Bribery, corruption and pensions

February 2011

Importance ★★☆☆☆

A wide-ranging new criminal law on bribery applies to pension scheme trustees.

It was due to come into force in April this year but has been postponed after criticism of the draft official guidance. The Act will now come into effect three months after the final guidance is published. At the moment there is no information when this might be.

The new law also applies to advisers and service providers, to sponsoring employers and to almost everyone else in business. The comforting news is that a lot of routine business interaction is unlikely to be caught.

Business people will soon be much more aware of the risk of bribery, including the risk of inadvertently compromising someone else. Trustees will not be alone.

Hospitality

Trustees are low risk for bribery. Normally their main concern will be hospitality and other promotional activity by advisers and service providers. In practice, this is unlikely to breach the Bribery Act as long as it only involves reasonable and proportionate expenditure in pursuit of good relations.

On the other hand, there is no exhaustive list of what can constitute bribery and no minimum value. Parliament has deliberately set a very low threshold for potential prosecution.

Criminal offences

One offence is bribing someone else. This includes giving or offering a person an advantage either with the intention that they (or someone else) should perform their duties improperly, or as a reward for doing so. The advantage need not be financial.

The other offence is being bribed. Broadly, this is when you ask for, or receive, an advantage for performing your duties improperly.

In addition, a company (or other corporate body) commits the offence of failing to prevent bribery if an employee or agent bribes someone with the intention of winning or retaining business for the company. There is a defence if the company has adequate procedures designed to prevent this sort of conduct. The official guidance will indicate the sort of procedures that will be sufficient. What is adequate is likely to depend on the size and nature of the business.

The new Act applies to individuals who act as trustees as well as to a corporate trustee and its directors.

Risk assessment

Like other organisations, trustees need to do a risk assessment and adopt procedures to address the risks they identify. The assessment should be documented but need not be particularly complicated.

As well as a policy on hospitality, trustees will need a general statement on ethics that declares zero tolerance of corruption.

Trustees might be able to adopt versions of the employer's bribery policy, modified to reflect their different circumstances.

One measure they might consider is to require that all hospitality be declared to the full trustee body and that any estimated to be worth more than a certain figure be approved in advance.

Conflict of interest

Bribery can be seen as a particularly acute form of conflict of interest. To that extent the Act is not new but underscores standards of behaviour that trust law already requires. Complying with it involves similar disciplines of thought and procedure to those trustees use to address other conflicts of interest.

The real target of the Act is large scale commercial activity as it is conducted in various parts of the world. Having been off the pace, UK legislation on bribery is now catching up with international standards.

Penalties

In the worst case, the penalty for an individual is an unlimited fine and up to 10 years in prison. Businesses can receive unlimited fines. Guidance is going to be issued to the prosecuting authorities (like the police and the Crown Prosecution Service) with a view to creating a common understanding of where the threshold for prosecution is in practice.

More information

If you would like more information, please get in touch with your usual contact in our pensions team or with **Marcus Hellyer at marcus.hellyer@burges-salmon.com or on 0117 902 7789**.

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