

The Bribery Act 2010 – Guidance Note for Congregations

“And when they had assembled with the elders and taken counsel, they gave a sufficient sum of money to the soldiers and said, ‘Tell people, ‘His disciples came by night and stole him away while we were asleep.’ And if this comes to the governor’s ears, we will satisfy him and keep you out of trouble.” So they took the money and did as they were directed. And this story has been spread among the Jews to this day.”

Matthew 28. 12 – 15

“And you shall take no bribe, for a bribe blinds the clear-sighted and subverts the cause of those who are in the right.”

Exodus 23: 8

Bribery runs contrary to Christian principles. It has always been illegal in the UK. The Bribery Act 2010 (“the Act”) consolidates the law setting out the offences of:

- offering, promising or giving a bribe;
- requesting, agreeing to receive or accepting a bribe; and
- bribing a foreign public official;

The Act also contains a new ‘corporate’ offence which provides that an organisation will be guilty of bribery if an ‘associated person’ bribes a third party.

A person is deemed to be associated with an organisation if they perform services for or on behalf of the organisation and so this could be construed broadly to cover employees, contractors or agents. The offence is a strict liability one which means that there is no need to prove negligence or guilt of the ‘directing mind and will’ of the organisation, thus making the offence easier to prove and will probably lead to more prosecutions/convictions in due course.

Congregations and their financial boards are not regarded as being corporate bodies. However, given the nature and position occupied by the Church of Scotland, it is not unforeseeable that it might in the future be argued that this new ‘corporate’ offence could be extended to be applied to the church in its capacity as a charity. As a result, members of the Kirk Session/Congregational

Board; Elders; members of the congregation; volunteers; contractors or agents could all be deemed to be 'associated persons'.

The dividing line between routine hospitality and bribery is a thin one. For example:

- (i) From time to time your congregation will need to employ contractors. What is your selection process for appointing a contractor? Do you always obtain more than one quote? Do you appoint someone you know? Do you appoint the party who has offered a substantial donation to the church? Could this therefore be caught by the provisions of the Act? Similar points arise about other contracts you enter into. (Of course if the person to be employed is a charity trustee of the congregation or a close relative of that trustee, it will be necessary to follow scrupulously the procedures to validate this. See the Law Department circular on Charities – remuneration for services.)
- (ii) From time to time your congregation may need to sell property. How do you select a purchaser? Is this the highest bidder? Is it someone you know? Is it someone who has offered to make a substantial donation to the church? Could this therefore be caught by the Act?
- (iii) Does the congregation fund or have other involvement with work abroad – perhaps via a twinning arrangement with a congregation of a partner church? Do you adequately monitor the use of funds sent overseas? How sure are you that funds sent will be used for the intended purpose rather than what could be deemed to be bribery. Would you be able to prove that your office bearers were not complicit in this? HMRC will also expect you to have taken reasonable steps to ensure that funds have been applied for charitable purposes as, if not, this may give rise to a tax liability which the congregation would have to meet.

If money is changing hands there will often be a risk (however small) that bribery could occur. In the majority of cases, it is very likely that there will be no bribery; however, ignoring the dividing line could potentially put the congregation at risk of unlimited fines, members at risk of fines and imprisonment (the maximum sentence being 10 years,) or both. It is therefore good practice to get your house in order to be able to demonstrate that 'adequate procedures', as the Act terms them, are in place to prevent bribery. If you do that, it should offer a good defence for everyone other than the person doing the actual bribing.

Adequate procedures are not defined in the Act but the Ministry of Justice has published six principles for organisations to follow: proportionate procedures; top level commitment; risk assessment; due diligence; communication; and monitoring and review.

Clearly, congregations would never be expected to put in place and follow as elaborate policies and procedures as will be expected of large commercial organisations. However, it is recommended that steps are taken to agree and put in place a bribery policy which might helpfully also cover in general terms procurement and conflict of interest issues.

Office bearers should not merely sign up to the policy, but should also communicate, adhere to

and enforce the policy.

KEY ACTION POINTS FOR YOUR FINANCIAL BOARD:

- Circulate the above note on the Bribery Act to your financial board and ensure that members read it;
- Adapt the attached draft policy to cover your circumstances and get it approved by your financial board;
- Communicate the agreed policy and guidance note to your board members, elders and employees. Depending on the responsibilities delegated to them, you may also wish to make other volunteers aware of them also.
- Implement the policy and report any concerns you may have to your Presbytery Clerk and the Law Department.

2012
Church of Scotland Law Department

