

How to stay on the right side of our anti-bribery legislation

Waste crime might be high on the agenda for the waste management industry, but recent attention has been on general offences, rather than bribery. **Thomas Webb** and **Nick Churchward** at independent UK law firm, Burges Salmon, explain why businesses need to keep the Bribery Act front of mind

A recent EU report on corruption says that waste management is one of the sectors “most prone to corruption”, according to the *European Commission’s 2014 EU Anti-corruption Report*, with offences ranging from deliberately misclassifying or understating waste volumes to bribery in the procurement of public contracts.

According to the outgoing chief executive of the Chartered Institution of Wastes Management (CIWM), Steve Lee, “waste crime is now a major issue in the UK”. Unsurprisingly, bribery is often used as the facilitator.

However, the Bribery Act 2010 creates one of the most stringent anti-bribery legal frameworks in the world, with a strict liability regime, extra-territorial effects and severe penalties.

Businesses in the waste sector need to be aware of and continue to take the critical practical steps needed to minimise the risk of offences under it and avoid any contractual consequences (an offence under the Bribery Act 2010 is commonly a termination event under public sector contracts).

Understanding the offences

Giving a bribe: Under Section 1 of the Act, it is an offence for a person (P) to offer or give a financial or other advantage to another person (R), where that advantage is intended to induce R to perform his functions improperly, or reward R for improper performance.

Receiving a bribe: The Act also makes it an offence to be bribed. Specifically, under section 2, it is an offence for R to request or accept a financial or other advantage if it is intended that, as a result of receiving that

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advantage, he will perform his functions or activities improperly.

Bribery of a foreign public official: Section 6 states that it is an offence to offer a financial or other advantage to a foreign public official, with the intention of obtaining or retaining business or an advantage in the conduct of business.

The corporate offence: failure to prevent bribery: Section 7 creates the most controversial offence under the Act. It states that an offence will be committed by a commercial organisation if a person associated with it bribes another person with the intention of obtaining or retaining business or an advantage in the conduct of business for the organisation.

It will be no defence that the commercial organisation had no knowledge or suspicion of the bribes. However, it will be a defence if it can prove that it had “adequate procedures” in place to prevent the bribery conduct.

What can be done? While many responsible waste management businesses may already have some form of anti-bribery procedures in place, it would be sensible to revise them now, especially in light of the Serious Fraud Office (SFO) obtaining its first convictions under the corporate offence.

Some practical steps to consider include:

1. Co-ordination: Appoint a person to be responsible for leading efforts to ensure that you have adequate procedures in place. This person should report directly to senior management.
2. Engagement from the top: Draft and issue an all-staff memorandum from senior management reminding staff of the business’s zero tolerance approach to corruption.
3. Risk assessment: Carry out a documented risk assessment programme in order to identify key areas of vulnerability and high-risk practices (e.g.

exporting waste in higher-risk jurisdictions).

4. Policies and procedures: Disseminate a clear, overarching bribery policy document. Such a policy may refer to existing procedures and policies.

5. Due diligence: Conduct due diligence of any potential “associated persons”, especially if they may be considered to pose a higher risk of corruption (e.g. agents located in higher-risk jurisdictions).

6. Contract review: Review existing and proposed contractual arrangements and amend where necessary to specifically prohibit bribery and include bribery as a ground for termination (e.g. sub-contractor contracts).

7. Training and awareness: Develop a training and awareness programme to be delivered to relevant staff.

8. Whistle blowing and investigation: Develop whistle blowing and investigation mechanisms to ensure that corrupt activities can be safely and confidentially reported to a nominated individual.

Businesses in the waste sector must be proactive in their approach to reducing exposure to bribery. In a worst-case scenario, a business will need to demonstrate that it had adequate procedures in place to seek to prevent bribery, even if an individual subverted those procedures. Failure to be able to demonstrate this could result in criminal consequences for the business. **RWW**

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