

SCENARIO 1

THEME 2: MANAGING CONFLICTS OF INTEREST AND GIFTS

Overview

Corruption in procurement processes can occur in any organisation. Its presence and extent depend largely on an organisation's procurement framework and the strength of its ethical supports, for example appropriate policies and procedures. Organisations can mitigate the risk of corrupt conduct being embedded by enforcing sound policies and controls with appropriate checks and balances.

This exercise describes the bribery and corruption of a local government official over a seven-year period. During this time, \$1.15 million in cash and other benefits was given to the official by the managing director of an engineering company, with the intention of gaining an unfair advantage for the company when tendering for council contracts.

It is designed to support a group discussion about how procurement processes can be exploited and how corrupt conduct can be accepted as normal business practice within a team.

There are two sections:

Section one describes how council staff accepted bribes to manipulate procurement processes, in order to give advantage to a specific provider. It demonstrates how a culture of entitlement can develop in a team, which can make it difficult to distinguish the difference between what is acceptable behaviour and what is not.

Section two provides a series of questions to prompt a group discussion on the theme of **managing conflicts of interest and gifts**, as well as background information to support the group discussion.



The key learning goal from using this resource is to build an understanding of the importance of proactively managing conflicts of interest and gifts

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The scenario

John is a senior manager at a large council and is responsible for parks infrastructure. John's role involves arranging contracts through competitive tender processes.

The council has a code of conduct that includes reference to conflicts of interest, gifts and hospitality policies. On an annual basis, all staff are required to formally disclose any actual or perceived conflicts of interests in accordance with these policies. Staff are also required to disclose gifts and hospitality as they are offered or provided. Guidance and training on these policies is provided to all staff members as part of their induction at the council however these policies are not rigidly enforced.

Rowells Ltd, an engineering company, is a current provider of services to the council. Rowells' director and owner is Mike. John and Mike previously worked together for a number of years in the 1990s and they have been friends ever since. John has not declared this relationship to the council.

Shortly after commencing employment with the council, John enters into an agreement with Rowells whereby he receives substantial monthly payments for work as a consultant to the company – work that is fictitious. John also accepts numerous gifts and benefits from Mike, including electronic equipment, meals, international travel and accommodation. John does not disclose his consultancy agreement to the council, nor the payments and other benefits he receives from Rowells. Over a seven-year period this amounts to approximately \$1.15 million in cash and other benefits.

John is instrumental in the development of a new tender process for the council and he ensures it is weighted to favour tenders from Rowells. This includes reducing the number of contractors used by the council, introducing three to four-year contract terms with rights to extensions for further items, and not requiring a fixed scope for the work that is commissioned. John also has control over choosing the contract specifications and procurement budgets, which he also ensures are favourable for Rowells. He then uses information he has acquired through his role at council to help Rowells draft tenders for council work. He does not disclose this assistance.

Although John is not part of the council's tender assessment board, he sits in on some of their meetings as an observer. He uses this opportunity to influence the discussions and decisions, resulting in a number of contracts being awarded to Rowells. There is no direct link between any of the specific gifts given to John and his team and individual contracts won by Rowells, but over a seven-year period, Rowells significantly increase the number of contracts it has with the council, and their turnover grows from \$8.2 million to \$32 million, with an increase in profit from three percent to 46 percent.

To avoid unwanted scrutiny, John surrounds himself with like-minded people in his team, many of whom he has had previous work or social relationships with, sometimes before joining the council. John promotes a team culture of entitlement. He actively encourages his staff to have a close relationship with Rowells staff and to accept benefits and gifts. The more Rowells' invoices a team member "signs off", the greater the benefits they receive from Rowells.

This way of working becomes 'business-as-usual' for the team. Team members who go along with John's way of doing business and accept gifts and benefits are considered team players and those who do not are treated as outsiders.

During a period that John is away, a number of invoices from Rowells are submitted to another council manager for approval. The manager is alarmed by the invoice amounts and a review of Rowell's invoices is undertaken. A full investigation is conducted and ultimately John and Mike are charged with and convicted of corruption and bribery offences and are sentenced to substantial terms in prison. Some members of John's team are dismissed from their jobs.

QUESTIONS FOR GROUP DISCUSSION

Why is it important to understand exactly how this corrupt conduct was able to occur and continue for so long?

- There is a public interest in understanding why and how this occurred. Failures in the system led to \$1.15 million of ratepayer money being misused and it is an organisation's responsibility to take all appropriate and reasonable steps to ensure such a case of offending does not happen again.
- Helps identify deficiencies in policies and procedures, both in their scope and the ways in which they are implemented and monitored.
- Supports understanding of the consequences of a lack of oversight and the ways in which a culture of entitlement can lead to widespread policy breaches.
- Raises awareness about the importance, not just of having policies on managing conflicts of interest and gifts, but also other supports for staff (e.g. mechanisms by which staff are encouraged to speak up).
- Supports the importance of quality training being provided to staff, both during induction, and on an on-going basis.

How was it possible for John and his team to breach the council's policies on managing conflicts of interest and gifts over a seven-year period?

- Policies on managing conflicts of interest and gifts were not enforced consistently across the organisation and there was a lack of oversight (i.e. internal audit processes were poor). So, by never declaring his relationship with Mike and because he was allowed to influence the underpinning procurement processes (e.g. tendering), John was able to continue and evolve his corrupt conduct.
- John manipulated the people around him; he encouraged his team to breach policies and procedures, both to enable the corrupt conduct and to ensure that, if they spoke out, they would incriminate themselves.
- John and his team justified their wrongdoing to themselves by building a team culture that normalised accepting gifts and personal benefits as standard business practice and using each other (not the council's policies) as reference points for their decisions. This meant that team members who were "on the bus" either did not adhere to procedures, or were "off the bus" but stayed silent.
- Others were aware of the lavish gifts and benefits some staff were receiving, but they did not speak up through the appropriate channels – this may have been because the avenues to do this were not clear.

What policies and procedures need to be implemented, changed, or reviewed in order to minimise the risk of this happening again?

- Conflicts of interest, gifts, and hospitality policies and procedures need to be reviewed regularly to ensure they are robust and fit for purpose and training needs to remain current and be ongoing.
- There needs to be robust oversight of policy compliance, this could include strengthening governance structures at the organisation and/or ensuring regular discussion of the risk environment at senior management level. Management need to ensure the organisations internal control framework considers the potential for corrupt conduct.

- Strengthen supervision of high-risk functions and systems that require joint decision-making.
- Implement accountability and transparency mechanisms that require decision-makers explain the reasons for their actions at various stages in the procurement process and allow greater oversight of the procurement function.
- Induction of staff should be strengthened to emphasise the importance of understanding and complying with, relevant policies.
- A speak up policy needs to exist, be fit for purpose and demonstrably championed by leadership.

What are the risks associated with failing to manage conflicts of interest with, and gifts or benefits from, parties involved in a procurement process?

- Can create a perception that decisions are biased even if the same decision would have been reached without the presence of a conflict of interest or receipt of gift or benefit.
- Can have a material impact on decisions that are made, i.e. it changes the outcome of the process and reduces the robustness of the process when decisions are not impartial.
- May reduce the value for money the organisation receives from the goods and services delivered.
- There is a reputational risk to the organisation and the individual(s) who have failed to declare a conflict of interest or receipt of gift or benefit.