



“ The Property Ombudsman, Christopher Hamer, examines the implications of the Bribery Act 2010.

In April the Bribery Act 2010 will come into force. The TPO has been carefully considering any possible implications that the Act will have on current working practices, within this office and for member agents. Although, at no time have there been any offers of bribes at the TPO from either consumers or agents, controls will be put in place to ensure that we are compliant with the new legislation.

Bribery is defined as giving or receiving something of value to influence a transaction. The 2010 Act will:

- **Make it a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe.**
- **Introduce a maximum penalty of 10 years' imprisonment with an unlimited fine.**
- **Introduce a new corporate offence of failure to prevent bribery by persons working on behalf of a business.**

The Act is very widely drafted, making it an offence to bribe or to receive a bribe. This applies to every conceivable scenario. A bribe is not limited to a financial reward. To bribe another is known as active bribery, to be bribed as passive bribery. The bribery may be directed at a third person, for example a family member of the person sought to be influenced.

A commercial organisation can be convicted of failing to prevent bribery by its representatives acting in the course of its business. This is a new offence, the only defence to which is to establish that 'adequate procedures' were in place to prevent such bribery occurring. This is particularly important, senior management can be held personally liable if they consented to bribery or turned a blind eye to the same. I recommend that all member



agents review policies and procedures to ensure compliance with the Act. Guidance on 'adequate procedures' is due to be published by the Government early 2011.

My main concern, in so far as this Office is affected, is a party attempting to affect the outcome of their case. Whilst this may not be a real issue, and has never happened to date, I need to ensure there are procedures in place to ensure impartiality. It is important that there is a clear distinction between my role and that of the TPO board, which deals with membership issues. Furthermore, I ensure that all cases are considered by both myself and at least one other case officer. Both parties to a dispute, having received my proposed decision, have an opportunity to represent, where the case will be passed for consideration to another case officer and then to me, so that, although I have every confidence in the impartiality and integrity of all my staff, there are appropriate and thorough safeguards in place to ensure that no individual can be party to a bribe to influence the outcome of a case.

A number of concerns have been raised about corporate hospitality which could be employed improperly and illegally as a bribe. However, reasonable and proportional hospitality which seeks to improve the image of a commercial organisation, better to represent services, or establish cordial relations, is recognised as an established part of doing business

and would only be bribery in exceptional circumstances. Whether a particular item of promotional expenditure constitutes a bribe will depend on the circumstances. However, routine and incidental business courtesies and standard hospitality arrangements are unlikely to have any impact on decision-making in the context of a business opportunity and may not be an offence under the Act. In developing an ethical corporate policy in this matter the best guide will be common sense. The Serious Fraud Office would be looking to consider that hospitality was not wholly disproportionate to the business.

How does the Bribery Act affect member agents? All agents must be aware of the Act and ensure their compliance. Paragraph 1b of the TPO Codes of Practice, both sales and lettings, places an obligation upon agents to ensure that all their staff are fully conversant with their legal responsibilities and comply with such obligations; so there will be no need for any amendments to update the Codes. My role, should such an allegation of bribery be made by a consumer, would not be to consider whether any criminal offence has occurred, but to consider the facts and determine whether the standard of service provided by the agent concerned has fallen below that expected of Member Agents, causing financial loss, aggravation, distress and/or inconvenience to the Complainant.

From this short précis, agents will appreciate the need to ensure that they understand the legislation and have considered their procedures, ensuring that the necessary safeguards are in place to avoid any breach of the Act. ☺

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