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Busting the bribery culture?

THE NEW UK BRIBERY ACT IS DESIGNED TO DETER THE INCENTIVES SURROUNDING BIDS FOR MAJOR CONTRACTS — BUT IT COULD ALSO HARM TRADE WITHIN THE SUPERYACHT SECTOR

MICHAEL HOWORTH REPORTS

ON FIRST READING, the UK's new Bribery Act appears to have little relevance to the world of superyachting, yet it threatens to have a serious and negative impact on our industry. Consider, if you will, these four everyday scenarios:

In the first, the British chief stewardess of a Cayman Islands-registered yacht is told by her local wine merchant, in a Mediterranean port, that if she places a sizeable order for wine the merchant will gift the yacht with wine for crew consumption. Under the new law this is a bribe — she has received an advantage which could encourage her to prefer that merchant over another.

The second one concerns the Italian captain of a 50m superyacht registered in London who takes her to a yard in Holland for a refit.

Upon arrival he is handed keys to a hospitality car and finds the boot filled with beer and designer clothing.

Two months later, the captain notices that corners have been cut during the refit job, but, rather than blame the yard or report the problem to the yacht's owner, he keeps quiet because he likes the way the yard looks after him. Because he is Italian, he cannot be caught by the Act. The owner, however, *will* be liable to prosecution because the yacht is UK-registered.

In the third, an American yacht broker working out of



The UK government wants every exchange of 'gifts' to be transparent

Monaco — but whose firm has an office in London — is contemplating the commission he has just earned.

But there's a niggler at the back of his mind — he can't be sure whether the new owner is aware that he was also paid a commission by the yard, one given on the understanding that he would do everything in his power to ensure that the sale went through.

As a US citizen, he can't be found guilty of being bribed. The firm he works for, though, might not be so lucky. By having offices in London it falls firmly within the remit of the Act.

The last scenario involves a British captain who wants to berth his Isle of Man-registered yacht at a local, government-owned port. The harbour master declares that all the berths for that night are full yet

the captain secures a berth by handing over cash. Unless there is a local written law permitting such a facilitation payment, then that cash payment will be considered a bribe within the remit of the Act.

In practical terms the UK Act covers bribery offences no matter where in the world they take place. Within the superyacht industry any UK individual or company that carries out business in the UK can be found liable and face prosecution if they clearly fail to prevent bribery.

Any company that carries out business in the UK (no matter where it is incorporated) can also be found liable for failing to prevent an 'associated person' from carrying out a bribe — this could include a sub-contractor.

Individuals found guilty of

an offence under the Act face imprisonment of up to 10 years and/or a hefty fine. Senior officers within a company can also face imprisonment if they're found to have consented to (or connived in) a bribery offence.

Strategies for defence

The best defence a company can have is to show that it has put in place a so-called 'Adequate Procedure' — a transparent reporting procedure for disclosing the receipt of gifts.

Owners and crew should be up front with all the parties involved in commercial transactions or workplaces.

Brokers, managing agents and service providers should inform each other if corporate hospitality gifts or commissions have been received.

Captains could, for example, ensure that a log of all possible incidences is kept and shown to his employers. That way it should not then affect the proper performance of work and should not constitute a bribe under the Act.

Crew may be able to continue accepting sweeteners from other businesses — for example when they place orders on behalf of their owners — but they must be open and honest about the receipt of such gifts. They should request permission from the owner, or their managing agents, before accepting the gifts. **SB**