

# FACILITATION PAYMENTS GUIDANCE

## HOW TO RESIST REQUESTS FOR FACILITATION PAYMENTS

.....

### 1. What are they?

A facilitation payment is considered to be a type of bribe under the UK Bribery Act. They can take the form of small payments of cash or gifts of goods (such as luxury drinks or perfume) to a government official to perform or speed up the performance of a routine action or duty. In most circumstances, we will have already paid for, or be entitled to that action. Although the amounts are often small, the consequences of not making a payment can be serious, for example: delaying the start of production or incurring additional costs with third parties with whom you have committed to specific delivery dates.

Common examples where requests may occur include:

- Clearing filming equipment, merchandise or products through customs.
- Immigration services and visas
- Border and checkpoint crossings
- Security/police protection
- Vehicle registration
- Securing locations for filming

In some instances you may be able to pay a legitimate fee to speed up a service. For example, when arranging a visa, you may be able to pay for a faster service. These types of fees will always be officially published and receipted. They are not facilitation payments.

There is a higher risk of requests for facilitation payments in inhospitable/dangerous environments and anywhere with a high corruption perception score from the NGO [Transparency International \(TI\) Index](#). We recognise that a BBC Studios employee is more likely to face a request when working in production, than in the Distribution business.

**Under the UK Bribery Act 2010, facilitation payments are illegal and making any of these forms of payments in any of the countries in which we operate is against BBC Studios policy.**

### 2. The UK Government's approach

The guidance issued by the Ministry of Justice expressly acknowledged the problems companies face in some parts of the world. It stated that getting rid of facilitation payments is its long-term objective needing cooperation between governments and other international bodies. However, companies are expected to show a genuine commitment towards eradication of these payments. This can involve: identifying where facilitation payments are being demanded; taking action to ensure the locals are aware that these payments are unacceptable; ensuring agents (including fixers) and employees are given guidance on how to deal with requests for such payments and, if appropriate, using diplomatic

channels to try and change local practice. The guidance on how to resist payments is framed with this approach in mind.

### **3. The BBC Studios 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, 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 BBC Studios.

#### **Safety and Duress**

**SAFETY of employees and anyone working on our behalf is of paramount importance. If at any stage fear for safety arises DO NOT RESIST - JUST MAKE THE PAYMENT. In these circumstances, as soon as you are able to do so, make detailed notes of what happened and report it to your manager. You will have protection from prosecution in circumstances where you consider you are in danger.**

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

This Guidance is aimed at BBC Studios employees and Freelancers who are based or filming overseas or travelling to countries where the issue of facilitation payments is more likely to arise. Although, the Guidance is equally applicable to employees who encounter facilitation payment requests in lower risk countries such as in the UK or Western Europe. The guidance provides advice on how to resist requests for facilitation payments. We expect any employee or third party who is acting on our behalf to comply with this guidance. Third parties most likely to face requests for payments, include anyone acting as an intermediary or agent, this includes local fixers, companies licensed to produce international formats and joint venture production partners.

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

It is important to plan in advance to minimise the risk of situations where you may face requests for payments. You should also discuss how to deal with them when if they do arise using a strategy of resistance - the 4Rs:

- A. Research**
- B. Resistance**
- C. Recording**
- D. Reporting**

## **A. Research – Preparation is key**

Research local laws in advance. If we know official requirements, it should be easier to resist a request for payment. 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. Research what authorisations or permits are required well in advance. If possible, obtain official written confirmation that all documents are in order.

### **Production Service Providers (Fixers)**

If you are engaging an intermediary, known as a “fixer” for production services, this Guidance is particularly relevant as fixers often offer services, which may place them in situations where they have to make payments. When engaging a fixer:

- Do as much research on the background of the fixer up front, not just their ability to provide the service, but what links they may have to government and any negative media that may surround them. If you have any concerns, then speak to your Business and Legal Affairs (BLA) Representative.
- Ask the fixer to complete a standard questionnaire to verify identity and ownership and to disclose any association with bribery offences, if we haven't used them before. If they don't cooperate this might raise suspicions.
- Contracts negotiated directly on location should always use the agreed fixer template, which includes the relevant links to the anti-bribery requirements and sets out a line by line itemisation of services and costs.
- Complex/higher risk fixer agreements, such as those for production services companies, must be referred to Business and Legal Affairs, who can also ensure that the correct due diligence checks are undertaken and draft a formal agreement.
- The results of research and due diligence should be acted upon if issues emerge and should feed into the contractual relationship with the fixer.
- Ensure you discuss with your fixers how they can legally obtain permits or permissions for us and have an honest conversation about what challenges they may face.
- Make sure the fixer knows our policy and understands why it is important to comply, even if local law and custom and practice differs.
- Ensure you have a process in place for managing fixer costs across the life of the production. In particular, if you engage them for additional services which are not in their original agreement.
- Do not turn a blind eye to any suspicions that a fixer has made a facilitation payment on our behalf.

## **Prepare your team**

Ensure upfront that everyone who is working on production is clear what constitutes a facilitation payment and they understand the steps outlined below, including how to report concerns or actual payments.

## **B. Resistance**

You may still find yourself in the situation where you face a request, despite your upfront research and planning. If this is the case and 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. Ask for evidence of published fees that would support the request.

Explain that facilitation payments are against BBC Studios policy, as well as UK law, and that you would be breaking the law and 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 in the circumstances. Try to avoid making a payment in cash directly to the official and ask for a receipt, which identifies the official and their position.

## **C. Recording**

Record the payments you have had to make, having gone through the resistance steps. Record the name of the official and their position, if possible, and any other details it feels safe to ask.

## **D. Reporting**

BBC Studios encourages all employees and anyone working on our behalf to report any instances of actual payments made or those successfully resisted. This must be done as soon as is practically possible. You can go via your local manager or if you are a BBC Studios employee you can speak to your Business and Legal Affairs Representative, who can offer privileged and confidential legal advice.

**Confidential Reporting:** If you are unable to speak to someone directly, or if you prefer, you can also use a secure online form or telephone line to file a report [through a confidential provider called Expolink]. We appreciate that not everyone feels comfortable providing personal details, so if you would rather report something confidentially, you have the opportunity to remain anonymous using this route.

**Reporting the Expense item:** If you have made a payment, then you must record it in the Concur Expenses System. This is an important step to ensure we comply with legislation and maintain accurate records. There is a specific line item within Concur used for the specific purpose of recording facilitation payments. Only post an expense claim to this line item if you have first spoken to Business and Legal Affairs and filed a report. This line item should not be confused with Facility Fees, which are valid and legal production costs.

Business and Legal Affairs should ensure that they notify either the BBC Studios Director of Regulatory Affairs or BBC Studios General Counsel of any reported incidents. They will liaise with BBC's Assistant General Counsel to ensure that the appropriate action is taken.

**REMEMBER SAFETY COMES FIRST – DO NOT RESIST IF YOU ARE IN DANGER!**

**For further guidance in relation to facilitation, payments or any other UK Bribery Act queries please contact your Business and Legal Affairs Representative**