The Optical Confederation represents the 12,000 optometrists, 6,000 dispensing opticians and 8,000 optical and optical-supplier businesses in the UK who provide high-quality and accessible eye care services to the whole population. This includes the 7,250 retail outlets, equipment, frames and lens manufacturers, IT suppliers, distributors and 51,000 support staff.

The Confederation brings together the national optical representative bodies: the Association of British Dispensing Opticians (ABDO); The Association of Contact Lens Manufacturers (ACLM); the Association of Optometrists (AOP); the Federation of Manufacturing Opticians (FMO); the Federation of Ophthalmic and Dispensing Opticians (FODO); Optometry Scotland; Optometry Wales; and Optometry Northern Ireland.

For pharmacy, the four NHS community pharmacy representative bodies, Community Pharmacy Scotland (CPS), Community Pharmacy Wales (CPW), Pharmaceutical Contractors Committee NI (PCCNI), and Pharmaceutical Services Negotiating Committee (PSNC) represent a total of: 13052 NHS community pharmacies (Scotland 1222, Wales 707, Northern Ireland 529, and England 10593).

This response, as it is relevant to the private hearing care sector, incorporates the comments of the British Society of Hearing Aid Audiologists which is the professional body for hearing aid dispensers. By law, the assessment, testing and prescription of hearing aids with a view to supply can only be undertaken by Hearing Aid Dispensers registered with the Health Professions Council.

Support for Act

As matters of principle we fully support the anti-bribery measures set out in the Bribery Act 2010 and the promotion of good corporate practice.

We also

- welcome the statutory defence that Section 7 provides when a commercial organisation can demonstrate that there are adequate bribery prevention procedures in place

- support publication of guidance under Section 9 to enable organisations to consider what appropriate arrangements for their organisations might be and “in determining the sorts of bribery prevention measures they can put in place”

- and support the consistent four UK countries approach.
Draft Guidance

As far as the guidance itself is concerned we welcome the fact that it “is not intended to be prescriptive or standard setting, or impose any direct obligation on business” (p.4) and that it is “not prescriptive and is not a one-size-fits-all document” (p.10).

We welcome the explicit recognition that adequate bribery prevention procedures need to be “proportionate to the nature, scale and complexity of activities” (p.12) and the intention “to allow each commercial organisation to tailor its policies and procedures” so that they comply.

We welcome the recognition that it is “for individual businesses or business representative bodies to fulfil any expectations as regards to the establishment and dissemination of any appropriate standards for hospitality and promotional expenditure.” (p.22). We will prepare guidance for our sectors on these and other matters connected with the Act.

Improper Behaviour

The key test of whether a bribery offence has occurred under the Act is whether the behaviour provoked is “improper”. We feel that this should be highlighted upfront and at the outset in the guidance. (Currently is it hidden away in a single statement in the Further Information document that “in order to amount to a bribe under Section 1, hospitality and promotional expenditure must be intended to induce a person to perform a function improperly (as defined in Sections 3, 4 and 5)” (p.22). We would propose this is given a far higher profile within the guidance.

This is because, in optics and pharmacy, we have long experience of misunderstanding and misinterpretation of regulations by overly bureaucratic tick-box public authorities (specifically Primary Care Trusts) which do not understand and indeed are often overtly hostile to the private sector and retail business.

Normal Commercial Practice

We also very much welcome the similarly crucial statement (also in Further Information p.22) that “reasonable and proportionate hospitality or promotional expenditure which seeks to improve the image of a commercial organisation, better to present products or services, or establish cordial relations, is recognised and established and an important part of doing business”. We feel strongly that this too should be stated upfront in the guidance and hope that you will be able to amend to make clear upfront that reasonable and normal business arrangements are not affected and that it is only “improper activity” that is targeted by the Bribery Act.

We are particularly keen to work with you to define “reasonable and proportionate hospitality entertainment” in particular for the optical and pharmacy sectors. We fear that leaving this too broadly defined could lead to confusion and inappropriate interpretation.
Six Principles

We agree fully with the six principles for Bribery Prevention set out in Annex 1 viz

- risk assessment
- top level commitment
- due diligence
- clear practical and accessible policies and procedures
- effective implementation
- monitoring and reviews.

Proportionality

The guidance understandably covers a wide spectrum of activity and the recognition that there will be "a huge variety of circumstances" is welcome. However, as currently drafted, the guidance seems more designed with international multi-billion dollar (e.g. arms and other) industries in mind rather than the far smaller (£3.6 billion) and already more heavily regulated optical sector. Whilst the total value of the NHS community pharmacy market is larger, pharmacy contractors’ purchasing is only through wholesalers and manufacturers licensed to deal in medicines in the UK by the Medicines and Healthcare Products Regulatory Agency. The potential for Bribery in the NHS pharmacy sector, which like the optical sector is heavily regulated, is also very low.

Although proportionality is implicit throughout we would prefer this therefore to be made explicit as a seventh principle or principle 1(a).

The optical retail sector, for instance is particularly highly regulated

- sight testing can only be carried out by a registered optometrist or ophthalmic medical practitioner (OMP)
- dispensing to high risk groups such as children and people with visual impairment can only be carried out by or under the supervision of an optometrist, OMP or registered dispensing optician
- the General Optical Council (GOC) publishes legally binding Codes of Conduct for both individual registrants and corporate body registrants which make the interests of the patient the first and overriding duty of both professionals and companies.

In the pharmacy sector, similar regulation exists:
The sale of many medicines and the dispensing of all prescriptions for medicines can only be carried out under the supervision of a registered pharmacist;

The General Pharmaceutical Council (GPhC) and the Pharmaceutical Society of Northern Ireland (PSNI) publishes standards for all registrants, and also for superintendent pharmacists and owners of pharmacy businesses. The standards are, like optics, principally to protect the interests of patients and the public.

In addition the Code of Practice for the Promotion of NHS-funded Services \(^1\) prevents any inappropriate referral arrangements and for optometry the domiciliary sight testing regulations [ref] specifically rule out both the solicitation by and the offer of any inducements to care home or other staff to obtain sight testing business.

For pharmacy, NHS Regulations prohibit the giving of inducements related to the dispensing of medicines.

Given that the UK optical sector is already tightly regulated including in terms of probity, it follows, therefore, that in our view a statement that the company or practitioner is registered with the General Optical Council and complies with its Codes of Conduct including

“mak[ing] the care of the patient …..[the] first and overriding concern”

“ensur[ing] that financial and commercial dealings do not compromise the interests of the patient”.

This should be sufficient to demonstrate full compliance with the Bribery Act.

This is also the case for pharmacy, because the pharmacists and owners of pharmacy businesses are regulated by the GPhC and PSNI and are required to comply with standards that secure, safe and patient-focussed practice.

In this context, we also welcome the recognition that prosecutorial discretion will be applied following a two-stage test: whether there is sufficient evidence to provide a realistic prospect of a conviction and if so, whether a prosecution is in the public interest.

We also welcome the fact that the standard of proof will be the criminal standard of “beyond reasonable doubt” (p.20). This, in our view, will prevent unnecessary and inappropriate prosecutions whilst at the same time ensuring that bribery is effectively prevented.

\(^1\) Code of Practice for the Promotion of NHS-funded Services, Department of Health, March 2008, Gateway Reference 9580
We also have serious reservations about the impact of ‘failure to prevent bribery’ on small to medium sized companies that import from overseas. We have concerns that this will be impossible for a small UK based company to monitor or police the behaviour of overseas suppliers, especially those outside the EU. If this regulation were implemented badly this would inhibit international trade and investment, and risk the cancellation of contracts in these pressed economic times. We feel that it should be sufficient for a small or medium UK based company to insert a relevant clause into their contract with an overseas supplier that ensures the same supplier complies with the relevant world, European or UK legislation on bribery. We feel that this would ensure compliance in so far as it would be possible for a small or medium sized company to do so (when dealing with an overseas supplier).

Open Events

As representatives of an entire (albeit small) economic sector, the Optical Confederation and the four bodies representing NHS pharmacy contractors would be very keen to be involved in the “open discussion events” the Ministry of Justice plans to arrange during the consultation period (p.15).

As noted above, as responsible leadership organisations, we will also be developing our own guidance for optical and pharmacy professionals and businesses and would welcome the opportunity to discuss this with the Ministry for Justice to ensure that the policy is properly aligned and that our two sets of guidance are fully complementary before we publish.

Consultation questions

Our responses to the specific consultation questions are below. Please also see our sector specific comments on the detail of Six Principles at Annex A.

Please do contact us if you would like any further clarification or further information. We look forward to working with the Ministry for Justice in implementing this important piece of legislation.

Question 1: Are there principles other than those set out in the draft guidance of the relevant important formulation of bribery prevention in commercial organisations?

As noted above we feel that the fact that the legislation is intended to prevent inducements to “improper behaviour” should be clearly stated at the outset. We have wide experience of over interpretation of official guidance by NHS bureaucrats with little understanding and sometimes outright antipathy to retail business. In our view it is essential that this important principle of the legislation and guidance is clearly set out in the guidance itself.
Although implicit throughout the text, we would also appreciate some recognition within the principles themselves of the related principle of proportionality. Again, this is because of our experience of disproportionate and bogus requirements being imposed by NHS authorities through misunderstandings of the intention of legislation by bureaucrats. The most ludicrous example in recent years was to ask optical practices for their “volcanic ash plans”!

Question 2: Are there any procedures other than those set out in the draft guidance that are relevant and important to a wide range of commercial organisations?

Answer: Yes. Many sectors, particularly professional sectors and those operating within a regulated professional/retail mix - such as eye care, community pharmacy and, we would suggest, hearing care – are already regulated to high ethical standards by the statutory health regulators – in our case the General Optical Council, the General Medical Council, the General Pharmaceutical Council, the Pharmaceutical Society of Northern Ireland and the Health Professions Council.

In our view, compliance with the rules, codes and strictures of those governing bodies should be a sufficient demonstration of compliance with the Bribery Act without the need for further regulation or bureaucracy. We would be happy to work further with the Ministry of Justice on this if required.

Question 3: Are there any ways in which the format of the draft guidance could be improved in order to be of more assistance to commercial organisations to comply with guidance for their particular circumstances?

Yes; we feel there should be an explicit recognition that individual business sectors such as ours should develop their own complementary guidance interpreting the principles for their professions and businesses. This will ensure that those sectors which require the full detail of the current draft guidance can use that, whereas other sectors, where risk is far lower or which are already heavily regulated, should be able to comply in a more light-touch, proportionate and appropriate manner.

Question 4  Are there any principles or procedures in particular that are important to small and medium sized enterprises?

Yes, again, the recognition that in optical retail there is virtually no risk of bribery and proportionality should mean that all optical businesses – the majority of which are small and medium-sized – should be able to demonstrate compliance with the Bribery Act requirements by complying with the Codes of Conduct of the General Optical Council without additional burdens on front line services and health care.

In NHS community pharmacy there is virtually no risk of bribery and proportionality should mean that all NHS pharmacy businesses should be able to demonstrate compliance with the Bribery Act requirements by complying with the Standards of the General Pharmaceutical Council and PSNI without additional burdens on front line services and health care.
Question 5  In what ways, if any, could the principles in the draft guidance be improved in order to provide more assistance to small and medium sized enterprises in preventing bribery on their behalf?

As described above, explicit recognition in the guidance that sector-specific guidance produced by representative bodies would be a sensible way of supporting small and medium sized businesses in complying with the requirements of the Bribery Act, would be welcome.

For instance, “seeking reciprocal anti-bribery agreements” is unlikely ever to be necessary or a proportionate in our industry (which does not for instance, routinely trade in high-risk countries or use intermediaries or agents) and recognising the benefit of our developing guidance on this and such other issues would be very welcome. “Seeking reciprocal anti-bribery agreements” is also unlikely ever to be necessary or proportionate in NHS community pharmacy as the NHS accounts for over 90% of the income of pharmacies, so we do not for instance, routinely trade in high-risk countries.
We very much welcome the recognition that, although “the guidance suggests certain procedures ... [we] may decide they are not applicable to ["our"] circumstances or that there are others that suit [our] particular circumstances better.” Our initial views are below. We would be glad to work further with the Ministry of Justice on our own complementary sector-specific guidance along these lines.

**PRINCIPLE 1: Risk Assessment**

Given the extremely low risk of bribery in optics, we feel a simple statement by a practice owner or a managing director that

- they comply fully with the requirements and Codes of Conduct of the General Optical Council, have considered the risks of bribery and setting out any additional steps they have taken to prevent it and

for NHS pharmacy:

- the pharmacist owner or superintendent pharmacist (for pharmacies owned by a body corporate) could issue a statement saying that they comply with the requirements of the Standards issued by the General Pharmaceutical Council and PSNI

should be sufficient to demonstrate full compliance with the Bribery Act and guidance.

**PRINCIPLE 2: Top level commitment**

In our small sector with very low risks of bribery, we suggest that the general promotion of honest and fair trading especially in dealing with customers and suppliers

- and a simple statement in standard operating procedures or a clause in employees’ contracts to this effect

should be sufficient to demonstrate compliance without further specific reference to bribery.

As an Optical Confederation we will develop “model statements of commitment” to recommend to optical businesses.
The NHS pharmacy representative organisations will develop “model statements of commitment” to recommend to NHS pharmacy businesses.

**PRINCIPLE 4:** Clear, practical and accessible policies and procedures

The Optical Confederation will develop model guidance for our sector on

- anti-corruption requirements in the Codes of Corporate and Individual Conduct published by our regulator the General Optical Council
- making direct or indirect political and charitable donations, and gifts
- bona fide hospitality, promotional expenses and incentives
- action which should be taken when faced with blackmail or extortion
- the Public Interest Disclosure Act 1998 (Employment Law Protection for Whistle-blowers)
- the scope for risk of bribery in our sector.

The NHS pharmacy representative bodies will work collaboratively with each other, and other national pharmacy organisations to develop similar guidance for pharmacy.

**PRINCIPLE 5:** Effective implementation

For our sector, we consider that normal training in

- professional practice
- honest trading
- and financial probity and controls

should be sufficient training to demonstrate compliance with the Bribery Act.

**PRINCIPLE 6:** Monitoring and review

Optical businesses already have effective financial and auditing controls to pick up potential and actual irregularities and to investigate and take action on these, if appropriate. For our sector, external verification is likely only extremely rarely to be necessary.
NHS Pharmacies are subject to audit and inspection by the GPhC, PSNI and the NHS bodies by whom they are contracted. It is likely that external verification will not be necessary.