

## SPOTLIGHT ON...

# Bribery & Corruption

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### Siobhain Egan, Lewis Nedas Solicitors

The Financial Conduct Authority (FCA) recently fined JLT Specialty Limited (JLT) over £1.8million for failing to have in place appropriate checks and controls to guard against the risk of bribery or corruption when making payments to overseas third parties. This serves as a reminder to firms of the importance of having appropriate anti-bribery systems and controls in place. Here, Siobhain Egan, of Lewis Nedas Solicitors, discusses the pressing subject of bribery and corruption.

**S**iobhain Egan is a leading criminal lawyer specialising in high profile cases in areas including Money Laundering, Bribery & Corruption, and Corporate & White Collar Crime. An expert fraud defence lawyer and one of the first female lawyers to be accepted as a Supervisor on the former Serious Fraud Panel, Siobhain has been defending cases of fraud since 1992, having trained with a very well known defence specialist.

#### The JLT Fine

The FCA fined JLT Speciality Limited and a well established insurance broker, for essentially failing to have adequate AB&C procedures in place.

The FCA used their regulatory powers, principle 3 (of their Principles for Business) i.e. that "a firm must take reasonable care to organise and control its affairs reasonably and effectively, with adequate risk managerial systems".

That isn't to say that JLT failed to have any systems in place, they did do that, it was just that the FCA found them to be inadequate. There was absolutely no evidence that any bribes were either received or given.

The issue arose over JLT's business agreements with "overseas introducers" of work to JLT. The FCA found that JLT had failed to execute due diligence before entering business arrangements with these "overseas introducers of work" in foreign jurisdictions and failed to implement adequate checks and controls to prevent bribery and corruption.

The regulator has implemented principle 3 before when fining AON and Willis Ltd. in 2009 and 2011 respectively for similar breaches, so there is a history of intervention in this regard.

JLT was fined some £1.8 million (after receiving a 30% discount to reflect an early settlement with the regulator). It was found that JLT received £20.7 million (gross) from the business introduced by "overseas introducers" and in turn paid out to them £11.7 million.

So, what happened? As I stated earlier, there were existing A,B&C policies in place, but they apparently failed to:

- Provide specific guidance to employees when dealing with these situations;
- Did not ensure that the employees took proactive measures to ensure that these "overseas introducers" did not have contacts with, for example, public officials within the respective jurisdictions;
- Execute due diligence throughout the life of the business relationship with the "overseas introducer" e.g. each time that they brought a new client to JLT;
- According to the FCA's audit, JLT had failed to show that the existing policies and procedures had been implemented properly or at all.

The JLT decision highlights many issues:

1. That companies still haven't learned from others mistakes and the FCA really do mean business on bribery and corruption;
2. That due diligence, let alone A,B&C due diligence is not a static, box ticking exercise - it is a regular on going process that has to be consistently implemented and kept up to date.

#### Protecting Against Bribery & Corruption Litigation

For companies to protect themselves, they need to install the most effective A,B&C systems that the

company can afford and bring in the best compliance staff to oversee and apply these systems rigorously. Most boards are wary of spending huge sums on compliance, and rightly so. It is a very competitive compliance market out there, so shop around, and focus the compliance systems where there are needed.

The approach taken by the compliance staff is the most important factor. I'm very concerned that the bigger companies are recruiting staff "hand over fist" but fundamental mistakes are still being made. Largely because compliance is a new profession, and the staff are young and generally inexperienced. Nothing beats a "gut instinct" that something just isn't right and, as I have said before, move away from the box ticking mentality, the Regulators have!

Additionally, they have to remember that it's not just the UK regulators and prosecutors that they have to keep happy. If they are working internationally beware the US regulators and the FCPA and new anti-bribery legislation from countries such as Mexico and Brazil.

#### Outlook

I feel that 2014 will bring more international A,B&C enforcement, generally led by the US. The SEC and DOJ have already promised an enhanced enforcement programme, the SFO will probably agree one of two lesser value Bribery and Corruption Deferred Prosecution Agreements and international regulators will continue to see defects in A,B&C compliance as easy and lucrative pickings!

