

Attorney General's Chambers

Anti Bribery and Whistleblowing Training

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LEGAL FRAMEWORK

- **Anti Bribery**
 - **Bribery Act 2013**
- **Whistleblowing**
 - **Employment Act 2006**



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THE BRIBERY ACT 2013

BRIBERY ACT 2013



- **Royal Assent 21st May 2013**
- **In force – 16th December 2013**
- **UK Act – RA April 2010 – in force July 2011**



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BRIBERY

WHAT IS BRIBERY?



Commissions

Hospitality

Kickbacks

Backhanders

Tip

Donation

"Bribery offers rewards, both financial and material, to individuals to obtain a commercial advantage"



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OFFENCES

- 1. Giving a bribe**
- 2. Receiving a bribe**
- 3. Bribing a foreign official**
- 4. Commercial organisation failure to prevent bribery**
- 5. Failing to report an attempt to bribe**
- 6. Interfering with duty to report**



Offences – Bribery Act 2013

Giving or receiving bribes (s7 and 8)

- **Giving** - Offer or promise of financial or material advantage
- **Receiving** - Request or agreement or acceptance of financial or material advantage
- **Intention** to induce or reward improper performance of a function or activity



Offences – Bribery Act 2013

Bribing a foreign official (s9)

- Offence if directly or through a third party offers, promises, or gives any financial or other advantage to a foreign official
- An organisation can be liable to prosecution if a person associated with its business (e.g. an employee) offers or bribes another person intending to obtain or retain business or business advantage



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Failure of commercial organisation to prevent bribery (s10)

- Person 'associated' with the commercial organisation (C) i.e. employee, agent or subsidiary
- Intends to obtain or retain business, or advantage in conduct of business for the commercial organisation

NOTE: Statutory Defence – 'Adequate procedures'



Failing to report (s13 and 14)

- **A public official must disclose any bribe as soon as reasonably practicable in the 'prescribed manner'**
- **Offence if fails to report**
- **Prescribed manner –**
 - **to police OR**
 - **in accordance with established procedures AND the police**



Failing to report (s13 and 14) (Cont)

- **Statutory Defence**
 - **reasonable belief that if report made, serious physical harm to that person, another person, or property would be caused**
- **PERSONAL duty to report to police**



Offences – Bribery Act 2013

Interference with duty to report (s15)

- **Offence – to interfere with a person’s duty to report bribery under section 13 (to police and in accordance with established employment procedures)**
- **Requirements:**
 - **Intentional action harmful to any person - includes interference with person’s lawful employment or occupation**
 - **Interference on grounds that person has made/ may make a disclosure (i.e. report of bribery)**



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PENALTIES

BRIBERY IS A CRIMINAL OFFENCE

- **Custody** of up to 6-12 months, or 2 to 10 years
- **Fines** between £5,000 and £10,000 or unlimited
OR BOTH
- **Unlimited fines for Commercial organisation (s10)**
- **Disbarment from EU or other contract tenders or groups**
- **Reputational risk to economy**
- **Loss of employment**



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BRIBERY ACT - DOES IT APPLY TO ME?

Corporate bodies ✓

'Commercial organisation' –public bodies ✓

Employees, agents or subsidiaries ✓

All levels of staff ✓

Offences committed outside the Island ✓

S23 – 'This Act applies to individuals in the public service of the Crown as it applies to other individuals'



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DEFENCES

Defences in statute:-

1. Duress - Reasonable belief of harm to person or property

(only available for failure to report – s14)



2. Intelligence or active service (for all bribery offences s19)

3. “Adequate procedures” (for commercial organisations section 10(2))



ADEQUATE PROCEDURES

WHAT ARE ADEQUATE PROCEDURES?

Procedures including the Six Principles:

- **Proportionality**
- **Top-level commitment**
- **Risk assessment**
- **Due diligence**
- **Communication (including training)**
- **Monitoring and review**



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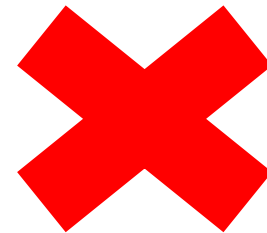
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https://www.youtube.com/watch?v=g0HAjm3ApdU&feature=player_embedded

WHAT NOT TO DO

YOU SHOULD NOT:

- **Confront the individual with your suspicions**
- **Try to investigate the matter yourself**
- **Convey your suspicions to anyone other than those with appropriate authority**
- **Do nothing!**



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WHAT CAN I DO?

- **Be aware of law, policy and procedures and ensure staff trained**
- **Report concerns internally**
- **Don't delay**
- **Keep notes – persons involved, dates and times**
- **Keep adequate records, copies and documentation**
- **Report it!**



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WHISTLEBLOWING

"Where a staff member raises a concern about a possible fraud, crime, danger or other serious risk that could threaten colleagues, the public, the environment, or the organisation's own reputation."

- **Making a disclosure in the public interest**
- **Where there is a reasonable and honest suspicion in relation to the above**
- **Protected disclosures override the duty of confidentiality in employment contract**
- **Protection for employees – unless false allegations or criminal offence committed**



WHISTLEBLOWING – THE LAW

Employment Act 2006 – Part IV – statutory protection to employees making a 'protected disclosure'

What is a protected disclosure?

- Includes reports of bribery under section 13 of Bribery Act 2013
- Any qualifying disclosure under sections 51-56 of the Employment Act 2006 – Part IV



PROTECTED DISCLOSURES

- **Criminal offence committed**
- **Failure to comply with legal obligation**
- **Miscarriage of justice**
- **Health and safety endangerment**
- **Damage to environment**
- **Information relating to above deliberately concealed**

(or, likely to occur in relation to all the above)

- **Disclosure to legal adviser, public services commission, other prescribed persons**



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STATUTORY OBLIGATIONS

- **Legislation may not offer protection in all circumstances (i.e. if you commit a criminal offence – for example Official Secrets Act 1911, or are guilty of gross misconduct, fraud etc)**
- **For disclosure to qualify for statutory protection it must be made to those persons or bodies prescribed in the Act, or on the list in the Public Interest Disclosure (Prescribed Persons) Order**

CONFIDENTIAL

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RESOURCES

- ❑ **Government Policies**
- ❑ **Training – E-Learn Vannin**
- ❑ **Bribery Act Guidance**
- ❑ **Anti-Fraud, Bribery and Corruption Strategy**
- ❑ **Legislation – www.legislation.gov.im**
- ❑ **Financial Regulations** (see FD1, FD3, FD4, FD8, FD11, FD12, FD15, FD29, FG13)



Anti-Bribery and Whistleblowing FAQ's

1. What training on these policies and procedures is planned for all Isle of Man Government workers?

- a. Short online Awareness Sessions have been designed and uploaded onto eLearn Vannin. These sessions have been made available to all Designated Officers (Whistleblowing) and Fraud Liaison Officers in the first instance. The sessions are available to all Isle of Man Government workers who have an eLearn Vannin account.

2. What training will be provided for Manual and Craft workers who may not have such an account?

- a. Short briefing sessions at their place of work will be rolled out during 2017.

3. Many teachers and other Department of Education workers do not have eLearn Vannin accounts as they work on Apple Mac computers and are on a different platform. How will these workers access the electronic training?

- a. The Department of Education is reviewing this position and that an electronic training facility for all staff is to be developed and as soon as this has been achieved the Anti-Bribery and Whistleblowing Awareness sessions will be rolled out for this group of staff.

4. What is the Designated Officer Role?

- a. Designated Officers are appointed by the Chief Officer of Departments, Boards and Offices in terms of the Whistleblowing Policy. These officers should be of sufficient standing within each Department to understand the business of their Department and to facilitate investigations.

The Designated Officer is responsible for:

- Acting as a single point of contact for each area in respect of all matters relating to Whistleblowing (Refer to [Whistleblowing Policy Guidance Appendix A 2.](#)for more details);
- Acting as the confidential liaison between the whistleblower and management during the course of the subsequent proceedings;
- Reporting suspected wrongdoing in confidence to the Chief Officer, in accordance with the Whistleblowing policy;
- Gaining and maintaining a comprehensive understanding of the risks to the organisation's business;
- Ensuring compliance with and maintaining a good understanding of relevant legal, in particular Bribery and Employment (Protected Disclosure) legislation, and the relevant corporate policies.

- Promoting training, awareness and ensuring best practice in relation to the reporting and investigation of suspected wrongdoing;

5. What is the Fraud Liaison Officer Role?

- a. Fraud Liaison Officers (FLOs) are appointed by all Departments, Boards or Offices to ensure that each area complies with Financial Regulations, and to inform Internal Audit of any issues. These officers should be of sufficient standing within each area to understand the business of their Department, Board of Office and to facilitate investigations.

The FLO will be responsible for:

- Acting as a single point of contact for each area in respect of all matters relating to potential fraud or corruption;
- Gaining and maintaining a comprehensive understanding of the risks to the organisation's business;
- Ensuring compliance with, and maintaining a good understanding of relevant legal, statutory internal obligations, in particular the Financial Regulations;
- Reporting suspected irregularities to the Director of the Audit Advisory Division, in accordance with Financial Regulations FD11, and assisting in the investigation of suspected irregularities;
- Promoting training, awareness and ensuring best practice in relation to the reporting and investigation of suspected irregularities;
- Attending the Fraud Liaison Officer Group meetings as and when required (at least annually).

6. If I am offered a bribe, but I decline it, do I still have to report this?

- a. Yes, you need to report it to the Police (in accordance with the [Anti-Bribery Policy](#)) as well as to your Designated Officer or Fraud Liaison Officer in terms of the [Whistleblowing Policy](#).

7. What is a Conflict of Interest and what Guidance do we have in this regard?

- a. Wikipedia definition: *"A conflict of interest is a situation in which a person is involved in multiple interests, financial or otherwise, one of which could possibly corrupt the motivation or decision-making of that individual."*

Such situations present a risk that the person, in a position of trust, could make decisions based on external/private influences rather than the best interests of the organization, or that others could allege that the person might have made decisions based on their external/private interests or influences. Both are a problem, as the perceived inference of a conflict may, on occasions, be as damaging as the existence of a real conflict.

In a judgment delivered by His Honour Deemster Kerruish on 12 February 2007 the test which should be applied in relation to a potential case of perceived bias is: *"Whether the ascertained relevant circumstances would lead a fair-minded and informed observer to conclude that there is a real possibility that the decision-maker was biased."*

If during the course of carrying out his responsibilities under the Whistleblowing Policy a Designated Officer becomes aware of a conflict, or that a conflict might be perceived, he should declare this in writing to his Chief Officer. The Chief Officer may apply the above test and make a decision accordingly. This decision should be recorded in writing and a copy provided to the Designated Officer.

- b. The [Government Code](#) provides advice on a number of relevant issues eg Conflicts of Interest (Part 2: Ministerial Code), the Acceptance of Gifts, Hospitality and Travel as well as Legal and Ethical considerations (Ministers and Civil Servants) and the Public Service Code.

8. What, if any, protection is afforded to the Designated Officer?

- a. The procedure of dealing with a Whistleblowing issue is by its very nature confidential. Designated officers are senior managers, and as such are generally experienced in dealing with complex, confidential and sometimes stressful issues as part of their role. Their Chief Officer may offer support if this should prove necessary.

9. Who will be responsible for monitoring eLearn Vannin to ensure that training is being undertaken?

- a. Not sure – will contact Lead to find out how they monitor other training.

10. Where/How else will this information be disseminated?

- a. Already out via All Staff email to inform of the new policies
- b. Corporate Induction – Confirm with LEaD who own the slides
- c. Financial Regulations Training – check with Audit Advisory Division
- d. Possibly circulate the Anti-Bribery Poster for putting up on notice boards?

11. We would like to see more case study examples

<http://www.telegraph.co.uk/news/health/news/11398148/The-NHS-whistle-blowers-who-spoke-out-for-patients.html>

http://www.pcaw.org.uk/files/whistleblowing_case_summaries.pdf

12. Could an employee claim for unfair dismissal if they are unfairly dismissed as a result of a whistleblowing incident? What compensation could be awarded?

- a. Yes, an employee could bring a claim for unfair dismissal on the grounds that he or she has been dismissed due to having made a protected disclosure.

- b. It is also important to remember that in a whistleblowing claim, the compensatory element of the award that can be handed down is not subject to any overall cap on compensation, unlike most other forms of unfair dismissal claims. This is most significant particularly for higher wage earners, or if that persons loss is subsequently very high. To gain protection pursuant to the Employment Act 2006, an employee will generally need to be able to show that they made a disclosure which was protected (pursuant to the Act), that they followed the correct disclosure procedure and that they were dismissed or suffered a detriment as a result of making the disclosure.