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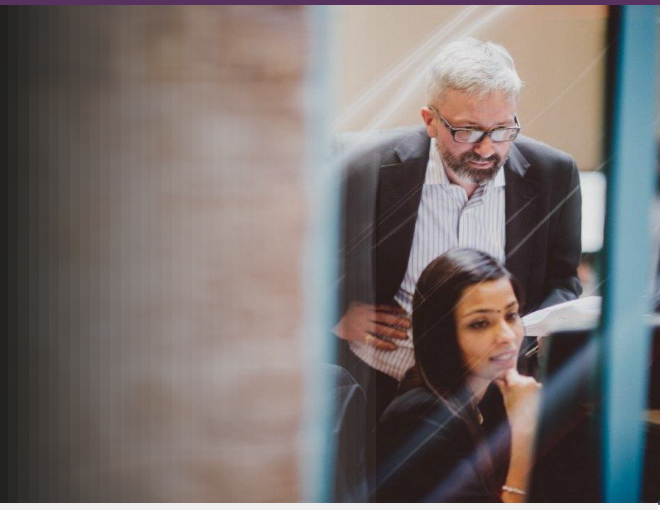
# Corporate Christmas: Gifts and entertainment or bribery and corruption?



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**Under the Bribery Act 2010, any corporate gifts or hospitality must be reasonable and proportionate. Companies who get it wrong may find themselves on the wrong side of the law.**

## What is bribery and what are the offences under the Bribery Act 2010?

In simple terms, bribery is giving or offering a person a financial or other advantage with the intention of inducing them to act improperly. It is also a crime to ask for or to receive an inducement in return for acting improperly.

The four offences under the Bribery Act are:

- **Paying bribes**: to give or offer someone an incentive with a view to inducing them to act improperly.
- **Receiving bribes**: to receive an incentive with the intention of acting improperly as a result.
- **Bribery of foreign officials**: to give a foreign public official an incentive with the intention of influencing the official and obtaining business as a result.
- **Failure to prevent bribery**: a commercial organisation will be guilty of an offence if a person connected with that organisation (including employees, subsidiaries, and agents) commits one of the individual bribery offences above, unless the organisation can show it was unaware and that there were adequate procedures in place.

## What are the consequences?

Since the introduction of the Bribery Act, the Serious Fraud Office (SFO) has shown an increasingly tough attitude towards tackling corruption. In one recent high-profile case, a division of multinational transport company Alstom was hit with a massive £15m fine for corrupt business activities, after a €2.4 million bribe was paid to secure a €79.9 million contract to supply tram services to Tunisia.

While the issue of bribery may seem the domain of big business, even the smallest companies can feel the force of the Bribery Act if they do not have the right checks in place.

## What do to?

Our while collar crime partner, Vinay Verma, explains:

*"Whatever their size, every company must demonstrate they take corruption seriously and have appropriate and up to date policies in place. While the legislation details the offences that may be committed by individuals, it also sets out how a company may be criminally liable if it fails to prevent bribery. Even if the company did not know the bribery was taking place, it could still be liable if there was a lack of adequate procedures.*

*Good practice would include routine risk assessments, continual training and reminding staff regularly of the value and items it is okay to give or receive, with permission required for anything outside this. Guidance should be provided to all staff in a company's code of ethics or equivalent document.*

*It's also a good idea to require everyone to record anything and everything related to corporate gifts and hospitality, whatever their value, to help keep policies and thresholds in people's minds."*

As well as the value of any corporate gift or entertainment, other key factors to consider are intention and timing. While the timing is not likely to be problematic when gifted during the Christmas period, alarm bells could ring if there were a procurement process underway at the same time.

Similarly, if the intention is to build or reinforce relationships with a customer, then having a clear business development opportunity for the company will make an event or gift more likely to pass the test.

Vinay added:

*"If the gift or hospitality involves a way to promote the company it is more likely to be considered as reasonable business development. So, a company-branded gift or a corporate get-together where staff can chat with customers is going to be more appropriate than handing over hard-to-get tickets for a sporting event for the customer to attend with friends or family or sending cases of expensive wine."*

Lavish hospitality and expenditure, particularly if it is unconnected to a legitimate business activity, is more likely to be interpreted as undue influence, intended to encourage or reward improper performance.

The case involving Alstom Network UK Ltd followed a ten year investigation by the SFO across a number of Alstom group companies in 30 countries, and was just one of the instances identified where bribery had taken place. Charges brought against the companies and individuals across three linked cases were conspiracy to corrupt, contrary to section 1 of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906, as the actions pre-dated the introduction of the Bribery Act 2010. Charges under the earlier legislation relied on the 'identification' principle to obtain a corporate conviction for bribery, which the Bribery Act was designed to overcome. The identification doctrine holds that for a company to be guilty of a criminal offence it must be established that someone who can be described as its 'directing mind and will' was involved in committing the offence.

**If your policies and procedures need refreshing or putting in place, contact Vinay Verma today.**

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.