

UNCAC – Update on implementation by the United Kingdom of Chapter III “Criminalization and law enforcement” and Chapter IV “International Cooperation”

Sentencing pertaining to acts of bribery in the private and public sectors

Sentencing Guidelines on sentencing in cases of fraud, bribery and money laundering were published in January 2014 and came into effect on 1 October 2014 (http://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud_bribery_and_money_laundering_offences_-_Definitive_guideline.pdf).

The guidelines apply to all sentencing on or after 1 October 2014, regardless of the date of the offence.

The UK does not make a distinction between public and private sector bribery. This is one of the main strengths of the Bribery Act 2010. The same maximum penalty applies to all offenders. The seriousness of the case will be reflected in the sentence handed down in individual cases, taking all the relevant circumstances into account.

Asset declarations by public officials and MPs

The current disclosure arrangements are well understood, effective and proportionate, and cover the full range of public officials, including Ministers. Under the terms of the Ministerial Code, Ministers are required, on appointment to each new office, to provide a full list in writing of all interests which might be thought to give rise to a conflict. The list should also cover interests of the Minister's spouse or partner and close family which might be thought to give rise to a conflict. A List of Ministerial interests is published. It is a key part of the terms and conditions of all Civil Servants that they must not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. The Civil Service Management Code makes clear that conflicts of interest may arise from financial interests and more broadly from official dealings with, or decisions in respect of, individuals who share a civil servant's private interests. Where a conflict of interest arises, civil servants must declare their interest to senior management.

Out-of-court settlements

On out-of-court settlements, it is important to emphasise that UK law enforcement agencies do not have a policy of systematically settling self-reported foreign bribery cases through the use of Civil Recovery Orders. Each case is taken on its merits and a range of routes to disposal for bribery offences have been taken by the Serious Fraud Office (SFO) and other prosecutors and regulators in the UK; including sanctions under the Bribery Act 2010, the Prevention of Corruption Act 1906, the Companies Act 1985, the Iraq (UN Sanctions) Order 2000, the Criminal Justice Act 1967 and the Financial Services and Markets Act 2000 as well as the common law offence of conspiracy to corrupt. The Serious Fraud Office revised its self-reporting policy in October 2012 in order to take forward recommendations made by the OECD Working Group on Bribery (and is currently producing further guidance on corporate self-reporting). The revised policy applies to all financial crime dealt with by the SFO including cases involving bribery and corruption overseas. A copy of the full policy will shortly appear on the SFO website (currently being redeveloped) but the main emphasis within the revised policy is to restate the SFO's primary role as an investigator and prosecutor of serious or complex fraud (including bribery and corruption) and to make it clear that there is no presumption in favour of civil settlements in any circumstances; each case will be decided on its merits in accordance with the Code for Crown Prosecutors.

In addition, in some cases the SFO may conclude that it is in the public interest to use its powers under proceeds of crime legislation. Where this is so, the SFO publishes its reasons, the details of the illegal conduct and the details of the disposal to ensure that there is transparency in relation to such settlements and that their publication has a dissuasive effect.

The Crime and Courts Act 2013 (Part 2, section 45/Schedule 17) introduced Deferred Prosecution Agreements (DPAs) in England & Wales which provide prosecutors with a new mechanism for dealing with corporate economic crime, including bribery and corruption. DPAs will provide an alternative to prosecutions in cases of bribery involving corporate entities and may include a range of conditions such as disgorgement of profits, financial penalties, compensation to victims, implementation of compliance programmes and the appointment of monitors to supervise the application of these measures to ensure future anti-bribery compliance. DPAs will be subject to judicial oversight to ensure it is in the interest of justice and the terms of the DPA are fair, reasonable and proportionate. The legislation requires the prosecutor to publish the DPA once it is approved by the Court.

SFO funding

The SFO funding model is unusual in that it is a comparatively small demand-led organisation taking on large and complex cases. The Director of the SFO (with the support of the Attorney General's Office and HM Treasury) has made clear that he will never refuse to take on an investigation on grounds of cost. The SFO has agreed with HMT that when expenditure on any given case is expected to exceed more than an agreed percentage of the SFO's core budget, the SFO will receive 'blockbuster funding' from the Reserve to ensure that resourcing issues do not prevent the SFO from conducting an investigation where the public interest demands one. The blockbuster approach gives the SFO access to additional resources to pursue cases of serious and complex fraud, bribery and corruption when required.

The flag principle

The Scottish Government will prioritise, as and when a suitable legislative vehicle is found, to make the legislative changes needed for the flag principle to also apply (in relation to Convention offences) under the laws of Scotland.

International Mutual Legal Assistance (MLA)

International agreements have no direct effect in UK law and cannot operate "as an independent legal basis" for cooperation. It is our view that we have implemented our international obligations through separate domestic law including, amongst others, the Crime (International Cooperation) Act 2003.

Since October 2014 the Home Office has recorded MLA and extradition requests on a new database and case management tool. This includes capturing data on the treaty basis of a request for assistance.

UK Anti-Corruption Plan & Anti-Corruption Champion

The UK has continued to take steps to deal with corruption and has notably published the first UK Anti-Corruption Plan in December 2014.

(<https://www.gov.uk/government/publications/uk-anti-corruption-plan>)

The UK Anti-Corruption Plan brings together all of the UK's anti-corruption efforts under one cross-departmental plan, setting out how the Government will tackle the threat of corruption and take action to reduce corruption risks across a range of sectors, both in the UK and overseas. The plan highlights that, our priorities are: to build a better picture of how corruption is affecting our society

and economy; strengthen our legal and operational tools and activity; enhance our law enforcement response; deny use of our financial system for those who are trying to abuse it; and step up our efforts internationally.

Delivery of the commitments in the Plan is overseen by an Inter-Ministerial Group on Anti-Corruption (co-chaired by the Government Anti-Corruption Champion and the Home Office Minister responsible for organised crime). This group brings together Ministers and heads of the operational agencies to both oversee delivery of the plan and set the direction for the Government's domestic and international anti-corruption activity.

Law enforcement co-ordination

The National Crime Agency (NCA) was established in October 2013 and the Economic Crime Command leads, supports and coordinates a multi-agency response to both domestic and international corruption. It leads on the national assessment of bribery and corruption by organised criminals and produces regular reporting on this threat. The NCA also supports investigations into corruption affecting law enforcement agencies and prisons, through intelligence, threat assessments and, where required, operational support. It works closely with a number of other law enforcement agencies to ensure a strong national response, including: the Serious Fraud Office who continues to lead on serious or complex and overseas cases of bribery and corruption and DfID-funded police units who investigate aspects of international corruption that affect the UK's key partner developing countries. To boost capacity to investigate cases of international corruption, a new central bribery and corruption unit has been created within the NCA to bring together resources from the NCA and the DfID-funded units. This unit will continue to work closely with the SFO to ensure a comprehensive and coordinated enforcement response.

The UK is committed to the investigation and prosecution of all forms of fraud, bribery and corruption, including the most serious and complex cases. The UK is currently reviewing the coordination and effectiveness of the enforcement response to these crimes, to ensure that the right powers, capabilities and structures are in place. This will conclude in June 2015 and Ministers will consider the findings in due course.

Statistical data collection on corruption offences

Currently, the set of offences the UK classifies and records as corruption relate to Bribery Act offences and Misconduct in public office offences. However, in the UK Anti-Corruption Plan the UK has committed to further exploring ways to improve the way corruption is recorded in national crime reporting. The government will consider how best to improve data collection and to identify data held by government which could be published to improve transparency and reduce opportunities for corruption.