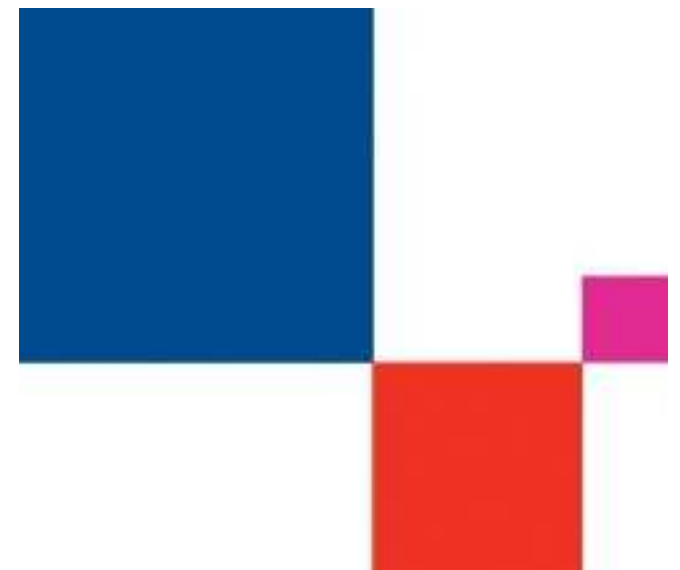
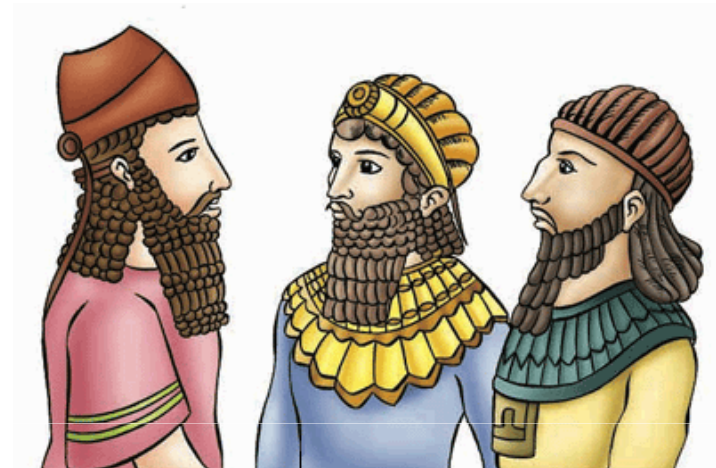


Corporate Governance after the Bribery Act *Still cheaper than a good lawyer?*

David Morrey, Partner



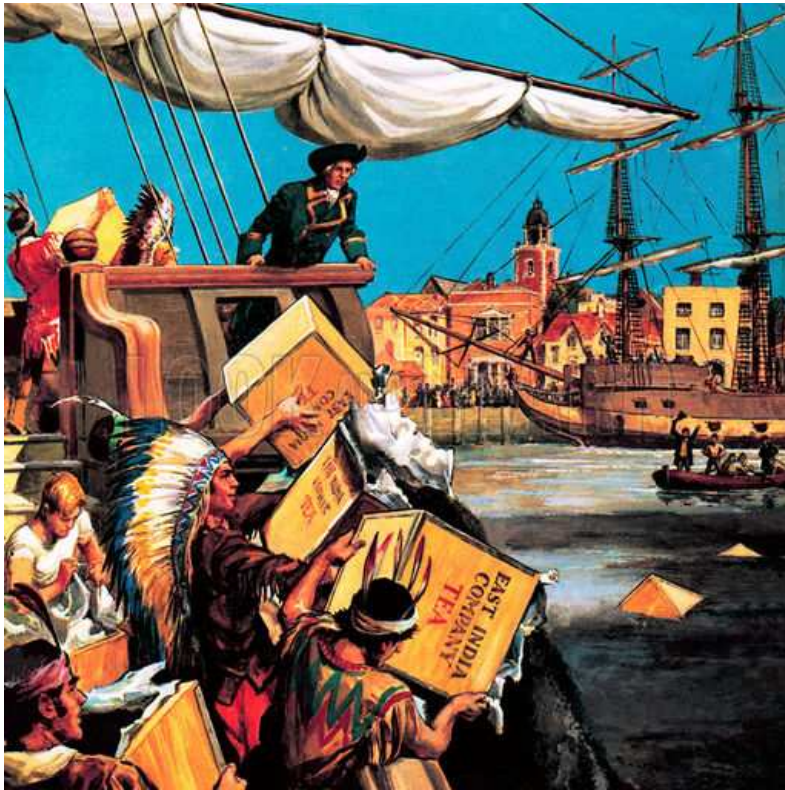
Le bribe



“For life, liberty and the pursuit of bribery”

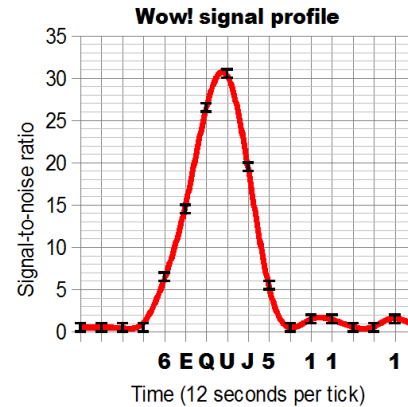


Turning points in American History – on special offer in aisle 5



1977

- August 15
 - 72 second alien transmission reaches earth



Were they linked?

- August 16
 - Elvis leaves the building



1977

- Foreign Corrupt Practices Act signed into law



- Modern anti-bribery law (and law enforcement) is born



FCPA is a little different

- Applies only to bribery of government officials or agents only
- No corporate criminal offence but similarities are greater
- Corporations can be fined (a civil offence under FCPA)
- Applies to any company with a business presence in the USA



Plenty of examples to study

- FCPA Enforcement activity:
- DoJ and SEC have discrete enforcement powers
- 60 active investigations at any one time – many pan-national (current list includes large companies from 13 European countries)
- Willingness to prosecute on cases identified by non-US agencies
- Prosecutions are extending to executives who fail to take necessary steps to prevent illegal conduct
- Poor internal controls feature in the judgements as a multiplier of the fine
- Companies under investigation are encouraged to self-disclose for which they can expect a lower fine and keep executives out of jail



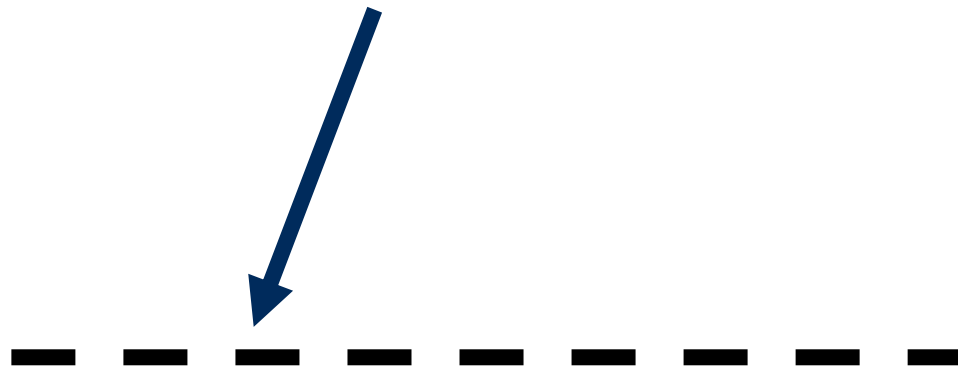
Ministry of Justice & Serious Fraud Office

- Strong incentives to ‘co-operate’ and disclose
- Smaller organisations in breach are an ‘education’ challenge...
- ... so will target large companies
- Will not pursue a business which does not have a trading presence in the UK...
- ... oh wait, maybe we will

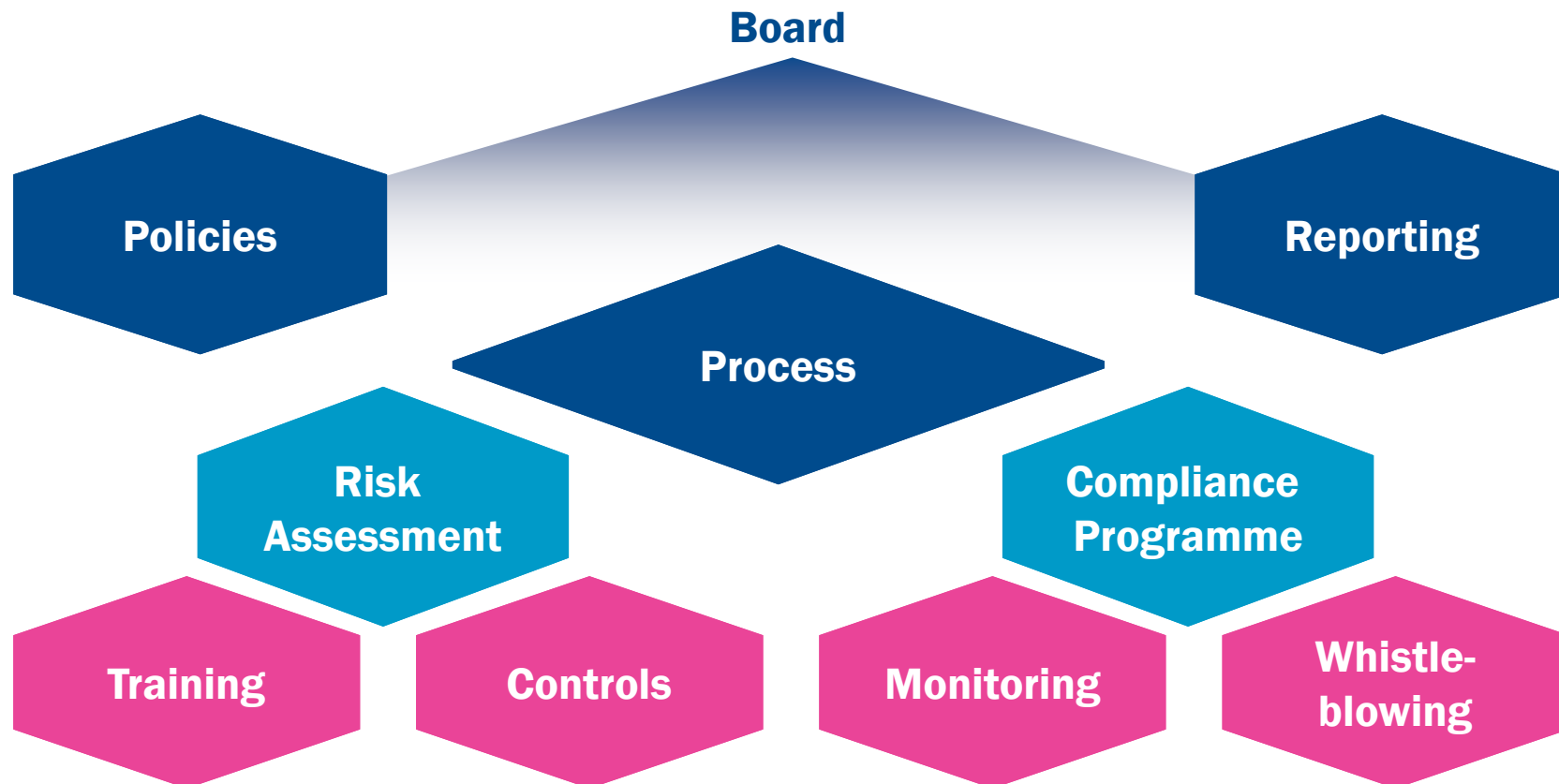


Corporate Governance and the Bribery Act – why it matters

- In general - keeping your staff out of jail is a good thing
- Specifically – it is the only defence to the corporate offence of ‘failing to prevent bribery’
 - Must prove they had in place adequate procedures designed to prevent the organisation paying a bribe
- On a difficulty scale this is here

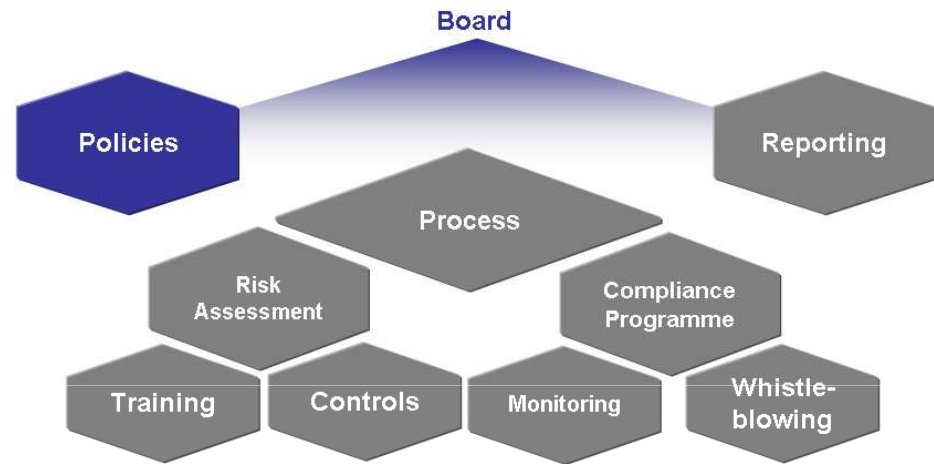


A sound anti-bribery environment



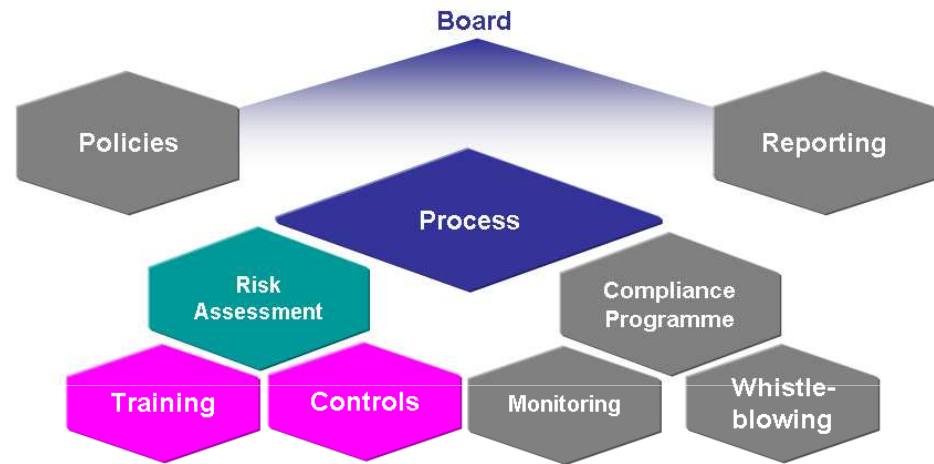
Policies

- Ethics / Code of Conduct
- Gifts & Hospitality
- Anti-Fraud
- Whistleblowing



Process

- Risk assessment
 - Performed by someone with right knowledge and skills
 - By location & activities
 - Red flags
 - Documented



Risk assessment example

What activities do I undertake where a bribe could play a significant role?

- Pursuing large contract business
- Large internal incentives to win or retain the business, e.g. bonuses or commissions
- Lobbying government officials

Are there grounds to believe the environment is receptive to bribes?

- Geography
- Industry
- Organisational experience

Any other red flags?

- Use of agents or middle-men
- Opaque bid criteria
- Unexpectedly successful



Reality based risk assessment



Red flags identified from FCPA

- 
- Multiple subsidiaries
 - M&A history with diverse cultures
 - Long reporting lines from the Corporate centre
 - High value contracts
 - Senior manager rewards strongly driven by revenue targets
 - Secrecy or silo culture
 - History of acceptance of (minor) ethics violations
 - History of business process / operational breakdowns



What that will likely exclude

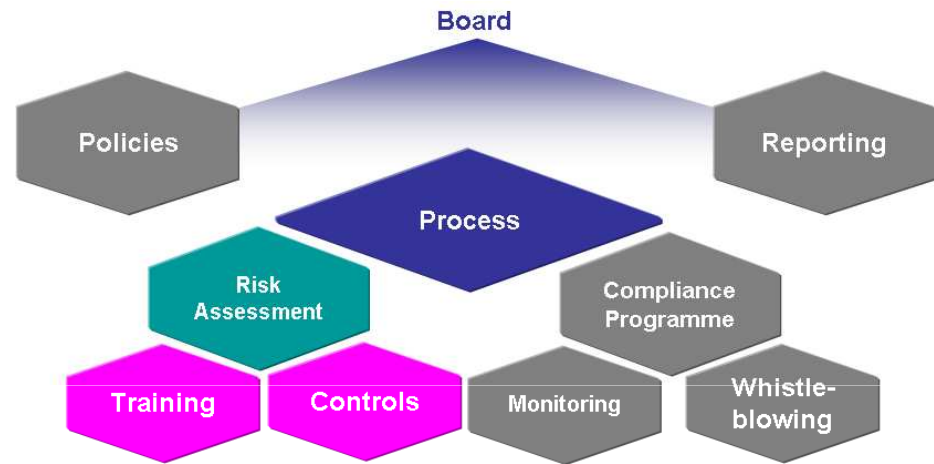
- Low value or retail sales
- Anything but the highest value corporate or public sector bids in low corruption countries
- Most activity by organisations that do not have high value commission or management bonus schemes
- Also excluded are:
 - Facilitation payments made
 - Any plausible level of entertaining
 - Bribes accepted by your staff

A good risk assessment will identify 'high risk' services / products / geographies / customers and control activity will be focused on those



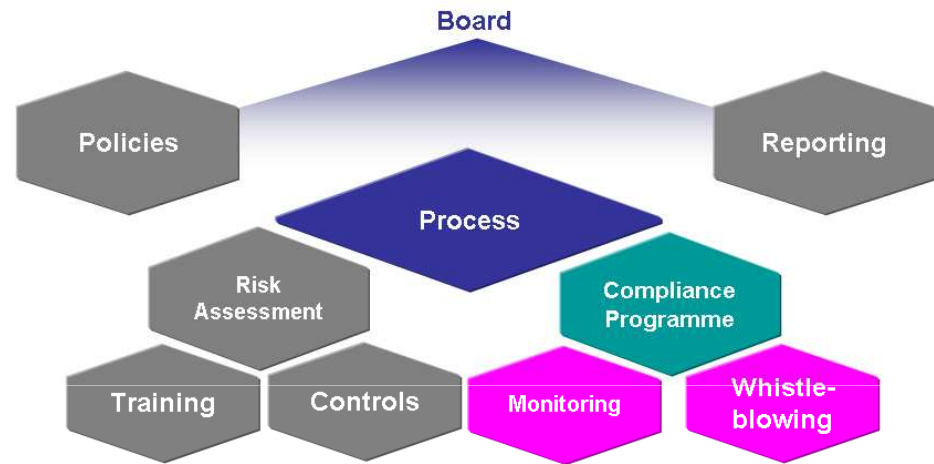
Process

- Training
 - Executive emphasis
 - On policy & controls
 - High risk staff, agents, JV partners
 - Regular
- Controls
 - Pre-authorisation of gifts & hospitality
 - Payment controls & invoice review
 - Due diligence of agents or middlemen
 - Contractual right of audit & bar on undisclosed sub-agents



Compliance Programme

- Compliance programme
 - Executive owner
 - Risk based
 - Adequate resource, knowledge and authority
 - Strong disciplinary response to violations
- Monitoring
 - Sensitive transaction review
 - Unusual payment review
 - Compliance audits (including 3rd parties)



- Whistleblowing
 - Anonymous reporting mechanisms
 - Whistleblower protections
 - Clear and rapid escalation protocols
 - Robust investigation



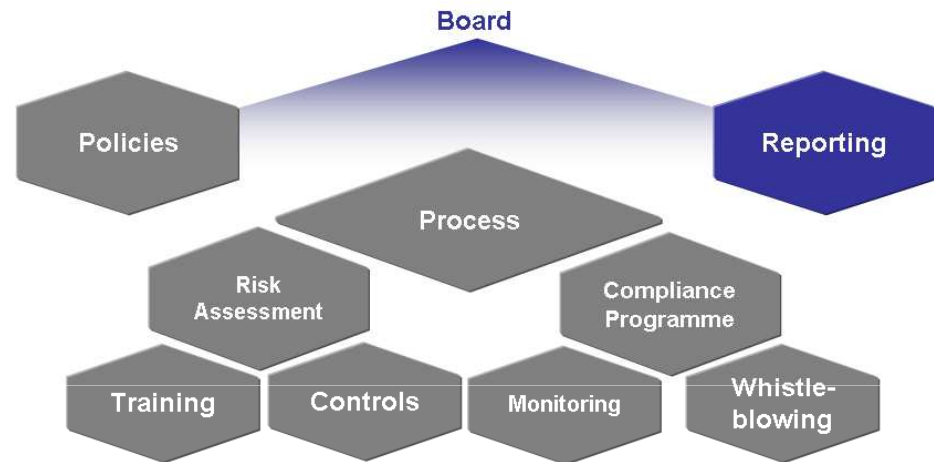
Investigations

- Low tech meets high tech
 - Diaries
 - Email
 - Visitor books
 - Electronic devices
 - Expense claims
 - Travel patterns
 - Credit cards
- Professionals only




Reporting – senior managers & Board

- Results of risk assessment
- Results of monitoring programme
- Whistleblowing incidents
- Outstanding issues



Key Corporate Governance messages

- Get the Board visibly involved in the anti-bribery communication
- Perform a good, focused risk assessment
- Explain how your controls and monitoring are adapted to the high risk areas
- For the very highest risk transactions consider performing a post deal review to identify issues
- Keep bribery where it belongs...  ... at home

