

A guide to existing bribery and corruption offences in England and Wales

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Introduction

The existing laws on bribery and corruption have long been considered unduly complicated and confusing as a result of their piecemeal development to deal with specific issues or problems that, at the relevant time, were deemed necessary to resolve by the introduction of new legislation. There have long been calls for reform and there is draft legislation in the form of a new Bribery Bill currently making its way through Parliament, intended to replace the existing law.

There are many different bribery and corruption offences under the existing law, some of which overlap in certain respects. This is illustrated by the table at the end of this note. In many cases, where a corruption offence has been committed, there will necessarily also have been other offences committed at the same time – such as theft, false accounting, money laundering etc. However, this note focuses only on the corruption offence element of the wrongdoing.

The first point to note is that “bribery” itself is really only a common law offence. Common law offences are offences that exist as a result of legal developments arising from case law. There is no statute creating or describing the offence. Instead, judgments over the years have created and then developed the relevant offence as part of the evolution of the law. Common law offences can be altered or abolished by statute.

The other major corruption offences, with which this note is concerned, are set out in the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906, both as amended by the Prevention of Corruption Act 1916. These three Acts are sometimes referred to as the Prevention of Corruption Acts 1889 to 1916. They have since been further amended by the Anti-Terrorism, Crime and Security Act 2001 (“ACSA”) which makes some of the above offences punishable in this country even if they were committed abroad.

The statutory offences are discussed further below. However, it is important to note that other corruption offences exist under different statutes relating to more specific acts of corruption, such as vote-rigging and seeking to buy honours. They are beyond the scope of this note.

The sole purpose of this publication is to provide a broad overview of the existing bribery and corruption offences in England and Wales. It makes no claims to completeness and does not constitute legal advice with respect to any set of facts. The information it contains is no substitute for specific legal advice. If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact or the authors of this publication.

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Common Law Offence of bribery

The common law offence of bribery has developed over many centuries. There is no conclusive definition, but the following points are commonly accepted as constituting it:

- Offering, giving or receiving
- Any undue reward
- By or to any person whatsoever in a public office
- In order to influence his behaviour in office and incline him to act contrary to the known rules of honesty and integrity.

Undue Reward

An undue reward need not be money and includes other goods and services. For example, it has been held to include sexual services.

On the other hand, no offence will be committed if the reward is so small that it is not considered a reward at all – as it would then not be “undue”. So, for example, the presiding judge in the *Bodmin*¹ case, Willis J., said that he had been required when taking on the office of judge, to swear not to accept any gift from a man with a plea pending, except for “*meat and drink and that of small value*”.

The key concerns that arise from the scope of the offence (and which equally apply to the statutory offences discussed below) are:

- Would a “facilitation” payment (i.e. a payment to a petty official to make them perform a non-discretionary public duty they already have or make them perform it more quickly), be caught?
- Would a “sweetener” (i.e. not a payment to influence specific conduct or a specific decision, but rather one to secure generally more favourable treatment towards you) be caught?
- Would “corporate hospitality” be caught?

The safest approach to all of the above is to assume they could be caught – in the case of a sweetener or facilitation payment, it almost certainly would be caught. However, the UK Government has stated at various times that a prosecution in respect of a small facilitation payment, extorted by a public official in a foreign country where such practice is normal, would be most unlikely.

The position in respect of corporate hospitality is more complicated. Case law differentiates between legitimate entertainment/treats and bribes. The difference revolves around the intention with which the entertainment or treat is given; so long as it is not given with the intention of influencing a person’s decision and inclining them to act contrary to the known rules of honesty, it would not be prohibited.

¹ (1869) 1 O’M&H 121

The following factors may be considered, although each case will be judged on its own facts:

- the relationship between the briber and recipient, including their financial and social positions; and
- the value of the entertainment.

When the Government last attempted, in 2003, to create new legislation on corruption, an example was considered by the Law Commission:

Company “A” hoping to win work from company “B”, invited B’s managing director “X” to a football match, with pre-match lunch and drinks. During the lunch, A’s business is discussed. There is no doubt that X is supposed to enjoy himself and to be influenced by it to look favourably on A in future. But is the hospitality corrupt?

The Law Commission thought that the answer lay in the way that A hoped to influence B:

- X might gain information about A’s business which works in A’s favour when X compares it against A’s rivals;
- X’s relationship with A’s employees may be strengthened and X may have a natural preference to do business with people he knows; or
- X may simply award future work to A in return, or as a reward, for an enjoyable event.

The Law Commission concluded that (i) and (ii) were acceptable, because they do not involve solely an intention to influence. However, (iii) is unacceptable – if A knows B will not give business to A unless X gets a ticket to the football match, then A intends X to be corruptly influenced. **The key issue is whether A thought it “probable” (i.e. more likely than not) that X acted as he did “primarily” in return for the hospitality.** The Commission concluded that corporate hospitality was only likely to result in prosecution where it was blatantly corrupt.

Any person whatsoever in a public office

In *R v Whitaker*², the court held that a public officer is an officer who exercises any duty in the discharge of which the public are interested, especially if he is paid out of public money, although this is not a requirement. The person being bribed could perform ad hoc public duties. This has been held to include judges, ministers, MPs, local government officials, lay justices and jurors and, in the case of *R v Whitaker*, army officers.

However, the offence is limited to public functions performed by public officers – it does not extend to their private functions.

For bribery performed on or after 14 February 2002, the Common Law Offence applies to bribery of a public officer whose functions are not connected to the UK and are carried out outside the UK³.

² [1914] 3 KB 1283

³ ACSA 2001 s 108(1)

To influence his behaviour in office and incline him to act contrary to the known rules of honesty and integrity

This section of the offence has been interpreted very widely by the courts and includes influencing a public officer to:

- do an act which would breach their public duty; or
- perform an act or exercise a discretion within the scope of their duty but which they would not have done without the bribe.

In *R v Gurney*⁴, a case concerning a justice of the peace, the court held bribery to include intending to produce any effect at all on a public official's decision. However, the influenced behaviour must relate to the recipient's public duties and could not be related to his private affairs. For example in *HM Advocate v Dick*⁵, the court held that bribery was not committed when the bribe was made to a councillor to use his influence to encourage a magistrate to grant a licensing certificate, as this was not related to the councillor's public duties.

Penalties include

- Imprisonment for a time entirely at the discretion of the court (although in practice the court is guided by the custodial sentences available for the statutory offences); and/or
- an unlimited fine; and/or
- disqualification from company directorship; and/or
- loss of public office; and/or
- confiscation of property which is gained as a result of criminal conduct, under the Proceeds of Crime Act 2002 ("POCA").

4 (1867) 10 Cox CC 550

5 (1901) 3 F (Ct of Sess)

“Public Body Offence”

This offence derives from the Public Bodies Corrupt Practices Act 1889, as amended:

- corruptly soliciting, receiving, agreeing to receive, or giving, promising or offering
- any gift, loan, fee, reward or advantage whatever
- whether for the benefit of himself or anyone else
- as an inducement to, reward for or otherwise on account of
- any member, officer or servant of a public body
- doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is concerned.

Corruptly (not “dishonestly”)

The main problem with the corruption offences is understanding what is meant by “corrupt”, as this is unclear.

Corruptly is not defined in any of the relevant statutes. However, in *Cooper v Slade*⁶, a case involving the payment of voters’ travelling expenses in an attempt to influence their vote, the court held that the offence does not require dishonesty and a person acts “corruptly” if they do any act which the law forbids as tending to corrupt. The case law on this point has been confusing and unhelpful, but in the more recent case of *R v. Harvey*⁷, the Court of Appeal upheld the *Cooper v Slade* construction, finding that dishonesty was irrelevant and “corruption” was to be construed as deliberately offering favours intending that they should operate on the mind of the offeree to encourage him to enter into a corrupt bargain. Whether this in fact adds anything to the rest of the requirements of the offence is uncertain.

Presumption of corruption

To ease the difficulty of proving that any advantage was given corruptly, the Prevention of Corruption Act 1916 introduced a presumption of corruption in certain circumstances. If a bribe is made by someone holding or seeking to obtain a government contract then, if it is proved that any money, gift or consideration has been paid to or received by a member of a public body, there is a presumption that the money, gift or consideration was given or received corruptly.

The defendant then would need to prove, on the balance of probability, that the reward was not given corruptly. They would need to provide evidence of an innocent explanation for the reward and could not merely assert that an innocent explanation exists. In *Evans-Jones*⁸, the court held that if a jury are in any doubt whether a payment was made corruptly, then based on the presumption, they must conclude that it was made corruptly.

6 (1858) 6 HL Cas 746

7 [1999] Crim LR 70, CA

8 (1923) 17 Cr.App.R. 121

In practice, however, the presumption is unlikely to be used as there are concerns that it may breach the European Convention on Human Rights. Article 6(2) of the Convention states that everyone charged with a criminal offence shall be presumed innocent unless proven guilty. Whether the presumption under the Prevention of Corruption Act 1916 breaches this article of the Convention depends on whether the presumption goes further than is reasonably necessary. There is little case law on this point. However, the Law Commission⁹ has pointed out that with the introduction of the Criminal Justice and Public Order Act 1994, adverse inferences can now be drawn from a defendant's silence. It is therefore arguable that adding the extra burden on a defendant under this presumption is unnecessary. The Law Commission could not definitively state whether the presumption breached the Convention but recommended that a similar provision was not included in any new bribery legislation.

The presumption does not apply to bribes paid to officials working for public bodies outside the UK or bribes made outside the UK. There is also no presumption if an individual is charged with conspiracy to commit the Public Body Offence.

Any gift, loan, fee, reward or advantage whatever

This includes any office or dignity, the ability to demand money or valuable things, aid, a vote, consent, influence or the promise or holding out of a future gift, loan, fee, reward or advantage¹⁰. In short, almost anything will suffice.

As an inducement to, reward for or otherwise on account of

An advantage can be given as a reward for previous behaviour, even when there was no prior agreement that the favour would be rewarded¹¹.

9 Law Commission Report No 248, paras 4.31 et seq.

10 The 1889 Act s 7

11 *Andrews-Weatherfoil Ltd* [1972] 1 W.L.R. 118

Any member, officer or servant of a public body

The offence covers current, ex or future members, officers or servants of a public body.

A public body essentially comprises any local or public authority of any kind¹². This includes:

- councils, boards, commissioners or other bodies with statutory powers relating to local government, public health or to administer money by raising rates. For example, in *R v Allday*¹³ council employees responsible for operating the council waste tips were convicted under the Public Body Offence. They accepted money from private contractors using the tips, in return for falsifying the record of the weight of the material tipped and therefore reducing the amount charged to the contractors. The council officials were sentenced to 8 months, 6 months, 4 months and 3 months respectively, while the contractors who made the bribes were sentenced to 3 months;
- any body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit¹⁴. This would include bodies such as the Scottish Parliament, National Assembly for Wales, Civil Aviation Authority and Port of London Authority. It is arguable whether this includes the House of Commons, but it has been held not to include the Crown or government departments¹⁵ (although individual employees of the Crown or government departments will nevertheless fall within the ambit of the Agent Offence discussed below);
- a corporation managing a nationalised industry (but probably not a company which is only partly in public ownership as this would not meet the requirement that it carries out its transactions for public benefit and not for private profit);
- companies under the control of a local authority; and
- any body outside the UK equivalent to any of the above¹⁶.

In respect of any matter or transaction whatsoever

This wording suggests that the bribe must relate to some specific matter, rather than in order to induce someone generally to be well-disposed to the briber. However, in *Grierson*¹⁷ it was held that a bribe to “show favour” would be caught by the offence.

12 The 1916 Act s 4(2)

13 (1986) 8 Cr App R (S) 288

14 DPP v Holly/DPPV and Manners [1978] AC 43

15 R v Natji [2002] 2 Cr App R 20, CA. This is because s.2 of the 1916 Act distinguishes between “the Crown and any government department” and a “public body”. Therefore, the former cannot be part of the latter.

16 ACSA section 108(3)

17 [1960] Crim LR 773

Penalties include

- Imprisonment for up to 7 years; and/or
- an unlimited fine; and/or
- a requirement to pay the public body the amount or value of the bribe received; and/or
- forfeiture of public office and a 5 year ban on being elected to any public office (on a second conviction, the ban becomes a lifetime ban and forfeiture of the right to vote for 5 years); and/or
- an individual employed by a public body may lose their right to a pension or compensation; and/or
- disqualification from being a company director; and/or
- confiscation orders under POCA¹⁸; and/or
- automatic debarment from competing for public contracts¹⁹.

“Agent” Offence

This offence derives from the Prevention of Corruption Act 1906. Unlike the statutory offence described above, it applies to all agents, whether in the public or private sector:

- (i) An agent corruptly accepts, obtains or agrees to accept or attempts to obtain from any person (for himself or any other person); or (ii) A person corruptly gives, agrees to give or offers to an agent
- any gift or consideration
- as an inducement or reward for
- doing or forbearing to do any act or showing or forbearing to show favour or disfavour to any person
- in relation to his principal’s affairs or business.

An agent

An agent is defined as any person employed by or acting for another²⁰ and includes all employees and agents acting for private employers, in addition to people serving under any public body (as outlined above), government departments or the Crown, because there is an agency relationship between public bodies, government departments and the Crown and their employees. Working for the Crown does not require actually being employed by the Crown, merely performing actions on behalf of the Crown. For example, in *Fisher v Oldham Corporation*²¹ it was held that police officers serve under the Crown and so do its agents.

In *Foxley*²² an employee of the Ministry of Defence was convicted of 12 counts of corruption under the Agent Offence and was sentenced to 4 years’ imprisonment concurrently for each offence. He accepted bribes of over £2 million for influencing the placing of government defence contracts. A confiscation order was also made for most of the amount.

¹⁸ See section 6 for further details

¹⁹ Under the Public Contracts Regulations 2006. The Joint Parliamentary Committee reviewing the new proposed bribery legislation noted that automatic debarment on conviction of a corruption offence was overly rigid as compared with the approach taken, for example, in the US – absent some discretion as to whether to debar (and, if so, for how long), there appeared to be little incentive for businesses to carry out proper internal investigations and self-report wrongdoing to the authorities.

²⁰ The 1906 Act s 2

²¹ [1930] 2 KB 364

²² (1995) 16 Cr App R (S) 879

In *R v Garner*²³ it was held that bribing a prison officer could amount to breaching the Agent Offence. Roy Garner, his wife and son pleaded guilty to conspiracy to corrupt, as they had bribed a prison officer to smuggle luxury goods to Roy, who was serving a prison sentence for VAT offences. Goods including smoked salmon, cigars and champagne were smuggled into Ford open prison by a prison guard. Roy was sentenced to 18 months' imprisonment, his son to 12 months' imprisonment, and his wife to 12 months' imprisonment suspended for 2 years. The court took into account guilty pleas, previous convictions and the difficult situation in which Roy's wife found herself. The prison officer was sentenced to 12 months' imprisonment.

Giving money to an intermediary to pass onto an agent is also prohibited under the Agent Offence. The initial briber and the intermediary can both be prosecuted under the Agent Offence and can both be prosecuted for conspiracy to commit this offence.

The Agent Offence applies to agents in the UK, but also to those whose functions have no connection with the UK and are carried out outside the UK²⁴. It also applies to agents of principals whose affairs and business have no connection with the UK and are conducted outside the UK. In 2008, Neils Tobiasen, the Danish head of CBRN Team Ltd, a British security company, pleaded guilty under the Agent Offence to making corrupt payments to a Ugandan official in connection with a contract to supply equipment to the Ugandan military. Ananais Gweinho Tumukunde, the Ugandan government official bribed by Tobiasen, pleaded guilty to accepting corrupt payments. This was the first UK conviction concerning bribery of a foreign public official.

In 2008, Nigel Heath, a former solicitor, pleaded guilty to charges relating to conspiracy to make corrupt payments to US government officials. Mr Heath conspired to bribe United States government law enforcement officers to lift a freezing order on bank accounts held by Terry Dowdell and the Vavassuer investment scheme.

Corruptly

Corruptly is defined in the same way as in the Public Body Offence.

The Prevention of Corruption Act 1916 also introduced a presumption of corruption in certain circumstances for the Agent Offence. The presumption applies to payments to agents of the Crown, a government department or a public body, if the bribe is made by someone holding or seeking to obtain a government contract. It is important to note that this presumption cannot arise when an agent is an employee of a private company.

This presumption does not apply to: (i) bribes given to agents whose own affairs or the affairs of their principal take place outside the UK and have no connection with the UK; (ii) bribes made outside the UK; or (iii) conspiracy to commit the Agent Offence.

23 [1988] 10 Cr App R (S) 445

24 ACSA 2001 s 108(2)

Any gift or consideration

Gift is not defined in the statute. Consideration is defined as valuable consideration of any kind. In *Currie v Misa*²⁵ the court held that “a valuable consideration...may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other.”

In *R v Hopwood*²⁶ an employee was sentenced to three and a half years’ imprisonment for accepting bribes totalling £200,000, given to ensure that he would not disclose to his employer frauds totalling £1.75 million, and also for accepting substandard steel on behalf of his company in return for his house being re-wired.

As an inducement or reward for doing or forbearing to do any act or showing or forbearing favour or disfavour to any person

It is irrelevant whether the agent actually shows favour or disfavour, as the offence only requires that the person giving the bribe does so as an inducement to do so. An individual who accepts a bribe knowing it is intended as such could be prosecuted even if he has no intention of allowing the bribe to influence his behaviour.

A bribe does not need to relate to a particular act or transaction and can be a “sweetener” to obtain generally more favourable treatment. For example, in *R v Wilson*²⁷ a purchasing agent employed by a large manufacturing organisation was imprisoned for 18 months for conspiracy to commit corruption and four counts of corruption. He accepted £2,500, in the form of money and a holiday, in return for showing favour to one of his employer’s suppliers.

In relation to his principal’s affairs or business

This has been interpreted very widely. The payment need not relate to work with which the agent’s duties bring him into direct contact, nor does it have to relate to matters in relation to which he owes his principal any duty.

For example, in *Dickinson*²⁸, an employee of the Ministry of Aircraft, whose agency role involved engine production, corruptly demanded payments from a company involved in producing small tools. Dickinson was concerned with engines and not with small tools and therefore his interference with small tools orders was not within the scope of his agency. The bribe was not directly related to his agency employment, but he was still prosecuted under the Agent Offence.

Penalties include

- Imprisonment for up to 7 years; and/or
- an unlimited fine; and/or
- disqualification from being a company director; and/or
- confiscation orders under the POCA; and/or
- automatic debarment from competing for public contracts.

25 (1875) LR 10 Exch 153, 162

26 (1985) 7 Cr App R (S) 402

27 (1982) 4 Cr App R (S) 337

28 (1948) 33 Cr. App. R. 5

Enforcement

Bribery proceedings can be brought against both the person who makes the bribe and the person who solicits or receives the bribe; both parties may be charged with conspiracy to commit bribery offences as they are conspiring with the other to commit an offence. Because the conspiracy offence is so broad, prosecutions are sometimes brought only under the conspiracy offence.

If a bribe is accepted then this will usually also amount to the more general offence of misconduct in public office (unless it is made to a private individual as part of the Agent Offence), which is committed by a public officer abusing his office for private gain (whether or not through bribery)²⁹. Prosecutions could also be brought for conspiracy to defraud if, for example, the briber and recipient conspired dishonestly to cause loss to the principal of the agent. Other possible offences committed when making or receiving a bribe include theft, obtaining by deception, false accounting and money laundering. In *R v Harrison*³⁰ the court held that bribing judges, magistrates or other judicial public officers could also result in prosecutions for contempt of court.

Proceedings under any of the existing offences can be brought against a company if the bribery was committed by someone who was, at the relevant time, the “directing will and mind”³¹ of the company. Unincorporated bodies (i.e. partnerships) cannot be prosecuted under the Common Law Offence, but do fall within the statutory offences.

Acts performed in England & Wales

The English courts have jurisdiction to prosecute any individual, regardless of their nationality, when any prohibited conduct or its consequences take place in England or Wales. Therefore, if any part of the bribery takes place in England or Wales, such as an offer, acceptance or agreement to offer a bribe, then prosecutions can be brought under English law.

Similarly, committing an act through the agency of a person in England or Wales will also give the English courts jurisdiction over a bribe, irrespective of whether the agent has actually committed an offence.

For example, in *R v Baxter*³², which concerned attempted theft, the defendant was resident in Northern Ireland but posted a letter to the promoters of football pools in England containing his fraudulent claims that he was entitled to winnings. He was held to fall within the English court’s jurisdiction because arrangements for the offence, i.e. transporting and delivering the letter, took place in England. Sending an email or making a phone call to someone in England or Wales in relation to a bribery offence may therefore be enough to fall within the jurisdiction. It is irrelevant whether the intent is to commit bribery abroad or in England or Wales.

The Common Law Offence does not apply to acts done in Scotland or Northern Ireland. Our case law is not binding on the Scottish and Northern Irish courts, although it is often persuasive. Scotland and Northern Ireland have corresponding rules to our statutory offences, but any offence committed in these jurisdictions will be prosecuted in the Scottish or Northern Irish courts.

29 Bowden [1996] 1 W.L.R. 98

30 (1800) 1 East PC 382

31 Tesco Supermarkets v Natras [1972] AC 153

32 [1972] 1 QB 1

Extraterritorial effect

All of the above offences apply to acts committed abroad by UK nationals³³ or UK incorporated companies or bodies (i.e. including limited liability partnerships³⁴), irrespective of whether the acts would amount to an offence in the country where they took place. This extraterritorial effect was introduced by the ACSA and only applies to acts committed abroad on or after 14 February 2002.

As indicated above, the first conviction for an overseas bribery offence under the ACSA was not until 2008 when Neils Tobiasen was convicted of bribing a foreign public official. In September 2009, in the first ever prosecution of a company for overseas bribery, construction company Mabey and Johnson was ordered to pay more than £6 million in fines and compensation after pleading guilty to various corruption offences. This followed their voluntary disclosure of wrongdoing to, and an extensive investigation by, the Serious Fraud Office (“SFO”) which revealed that the company had been engaged in bribing foreign public officials in Jamaica and various African states, and breaching UN sanctions in Iraq.

The ACSA did not extend jurisdiction to foreign nationals who are domiciled or habitually resident in the UK committing bribery abroad. The offences also do not apply to acts committed outside the UK by a foreign subsidiary of a company incorporated in the UK, provided the UK company did not authorise, direct or actively connive in the bribery.

One curiosity of the ACSA is that it covers acts committed abroad by Scottish and Northern Irish individuals and companies. Therefore, any act committed outside the UK by a Scottish or Northern Irish entity would fall within ACSA and the English courts would have jurisdiction. This means that if a Scottish or Northern Irish entity breaches a statutory bribery offence in Scotland or Northern Ireland then they will be prosecuted under the Scottish or Northern Irish statute in their respective court. If, however, a Scottish or Northern Irish entity commits a bribery offence outside the UK then they may be prosecuted under the ACSA in the English courts.

33 Definition of UK national in ACSA section 109(4)

34 Save that limited liability partnerships fall outside the Common Law Offence

Defences

All of the offences have a possible defence of duress, where there have been threats of physical violence if the conduct is not carried out.

Proceeds of Crime Act

Under POCA, bribery constitutes criminal conduct and the proceeds from such conduct constitute criminal property, even if committed abroad (unless the conduct abroad is legal under local law). It is irrelevant who committed the act, who benefited from it and whether it pre-dates POCA. POCA has numerous methods for confiscating and otherwise seizing criminal property. It is also an offence to do any of the following:

- conceal, disguise, convert, transfer or remove criminal property from the jurisdiction; and/or
- enter into or become concerned in an arrangement which a person knows or suspects facilitates the acquisition, use or control of criminal property by another person; and/or
- acquire, use or possess criminal property without disclosing the fact.

Any of the above-mentioned offences can attract the following penalties:

- Confiscation: The court can make an order to confiscate property which is a direct result of particular criminal activity. Much wider confiscation powers exist if the defendant can be shown to have a criminal lifestyle, which broadly means he has committed multiple offences or offences over a period of time.
- Forfeiture: Civil proceedings can also be brought for the forfeiture of assets where, on the balance of probability, there are “reasonable” grounds for “suspecting” they are the proceeds of, or are to be used in, criminal activities. Civil recovery is not pursued below a threshold of £10,000. Civil recovery does not require a conviction first.

Interim measures are available to protect property liable to confiscation or civil recovery.

- Deprivation: A convicted defendant can be deprived of anything used in the commission of an offence.
- Taxation: Where there are reasonable grounds to suspect a person has received income or profit from unlawful acts they can be taxed.
- Seizure and forfeiture of cash: Police and Customs Officers can seize, detain and seek forfeiture of cash of at least £5,000 which they suspect are the proceeds of crime or intended for such use.
- Restraint Order: A criminal restraint order can be obtained over all realisable property held by a specified person once an investigation or prosecution has commenced.

Professional advisers to bribers can find themselves in trouble under sections 330 – 332 of POCA which makes it a criminal offence to fail to disclose the three offences under POCA mentioned above to relevant authorities, when there are reasonable grounds for suspecting money laundering (subject to certain exceptions relating to offences overseas if the conduct was not unlawful in the country in which it occurred).

The Future

Ever since the highly political collapse in 2006 of the SFO investigation into BAE Systems over its £50 billion al-Yamamah arms deal with Saudi Arabia, the UK Government have been keen to show they take bribery and corruption seriously.

A draft Bribery Bill has been prepared to consolidate and update UK anti-corruption and bribery laws. This is arguably long overdue, as the existing laws developed over the last 120 years or so in piecemeal fashion, are overlapping, confusing and complicated. Whether the draft legislation will ultimately become law is uncertain; the previous efforts of the Government to update the law in 2003 came to nothing.

Nevertheless, the current Secretary of State for Justice has indicated he will do all he can to get the legislation on the statute books before the next election.

As the recent prosecution of Mabey & Johnson and the SFO's request to prosecute BAE show, the prosecuting authorities are increasingly focusing efforts and resources on investigating and prosecuting bribery and corruption:

- In 2006, the Department for International Development provided funding for the City of London's Overseas Anti-Corruption Unit, which proved instrumental in the Tobiasen prosecution.
- In October 2008, using civil recovery powers under POCA, the SFO reached a court-approved settlement with Balfour Beatty in connection with "payment irregularities" concerning a project to build a library in Alexandria, Egypt, resulting in the construction company paying fines of more than £2m. The settlement was made possible by Balfour Beatty's "transparent and responsible" approach in coming clean to the SFO and taking steps to put procedures in place to prevent repetition.
- In January 2009, the Financial Services Authority fined Aon more than £5m for failings in its anti-corruption systems and controls in connection with payments to overseas companies and individuals who had helped it win business. Margaret Cole, Director of Enforcement at the regulator noted: "*The involvement of UK financial institutions in corrupt or potentially corrupt practices overseas undermines the integrity of the UK financial services sector. The FSA has an important role to play in the steps being taken by the UK to combat overseas bribery and corruption*".
- In July 2009, the SFO formalised its "plea bargain" approach, issuing guidance to encourage businesses to self-report overseas corruption in return for civil settlements, without criminal sanctions being imposed and avoiding debarment from public contracts.

The SFO would appear to be seeking to adopt a US-style approach to negotiating settlements with infringing companies who own up to wrongdoing, thereby avoiding the time, cost and risk of a criminal prosecution. With some notable successes in this area under the existing laws, the proposed new bribery legislation offers scope to the prosecuting authorities to flex their muscles to a far greater degree, relying on clearer and more wide-ranging offences, which carry harsher penalties than ever before. Coupled with the proposal in the draft Bribery Bill to permit the DPP and SFO to prosecute offenders without requiring the Attorney General's consent, we can perhaps expect to see far more examples of high profile settlements by self-reporting businesses in future.

Common Law Offence	Public Body Offence	Agent Offence
It is an offence for any person to offer		
any undue reward	any gift, loan, fee, reward or advantage	any gift or consideration
to any person in a public office	to any person (for his own benefit or for another's)	to any agent
to influence	as an inducement or reward	
his behaviour	for any member, officer or servant of a public body	for his
	doing or forbearing to do	
in office and incline him to act contrary to the known rules of honesty and integrity	anything in respect of any matter or transaction whatsoever	any act or showing or forbearing to show or favour or disfavour to any person
	in which the public body is concerned	in relation to his principal's affairs or business
In each case it is also an offence to receive such a reward, advantage or consideration		

Anti-CorruptionZone

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