



UK BRIBERY ACT 2010 – TEN YEARS ON

Introduction

Ten years have now passed since the Bribery Act 2010 was introduced in the United Kingdom, reforming the law on bribery and corruption. Since its implementation, there have been a number of high profile investigations and prosecutions, along with the introduction of Deferred Prosecution Agreements and Unexplained Wealth Orders.

Background

On 1 July 2011, the Bribery Act 2010 (“the 2010 Act”) entered into force in the United Kingdom. The previous regime was considered to be antiquated and territorial, and faced considerable criticism – in comparison, the new regime was intended to reform the criminal law of bribery to provide for a new consolidated scheme of bribery offences to cover bribery both in the United Kingdom and abroad. The 2010 Act replaced previous bribery and corruption offences both under pre-existing statutes and at common law, and created new specific offences of bribery of a foreign public official (Section 6) and where a commercial organisation fails to prevent bribery (Section 7).

Key statistics and prosecutions under the 2010 Act

Limited information is available on the number of prosecutions brought under the 2010 Act – indeed, the House of Lords Select Committee on the Bribery Act 2010 observed that no publicly available source of data on prosecutions and convictions under the 2010 Act appeared to have been collated until it requested this data at the start of its inquiry.

Available figures indicate that between 2014 and the second quarter of 2018, the Crown Prosecution Service (“CPS”) had launched 107 proceedings under the Prevention of Corruption

Act 1906, compared with around 42 for all offences under the 2010 Act. In the Government's Response to the House of Lords Select Committee, it said, *"Given that the number of Bribery Act cases is still relatively low overall... The SFO is a small organisation which takes on only a few of the most serious and complex cases and therefore caseloads are never likely to be high."*

The most comprehensive source is the UK Bribery Digest published by Ernst & Young (with Edition 12 available at: [https://www.ey.com/Publication/vwLUAssets/EY-UK-Bribery-Digest-edition-12-March-2018-table-of-cases/\\$FILE/EY-UK-Bribery-Digest-edition-12-March-2018-table-of-cases.pdf](https://www.ey.com/Publication/vwLUAssets/EY-UK-Bribery-Digest-edition-12-March-2018-table-of-cases/$FILE/EY-UK-Bribery-Digest-edition-12-March-2018-table-of-cases.pdf) -

The first conviction of a corporate entity under the new Section 7 (failure to prevent bribery) took place in December 2015 against Sweett Group Plc, which had pleaded guilty.

The first contested prosecution under Section 7 did not come to trial until 2018. Skansen Interiors Ltd, a small furniture business with around 30 employees which was part of the larger Skansen Group, reported bribery by two of its employees, and the Crown Prosecution Service subsequently brought charges against both the company and senior executives under Section 7. Skansen defended itself on the basis that it had in place adequate procedures to prevent bribery – while these controls were limited, Skansen argued that they were adequate given that it was a small company operating only within the UK. However, the jury disagreed and found the company guilty. In February 2018, Skansen was given an absolute discharge after the court ruled it had no assets for a financial penalty to be imposed; however, the judge made it clear however that a financial penalty would have been imposed had the defendant had the independent means to pay. Subsequently, two directors were convicted of bribery and sentenced to imprisonment. This case has been the subject of criticism and comment, including as to whether it should be viewed as something of an "outlier" and whether the standard should be "adequate" procedures, or "reasonable".

Deferred Prosecution Agreements

Deferred Prosecution Agreements ("DPAs") are not part of the 2010 Act, but rather were introduced in the United Kingdom by the Crime and Courts Act 2013 (effective from February 2014). Under the DPA regime, a company accused of an offence under the 2010 Act may be able to enter into a discretionary agreement with the Serious Fraud Office pursuant to which prosecution of the offence is suspended for a finite period. Such an agreement requires Court approval. If the company complies with the provisions of the DPA, then the offence will not be prosecuted at all. While still relatively uncommon in the UK, DPAs have been used to a far greater extent in the United States (where they have been in use for significantly longer).

The first DPA was entered into between the SFO and Standard Bank in November 2015. Standard Bank was charged with an offence of failing to prevent bribery contrary to Section 7 of the 2010 Act. In the course of securing \$600m project financing by the government of Tanzania from the respondent bank and its sister company, an additional 1% fee was paid to a 'local partner', a Tanzanian company of which two of three directors and shareholders were current and former Tanzanian government officials. There was no evidence that the 'local

partner' had provided any services related to the transaction. The withdrawal of the \$6m in cash from an account at the sister company led to a report by staff which generated a self-report to the SFO within three weeks, full disclosure of the internal investigation to the SFO and full cooperation. Leveson LJ approved the terms of the DPA, which included: (a) payment of \$6m compensation to the Tanzanian state plus interest; (b) disgorgement of profit on the transaction of \$8.4m; (c) payment of a financial penalty of \$16.8m; (d) past and future cooperation with relevant authorities in all matters relating to the conduct arising out of the circumstances of the draft indictment; (e) at the respondent's expense, commissioning and submitting to an independent review of its internal anti-bribery and corruption controls, policies and procedures regarding compliance with the act and other anti-corruption laws; and (f) payment of the SFO's costs.

Since then, a number of DPAs have been entered into between SFO and various companies, including:

- Unnamed company (July 2016): DPA required, inter alia, disgorgement of profit (approximately £6,200,000) and a much-reduced financial penalty of £352,000 payable over three years. The company was not required to pay any of the SFO's costs due to its financial position.
- Rolls Royce (January 2017): to date, this has been the most significant of the DPAs entered into, both in terms of the financial penalties and the contribution towards the SFO's costs. Sir Brian Leveson P noted that, notwithstanding the massive financial penalties that the DPA imposes on Rolls-Royce, the situation could have been much worse had it not been for RollsRoyce's "extraordinary" cooperation with the SFO and the extent of its own internal investigations. Nevertheless, Rolls Royce was required to pay (i) £258,170,000 to reflect the profits that Rolls-Royce made as a result of criminal conduct; (ii) £239,082,645 as an additional penalty; and (iii) £13,000,000 towards the SFO's costs of its investigation
- Tesco (April 2017; however, not made public until January 2019): Tesco Stores Limited dishonestly created a false account of its financial position by overstating its profits. As a result, it was ordered to pay a £129m fine and £3m investigation costs. However, this DPA was subject to criticism after the criminal proceedings against various individuals involved collapsed.
- Since that date, there have been a number of other DPAs, most recently Serco Geografix Limited and Güralp Systems Ltd (both concluded in 2019).

Unexplained Wealth Orders

Unexplained Wealth Orders ("UWO"), introduced in the Criminal Finances Act 2017, are another tool used to tackle bribery and corruption, along with other crimes. An UWO requires the person(s) subject to it to provide a statement setting out the nature of its interest in respect of certain property, including, inter alia, how the subject acquired the property (including the source of funds, if applicable).

The first known UWO was issued in 2018, to Zamira Hajiyeva, the wife of Jahangir Hajiyev, the former chairman of the International Bank of Azerbaijan. Jahangir Hajiyev, along with 7 other persons, was accused of embezzling public funds amounting to 211.59 million AZN (125 million euros) under Articles 178.3.2 and 179.1 of Azerbaijan's Criminal Code. On, 14 October 2016, a Baku court sentenced Jahangir Hajiyev to 15 years imprisonment for grave crimes.

On 27 February 2018, Mr. Justice Supperstone made a UWO against Mrs Hajiyeva, the Respondent, who was referred to as "Mrs A" on the basis that the order was to be anonymous (the order giving anonymity to Mrs A, her husband and two of his lawyers was later discharged). In a decision handed down on 3 October 2018 (*National Crime Agency v A* [2018] EWHC 2534 (Admin)), Mr Justice Supperstone dismissed a challenge by Mrs Hajiyeva to the UWO. Mrs Hajiyeva appealed against this decision to the Court of Appeal. A hearing took place on this appeal on 12 December 2019, and a judgment is expected in 2020.

Subsequently, a number of UWOs have been ordered, covering a variety of different areas:

- On 18 July 2019, the National Crime Agency ("NCA") reported that it had obtained an UWO in respect of a businessman with suspected links to serious organised criminals in what was described as the first time a UWO had been obtained solely based on an individual's alleged involvement in serious organised crime.
- On 31 July 2019, the NCA announced that it had obtained an UWO at the High Court on 24 July in respect of a Northern Irish woman believed to be associated with criminals involved in paramilitary activity and cigarette smuggling. The woman was ordered to explain how she financed the purchase of six properties worth around £3.2 million in total, four in London and two in Northern Ireland.
- In May 2019, the NCA reported that it had obtained three UWOs as part of a National Crime Agency investigation into London property linked to a politically exposed person believed to be involved in serious crime, later revealed to be Pakistani business man Malik Riaz Hussain. In December 2019, it was reported that the NCA had agreed a settlement with the family of Malik Riaz Hussain for the transfer of assets worth £190 million (including a UK property, 1 Hyde Park Place, London, W2 2LH, valued at approximately £50 million and all of the funds in various frozen accounts) to the Islamic Republic of Pakistan.

Concluding Observations

In March 2019, the Select Committee on the Bribery Act 2010 published its post-legislative scrutiny report in which it concluded that the 2010 Act was "an exemplary piece of legislation". However, it did make some recommendations, which dealt mainly with the implementation and enforcement of the 2010 Act.

Whilst there may have been limited convictions of individuals so far for the offence of bribery under the 2010 Act (around 28 convictions under Sections 1 and 2 between 2011 and 2017), the development of DPAs and UWOs indicates that the sense of impunity hitherto enveloping those who bribed or parked illicit funds in the UK may be diminishing, albeit to a very modest extent

thus far. With ever increasing focus in the impact of bribery and corruption in the developing world, it remains to be seen whether more concrete steps will be taken by the UK authorities to deter, detect, prosecute and punish such activity.