



PREVENTING CORRUPTION - GUIDANCE FOR PROFESSIONAL BODIES

Introduction

1. The purpose of this guidance is to:
 - a) Assist professional bodies in the infrastructure, construction and engineering (IC&E) sector to establish effective rules and procedures to reduce the incidence of corruption involving their members and to deal effectively with those incidents that do arise.
 - b) Help IC&E professional bodies to adopt a consistent approach in how they deal with cases of corruption involving their members.
 - c) Encourage professional bodies to raise awareness amongst members that corrupt activity, in addition to being unethical and against the professional body's rules, may also constitute a criminal offence for which members could incur personal liability.

The guidance given below deals only with corruption, and does not cover the other kinds of unethical conduct that might breach professional bodies' rules or codes of conduct.

There is no standard international definition of corruption. For the purposes of this Guidance, corruption includes bribery, extortion, fraud, deception, and collusion. This type of activity is unethical, and should therefore be a breach of the professional body's rules. It is also likely to be a criminal offence in all jurisdictions. Consequently, this guidance is intended for use by all IC&E professional bodies in all countries.

Proscribing Corruption

2. The rules of conduct applied by all IC&E professional bodies should state explicitly that their members must not take part in any form of corrupt activity. It is not realistic to expect all IC&E professional bodies to adopt exactly the same rules, but to achieve a consistent approach, all anti-corruption rules should include the following:
 - a) A clear statement that members must not take part, directly or indirectly, in any form of corruption, including bribery, extortion, fraud, deception and collusion, whether for their own benefit or the benefit of their employer or any other third party. To assist members in understanding the breadth of this requirement, the activities listed in paragraph 3 below should be listed and expressly prohibited, either in the professional body's rules of conduct, or in other guidance relating to the ethical conduct of members.
 - b) A requirement that if members become aware of any corrupt activity in projects in which they or their employer have become engaged, they must report what they know within their employer's reporting line.

- c) A requirement that members who are senior managers or senior officers in a company must properly investigate any suspicion of corruption of which they become aware, and for which they or their company may be responsible.
- d) A statement explaining that involvement in corrupt activity will be a breach of the professional body's rules, and may also constitute a criminal offence for which members may incur personal criminal liability carrying serious penalties.

Activities Involving Corruption

3. The following are examples of activities which are likely to be both a breach of the professional body's rules of conduct and a criminal offence. These would be where a member knowingly or recklessly does any of the following, or participates in any activity which involves any of the following:
 - a) Offering, giving, soliciting or accepting any bribe or improper advantage.
 - b) Taking part in any dishonest activity in the pre-qualification, tender or nomination process prior to engagement, including any activity which breaches anti-competition laws.
 - c) Providing, concealing, or approving work, materials or equipment or services which are not of the quality and quantity required under contract.
 - d) Providing false, inaccurate or misleading information.
 - e) Dishonestly withholding information.
 - f) Making any false, inaccurate or misleading records, invoices, claims for variations or extensions of time or request for payment.
 - g) Dishonestly refusing to or failing to approve, or delaying in approving, work, materials, equipment, services, invoices, claims, applications for variations or extensions of time, or requests for payment.
 - h) Dishonestly refusing to pay, failing to pay, or delaying in paying, sums due.
 - i) Wilfully ignoring any evidence of corruption (in cases where the member ignoring the corruption, or the member's employer, may be directly or indirectly responsible for the corruption).

Disciplinary action by IC&E professional bodies

4. **The need for disciplinary action.** Corrupt conduct strikes at the heart of professional bodies' regulatory responsibilities; membership of an IC&E professional body provides a badge of probity and honesty for those who are members and reassurance for those who engage their members that they may be trusted to behave ethically. It follows that for the public good and for the good of their membership, professional bodies should deal severely with those members who are guilty of corruption.
5. **Disciplinary proceedings.** Any member suspected of involvement in corruption should be investigated by the professional body. A member found to have been involved in corruption should be appropriately sanctioned under the professional body's disciplinary proceedings.
6. **Conduct of the proceedings.** The disciplinary proceedings should be carried out by the professional body in a fair and reasonable manner, consistent with the requirements of natural justice. In particular, the proceedings should allow the member facing disciplinary action the opportunity to provide the tribunal with all relevant evidence, and to put his/her case to the tribunal.

7. **Standard of proof.** The standard of proof required in order for the professional body to impose a penalty should be proportionate to the severity of the proposed penalty. If the possible sanction will be expulsion or suspension from the professional body, or any other sanction that is likely to materially affect the livelihood of the member, the appropriate standard of proof should be “beyond reasonable doubt”. However, for a lesser penalty, the professional body’s procedures may allow a decision based on “balance of probability”. Where there has been a criminal conviction in a properly constituted court of law, the professional body may choose to regard this as adequate proof of the activity in question without need of further investigation.
8. **Severity of the penalty.** The severity of penalty imposed by the professional body should take account of the following factors:
- a) *Members convicted of corruption.* Where a member of a professional body has been convicted of a corrupt act, the penalty imposed by the IC&E professional body should correspond to the severity of the offence concerned. In serious cases where there is no mitigation, conviction should normally result in expulsion from membership.
 - b) *Wilfully ignoring evidence of corruption* The case of senior staff who wilfully ignore evidence of corruption in the circumstances described in para 3i) above should be treated as serious. Although such conduct will generally be ‘passive’, i.e. the member will not have directly participated in, and may not have directly benefited from, the corruption concerned, in law, ‘wilful ignorance’ or ‘wilful blindness’ can, depending on the circumstances, carry the same penalty as an intentional act. It should therefore be treated with corresponding severity. Therefore, in the most serious circumstances the senior staff concerned should be expelled from membership. The penalty to be imposed in the case of less serious offences and upon junior staff will depend upon the extent of any mitigation (see sub-para d).
 - c) *Senior managers or senior officers in a company.* The more senior the position of the member, the greater the responsibility he/she has to act responsibly and ethically, particularly in view of the influence he/she will have over the conduct of junior staff, especially those who are answerable to him/her. In most cases, unless there are very strong mitigating factors, a senior manager or senior officer involved in a serious case of corruption should be expelled from membership.
 - d) *Mitigating factors.* A lesser penalty might be appropriate if there are mitigating circumstances. For example, in the case of more junior staff, the severity of the penalty will depend upon such factors as the age and experience of the member, the degree to which the member’s participation was active or passive, whether he/she had been subject to coercion or pressure from the peer group in which he/she had been working, or from senior staff. It would also be appropriate to take account of the extent to which clear, well-publicised rules of conduct and appropriate anti-corruption reporting lines existed within the employing organisation. Other mitigating circumstances include where the member brought the matter to the attention of the professional body, admitted the circumstances, and/or co-operated with the enquiry.
 - e) *Defences:* The member should not normally be disciplined if the sole reason that he/she undertook the corrupt act was to avoid the real risk of death or personal injury to the member or another person.
9. **When to take disciplinary action:** Disciplinary action in relation to corruption should be taken by the professional body as soon as reasonably possible, and whether or not there has been a criminal prosecution or conviction. However, the decision as to when to initiate disciplinary action should take account of intended or existing criminal proceedings, as follows:
- a) The types of corruption listed in paragraph 3 are likely to be criminal offences in all countries. Normally, therefore, it would be expected that evidence of corruption by a member would be referred to the criminal authorities in the relevant country for investigation and, where appropriate, prosecution. In such cases, professional bodies would not normally commence disciplinary action against a member accused of corruption until the investigation or prosecution had been concluded.

- b) However, if the professional body has good reason to doubt that the matter will be dealt with effectively by the authorities, or if it appears that criminal proceedings are likely to be unduly delayed or prolonged, it may be appropriate to initiate disciplinary action irrespective of the outcome of the criminal investigation/prosecution.
- c) Similarly, if the criminal authorities have decided not to prosecute, or continue an investigation, it would be appropriate for the professional body to initiate disciplinary action if it considered that the evidence was sufficiently strong to show that its member or members had a case to answer. An example would be where the authorities had decided not to proceed for reasons unrelated to the strength of the evidence of corruption, e.g. citing national security.

Raising Awareness

- 10. In some cases, a member may participate in corrupt activity without being aware that the activity may be regarded as unethical, or that it may lead to disciplinary action by the professional body or criminal sanction by the authorities. The professional body should therefore widely publicise its rules prohibiting corrupt activity, explain the conduct which is regarded as corrupt, and outline the likely disciplinary and criminal sanctions.

UK Anti-Corruption Forum

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The UK Anti-Corruption Forum is an alliance of UK business associations, professional institutions, civil society organisations and companies with interests in the domestic and international infrastructure, construction and engineering sectors. The purpose of the Forum is to promote industry-led actions which can help to eliminate corruption. The members of the Forum believe that corruption can only be eliminated if governments, banks, business and professional associations, and companies working in these sectors co-operate in the development and implementation of effective anti-corruption actions.

www.anticorruptionforum.org.uk