

EXAMPLES

P and R are applicants for a job with X Ltd. P offers R, who is better qualified than P for the position, a large sum of money to withdraw his application. R accepts the offer and withdraws.

Neither P nor R would be guilty of bribery. P was under no duty to X Ltd to maximise the field of choice or to allow X Ltd to choose the best candidate.

P is an insurance provider. R is a broker of insurance policies who sells, amongst others, P's policies. R receives a commission from P every time he sells one of P's policies. R recommends one of P's policies to X. He does so knowing that the policy is not the most suitable for X. However, R is anxious to secure the commission. X accepts the recommendation.

R would be guilty of bribery. He owes a duty to act impartially and in X's best interests. He has broken that duty and the primary reason that he has done so is in order to secure the commission. By contrast, P would be guilty of bribery only if he intended that the commission should be the primary reason for R to recommend a policy that was unsuitable for X or he foresaw that a serious risk that the commission would be the primary reason for R to recommend an unsuitable policy.

P is self-employed and is heavily reliant on business from Z Ltd. P is afraid that Z Ltd will switch its business to L who is offering more competitive terms. Accordingly, he flies R the directors of Z Ltd to an exotic location and puts them up in a five star hotel. The primary reason that P does so is to ensure that Z Ltd continues to do business with P regardless of whether it is in the interests of the shareholders of Z Ltd.

Under the current law, it is questionable whether P can be convicted of bribery. Under our proposals, it would be possible to convict P of bribery because he has conferred an advantage in order to induce R to breach a duty that they owe to act in the best interests of the shareholders.

P is trying to set up a new business. In order to do so, he needs a licence from X that he does not qualify for. P pays R (X's wife) a considerable sum of money for her to convince her husband to act improperly and grant a licence. She does so and X, without knowing that his wife has been bribed by P, grants the licence.

In this example, X has breached a duty that he owes but has not done so in return for an advantage. By contrast, R has not breached a duty but, in return for an advantage, has **used her influence** to induce X to breach a duty. Under our proposals, both P and R would be guilty of bribery. Under the current law neither P nor R would be guilty of bribery.

P, a foreign national, resides in London where he works as a middle-ranking manager for a British company. P goes abroad on company business and, unknown to his superiors, bribes a foreign official. P returns to London.

Under the current law, P cannot be convicted of bribery because he is a foreign national. Under our proposals, he can be convicted of bribery