The Bribery Act 2010 – What Employers need to know...

Munir Patel has just received two prison sentences for 3 and 6-years to run concurrently and in doing so, has gone down in history. ***Why?*** Munir was a Court Clerk, working at Redbridge Magistrates Court and has become the first person to be prosecuted under the Bribery Act 2010 for accepting a bribe to 'get rid' of a speeding fine. The sentences received were for Bribery (3-years) and Misconduct in a Public Office (6-years) and in the words of the Judge hearing the case were [intended to] "deter offending of this kind".

So as an employer; what do you need to know about the Bribery Act? Firstly, it: -

- Provides a revised framework to tackle bribery in the Public and Private Sectors.
- Removes the need to prove that such acts were done corruptly or dishonestly.
- Creates two general offences covering the: -
  - Offering, promising or giving of an advantage – otherwise known as an 'Active Bribe'
  - Requesting, agreeing to receive or accepting of an advantage – known as a 'Passive Bribe'
- Creates a discrete offence of bribery of a foreign public official
- Creates a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf
- Provides a maximum penalty of 10-years' imprisonment or an unlimited fine for all the offences for individuals and an unlimited fine only for commercial organisations.
- Provides jurisdiction to prosecute an act of bribery committed overseas by any person (individual or corporate) who has a 'close connection' with the UK.
- Provides that senior officers of a corporate body may be prosecuted if it can be proved that the corporate body consented to the particular offence or that it was encouraged by them.

The only available defence for Employers is to show that you put in place 'adequate procedures' to prevent bribery. To assist Employers, the Government has outlined six principles which they believe any Organisation committed to preventing bribery should be guided. These principles are: -

- **Proportionate Procedures** – that the procedures put in place to prevent bribery should be proportionate to the risk of bribery to which they are faced.
- **Top-level Commitment** – the most senior representatives of the Organisation will foster a culture where bribery is considered to be unacceptable.
- **Risk Assessment** – there is an on-going/ periodic assessment of the level of risk to which an organisation may be exposed.
- **Due Diligence** – that the Organisation applies appropriate due diligence measures to mitigate against acts of bribery being committed by that person(s).
- **Communication (including training)** – that the Organisation ensures that its policies and procedures in relation to bribery are embedded and understood throughout the Organisation.
- **Monitoring and Review** – all policies and procedures relevant to the commitment to prevent bribery within the Organisation are regularly reviewed and updated to make appropriate improvements.

The intention of these principles is to enable Organisations to put in place appropriate measures that are in proportion to the level of risk faced, rather than by imposing strict and cumbersome measures that in many cases will not be relevant due to the size and nature of the business.

For prosecutions to be pursued in England and Wales, one of the two most senior prosecutors (The Director of Public Prosecution or the Director of the Serious Fraud Office) must be satisfied that: -

- Based on the evidence, a conviction will be achieved
- That prosecution is in the public interest

Munir Patel's case is the first warning shot delivered following the implementation of the Act and we must now wait to see what impact this and other cases may have on the interpretation of the Act.

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