



The
University
Of
Sheffield.

Finance and Commercial Advice note for Departments

Guidance on Facilitation payments and the UK Bribery Act 2010

What is a Facilitation payment?

Facilitation payments are typically small, unofficial payments made to secure or expedite a routine or necessary government action by a government official, when we have already paid for, or are entitled to, that action. A typical example might be “inspection fees” for clearance of imported equipment through customs. They are not commonly requested in the UK, but this is a widespread form of bribery, despite being illegal in almost every country in which the University has a business footprint. Under Sections 1 and 6 of the Bribery Act 2010, bribes and facilitation payments are illegal and therefore the offer of any of these forms of payments in any of the countries in which we operate is against University policy. Appendix 1 to this Financial Advice Notes shows some illustrative examples of Facilitation payments in relation to University activities.

Zero tolerance but with a realistic approach

The guidance issued by the Ministry of Justice has expressly acknowledged the problems companies face in some parts of the world and said that getting rid of facilitation payments is its long-term objective needing cooperation between governments and other international bodies. This Financial Advice Note on how to resist requests for facilitation payments is framed with this approach in mind. Our zero-tolerance approach to bribery in the case of facilitation payments involves a policy of resistance which is achieved in stages. Our policy is to refuse to pay facilitation payments unless payment is clearly unavoidable. Where payment is determined to be unavoidable and payment is made, this needs to be documented –guidance on what details to record is set out below. Our ultimate goal is the elimination of all such payments made on behalf of the University whilst protecting the safety of our employees and students and avoiding them being placed in any form of duress.

You should never refuse to make a payment if faced with a threat of, or fear of, violence or loss of liberty. The safety of our employees and students is of primary concern in all our operations both at home and abroad. The Ministry of Justice Guidance includes a defence of duress which is stated to be likely to be available in the case of payments made to protect “life, limb or liberty”.

Who is this Guidance aimed at?

This Guidance is primarily aimed at staff who are engaged in University research and/or teaching overseas, where the issue of facilitation payments is more likely to arise, although the Guidance is equally as applicable to any staff who encounter facilitation payment requests in the UK. The Guidance provides advice on how to resist requests for facilitation payments. Anyone who conducts University activities overseas, or is based or travels overseas on University business, is required to review this Guidance and act in accordance with it.

Requests for facilitation payments are perceived to be most likely in the countries/continents where corruption is perceived to be high. However, they can occur in other parts of the world, including European countries, so staff need to be alert to the possibility of a request and be prepared to adopt the strategies indicated below. In addition, this Guidance is relevant to any University staff who make use of agents or intermediaries. Contracts or agreements with agents and intermediaries should always be confirmed in writing and there should be a requirement to agree to adhere to the University's Anti-Bribery Statement and all Policy and Guidance in all dealings on behalf of the University

Resistance to facilitation payments

It is important is to know how to plan in advance to avoid these situations, and how to deal with them when they arise. The strategy of resistance outlined below falls under four headings:

- **Research**
- **Resistance**
- **Recording**
- **Reporting**

Research

- Research local laws in advance; if we know what the official requirements are it should be easier to resist a request for payment.
- Research what authorisations or permits are needed well in advance, in cooperation with any relevant agent or intermediary. If possible get official written confirmation that all documents are in order.
- Research the background of your agent or intermediary and include anti-bribery provisions in their contract. Their contract or agreement needs to itemise what you are asking them to do, so that there is less chance of hidden facilitation payments being made on our behalf.
- Build in the necessary time required to get through the administrative formalities well in advance so that time pressure is likely to be less of an issue.

Resistance

If it feels safe:

- Question the legitimacy of the request.
- Explain to the individual that you don't believe you need to make the requested payment as all your papers are in order – use your research on local laws to support this.
- Explain that facilitation payments are against your company policy, as well as UK law, and that you would have to report it to your management.
- Point out, if this is the case that facilitation payments are against local law.

If having resisted the payment, the payment appears unavoidable

- Negotiate it to the minimum amount appropriate to the circumstances.
- Try to avoid making a payment in cash directly to the official.

Recording

- Record all payments which you have had to make, having gone through the resistance steps.
- Record the name of the individual, if possible, requesting the payment and any other details it feels safe to get.

Reporting

- Immediately - or as soon as practicable - report the payment to your line manager and explain why you had to pay it.
- Ensure payment is recorded in the University finance system with a clear explanation of its purpose.
- Heads of Department will need to consider the need to report the incident to authorities in the UK and in the country concerned eg. the country's Ministry of the Interior or local Embassy.
- Incidents need to be considered by the relevant activity management and consideration given to efforts to reduce the risk of re-occurrence, particularly where incidents show a trend towards endemic corruption in a particular territory.

Appendix 1 – Illustrative examples of Facilitation payments in relation to University activity

- An academic conducting research overseas pays a small sum of cash directly to a customs official to avoid excessive delay to import equipment required to do the work.
- An agent or intermediary responsible for finding potential new overseas students for a UK University pays a small bribe directly to an education department official to be allowed access to a highly rated secondary school.
- A senior University manager whilst visiting an overseas campus pays a sum of money directly to a foreign government official in order to expedite planning permission for a new building.