

SALES INCENTIVE SCHEMES – NBF GUIDANCE NOTES

Updated December 2019

Overview

The National Bed Federation actively encourages ethical behaviour, and the public's trust and confidence in our members is essential. We know that the way sales staff are paid can influence how and what they sell to customers. We equally recognise that payment of sales incentives is a common method used by manufacturers to boost the sales of their products. We acknowledge that payments to sales staff of incentives or other, similar rewards, are not illegal, but we are now taking steps towards ensuring the risks posed by such payments are properly managed. The National Bed Federation, in mitigating these risks, recommends that businesses cease to participate in payments to sales staff of incentives, rewards or use of similar incentive schemes. This suggestion is only guidance and The National Bed Federation urges businesses to independently decide whether they wish to comply with our suggestions.

Context

The National Bed Federation is concerned that the use of incentive schemes poses a risk to customers. The distinction between incentive payments and bribes is not always clear cut and we consider that, because sales staff are able to offer different products that earn them different incentive payments, there is a risk that the sales staff may recommend a product that earns them more commission, even if the product is unsuitable for the customer's needs. This opens the industry up to potential bribery risks. We have updated our guidance to reflect our attitude towards this behaviour and to highlight the steps businesses should be taking if they wish to continue issuing incentives in order to mitigate the risks posed.

Other industries have recently moved towards the risk-averse attitude of ceasing to use incentive schemes and The National Bed Federation is aligning itself with this.

Next Steps

If members of The Bed Federation wish to continue using incentive schemes during the course of business, we strongly recommend you read this high-level guidance and take independent advice on how you can mitigate the risks of bribery in practice.

Following a period of review, The National Bed Federation intends to regularly review this issue and will reissue further guidance if we are advised that the risks have changed.

What is an incentive scheme?

A reward (such as a gift; voucher; cash payment; points which can be accrued and converted into goods, holidays, experiences etc) paid by a manufacturer/supplier to retail sales staff for each sale they make of that manufacturers/supplier's product.

This is likely to have the direct effect of incentivising the salesperson to promote that particular product over and above those of its competitors.

Are they illegal?

Incentives schemes are not illegal, but they could become so if they are in fact bribes masked as incentives.

What's the difference between a legitimate incentive and a bribe?

Both incentives and bribes provide a benefit that seeks to motivate or encourage another person to do something.

Under the Bribery Act 2010 a person commits an offence if they give a financial or other advantage to a person and intend the advantage to induce the person to improperly perform a relevant activity. This could mean ignoring the actual needs of a customer and selling them a bed which is unsuitable, simply because it there is a good reward for the salesperson on that product.

According to the Serious Fraud Office, incentives must be:

- transparent to all the parties
- the company funding the incentives needs to be sure these are genuine incentive payments going to individuals and are not being used to provide a way of making bribes to third parties.

So, how do you stay the right side of the law?

The SFO suggests at the very least that you should:

- Make the retail proprietor/manager/director aware of the reward scheme, the sums involved and in what circumstances you will pay out. Prepare a short written summary and provide a copy of this
- Provide clear (preferably written) guidance to the retail staff who will potentially benefit from the scheme. Make it clear when you will pay out. Also make it clear that, notwithstanding the scheme, **retail staff must always recommend appropriate beds to their customers;**
- Set reward levels at reasonable and proportionate levels. As a general rule the lower the reward level the less of an issue it is likely to present;
- Make sure a senior person in your organisation has full visibility of the scheme being offered and is comfortable that it does not present any issues under the Bribery Act; and
- Maintain a bribery policy highlighting your position on incentive schemes and ensure all employees are kept aware of the contents of the policy.

The National Bed Federation expects businesses to properly consider your use of them and whether they increase the risk of mis-selling products. If it is likely that this risk is increased, you should ensure you have adequate controls in place to manage risks and if they are inadequate or you cannot mitigate them, take immediate action to change your scheme.

Don't forget that both you and the retailer have a duty of care to ensure any rewards or incentives schemes you put in place stay the right side of the law, including:-

Consumer Protection from Unfair Trading Regulations 2008

A trader is guilty of an offence if he recklessly engages in a commercial practice which contravenes the requirements of professional diligence, and the practice materially distorts the economic behaviour of the average consumer with regards to a product.

There are also offences committed should a trader give false information, or if its overall presentation in any way deceives or is likely to deceive an average consumer through misleading actions, or if they make any misleading omissions. Within the Regulations there are also 31 specific commercial practices which are in all circumstances considered unfair.

For more guidance on the Consumer Protection from Unfair Trading Regulations 2008, please follow this link

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284442/oft1008.pdf

What about the tax and NI liability?

Both cash and non-cash award schemes, via voucher or otherwise, are seen as benefits in kind and attract income tax and NI. There are differences in how to deal with these liabilities, depending on what type of award it is and who is responsible for arranging it.

Anyone providing an award scheme should make it clear in writing who will be responsible for paying any tax or NI due.

There are specific rules about reporting to HMRC and where the tax and NI liability lies for cash and non-cash incentive awards. Both attract both PAYE and NI as they are classed as earnings.

We recommend that if you are rewarding third parties, you should consider paying some or of all the recipient's tax liability. You can set up a Taxed Award Scheme (TAS) with the HMRC Incentive Award Unit, more details of which can be found on the Government website and in Appendix 1 to this guidance. Usually the award-giver will account for basic rate tax and they must also account for all employer NICs. No employee NICs are due on awards to third parties made under a TAS. The benefits of such a scheme are:

- *Simplifies administration of taxes*
- *No employee NICs are due*
- *Tax returns detailing benefits awarded don't need to be submitted until after the end of the financial year, improving cash flow*

If the employer makes the arrangement for a third party to reward its employees, then the employer is liable to account for employer NICs.

Are there any other options?

The National Bed Federation recognises that incentive schemes can be a successful way of rewarding sales staff for achieving appropriate outcomes for their customers and does not want to stop this. We therefore recommend considering other ways of achieving the same objective, for example by adjusting wholesale prices to retailers to drive higher sales and allowing retailers to decide whether to reward their staff which would reduce the risk of bribery.

Appendix 1

The following is HMRC Guidance on Employee Incentives Awards, published in June 2014.

Overview

If you give out incentive awards as part of a pay package, or your employees get awards from a third party, you may need to pay PAYE tax and National Insurance contributions (NICs) on them. There are different rules for what you have to report and pay depending on what the award is and whether it's you or someone else who makes the award to your employee.

What's included as an incentive award?

Incentive awards could be:

- cash
- vouchers - including ones that can be exchanged for cash
- non-cash items like goods
- prizes for employer-run competitions
- holidays you pay for

1. Cash or vouchers exchangeable for cash

a) Cash awards

Include in the employee's gross pay when working out both PAYE tax and NICs.

But if a cash award is made to one of your employees by another business, then you must calculate and pay the NICs due on the award - the other business must deduct PAYE tax from the award.

You must:

- report the value of the award to HM Revenue and Customs (HMRC) on a Full Payment Submission (FPS) at the time it's provided - even if this is before the employee's main payday
- include the amount in the fields 'pay subject to Class 1 NICs' and 'taxable pay in this pay period' on the employee's payroll record

You have to report the award itself on or before the day it's made, but you don't have to calculate or report any NICs for the pay period until the last payment is made in that period.

b) Vouchers that can be exchanged for cash

These vouchers count as earnings, regardless of who gives the voucher to your employee, so you'll need to:

- add their value to the employee's other earnings
- deduct and pay PAYE tax and NICs through your payroll
- report any NICs for the pay period when the last payment is made in the same period

2. Vouchers exchangeable for goods and services only (non-cash vouchers)

Add the cost of the vouchers to the employee's earnings (unless they're luncheon or childcare vouchers. For these, use the voucher's face value).

If another business provides one of your employees with a non-cash voucher without you being involved you don't need to pay any NICs due on the award. It's the third party's responsibility to pay what's due. But if you provide it, or you arrange for another business to provide it, when the employee gets the voucher - even if this is before their main payday - you must:

- report the value of it to HMRC - include the amount in the fields for both 'pay subject to Class 1 NICs' and 'benefits on which Class 1 NICs are due' on the employee's payroll record and send an FPS
- report any NICs for the pay period when the last payment is made in the same period
- add the value of the award to the employee's pay that was paid in the same period the award was made and work out NICs on this revised gross pay figure
- deduct the employee's share of NICs from any cash earnings you pay them, send an FPS to report them to HMRC and pay the NICs due on the revised gross pay figure

Other non-cash awards

If another business provides a non-cash award to one of your employees and makes all the arrangements, it's up to the employee to report this to HMRC - you don't have to report or pay anything to HMRC.

But if you provide a non-cash award, find out if you have to pay either Class 1 or Class 1A NICs for a specific type of non-cash award by checking the [Expenses and benefits: A to Z](#).

Report what you've provided in one of these ways:

- by filling in the gross value of the award on [form P11D or form P9D](#)
- by entering into a Taxed Award Scheme or a [PAYE Settlement Agreement](#) with HMRC

And if it's one you have to pay Class 1 NICs on:

- report the value of the award to HMRC even if this is before the employee's main payday
- include the amount in the fields for both 'pay subject to Class 1 NICs' and 'benefits on which Class 1 NICs are due' on the employee's payroll record and send an FPS
- add the value of the award to the employee's pay that was paid in the same period the award was made and work out NICs on this revised gross pay figure