
UK: Updated BBA Anti-Bribery and Corruption Guidance Launched

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On 6 May 2014, The British Bankers' Association published its updated Anti-Bribery and Corruption Guidance ("the Guidance"). When first published in December 2011, the Guidance provided advice to the banking industry on the establishment and implementation of adequate policies and procedures required to meet the legal and regulatory requirements arising from the UK Bribery Act 2010. The Guidance has now been expanded to incorporate additional regulatory expectations, focusing primarily on those of the Financial Conduct Authority ("FCA").

Background:

The British Bankers' Association ("BBA") is the UK's leading association for the banking sector. It represents the interests of more than 240 member organisations in 180 countries. On 6 May 2014, the BBA published its updated Anti-Bribery and Corruption Guidance. The BBA published its original guidance in December 2011. This was focused primarily on advising banks on how to avoid breaching the Bribery Act 2010. While it also briefly mentioned the obligations on banks under the FSA's Rules and Principles (now the FCA's Rules and Principles), the original guidance did not provide any detailed guidance on the additional regulatory requirements that apply

to the banking sector.

Update:

The Guidance provides advice on how to comply with the Bribery Act as well as the regulatory requirements of the FCA. The Guidance notes that when reviewing the adequacy of their anti-bribery policies and procedures, banks will need to be aware of the obligations of the FCA's Rules and Principles and those of the Bribery Act, noting that they may not always be identical.

Since the publication of the original Guidance in 2011, regulatory scrutiny of the BBA's membership has increased. For example, the FCA is now engaged in assessing risks relating to issues or products across the banking sector by conducting "thematic reviews". The BBA Guidance has been expanded to reflect this increasing regulatory scrutiny. For example, the Guidance now notes the importance of the FCA Handbook Rules in an anti-bribery context: Rule SYSC 3.2.6R in the FCA Handbook states *"A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime."* Further, Rule SYSC 6.1.1R in the FCA Handbook states *"A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime."*

The Guidance highlights where FCA requirements differ from those under the Bribery Act. For example, in relation to the improvement of ethical

standards, the Bribery Act is focused on ‘tone from the top’, whereas the FCA’s chairman has stressed that the regulator will increasingly be looking towards ‘tone from the middle’.

Practical examples have been added to the Guidance to assist the BBA’s membership with putting into practice procedures to address key areas of bribery prevention. These examples include driving the ‘tone from the top’, ‘end to end’ risk assessment processes for both the bank and associated persons/third parties, due diligence red flags, the type of information that may be collected in Gifts and Hospitality Logs and tips for dealing with US and other prosecuting bodies.

In June 2013 the Parliamentary Commission on Banking Standards made a number of recommendations in relation to banks’ obligations involving whistleblowers. These recommendations have been supported by the FCA. The Guidance deals with these recommendations, stating simply that they must be taken into consideration when banks consider the responsibilities of their Board.

Whilst significantly revised, the message to banks remains the same; they must keep abreast of all anti-bribery and corruption developments and ensure their procedures reflect current legislation, regulations and recommendations.

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