bribery work; for example, our Chief Executive issued an anti-bribery message to all staff
- A Counter Fraud Team to investigate allegations of bribery and corruption
- A Bribery Risk Assessment to determine the Trust's potential risk/exposure to Bribery (risk of bribery is currently assessed as low)
- Fraud Risk Assessment - which includes bribery risks within Procurement
- Training on the Bribery Act for existing staff with presentations evaluated
- Information on the Bribery Act included in the induction pack for new starters
- Counter Fraud and Bribery Policy and a Standards of Business Conduct Policy which set out our expectations of staff. These are accessible to staff on the intranet and to third parties on the website
- Whistle-blowing Policy and Standing Financial Instruments which supports our commitment to preventing bribery
- Other relevant policies and procedures which refer to the Bribery Act 2010
- Contracts of employment include a section on defrauding the Trust and a link to both the "Counter Fraud and Bribery Policy" and "Standards of Business Conduct Policy"
- Anti-bribery clauses are included in contracts with external organisations
- An NHS CFA\*\* Suppliers' Code of Practice is issued to new and existing suppliers.

Currently, it is not mandatory for new starters to receive training in respect of the Bribery Act 2010 but a request from the Counter Fraud Team to include "Fraud and Bribery" in the staff induction is being considered by the Learning and Development Department.

\*\* - NHS CFA : National Health Service Counter Fraud Authority

**NOTE:**

**Top-level involvement in bribery prevention**

The Ministry of Justice Bribery Act Guidance advises that top level engagement is likely to reflect the following elements:

- Leadership on key measures such as code of conduct
- Leadership in awareness raising and encouraging transparent dialogue throughout the organisation to ensure effective dissemination of anti-bribery policies and procedures to employees, subsidiaries, and associated persons etc.

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- Engagement with relevant associated persons and external bodies to help articulate the organisation's policies
- Assurance of risk assessment
- General oversight of breaches of procedures and the provision of feedback to the board or equivalent, where appropriate, on levels of compliance.

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