

# STOPPING THE ROT

The Serious Fraud Office has dedicated 2014 to rooting out corporate corruption. **Michael Littlechild** answers some key questions about anti-bribery measures concerning UK FDs

**S**ince becoming director of the Serious Fraud Office in 2012, David Green has sought to sharpen the strategic focus of the organisation with a particular focus on casework dealing with the “topmost tier of serious and complex fraud and bribery”. With this in mind, Michael Littlechild, chief executive of corporate responsibility specialists GoodCorporation, answers questions on pressing issues surrounding identification and prevention of corporate fraud.

**Q: How do companies typically find themselves exposed to bribery risk?**

**A:** There is a real danger in assuming that bribery is carried out by third parties in remote locations. While this does present a very real risk, often the root cause is much closer to home and stems, for example, from highly pressurised sales targets. Companies need to ensure that employees have a clear understanding of what is and is not acceptable in pursuit of new business. The



'win at any cost' mentality is a high-risk approach, raising the likelihood of both reputational and criminal damage. Many of the high-profile corruption cases of recent years (BAE, Mabe & Johnson and latterly Alstom) have involved payments to foreign government officials in order to win a contract.

Other bribery risks include payments by agents or intermediaries acting on a company's behalf, often to win a contract, or facilitation payments, which can be permitted under some laws, for example the US's Foreign Corrupt Practices Act (FCPA) but not the UK's Bribery Act. Companies need to conduct risk-based anti-bribery due diligence to identify the relationships that are most risky and put effective controls in place to mitigate those risks. Ownership of third parties should also be verified; in many parts of the world, Brazil and the Middle East for example, businesses are often partially owned by the state or government officials. Consequently, what appears to be a normal company payment could be classified as a bribe to a government official.

Companies trading internationally also need to be aware of local customs and business traditions that may lead them to breach UK anti-bribery legislation. In China for example, gift-giving is common, including to government officials, for providing licences or permits, despite the Chinese government's crackdown over the past few years. Companies need a careful communications policy that explains how UK bribery laws affect what they can and cannot do abroad.

**Q: Are there any sectors/industries that have particular risks in this?**

**A:** While there are some sectors that appear to be more at risk than others - notably defence, extractives, construction and pharmaceuticals - bribery can and does permeate all industries and sectors. Oxford University Press, for example, was ordered to pay £1.9m after two subsidiary companies

paid bribes to government officials to win contracts in east Africa. The sectors listed above are particularly at risk, as they tend to be large multinationals with complicated supply chains, using agents or intermediaries to bid for government contracts or permits.

**Q: Are possible sanctions just a reputational issue or is there criminal liability involved?**

**A:** Facing corruption charges is more than just a reputational issue. In the UK, conviction under the Bribery Act could lead to up to 10 years in jail and an unlimited fine. Not only that, but executives facing bribery charges abroad would be subject to local penalties which range from life imprisonment (China) to fines up to 100-times the bribe plus a jail sentence (Russia).

What we have also seen is that where countries are taking a firm line on corruption, it is often overseas companies in the firing line, as governments tend to protect their own companies first. Eight of the top 10 FCPA enforcement actions have involved foreign companies.

But it's not just about prosecution, and as we have seen in the UK, not every company that discovers corrupt practices within it finds itself in court. What it will find, however, is that it loses business and/or is barred from tendering for public contracts. Serco and G4S, under investigation for overcharging the government for electronic tagging services, were banned from tendering for government contracts. A corporate renewal plan was ordered, involving detailed forensic audits and a review of corporate performance and behaviour.

In addition to lost business, companies that find themselves in this position have to put business growth and development on hold while management time is deployed putting their house in order, often under the watchful eye of an appointed monitor who scrutinises every area of business operation for a specified period of time.

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**Q: If prevention is better than cure, how can businesses protect themselves from falling foul of anti-bribery rules?**

**A:** Businesses need to ensure they have a robust anti-bribery programme in place that is regularly monitored and reviewed using internal or external auditors. This will ensure that anti-bribery and corruption (ABC) controls are working on the ground in all areas of the operation. Auditing tools such as the GoodCorporation Framework on Bribery and Corruption ([bit.ly/URamDI](http://bit.ly/URamDI)) can be used to check that adequate procedures are in place, although other tools are available.

Assessment against software tools like the GoodCorporation framework meet the BSI 10500 anti-corruption standard and mirrors the Ministry of Justice guidance on Adequate Procedures. These are broken down into six broad areas:

**Management commitment** to demonstrate clear ownership at the most senior level of anti-bribery controls and a total commitment to a zero-tolerance approach.

**TOP 10 FCPA ENFORCEMENT ACTIONS OF ALL TIME**

Company	Country	Amount fined	Year of prosecution
Siemens	Germany	\$800m	2008
KBR/Halliburton	US	\$579m	2009
BAE	UK	\$400m	2010
Total SA	France	\$398m	2013
Alcoa	US	\$384m	2014
Snamprogetti Netherlands BV	Holland/Italy	\$365m	2010
Technip SA	France	\$338m	2010
JGC Corporation	Japan	\$219m	2011
Daimler AG	Germany	\$185m	2010
Weatherford International	Switzerland	\$152m	2013

A comprehensive **risk assessment** of the markets, countries, sectors and areas of the business at risk from bribery, with appropriate mitigation controls put in place.

All stakeholders must receive clear and regular **communication and training** on the company's ABC policies and demonstrate their commitment to following these principles.

Appropriate risk-based **due diligence** must be carried out to examine the ethical practices of agents, intermediaries and partners as well as wholesalers, distributors and suppliers that act on the company's behalf.

**Proportionate procedures** also need to be in place to prevent corruption in the key business functions of sales, procurement, finance, HR and government and regulatory affairs.

Finally there should be a **compliance and monitoring function** with a clear ABC remit and the resources to ensure that the policies are implemented and appropriate reporting channels are in place.

**Q: Are UK businesses covered only by UK legislation or do they need to study bribery rules of the country in which they operate?**

**A:** A business operating internationally may find itself exposed to a number of laws simultaneously. These include the laws of the country in which it is based, the laws of any overseas country in which it is doing business and the laws of any further countries into which it may be exporting that have extra-territorial reach. It is

essential therefore, to employ the services of well-informed local lawyers and compliance professionals to ensure that ABC controls meet all legal requirements.

**Q: Where does responsibility lie for this - with the FD, the CEO, company secretary, or staff on the ground?**

**A:** A company's anti-bribery commitment should start with the board but be driven by the compliance function that should aim to instill collective responsibility throughout the organisation.

In all but the largest companies, ABC compliance is often bolted on to an existing job title, often to someone in the legal department. This may result in insufficient focus on ensuring adequate procedures are properly in place.

GoodCorporation advises its clients to take an ethics-based approach to anti-corruption compliance, embedding an ethical culture and ethical decision-making throughout the organisation.

An open and transparent whistleblowing procedure for reporting potential bribery should also be developed to encourage the reporting of misconduct.

**Q: What about education - what works and what doesn't when it comes to training staff in this area?**

**A:** Training and communication of a company's anti-bribery policy should be clear and consistent using a number of mediums to reach the widest possible audience. The website should be used to communicate the organisation's zero-tolerance approach to bribery. All employees should receive the company's ABC policy and make a

commitment to follow it.

Those members of staff likely to be exposed to bribery risks should receive either face-to-face training or as a minimum, interactive e-training on the company's ABC practices and procedures. If in doubt, train: the more stakeholders who are aware of potential misconduct, the greater the organisation's eyes and ears.

An international programme of risk assessment workshops should also be considered. This is an effective means of training teams to identify local bribery risks and develop a deeper understanding of the threats they pose to the organisation as a whole.

ABC policies should also be communicated to suppliers, customers, agents, intermediaries and partners. This needs to be done proactively, soliciting their commitment to uphold the organisation's or equivalent policies.

**Q: Assuming ignorance is no defence, how can companies take an active approach without becoming bogged down?**

**A:** Ignorance is most definitely not a defence and if facing prosecution, could well lead to conviction. Under the Bribery Act, failure to prevent corruption is a corporate offence, so if charged, the only defence a business has is to demonstrate that it had adequate procedures in place to prevent bribery.

Businesses have been investing significantly in strengthening these procedures. However, for many large multinationals, knowing how far to go has proved a challenge. The key to getting this right is to take a risk-based approach, which enables a business to identify the real dangers and put the right controls in place.

Too many organisations embark on an overambitious programme of anti-corruption due diligence, often becoming bogged down mid-way through and consequently failing to identify the real concerns. This is particularly true when it comes to managing corruption in the supply chain. Good decision trees (see GoodCorporation's due diligence leaflet at [bit.ly/1sqXhy1](http://bit.ly/1sqXhy1)) can help here, ensuring the risk is properly evaluated and appropriate mitigating steps put in place. ■

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