

Submission to the House of Lords Select Committee inquiry into the Bribery Act 2010

August 2018

Overarching statement

Balfour Beatty is alive to the risks that exist in any industry where bidding for contracts takes place and where gaining a competitive advantage is important. As such, we have taken a proactive approach to ensuring that we comply with the Bribery Act. We have a Code of Conduct and a robust programme which includes training for all employees in behaving ethically and whistleblowing channels. We promote a culture of trust which instils confidence in those working for and with us to do the right thing and empowers them to challenge where others have not.

Balfour Beatty's approach to bribery and corruption

The integrity of both our employees and our supply chain is something Balfour Beatty takes very seriously. We expect all those working for and with us to meet the highest standards of business conduct. Corruption and bribery are unethical and illegal. From false invoicing, bribery such as the giving of expensive gifts or payments or lavish entertainment, kick-back schemes, facilitation payments, opaque contracts, and the sale of sub-standard goods, bribery and corruption take multiple forms. These practices distort the market and undermine the law: they must be given no place in how the construction industry operates.

Balfour Beatty's position is set out in its Code of Conduct¹. The principle that guides us on this issue is that we will not offer, give or receive bribes, or make or accept improper payments to obtain new business, retain existing business, or secure any improper advantage, and we will not use or permit others to do such things for us.

Balfour Beatty's Code of Conduct has been communicated to its employees, clients and supply chain and is posted on the company's website. The company's board and senior management actively lead the implementation of the Code. Our Code of Conduct training includes an annual assessment with a declaration of compliance. The training is tailored to different jurisdictions and risk groups (e.g. international Code, competition training). We also run workshops for a range of different groups across the business, including Project

¹ Balfour Beatty's full Code of Conduct: <https://www.balfourbeattycodeofconduct.com>
Balfour Beatty's Code of Conduct for our sub-contractors, suppliers and partners:
https://www.balfourbeatty.com/media/244806/balfour-beatty-code-of-conduct_2017.pdf

Managers, new starters, Joint Venture staff and graduates. In particular, our new starter programme includes access to the Code before starting and requires training to be completed within 30 days.

We continue awareness raising through a range of channels, including posters, newsletter articles, employee newspaper, blogs, Yammer, text messages and workshops. We also monitor this in number of ways. For example via staff surveys: in our most recent staff survey², 95% of staff said they understand what is expected of them in the Code of Conduct; 84% agreed that they are encouraged to do the right thing at work; and 82% stated that they can challenge unethical, dishonest or unacceptable behavior.

We also have in place risk assessment and due diligence procedures which apply in relation to the appointment of agents, joint venture partners, sub-contractors and suppliers, and prior to tendering for projects in medium or high corruption risk markets. We procure materials, products and services only from suppliers and sub-contractors which agree to adhere to the same high standards as we operate to. Balfour Beatty aims to be transparent and accountable - and we expect the same of our suppliers. Our pre-qualification questionnaires and audits include questions about bribery to demonstrate to our supply chain what we expect of them. We ask questions as part of the procurement process and independently check publicly available information through Dow Jones in order to verify what they have told us.

We believe it is better to miss out on business or lose money than act illegally or unethically, and we expect our suppliers to meet the same standards. We are committed to ensuring that those who provide goods and services to us do so with integrity and we make this clear in our contracts and dealings with them.

Balfour Beatty holds workshops with clients to share best practice and we make it clear that anyone in our supply chain who has a serious concern that something may not be consistent with the Code of Conduct should feel confident to raise it with Balfour Beatty senior management or using our whistleblowing channels. We will treat the issue seriously and follow it up conscientiously, discreetly and without bias.

We have a widely publicised confidential hotline: Speak Up³. This helpline is secure, confidential and independently operated by a separate company. Employees, partners and suppliers can use this service to raise concerns about unethical conduct or possible breaches of the Balfour Beatty Code of Conduct and be assured that the issue will be fully investigated and dealt with appropriately. Investigations are carried out according to a standard investigations procedure. We will always support our suppliers for doing the right thing.

Responses to the Committee's areas of interest

1. Is the Bribery Act 2010 deterring bribery in the UK and abroad?

² Balfour Beatty's June 2018 staff survey: 69% of employees took part across the Group

³ www.balfourbeattyspeakup.com

Although we are not able to comment beyond our own business as to whether the Act has changed behaviour, we do believe that it has raised awareness of the issues around bribery and corruption, especially amongst larger companies, many of which will have examined their own anti-bribery and corruption procedures in response to the legislation.

However, while we are clear that we expect those small and medium enterprises (SMEs) in our supply chain to act ethically and to comply with the Bribery Act, we are concerned that SMEs more broadly often remain unaware of the Act, or of its full extent. Where they are aware of it, they often do not have the resources to devise their own “adequate procedures” to mitigate against it happening either here or on their behalf anywhere in the world, as they are required to do. To assist with this, we believe that SMEs would benefit from training. We go into more detail on this point in response to question 3.

One area where more could possibly be done is in the area of public procurement. The Government has huge buying power, which would enable it to make a significant difference in this area. At the moment, the Government asks for guarantees that bribery does not take place in either the company it is entering into a contract with, or in that company’s supply chain. We believe that there should be more checks to ensure compliance and Government should place more weight on scoring for those companies who can demonstrate a genuine compliance culture. Greater engagement from Government in this way would send a stronger signal to companies of all sizes that the issue is being taken seriously and is not merely a tick-box exercise.

2. Is the Bribery Act 2010 being adequately enforced? If not, how could enforcement be improved? Do the Serious Fraud Office and the Crown Prosecution Service have the right approach and the resources they need to investigate and prosecute bribery offences effectively?

As the Committee will be aware, the Serious Fraud Office (SFO) has a statutory obligation to investigate and prosecute cases involving serious or complex fraud which involves significant financial loss or economic harm. Although there is no longer a monetary threshold above which the SFO will investigate, in practice, the SFO focuses only on large-scale multinational bribery cases and has little appetite for smaller, domestic cases. The result is that there is a gap (which we believe has already been identified by the SFO and the police) in that there is insufficient resource in policing generally to deal with economic crime which does not meet SFO criteria. Smaller domestic cases, which can nonetheless relate to bribery and fraud in the millions of pounds, can therefore go uninvestigated and therefore prosecuted. We therefore believe that there should be an increase in the resources being deployed to investigate/prosecute.

3. Is the statutory guidance on the Bribery Act 2010 sufficient, clear and well-understood by the companies and individuals who have to deal with it? Should alternative approaches be considered?

Balfour Beatty believes that the guidance on the Bribery Act is clear. However, as noted in response to question 1, many SMEs remain unaware of the legislation. It is our view that the Government should increase efforts to ensure that SMEs are aware of both the

legislation and the available guidance, and that they understand what is required of them and how to devise appropriate procedures to ensure that they do not break the law.

Balfour Beatty has partnered with the Supply Chain School since 2013. The School is a collaboration between 75 clients, contractors and tier one suppliers, operating largely in the construction industry, which have a mutual interest in building the skills of their supply chains. It is supported by the Construction Industry Training Board (CITB). The partners pay for the School via an annual fee, to ensure that its services are free for members. One of the values of the Supply Chain School is to share knowledge and resources. This takes place via a combination of e-learning and face-to-face sessions. We believe that the School could train the c.30,000 SMEs amongst its members in how to comply with the Bribery Act. Given that construction is among the industries where bribery and corruption are most likely to be an issue, this could have a significant positive impact. We are working with Government to overcome the barriers that currently exist to making this happen. These include budgetary issues. For example, while the partners fund the school and are happy to give their time and knowledge to develop content and materials for the training, further budget is required for additional costs, such as training the teachers and paying for invigilators.

4. How have businesses sought to implement compliance programmes which address the six principles set out in the Ministry of Justice’s guidance on the Bribery Act 2010? What challenges have businesses faced in seeking to implement their compliance programmes? Are there any areas which have been particularly difficult to address?

Balfour Beatty launched its own programme to ensure we were addressing these issues, in 2009. While we did not change our programme in response to the Bribery Act, we did closely examine the six principles to ensure we were addressing them, and we have kept that under regular review to ensure that our approach incorporates best practice.

The greatest challenge, in our view, lies in ensuring that our supply chain and partners are aware of and fully understand the legislation. We have robust procedures in place, are clear about the expectations we have of those we work with, and we undertake measurement and benchmarking to ensure they are working. For example, we have increased our whistleblowing cases from 7.1 to 11.6 cases per 1,000 employees⁴ (the global benchmark is 14) over a two-year period, showing that we can empower people to challenge, something which has been difficult in traditional industries. However, we do not think these is representative of the industry as a whole.

5. What impact has the Bribery Act 2010 had on small and medium enterprises (SMEs) in particular?

We are not able to comment specifically on the direct impact the Act as has on SMEs. However, as outlined above in response to questions 1 and 3, Balfour Beatty believes that this is an area were more awareness-raising and direct training would be helpful.

6. Is the Act having unintended consequences?

⁴ <https://www.balfourbeatty.com/how-we-work/our-code-of-conduct/speak-up-helpline>

Balfour Beatty is not aware of any unintended consequences.

7. Has the introduction of Deferred Prosecution Agreements (DPAs) been a positive development in relation to offences under the Bribery Act 2010? Have DPAs been used appropriately and consistently? Has their use reduced the likelihood that culpable individuals will be prosecuted for offences under the Act?

Balfour Beatty believes that Deferred Prosecution Agreements (DPA) are a positive development and a useful tool in the fight against bribery and corruption. It is important to give companies the opportunity to acknowledge their failings and to be punished for them less severely than if they do not demonstrate full acceptance of their wrongdoing and a desire to make good on it. However, it is also important that DPAs are in no way an easy option for companies which have broken the law.

8. What impact has the Bribery Act 2010 had on UK businesses and individuals operating abroad?

Although the Bribery Act is likely to have had an impact on other companies, it did not make a significant difference to Balfour Beatty, as we already had a programme in place, as outlined above.

About Balfour Beatty

Balfour Beatty is a leading international infrastructure group. With 15,000 employees across the UK, Balfour Beatty finances, develops, delivers and maintains the increasingly complex infrastructure that underpins the UK's daily life: from Crossrail and Heathrow T2b to the M25, M60, M3 and M4/M5; Sellafield and soon Hinkley C nuclear facilities; to the Olympics Aquatic Centre and Olympic Stadium Transformation.

Balfour Beatty is a member of the UK Anti-Corruption Forum (the Forum), which was established in 2004. The Forum is an alliance of UK business associations, professional institutions and companies with interests in UK and international construction. Its purpose is to promote effective and coordinated industry-led actions in order to reduce corruption, on both a domestic and international basis, and on both the supply and demand sides.

Contact

Veena Hudson

Head of Public Affairs and Policy | Balfour Beatty

+44 (0)20 7963 4235 | +44 (0)7790 340693 | veena.hudson@balfourbeatty.com