

Bribery Prevention Procedures

Section 7 of The Bribery Act 2010:

create[d] a new form of corporate liability for failing to prevent bribery on behalf of a commercial organisation [under which]

a commercial organisation will be liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation.

[*The Bribery Act 2010 - Guidance about commercial organisations preventing bribery*, MoJ, paras 10 & 33, www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf]

It is clear that Section 7 can apply to charities:

*So long as the organisation in question is incorporated (by whatever means), or is a partnership, it does not matter if it pursues primarily charitable or educational aims or purely public functions. [The Bribery Act 2010 - Guidance..., para 35, *ibid*]*

However:

*Only a 'relevant commercial organisation' can commit an offence under section 7 of the Bribery Act... The key concept here is that of an organisation which 'carries on a business'... [The Bribery Act 2010 - Guidance..., para 34 *ibid*]*

*[where] despite the fact that there are many ways in which [an organisation] can pursue business objectives, the Government expects that whether [it] can be said to be carrying on a business will be answered by applying a common sense approach [The Bribery Act 2010 - Guidance..., para 35, *ibid*]*

Applying a “common sense approach”, it is hard to see how the Butler Trust could be considered to “carry on a business” and therefore to qualify as a “commercial organisation” and so be subject to Section 7 of the Act.

However, while the only additional obligation placed on organisations under the 2010 Act is that set out under Section 7 and there are questions as to its applicability to the Trust, it was already illegal (under pre-existing legislation) for someone to bribe, or accept or solicit a bribe from, someone else, and remains so under the Act – and the Trust could be held liable for such offences where they were committed by someone who is “the directing mind or will of the organisation” [*The Bribery Act 2010 – Guidance...*, para 14 and note 3, *ibid*]

In addition, notwithstanding the question and extent of its liability under law (including the applicability or otherwise of Section 7 of the 2010 Act), the Trust will not tolerate bribery, or the acceptance or soliciting of bribery, by any persons associated with it.

Given the Trust’s size and profile, the nature of its work, and the oversight systems already in place, the risks of anyone associated with the Trust being involved in bribery would seem to be low. Nevertheless, it is not impossible to imagine a situation in which someone might, for instance:

- seek to bribe a potential funder to provide the Trust with funding;
- seek to bribe a supplier to supply services to the Trust at a more favourable rate;
- seek to solicit or accept a bribe in connection with the granting of Awards;
- seek to solicit or accept a bribe in connection with access to HRH;
- seek to solicit or accept a bribe in connection with the purchase of goods or services.

The MoJ provide guidance to organisations on how to prevent bribery. It is intended for organisations covered by Section 7 of the Act, and relates only to bribery by, rather than of, associated individuals. Nevertheless, it is pertinent to the prevention of bribery in all its forms within any organisation, and suggests that a bribery prevention strategy should be based on six principles, including:

- commitment at the top of the organisation;
- assessment of risks;
- due diligence in taking on people to act for the organisation;
- communication to staff and other associated individuals;
- monitoring and review of risks and policies and procedures for addressing them.

[*Bribery Act 2010 – Quick Start Guide*, MoJ, p4,

www.justice.gov.uk/downloads/legislation/bribery-act-2010-quick-start-guide.pdf]

The sixth principle relates to ‘proportionality’:

If, having assessed the position, there is a risk of bribery then... the procedures you adopt should be proportionate to that risk. There is no need for extensive written documentation or policies. You may already have proportionate procedures through existing controls over company expenditure, accounting and commercial or agent contracts for example. [*Bribery Act 2010 – Quick Start Guide*, MoJ, p5,

www.justice.gov.uk/downloads/legislation/bribery-act-2010-quick-start-guide.pdf]

Taking account of the above, the Trust believes that the risk of bribery, in any forms, by anyone associated with it, is acceptably managed through the following:

- the existing financial control and management systems and structures help to prevent Butler Trust funds being misused in connection with bribery;
- the Trust follows due diligence in the appointment of staff, Trustees and Awarding Panel members;
- bribery is included as a risk area in the risk register, which is updated quarterly by the Director, and reviewed by Trustees through the Governance Group;
- an annual review of bribery risks and the Trust's management of these is carried out by the Director and the Governance Group of Trustees;
- a copy of this paper, which includes evidence of the Trust's commitment and approach to bribery prevention, is included in induction materials for staff and Trustees;
- the Trust's commitment to bribery prevention is made clear to Awarding Panel members in the guidance issued to them.