

The Ethics of Gifts & Hospitality

The giving and accepting of gifts and hospitality has an important role in facilitating business relationships and practice. A meal out with a supplier can help build a relationship; a pen with your firm's name on it can remind a customer of you when they need a quote.

When giving or accepting gifts and hospitality, organisations and their employees need to bear in mind:

- When is a gift appropriate or inappropriate?
- When is a gift a bribe? (i.e. given to influence your decision)

This Briefing considers some of the ethical issues around the giving and accepting of corporate gifts and hospitality and outlines good practice.

Ethical issues when giving or accepting gifts/hospitality

The acceptance of gifts, services and hospitality can leave an organisation vulnerable to accusations of unfairness, partiality or deceit, or even unlawful conduct. Commercial relationships may be subject to bias and an organisation's reputation for 'doing business ethically' will be put at risk.

Companies which operate outside their home market need to be particularly aware of cross-cultural differences in what is considered appropriate in gift giving and accepting. Although in some markets gifts and hospitality are a prevalent and fundamental part of business transactions, the extraterritorial reach of the UK Bribery Act (2010) has made the giving and accepting of gifts and hospitality a real concern for businesses and their employees around the world (see Box 1).

Box 1: Gifts and hospitality under the UK Bribery Act (2010)

The UK Bribery Act (2010) has extraterritorial reach – an organisation that has business operations of any sort in the UK can be prosecuted under the Act, regardless of where in the world the organisation is based or the bribery occurs.

The Act does recognise that corporate gifts and hospitality play an important part in business, and provides guidance for organisations as to what is considered appropriate and what may be construed as a bribe when giving or accepting gifts/hospitality. For example, bribery may be disguised through frequent or 'lavish' gift giving/hospitality.

In October 2012 the SFO extended its guidance on gifts and hospitality to include "legitimate business expenditure". Whilst recognised as an inevitable and important part of doing business, the guidance warns that "bribes are sometimes disguised as legitimate business expenditure".

Under Section One of the Act, 'intent to induce improper conduct' is a test of whether or not gifts/hospitality can be interpreted as a bribe. Offers of gifts/hospitality must be made in 'good faith' and are not considered legitimate if the intention behind the offer is to advantage the individual making the offer; i.e. the offer is made with the intent that the person who accepts the gift/hospitality will perform a function improperly and partially.

Another test the Act applies is the principle of 'proportionality'. Gifts/hospitality are less likely to be construed as a bribe where they are proportionate to the nature, scale and complexity of an organisation's business activities (see more on proportionality below).

Company policy

Companies help prevent their employees giving or accepting inappropriate gifts/hospitality by providing guidance, usually in the company code of ethics (or equivalent document). The code will outline the company's position on gifts and hospitality and set out good practice for employees. Codes of ethics will often reference a *gifts and hospitality policy* which expands on the guidance in the code. Box 2 sets out some examples of guidance on gifts and hospitality in company codes and policies.

A gifts and hospitality policy needs to be consistent with all other aspects of an organisation's ethics programme in encouraging high standards of honesty and integrity in decision-making and behaviour. It would be inappropriate, for example, to give or accept corporate hospitality which would discriminate or cause offence on the basis of gender or religion, as this would violate the ethical values of the giver's/recipient's company.

Corporate gifts and hospitality policies typically set out:

- Clear definitions of what constitutes 'gift giving' or 'hospitality'
- What type of gift/hospitality can and cannot be given or accepted
- The financial value of gifts/hospitality that can be given or accepted without disclosure
- How and where gifts/hospitality should be recorded when given or accepted i.e. on a gifts and hospitality register
- How employees can refuse gifts or hospitality without causing offence
- How staff can seek further guidance
- Standards for the giving and accepting of gifts and hospitality in the markets the company operates in and how the company responds to cultural differences in these markets. Companies may need to adapt their policy on gifts and hospitality in some localities so it is aligned with cultural beliefs and practice in these areas. However, it is important not to contravene the 'spirit' of the policy when accommodating cross-cultural differences.

Principles for what can and cannot be given or accepted

There are a number of principles for organisations to consider when developing guidance for employees on giving and accepting gifts/hospitality. Though no principle alone is sufficient to decide whether the

gift/hospitality is legitimate, each principle can be used to help identify potential ethical issues ('red flags').

When a gift is not a gift: One principle to consider is whether there is an expectation that the business relationship will be influenced. If so, this is a bribe, not a gift and is covered under Section One of the UK Bribery Act (2010) as 'intent to induce improper conduct' (see Box 1).

The timing of gifts/hospitality is also relevant. An offer shortly before or after, or during a tendering process for example, is inappropriate as it can be construed as a bribe, offered with the intention of 'closing the deal'. It is not advisable to accept gifts/hospitality at any point in the time surrounding a tendering process or a contract renewal.

Who the gift is for: Giving gifts or hospitality to certain persons, for example public officials, can be more inappropriate than when given to others. Gifts, particularly monetary gifts, to public officials can be construed as a facilitation payment to speed up a normally legal service and is illegal under UK law anywhere in the world. Many companies prohibit gift giving/hospitality of any kind to public officials. Some may put additional controls in place, such as lowering the value limit on gifts/hospitality for public officials or requiring employees to obtain management approval, regardless of the value.

Organisations, particularly those operating cross-culturally, may wish to provide specific guidance to employees to help identify public officials. In China for example, a significant proportion of companies are state-owned enterprises, and it can be difficult to clearly differentiate between public and private organisations.

Inappropriate scale (principle of proportionality): What constitutes a 'lavish' gift or hospitality? Some companies adopt a 'no to all' gifts/hospitality approach. Others put a monetary limit on the value of gifts/hospitality that can be given or accepted. It is worth noting that different monetary value limits may be set for gifts and for hospitality. Gifts/hospitality that is offered to an employee and is above the stated value will usually need line managers' approval before the gifts/hospitality can be accepted.

This can be difficult to judge. For example, the duties of senior staff may require them to attend or sponsor events where hospitality is generous. What may seem minor to a senior manager could be significantly more valuable to a junior employee. Stipulating different monetary values for different management levels can become complicated to justify. Also, the exact value

Box 2: Example corporate gifts and hospitality guidance in codes/policies

Codes

It's a Question of Ethics – Borealis (p16 - 17)

<http://www.borealisgroup.com/pdf/ethics/borealis-ethicspolicy-en.pdf>

Our Code of Conduct – BP (p42 – 45)

http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/C/Code_of_Conduct_2011.pdf

Integrity - The Spirit and Letter of Our Commitment (Guide to Our Policies) – GE (p19 – 20)

http://www.ge.com/files_citizenship/pdf/TheSpirit&TheLetter.pdf

Employee Guide to Business Conduct – GSK (p10)

<http://www.gsk.com/responsibility/downloads/employee-guide-to-business-conduct.pdf>

Our Values and Standards – Merck (p9 – 11)

http://www.merck.com/about/code_of_conduct.pdf

How we Work, What we Value: Our Code of Conduct - Balfour Beatty (p19)

http://www.balfourbeatty.com/files/pdf/policies/code_of_conduct.pdf

Policies

Code of Conduct: Supplier Relations and Third Party Hospitality and Gifts in Kind - Whitbread

http://www.whitbread.co.uk/content/dam/whitbread/micosite_CSR/download_c/wcoc_supplier_gifts_and_hospitality_policy_2009.pdf

Gifts and Hospitality Policy - Cable & Wireless Worldwide

<http://www.cw.com/assets/content/about-us/Gifts-Hospitality-Policy.pdf>

Gifts and Hospitality Policy - BT

http://www.btplc.com/Responsiblebusiness/Ourstory/Sustainabilityreport/pdf/2011/gh_policy_english.pdf

Business Ethics, Gift and Hospitality Policy – WSP Group

<http://www.wspgroup.com/PageFiles/7567/WSP%20Group%20Business%20Ethics%20Gift%20and%20Hospitality%20Policy.pdf>

Gifts, Corporate Hospitality and Promotional Expenditure Policy - Berkeley Group Holdings

http://www.berkeleygroup.co.uk/media/pdf/t/9/Gifts_Corporate_Hospitality_Promotional_Expenditure_Policy.pdf

of an event package, for example a trip to watch the tennis at Wimbledon, is hard to determine. The UK Bribery Act (see Box 1) provides some guidance on how to judge whether a gift or hospitality is proportionate or not.

In addition, multinational companies need to consider relative monetary values and cultural practice in the different countries in which they operate. A £25 limit on gifts in the UK may be considered lavish to some employees in poorer economies.

In some companies, gifts that exceed the value limit but are impossible to decline without causing offence or putting business relationships at risk may be accepted on behalf of the organisation. Gifts of high value can then be auctioned at the end of the year to raise funds for charity, for instance.

Reciprocity: Another principle sometimes applied to determine what is an appropriate level of gift giving or hospitality is that of reciprocity, i.e. if I accept an offer, am I able to offer the equivalent in value in return? For example, “If my supplier offers me tickets to the theatre, would I be able to reciprocate?”. If the answer is “No”, then it may be seen as an attempt to ‘buy favour’ and it may be advisable not to accept.

Cash: Giving or accepting cash gifts is rarely appropriate. Being easier to conceal, there is more risk that it will be viewed as bribery than a fair business practice. In some cultures however, giving cash in certain circumstances is acceptable or may even be part of cultural tradition, such as the giving of red envelopes for Chinese New Year. The policy should advise staff on how to handle these cross-cultural challenges by establishing a protocol.

Who does a policy cover?

The policy should extend to all employees at all levels in the organisation. Additional guidance may be provided for employees working in ‘high risk’ business functions, such as procurement or sales.

Besides employees, corporate gifts and hospitality policies may need to provide guidance on the inclusion of employees’ family members. For instance, a corporate invitation to a conference in the Bahamas may be legitimate for business reasons, but if spouses are invited and paid for, it may be misconstrued as a holiday. The key principle is that hospitality received has to have a clear business reason and not just be for the employee’s or their family’s personal enjoyment.

The gifts and hospitality policy should also extend to any third parties such as agents, in the company's employ. Under the UK Bribery Act (2010) an organisation can be prosecuted for bribery involving "persons who perform or will perform services for or on

behalf of the organisation".

Increasingly, companies are including reference to their corporate gifts and hospitality policy in supplier contracts or terms of agreement.

Making the policy effective

Because a policy cannot cover all situations, a clear set of decision-making principles will help employees make decisions that are in line with the policy and their organisation's ethical values. They can be included in the code of ethics guidance and/or gifts and hospitality policy. The decision-making principles can take the form of questions. For instance:

- Would you be embarrassed if anyone found out about you accepting the gift/hospitality?
- How would you feel if you read about it in the paper?

- Would receipt of the gift or hospitality influence your decisions or behaviour in any way?

An example of a company using additional tools to support the gifts and hospitality policy is Best Buy. The Chief Ethics Officer, Kathleen Edmonds, regularly blogs about ethical issues the company faces. In one post entitled 'When a Business Relationship Goes Bad', she provides a real-life case study of inappropriate hospitality being accepted by an employee. The post ends with a number of questions around why, in this example, the employee's behaviour was unethical.

Disclosing gifts and hospitality

Many organisations operate registers in which gifts and hospitality over a stated value are recorded to ensure that they are not being used for undue influence. A gift and hospitality register will usually record gifts offered and given to others, as well as any gifts received or accepted by the organisation.

Gifts/hospitality that is declined should also be noted so that the organisation is aware of pressures staff may

face and where they are likely to arise. This helps to make the process open and transparent and avoids accusations of distortion. As well as disclosing gifts and hospitality on a register, companies can require employees to notify their line manager about any offered or received gifts/hospitality. Disclosure may be a particular issue in sectors where purchasing decisions are made by influential individuals, e.g. the pharmaceutical and defence sectors.

Additional tools

To ensure a transparent culture around gifts and hospitality issues, open discussion in the workplace should be encouraged. As part of an ethics programme, it is worth considering:

- Offering an information or advice line for staff to call for guidance on gifts and hospitality and other ethical issues
- Asking questions in employee surveys to identify doubts and pressures on staff on this issue

- Offering a training programme to provide staff with the tools to deal with dilemmas around the giving and accepting of gifts and hospitality
- Regularly auditing the gifts and hospitality register to ensure that the policy is understood and being adhered to.

What employees can do

- Be familiar with your organisation's policy on gifts and hospitality
- Understand the requirements for disclosing offers and acceptance of gifts and hospitality
- Notify your line manager or another appropriate person if you suspect that you have been offered a gift or hospitality with corrupt intent
- Consult your line manager or a colleague if in any doubt as to the right thing to do. Alternatively,

make use of your organisation's information helpline/advice line (if provided)

- Consider speaking up to your line manager or another appropriate person if you are concerned that a colleague may have accepted an expensive gift or significant hospitality that contravenes your organisation's policy. If preferred, you could raise your concerns through your organisation's speak up line (or equivalent mechanism).

Further resources

- *Anti-Bribery & Corruption Standards and Frameworks* (2012) IBE Briefing Issue 27
- *The Bribery Act 2010: Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing* (section 9 of the Bribery Act 2010) (March 2011) Ministry of Justice
- *Bribery Act 2010: Joint prosecution guidance of the director of the serious fraud office and the director of public prosecutions* (March 2011) Director of Public Prosecutions & Serious Fraud Office
- *GoodCorporation Gifts & Hospitality Decision Tree*
<http://www.goodcorporation.com/documents/decisiontreeforhospitalityandgifts.pdf>
- *When a Business Relationship Goes Bad* (3rd August 2012) Kathleen Edmonds Best Buy's Chief Ethics Officer Blog
<http://www.kathleenedmond.com/2012/08/03/when-a-business-relationship-goes-bad/>
- *SFO guidance on Business Expenditure* (9th October 2012) <http://www.sfo.gov.uk/bribery--corruption/the-bribery-act/Business-expenditure.aspx>
- *UK Bribery Act: When do gifts and hospitality become bribes?* (May 2011) SAI Global

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<http://www.ibe.org.uk/index.asp?upid=51&msid=8>

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By Sabrina Basran & Simon Webley

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Emmanuel Lulin, Group Director of Ethics, L'ORÉAL