



Responding to contact by an authority

This is a case study for business owners on how to respond to a bribery complaint raised by an authority.

Scenario

This is a continuation of the scenario in the [Investigating an internal complaint](#) case study.

Sarah's business, MacNuts Pty Ltd, grows macadamia nuts on rural land in New South Wales. It recently started exporting macadamias to the competitive European market. After an internal complaint was made to the business's whistleblower hotline, Sarah is concerned that Andy, a senior employee, may have entered into a contract with a food distributor that acted as an intermediary to pay bribes to European customs officials. She is concerned that the contract, in effect, is an agreement to facilitate bribery.

Sarah has since conducted an internal search of Andy's emails, which suggests that her concerns are well-founded. There appears to be further correspondence suggesting that Andy was aware of the illegitimacy of the arrangement, and that he sought to prevent Sarah from finding out.

Today, Sarah was contacted by the Australian Federal Police (AFP). The officer told her that the AFP had received an anonymous tip-off that MacNuts has an agreement with a third party to bribe foreign officials on its behalf and that the AFP is now investigating the matter.

Sarah is very upset. She feels the business has done everything right, including establishing an anti-bribery and corruption compliance program, with a policy that clearly prohibits bribery and corruption. She believes Andy's conduct is not reflective of how seriously MacNuts takes compliance.

What should the business do next?

Sarah and the business should consider these steps.

Step 1: Take the complaint and the AFP investigation seriously

The business should proceed on the basis that the bribery concern is serious. Whether the bribery is found to have occurred will be determined in time. Taking the matter seriously sends a good signal to the authorities that the business is not ignoring or dismissing the nature of the matter.

Step 2: Ascertain your rights

In some cases, authorities have powers to compel the provision of documents or other information under a mandatory notice. At other times, they may seek voluntary cooperation. The AFP and other authorities can also obtain a warrant to search premises and seize documents and devices where they reasonably suspect



that they contain evidence of criminal activity. Determining the nature of the inquiry with authorities will assist the business to understand what it must do to assist.

Step 3: Cooperate with authorities

If the notice is mandatory, cooperate. Ignoring a mandatory notice to comply with a request from an authority, or obstructing the AFP while they execute a warrant will complicate matters further and can lead to further liability.

If the request is voluntary, consider the risk and benefits of cooperation. It is often prudent to cooperate with a request for voluntary assistance. The attitude of the business to the investigation will be a factor that may inform decisions about how the authority deals with the business going forward, including whether the business itself is considered to be involved in the conduct, whether it should be prosecuted and, if so, the penalty that should be imposed. Read more [here](#).

Step 4: Conduct an internal investigation

In many cases, authorities such as the AFP will consider the quality and veracity of the business's internal steps to address bribery concerns, especially where it is apparent that the business may have been alerted to possible red flags. In doing so, the business is also able to detect any similar conduct that may still be occurring, such as any ongoing payments that are questionable. Read more [here](#). Also, see the [Investigating an internal complaint](#) case study.

Step 5: Terminate any suspicious arrangements

Ensuring this arrangement is terminated will assist the business to avoid any suggestion it endorsed the arrangement, or that it has not complied with its own anti-bribery and corruption policies. Proactive conduct could be a mitigating factor in determining whether prosecution of the business would be in the public interest (which may lead to a decision not to prosecute) and may reduce the risk of more serious sanctions.

Step 6: Critically review anti-bribery policies and procedures

A key consideration for authorities will be the existence and effectiveness of the business's pre-existing anti-bribery and corruption program. Steps taken in response to any identified vulnerabilities are also very important. In the scenario, the business had a good anti-bribery and corruption policy in place. However, the business also needed to consider issues with implementation, such as the visibility of the policies and whether appropriate regular training was provided.

Other controls could also be adopted to mitigate risks. For example, the business's approval process could mandate secondary oversight of contracts in regions with a high susceptibility to bribery. If any issues with training, processes or compliance are identified, the business should take immediate and tangible steps to strengthen the anti-bribery framework.

Step 7: Maintain professionalism with employees who are the subject of a complaint

Employees like Andy should be treated professionally. The investigation is not yet complete and the business must not assume the employee has committed wrongdoing. Confidentiality should be maintained. Employees who are the subject of an investigation should not be involved in managing the response to the relevant authority. Consequences, such as disciplinary action, may be appropriate once an investigation is completed.



Prevention is the best way to avoid liability

Sarah's business may have avoided forming a relationship with the intermediary in the first place if it had conducted thorough due diligence on the intermediary and taken more steps to support employees exposed to the risk of bribery.

Once Sarah and her business became aware that a suspected bribe had been paid, it should have acted on the matter immediately and sought to end any suspicious arrangement.

Implementing an anti-bribery and corruption compliance program and providing ongoing training on the business's anti-bribery policies and controls would also encourage employees to escalate concerns internally. In turn, this fosters an organisational culture that is proactive about mitigating bribery risk.

Early detection of potentially illegal conduct can be supported by encouraging staff to speak up if they become aware that their colleagues are engaged in such conduct. A healthy speak up culture needs to ensure protection for whistleblowers. See the [Implementing a whistleblower policy](#) case study.

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