

# The only way is ethics



GETTING THE COMPANY CULTURE RIGHT IS THE KEY TO EMPLOYEES BEHAVING ETHICALLY. PETER WILLIAMS REPORTS.

Do efforts to make the business world pay greater attention to ethics falter when economic times are hard? Perhaps. But ethical behaviour enhances a business regardless of whether the economic climate is fair or foul. Organisations such as the Institute of Business Ethics (IBE) push the message that it is always possible to encourage good ethical practice in business and that treasurers are ideally placed to play a full part.

Promoting ethical decision-making can help protect companies from financial and reputational risk. Faced with the pressures of business – demands to succeed, to make the numbers, to deliver on time, to follow the boss's orders – it is often too easy to make decisions without considering the ethical implications. High-profile business scandals have shown that organisations' failure to instil the habit of ethical awareness and reasoning across all decision-making can lead to significant reputational and financial hits.

In June, the IBE published its new Good Practice Guide, which draws on the experience of UK and international companies, as well as psychological and behavioural research, to provide businesses with practical assistance on how to encourage and embed ethical values and commitments across all decision-making.

Philippa Foster-Back, a member of the ACT Advisory Board and formerly EMI's group treasurer, has been the IBE's director for the past 10 years and has strengthened its influence with both corporations and regulators. ACT members who attended this year's conference in Liverpool heard her speak as a panellist on a session devoted to treasury policy and ethics.

The IBE's reminder of what constitutes good practice is timely. The institute also recently issued a survey that found six out of 10 UK companies provided training in business ethics for their staff last year, compared with seven out of 10 when the IBE carried out a similar survey three years ago.

This year's survey extended its remit to include companies listed on the stock exchanges of Spain, Italy, France and Germany. It found that references to the corporate code of ethics in the recruitment

process are more likely to be made by continental European-based companies than those in the UK. Continental European companies are also more likely to have a standalone ethics/compliance function with responsibility for the code and ethics programme than British companies.

Also released in June was a report from KPMG International, which highlighted some of the obstacles global companies face in adopting a

COMPANIES THAT WANT TO TAKE ETHICS SERIOUSLY AND WORK HARD TO ACHIEVE AN ETHICAL BUSINESS WILL FIND THAT PROMOTING BUSINESS ETHICS REQUIRES MORE THAN TRAINING.

## Act now

Companies may be granted a further period of grace to comply with the new Bribery Act, suggests information management firm Recommind. The Act, which took effect from 1 July, creates a new offence of failure by a corporation to prevent bribery that could lead to a jail sentence of up to 10 years and unlimited fines.

The Act's criminalisation of bribery makes no exceptions for private sector bribery or for facilitation payments. However, the initial phase of implementation offers a "unique opportunity" for UK companies to self-disclose any such issues to the Serious Fraud Office, says Howard Sklar, Recommind's senior corporate counsel. He expects this period to extend to at least the end of this year before the SFO takes any action, in recognition of the fact that

organisations need time to formalise their plans for compliance.

"It's therefore essential that UK organisations take the right steps towards remediation and compliance, so that they're able to unearth any potential issues now before the major fines come into play," he adds.

While the Act assigns responsibility for corporate bribery to the board of directors, who can be held personally liable, Sklar urges companies to avoid a top-down approach.

"Organisations need to ensure that the anti-bribery message comes from front-line managers, and real experiences are used to formulate a brand-new risk assessment that is based on the reality of the business," he says.

more ethical policy. The group's global anti-bribery and corruption survey 2011 found that more than two in three of the UK and US senior compliance executives who participated thought that bribery and corruption remained an integral part of doing business in many parts of the world.

However, fewer than one in three of respondents had considered not doing business in countries where corruption was endemic in order to avoid the risk. They reported that rather than abandoning these areas their company had introduced precautions such as improved internal controls, enhanced due diligence and employee training.

The survey findings confirm that companies operating in countries with corrupt reputations face significant challenges, such as adequately investigating the backgrounds of local business partners and complying with a wide variety of foreign laws and regulations.

"Even as awareness grows among survey respondents about the business and legal imperatives for well-developed anti-bribery and corruption compliance programmes, the survey findings and our experience show that there are still numerous ways that companies can improve their compliance efforts to reduce bribery and corruption risks around the world," says Richard Girgenti, head of KPMG's US forensic services practice.

What role should the treasurer play in raising the profile and standing of business ethics within an organisation? For business ethics to work there has to be a successful focus on corporate governance, corporate social responsibility and sustainability.

These issues need to be taken seriously. Running into ethical problems has an impact on reputation and this can in turn adversely affect the hard numbers, such as profitability, returns to shareholders and growth.

Dealing with ethical issues such as allegations of corruption or bribery can consume vast amounts of company resource and senior management time. It involves not only the obvious elements such as people and reputation but the less obvious elements such as a company's ability to trade, its relationship with all authorities – including tax – and raising finance. It is also inevitable that the aftermath of ethical problems will be an extensive review and fundamental overhaul of policies, procedures and data protection.

There is a basic checklist of actions a company should follow if it is involved in an ethical event. These include:

- conducting a culture and values survey;
- establishing an employee hotline to enable easy and confidential reporting of ethical concerns;
- creating or updating a code of conduct which all employees are



- expected to know, understand and adhere to;
- setting up a compliance department;
- reforming the internal audit department; and
- ensuring a focus on the understanding and implementation of ethical and related policies.

While the above measures all contribute towards ethical behaviour, what is needed most when lapses occur in a company is a more fundamental philosophical shift. In many cases the right elements are already in place, such as audits, reviews, self-declarations and company training. It is possible that companies have also taken action against fraud and corruption in the past, including dismissing rogue employees. Yet all of this may still not be enough. And if companies don't recognise all the ethical risks they are running, the consequences could be severe.

The key to eliminating fraud and corruption as much as possible is culture and understanding. The fundamental aspects of ensuring the right culture include:

- employees need to want to behave ethically;
- employees need to be able to spot the risks in their everyday role;
- employees need to understand the consequences of bad behaviour and, conversely, the benefits of good behaviour;
- the company needs to foster an environment where employees can speak up without fear of retribution; and
- senior management needs to understand that policies won't stop bad things happening – people will.

To ensure that the right culture is in place, some companies have instituted group-wide face-to-face training on ethical dilemmas using video-based scenarios, and used employees as trainers to embed the corporate culture. One firm employs what it dubs the STAR (stop, think, act, reflect) guide, and recommends that when an employee is uncertain over any of five key questions they go and seek advice. It believes that this simple guide promotes responsible actions by its workforce and has a positive impact on profitability, returns to shareholders, reputation and growth. The five key questions are:

- Have I consulted the appropriate people?
- Am I sure this is legal?
- Could I explain this to others and feel comfortable?
- Is it consistent with company policy?
- Am I setting a good example?

The culture on ethical behaviour is part of a much wider code of responsible business which extends beyond the avoidance of fraud,

bribery or corruption to embrace health and safety, supporting customers' responsible business priorities, ensuring responsible business in supply chain and manufacturing, energy and carbon efficiency, community engagement, and employee investment and talent development.

Companies that want to take ethics seriously and work hard to achieve an ethical business will find that promoting business ethics requires more than training. A cultural shift is needed to support behavioural change and encompassing ethics in a broader approach

to responsible business should be the sensible and logical move for most businesses. It is important to realise that ethics and responsible business policies, just like every other company policy, need constant updating and revising. The world is constantly changing and the behaviour and attitudes that were once OK may no longer be ethically or legally acceptable.

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# Straying from the path

COMPANIES THAT DEPART FROM A STRICTLY ETHICAL PATH CAN EXPECT THEIR ACTIONS TO ATTRACT THE ATTENTIONS OF THE SERIOUS FRAUD OFFICE (SFO), THE GOVERNMENT DEPARTMENT RESPONSIBLE FOR INVESTIGATION AND PROSECUTING SERIOUS AND COMPLEX FRAUD, WRITES **GRAHAM BUCK**.

The SFO has had a number of well-publicised clashes in recent years with BAE Systems over alleged bribery and corruption, even contemplating prosecution of the defence group's individual executives.

It has also levied heavy fines against companies that have engaged in behaviour deemed improper, even when the offending company has itself uncovered the wrongdoing and promptly reported it.

Such was the case with international engineering and project management group AMEC. In October 2009 the SFO obtained a recovery order of almost £5m against the group, even though AMEC had made a referral to the SFO some 18 months earlier, following its internal investigation into the receipt of irregular payments associated with a project in which AMEC was a shareholder.

The SFO determined that the description of the payments entered into AMEC's books and payments contravened part of the Companies Act and amounted to "unlawful conduct". However, the agreed settlement took into account that AMEC had acted promptly and responsibly in referring the case following its internal review and also assisted the SFO's own investigation into the corporate irregularities.

The group also agreed to improve its ethics, compliance and accounting standards and to allow these improvements to be reviewed by an internal consultant so they could be reported back to the SFO.

In February this year engineering group MW Kellogg was ordered to pay just over £7m in a High Court action brought by the SFO. The order, made under the Proceeds of Crime Act 2002, related to share dividends from profits and revenues generated from contracts obtained by bribery and corruption committed by Kellogg's parent company and others in a joint venture that was bidding for a liquefied natural gas project in Nigeria. The group was found not to have engaged in any criminal activity itself.



As Kellogg reported its concerns to the SFO under the "self referral" scheme and co-operated with the subsequent investigation, the fine represented only the amount that the group would have earned as a result of the unlawful conduct. It reflected the finding that Kellogg "was used by the parent company and was not a willing participant in the corruption", said the SFO. The group also agreed to overhaul its internal audit and control measures.

A more complicated case was reported in April, when the SFO obtained a recovery order against DePuy International. The company was ordered to pay £4.8m plus prosecution costs for unlawful conduct over eight years to 2006 arising from its sale of orthopaedic products in Greece.

DePuy's US parent was acquired by pharmaceuticals giant Johnson & Johnson in 1998. Eight years later, following an internal claim that these Greek sales weren't compliant with company rules, Johnson & Johnson began an internal investigation and reported its findings to the US Department of Justice (DoJ) and the US Securities and Exchange Commission (SEC).

The SFO subsequently became involved and the remedy devised involved financial penalties, civil sanction, freezing of assets of the Greek subsidiary and civil recovery obtained by the DoJ, the SEC, the Greek authorities and the SFO.

SFO director Richard Alderman says: "We worked with the DoJ to find a solution that served both the interests of justice and the company's desire to put illegal activity behind it. I believe that the order... will illustrate to other companies how the SFO works closely with organisations across the world in enforcing the highest ethical standards, but is willing to engage and listen to companies that come to us with problems and help them find solutions."

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