

with Bernadette Barber



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Knowing the risks



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From the Panorama claims about dubious practices among FIFA officials to the Serious Fraud Office's investigations into allegations against BAE Systems, bribery and corruption have been much in the news in recent months. And every time I hear such reports, I am reminded of the onerous obligations placed upon company directors by the new Bribery Act.

Knowing the difference between right and wrong, ethical and unethical is often as much a gut feeling as anything else. Despite instinctively thinking that commonplace business customs, such as taking a client out for an occasional lunch, are perfectly reasonable, fears abound that such seemingly innocent practices may be caught by the new Act. Such fears are hardly allayed by lawyers pondering how courts will interpret the various restrictions imposed by the new legislation.

However, while it seems like a minefield with no guarantees that there will not be casualties along the way, the Bribery Act is focusing attention on an important and all too often hidden issue. The size of the corruption problem worldwide is staggering, with an estimated \$1 trillion paid in bribes each year. Undoubtedly, it simplifies things to consolidate a complicated

hotchpotch of outdated legislation and case law in one place, but directors and senior officers who may be personally liable to prosecution are understandably desperate to know what to do to avoid falling foul of the new regime.

The defence available under the Act of showing you have 'adequate procedures' in place to prevent bribery seems to offer a safe haven, but in practice those 'adequate procedures' may be devilishly difficult to devise, implement, test and review.

In addition to the Act coming into force in April, publication of the Attorney General's guidance for business on procedures, which can be put in place to meet the Act's requirements, is a little late in the day for timely implementation by those directors and managers who fear finding themselves on the hook for any shortcomings. In the absence of the Attorney General's view, guidance published by Transparency International UK has proved extremely helpful. It is packed full of practical steps, broken down into detailed checklists, which boards can take to demonstrate that they are committed to a zero-tolerance approach to corruption. Going through the Transparency International checklists, it is clear that directors and senior officers will have their work cut

out to fully and effectively implement a comprehensive anti-bribery policy, particularly if their company operates in high-risk territories or sectors. Not only must directors demonstrate good practice within their own organisation, but also ensure that those within their supply chain and others who act on their behalf are squeaky clean.

It may seem harsh and somewhat unfair to make one person responsible for the actions of another from a completely separate organisation, but the rationale for this is not hard to understand. The cost of bribery to industries and society as a whole is not to be underestimated. When contracts are awarded unfairly or poor service delivery goes unchecked by a corrupt official, whether the perpetrators are public or private sector, this is not a victimless crime. Society as a whole pays the price and often those paying the highest price of all are those in developing countries who can least afford to do so.

Clearly, anti-bribery procedures need to go much further than simply publishing a policy rejecting all corrupt practices. All company policies, including in particular those relating to employment, need to be reviewed to ensure that they do not unintentionally encourage bribery. Board members need to visibly commit to the principles of their company's ethical stance and lead by example. Directors need to be enquiring, constantly keeping themselves alert to what corruption risks the organisation may be exposed to and be at the ready to challenge the management team accordingly.

It is clear that there are not going to be any hard and fast rules that say a bottle of wine is ok or dinner is fine so long as it costs no more than a certain amount. Directors are going to need to use their judgment to ensure that the intentions behind their company's practices are honourable. But those enforcing the new regime are also going to have to use their judgment to ensure that the people they pursue are the real offenders.

» About the author

Bernadette Barber is the author of ICSA's Corporate Governance Handbook, published by ICSA Publishing. Order your copy at www.icsabookshop.co.uk. To book a place on the ICSA training course, Complying with the Bribery Act, to be held 11 March and 25 May, contact 020 7612 7033 or go to www.icsatraining.co.uk.