



Fraud, Bribery and Corruption charges can cause more damage than reputational damage. How can you make sure your business stays out of headlines?

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Recent bribery charges brought by the UK's Serious Fraud Office against six individuals who have worked for commodity traders are a further reminder, if one were needed, of the authorities' focus (and corresponding headlines) on commodity trading and alleged misconduct.

We do not expect this focus to change, in the UK or globally. In separate enforcement actions in the US, other commodity traders have been convicted and some of the largest commodity trading houses have been subject to fines and penalties running into billions of US dollars following lengthy multijurisdictional criminal and civil investigations. Enforcement actions elsewhere, including in Switzerland, remain ongoing.

The levying of fines, penalties and worse mask other huge costs to affected traders, including the time and money spent dealing with the investigations and their aftermath, which can include ongoing reporting obligations to law enforcement, up to and including the appointment of a 'monitor' (essentially an auditor), for a period of years following the resolution.

Outside of regulatory investigations, allegations of fraud have made headlines and spawned disputes worth hundreds of millions of dollars within the commodity trading community.

Given the high stakes, prevention really is better than cure. Here are three tips for keeping out of trouble.

TIP 1: Make sure your compliance programme is fit for purpose.

Have you checked your compliance programme recently? Are you confident that it works in practice? We recommend that compliance policies are dusted down and reviewed on a regular basis. A good programme will evolve and update to take into account feedback from the business and developments in the regulatory environment (for example, the new UK legislation on failure to prevent fraud and other changes which now make it easier successfully to prosecute corporates for fraud in the UK and abroad).

A really good programme will knit together with other processes and procedures so that it is integrated with them and not siloed.

It is important to ensure that your business does all the things that the compliance programme says it will do. While the law is not prescriptive about what your compliance programme should include, it is important that your business complies with the standards it has set itself. A programme which, for example, references annual training, or requires that a specific process is followed in certain circumstances, will be viewed as having failed if that training is not undertaken or that process is not followed.

TIP 2: Ensure your record keeping has kept pace with developments in communications

The use of BYO/other mobile devices and third party messaging apps within businesses has given rise to a very basic problem. Employers often no longer have control over the communication platforms used by employees.

Put another way, it is commonplace for those working for companies to download WhatsApp and other messaging services to their mobile phones and for clients and others to message them using these services. While some businesses have outlawed the practice, in most cases this equates to burying your head in the sand. Businesses should factor in these new communication practices and consider how best to ensure that important business communications will be saved and available if and when they are needed.

We have come across instances on more than one occasion where a business does not have records of key transactions because they were conducted using WhatsApp on a former employee's mobile phone, making it difficult or impossible to explain it to a regulator and/or to bring and/or to defend a civil claim.

TIP 3: Make sure your whistleblower hot line is working and that you are receiving complaints!

It may seem counterintuitive, but it is good news to receive complaints on your corporate whistleblower helpline.

On the one hand, whistleblowers are the catalyst for many regulatory investigations and adverse media stories and globally, there is a move to pay whistleblowers for tips, such is their value in bringing cases to the attention of regulators and law enforcement. However, on the other hand, whistleblowers offer an opportunity for a company to learn what might be going wrong and have the opportunity to address, remediate and fix a problem internally before it is escalated.

We strongly encourage businesses to ensure that whistleblower hotlines are well-publicised and that people use them.