

TOP LEVEL COMMUNICATION & CULTURE

**Anti-Bribery Guidance
Chapter 1**

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

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Transparency International UK's Global Anti-Bribery Guidance

Best practice for companies operating internationally

This is a guidance section from Transparency International UK's Global Anti-Bribery Guidance. The full guidance is available at www.antibriberyguidance.org.

About the Guidance

This flagship guidance presents anti-bribery and corruption best practice for companies, drawing upon expertise from over 120 leading compliance and legal practitioners and Transparency International's extensive global experience.

This free-to-use online portal expands and updates all of TI-UK's Business Integrity guidance over the last decade. This includes our original Adequate Procedures Guidance to the UK Bribery Act; a leading resource for compliance and legal professionals, which has been downloaded over 45,000 times from TI-UK's website. The guidance has been kindly supported by FTI Consulting and DLA Piper.

For each area of practice, we provide a summary, best practice tips, full guidance, and links to further resources. This is a dynamic resource and we will continue to update it with new content and features. If you have anything you would like further guidance on, or other suggestions, please do contact us at businessintegrity@transparency.org.uk

Many companies are facing increased bribery risks as they continue to expand internationally and become increasingly reliant on diffuse supply chains and complex third-party networks. There are also additional risks around stakeholder expectations, a global strengthening of anti-bribery legislation – requiring better internal mechanisms to ensure compliance – and enhanced enforcement.

Companies will always design their own bribery programme according to their particular circumstances but those following this guidance can take reasonable assurance that they are well positioned to counter risks of bribery, comply with anti-bribery legislation in jurisdictions across the world and to act ethically and positively in the markets in which they operate.

Transparency International UK's Business Integrity Programme

The goal of our Business Integrity Programme is to raise anti-corruption standards in the private sector. We aim to ensure that individuals and organisations do not participate in, enable or endorse corruption. Our approach is to engage positively with the private sector, governments and leading anti-corruption initiatives to identify and advocate best practice.

For more information, please visit <http://www.transparency.org.uk/our-work/business-integrity/business-integrity-forum/>

QUICK READ

Corporate Culture: “The beliefs and ideas that a company has and the way in which they affect how it does business and how its employees behave.”

- Cambridge English Dictionary

A corporate culture of ethics and integrity creates the enabling environment which provides the setting in which the anti-bribery programme operates. Without such an environment, the anti-bribery programme will operate in isolation without an ethical compass of corporate values or impetus for action. The key contributing factors to an enabling environment are tone from the top, ethical leadership and employees who understand how they should act when faced with ethically challenging situations, and are motivated to do so.

Key Elements:

- **Culture of ethics and integrity:** Employees know what is right and will know how to act when faced with ethical challenges. The company encourages and supports employees to do the right thing.
- **Alignment:** The anti-bribery policy and programme are an expression of the corporate values.
- **Tone from the top:** The board and management carry the anti-bribery commitment throughout the company through their support, statements, behaviour and activities.
- **Incentives:** Design remuneration and incentives so that they do not inadvertently reward behaviour which undermines the company’s anti-bribery commitment.
- **Speak-Up:** Encourage a speak-up culture and provide confidential advice and speak-up lines for employees.
- **Reward:** Ensure good behaviour and speaking up is visibly rewarded and bad behaviour is visibly penalised.

BEST PRACTICE

- **Culture of ethics and integrity:** Employees know what is right and will know how to act when faced with ethical challenges. The company encourages and supports employees to do the right thing.
- **Alignment:** The anti-bribery policy and programme are an expression of the corporate values.
- **Assess impact:** Take a systematic approach to assessing corporate culture, identifying indicators, monitoring performance and reporting on progress. As part of this, consider the impact of tone from the top. For example, by surveying staff, third parties and other stakeholders and monitoring media and social media to understand the ways in which messages from the leadership are received and translated into norms and expectations.
- **Recruit ethical leaders:** Assess ethical attributes when recruiting board members and senior management. Those at the top of the organisation need to live up to the values that they champion.
- **Tone from the top:** The board and management carry the anti-bribery commitment throughout the company through their support, statements, behaviour and activities.
- **Tone from the middle:** Managers at all levels convey the company's commitment to preventing bribery. They provide advice to their staff and recognise examples of ethical conduct and contributions to improving the anti-bribery programme.
- **Spread the word:** The board and senior management visit business units, local offices, overseas operations, key agents and suppliers to convey the company's anti-bribery commitment and ensure messages are not lost through remoteness from the head office.
- **Use a range of channels:** The board and senior management communicate the nature of the company's commitment to integrity and zero tolerance of bribery in the Annual and Sustainability Reports, as well as through company and external events, social media, speeches, articles and interviews.
- **Demonstrate commitment:** The board and senior management publicly commit to the anti-bribery programme, for example, by attending trainings, visiting locations, reviewing implementation and taking part in high-level corporate integrity initiatives.
- **Incentives:** Design remuneration and incentives so that they do not inadvertently reward behaviour which undermines the company's anti-bribery commitment.
- **Punish misconduct:** The board and senior management are firm on transgressions and ensure sanctions are applied appropriately, consistently and openly.
- **Reward:** Ensure good behaviour and speaking up is visibly rewarded and bad behaviour is visibly penalised.
- **Speak-Up:** Encourage a speak-up culture and provide confidential advice and speak-up lines for employees.

GUIDANCE

1.1 Culture of ethics and integrity

Numerous corporate scandals have been attributed to failures in corporate culture and attention should be directed to the role of culture in supporting a company's anti-bribery programme. A culture of ethics and integrity can be distilled down to the company and its employees knowing what is right according to universally accepted norms including fairness, honesty, respect for people and the environment and that they observe these values.

There is no generally accepted definition of such a culture and its core elements, and this provides an opportunity for boards, employees and stakeholders to define what a culture of ethics and integrity means in their company.

The anti-bribery programme will be most effective when there is the positive enabling environment of an embedded culture of integrity. Management and employees cannot live by rules and policies alone. They need to have a personal commitment to do things the right way and to be given the knowledge and support to behave correctly. This includes being able to recognise what is improper behaviour, knowing what to do, when to seek advice and having the skills to deal with the issue. The substantial challenge is that a culture of integrity is amorphous, the levers for change are uncertain, employee understanding and commitments hard to build and measure. Results can be degraded by misaligned incentives and at risk from employees determined to act corruptly or from external threats such as third parties soliciting or extorting bribes.

An effective compliance program promotes 'an organizational culture that encourages ethical conduct and a commitment to compliance with the law.'

- A Resource Guide to the U.S. Foreign Corrupt Practices Act (DoJ and SEC 2015) p. 56

Companies should take a systematic approach to assessing corporate culture, identifying indicators, monitoring performance and reporting on progress. Various attitudinal research techniques can be drawn on, including staff and third party surveys, interviews and focus groups. As part of this, companies should consider the impact of tone from the top. For example, by surveying staff, third parties and other stakeholders and monitoring media and social media to understand the ways in which messages from the leadership affect behaviour and attitudes.

Often responsibility to oversee the development and implementation of a culture of integrity lies at the executive level. This would include developing the values and the code of conduct and ensuring proper resources. Human resources should contribute to this process, for example, by advising on clear assignment of responsibilities, recruitment of the right people and assessing employee performance. HR can also advise on optimising communications, training, incentives and appraisal and disciplinary procedures.

Notable scandals where a culture of integrity has been shown to be wanting

- Banks: manipulation of the LIBOR rate¹, subprime mortgages.
- Enron: a wide range of forms of corruption including financial misstatements, off-the books accounts and market manipulation.
- Siemens: bribery to win large contracts.
- Tesco: misstatement of financial accounts.
- Volkswagen: manipulation of emissions tests results.
- Wells Fargo: creation of false deposit and credit-card accounts.
- WorldCom: financial misstatements and inflated reporting of assets.

1.2 Tone from the Top

Leaders must communicate the highest standards of ethical behaviour across the company and demonstrate a high level of personal integrity if the anti-bribery programme is to succeed.

Leadership set the ethical standards and promotes a culture of integrity throughout the company and its operations. If board members and senior management do not provide strong, visible and continuing support to countering bribery, then even the best designed anti-bribery programme will falter. The tone from the top should be aligned with the organisation's culture to ensure staff are receiving a consistent message. Middle Management amplify the "Tone from the Top" through "Tone from the Middle".

Tone from the top is critical to the success of the anti-bribery programme. It is the way the top leadership – the chair, board members, CEO and senior management – communicate and support the anti-bribery programme through their behaviour and actions. Tone from the top not only influences employees but also shapes stakeholder views, building confidence in the company's measures to counter bribery and providing reassurance in the event of a bribery incident. Tone from the top starts with the board and integrity should be a key criterion when the board appoints the CEO, who will be responsible for driving the anti-bribery commitment throughout the company.

¹ London Interbank Offered Rate: This, is the average interest rate at which banks can borrow from one another and a huge number of investments and trades are referenced to it. These transactions involve small businesses, large financial institutions and public authorities as well as individuals affected by the interest rates attached to a wide range of contracts including loans, savings rates and mortgages.

‘The top-level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.’

- UK Ministry of Justice, *Guidance to the UK Bribery Act 2010*

The anti-bribery tone does not stop at the top. It should be expressed equally by middle and first line management. Further, tone from the top will only succeed where the leadership are seen to live by the standards they advocate. All too often in corporate scandals the leadership has fallen short of the standards they professed to follow and exhorted others to live up to.

‘Within a business organization, compliance begins with the board of directors and senior executives setting the proper tone for the rest of the company. Managers and employees take their cues from these corporate leaders. Thus, DOJ and SEC consider the commitment of corporate leaders to a “culture of compliance” and look to see if this high-level commitment is also reinforced and implemented by middle managers and employees at all levels of a business.’

- A Resource Guide to the U.S. Foreign Corrupt Practices Act (DoJ and SEC 2015) p.57

1.3 Incentives & remuneration

Incentive schemes an important way of encouraging desired behaviour from directors and employees. Extensive guidance on this topic is provided in the TI-UK publication [*Incentivising Ethics: Managing incentives to encourage good and deter bad behaviour.*](#)

Employees are incentivised, assessed and recognised using a variety of measures such as achievement of business key indicators or on less tangible measures of personal achievements assessed during the appraisal process. Scandals in many sectors have shown that misaligned incentives have been one of the drivers of corrupt practices. For example, incentives to meet targets have led to corrupt behaviour including fraud, misselling, falsification of records, manipulation of accounts, anti-competitive practices and bribery.

US Federal Sentencing Commission Compliance Guidelines

‘The organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.’

Chapter 8.B.2 (6).

Business units should work together to advise management and the board on setting remuneration, bonuses, commissions and benefits (good governance practice requires that a board delegates authority to a board remuneration committee). The challenge for the company is to design structures that encourage and reward employee and board members' performance but do not lead to incentivising improper behaviour or pressurising employees to make bribes or other improper behaviour.

'Boards of listed companies will need to ensure that executive remuneration is aligned to the long-term success of the company and demonstrate this more clearly to shareholders. Executive directors' remuneration should be designed to promote the long-term success of the company. Performance-related elements should be transparent, stretching and rigorously applied.'

[The UK Corporate Governance Code, The Financial Reporting Council Limited, September 2014.](#)

For incentives to work, the company must have an open integrity and ethical culture in which employees are encouraged to do the right thing and feel able to challenge management on targets they think are unethical or dysfunctional and feel able to speak up without fear of repercussions. Ethical behaviour should also be incentivised in appraisal.

1.4 Speak up and advice lines

Speak up and advice channels are for employees and others to seek advice and raise concerns about issues, including bribery. Speaking up or, as it is sometimes called, whistleblowing, has brought to light many significant bribery cases.

Advice channels allow employees to clarify policies, and receive guidance about how to handle sensitive situations. Such channels are most effective when there is a strong corporate culture of integrity so that employees trust that requests for advice or speaking up will be handled promptly, thoroughly and fairly. Advice can be given in many ways and the company should explore and develop an integrated range of routes by which employees can receive support. Please see Chapter 15.

RESOURCES

- [*Incentivising Ethics: Managing incentives to encourage good and deter bad behaviour.*](#)
Transparency International UK, October 2016.

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