

## **BBC GUIDANCE – FACILITATION PAYMENTS**

### **How to resist requests for facilitation payments**

#### **What are they?**

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 we operate. Under Sections 1 and 6 of the Bribery Act 2010, bribes and facilitation payments are illegal and the offer of any of these forms of payments in any of the countries in which we operate is against BBC policy.

#### **The Government’s approach**

The guidance issued by the Ministry of Justice earlier this year<sup>1</sup> 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. The BBC’s Guidance on how to resist requests for facilitation payments is framed with this approach in mind.

#### **The BBC approach – staged resistance**

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 BBC.

#### **Safety and 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 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”.

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<sup>1</sup> Guidance about procedures which relevant commercial organisations can put in place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010).  
[www.justice.gov.uk/guidance/bribery.htm](http://www.justice.gov.uk/guidance/bribery.htm)

## **Who is the Guidance aimed at?**

This Guidance is primarily aimed at staff who are based or filming 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 whose work involves overseas productions, or is based or travels overseas on BBC 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 production departments which make extensive use of intermediaries, known as “fixers”. Contracts with fixers should always be confirmed in writing and there should be a requirement to agree to adhere to the [BBC's Anti-Bribery Code of Conduct](#), [BBC Anti-Bribery Policy](#) and this Guidance in all dealings on behalf of the BBC.

## **The 4 Rs – Staged resistance to facilitation payments**

It is important 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 – the 4Rs:

**Research  
Resistance  
Recording  
Reporting**

**However, we would stress that SAFETY of staff is of paramount importance. If at any stage fear for safety arises DO NOT RESIST. In these circumstances, staff should make the payment and make detailed notes afterwards of what happened and report as required.**

### **Research – Preparation is key**

- 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 fixer (making sure the fixer knows our policy and adheres to it). If possible get official written confirmation that all documents are in order.

- Research the background of your fixer and include anti-bribery provisions in their contract. Your fixer's contract 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. Contact your Legal and Business Affairs representative for further guidance.
- Request that any intermediaries acting on our behalf train their staff on resisting facilitation payments and report any enforcement problems to their relevant BBC contact.
- Build in the necessary time required to get through the administrative formalities well in advance of production 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 manager and explain why you had to pay it.
- Ensure payment is recorded in the BBC expenses system, or relevant finance accounting system if not claimed through expenses, with a clear explanation of its purpose.
- Divisional Directors will liaise with the Group General Counsel on any requirement for reporting to relevant 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 Divisional 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.

If you have any queries while you are in the field contact your line manager/BBC contact who may take legal advice if necessary.

## **REMEMBER SAFETY COMES FIRST**

***For further guidance in relation to facilitation payments or any other Bribery Act queries advice can be sought by programme-making teams from Legal and Business Affairs.***