

TRAVERS SMITH

Anti-Bribery Newsletter

Winter 2013/2014



Welcome to the second edition of our Anti-Bribery Newsletter. In this edition, we will review some key recent developments in the UK's fight against bribery and corruption and reflect upon their likely impact on the anti-bribery landscape in the UK in 2014. If you have any questions about any of the topics covered in this newsletter, please do get in touch.

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Proposed extension to the corporate offence of failing to prevent bribery

David Green, the head of the Serious Fraud Office (SFO), the UK's chief prosecutor of bribery and corruption offences, is reported to be pursuing a proposal to widen the scope of the corporate offence of failing to prevent bribery committed by associates. As we mentioned in our last newsletter (see [here](#)), the amendment he has put forward would catch companies who fail to prevent their staff committing fraud or other financial crime, and not just bribery. The Government has not yet confirmed whether the amendment is formally on the agenda. Watch this space.

SFO gets additional funding for the bribery investigation at Rolls Royce

Just before Christmas, the SFO announced a criminal investigation into bribery offences in overseas markets allegedly committed by intermediaries for Rolls Royce, the defence and aerospace manufacturer. In January, the SFO reportedly secured additional funding from the UK Government to carry out the investigation.

The launch of the investigation caused quite a stir because of the high-profile and iconic status of the Rolls Royce brand worldwide. The allegations relate to payments made by local contractors in Indonesia and China.

The Rolls Royce case is an important one for the SFO which has endured a reputational battering following the eleventh-hour collapse of its long-running fraud case against Victor Dahdaleh and the failure of its investigation into Vincent Tchenguiz's dealings with Kaupthing amid allegations of malicious prosecution and false imprisonment. The SFO is also reportedly under considerable budgetary pressure, so a successful, high profile prosecution would do much to restore the SFO's reputation as a serious prosecutor.

The UK business community is waiting nervously for the first corporate prosecution under the Bribery Act as a guide to the SFO's approach to enforcing the controversial corporate offence of failing to prevent bribery. If it results in a prosecution, the Rolls Royce investigation is unlikely to be the first significant Bribery Act "scalp" for the SFO since the allegations involve pre-Bribery Act activities and would be brought under predecessor legislation. However, the SFO reportedly has other Bribery Act "projects" under investigation so it would be surprising if a significant Bribery Act prosecution does not materialise in 2014.

FCA fines insurance broker JLT for systems failures relating to bribery risk

The UK's financial services regulator, the Financial Conduct Authority (FCA), has fined insurance broker JLT Specialty Limited (JLT) more than £1.8million for failing to have appropriate checks and controls to guard against the risk of bribery or corruption when making payments to overseas introducers. Specifically, JLT, which provides insurance broking and risk management services, was found to have failed:

- adequately to assess the potential risk of new insurance business secured through existing overseas introducers;
- to conduct proper due diligence before entering into a relationship with new overseas introducers; and
- adequately to have implemented its anti-bribery and corruption procedures.

JLT's failures, which occurred between 2009 and 2012, breached Principle 3 of the FCA Handbook which requires regulated firms to take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems.

The FCA (and its predecessor the FSA) has a track record of successful enforcement actions against financial services firms for systems and controls failings in relation to bribery risks, with a particular focus on cases involving third party relationships with overseas business introducers.

Willis Limited, an insurance intermediary, was fined £6.9m in 2011, and Aon was fined £5.25m in 2009, in each case for very similar failings in their anti-bribery control systems. JLT's penalty was increased by 20% in part due to its failure to heed these (and other) warnings emanating from the FSA/FCA about the bribery and corruption risks inherent in the insurance broking industry.

All in all though, JLT seems to have got off relatively lightly by comparison with the earlier cases. JLT qualified for a 30% reduction in the original £2.6m fine in return for an early settlement. The FCA also took account of the

absence of evidence that any illicit payments had been permitted or induced, or of any loss to consumers, investors or other market users. JLT was also credited for having made no attempt to conceal the breaches, co-operating fully with the investigation and enhancements made to its systems and controls during the investigation. Evidently JLT already had the appropriate risk management systems in place, but simply failed to use them properly or to record what action had been taken, which underlines the importance of effective implementation of anti-bribery controls. A comprehensive anti-bribery policy will be no defence in a prosecution if it simply sits on the shelf, or actions taken under the policy are not recorded.

Financial services firms operating in the UK are duly warned to heed their systems and controls obligations under the FCA Handbook, and to take note of the relevant FCA guidance, including the general guidance on preventing financial crime issued to all financial services firms two years ago – see [here](#).

Deferred Prosecution Agreements available to UK prosecutors from 24 February 2014

The SFO will have Deferred Prosecution Agreements (DPAs) at its disposal from 24 February 2014. DPAs can be deployed in bribery, fraud and other financial crime cases involving UK companies. Meanwhile, the SFO is expected to publish shortly a summary of the responses received to the consultation on its draft Code of Practice on DPAs (produced jointly with the DPP (Director of Public Prosecutions) last year) and, if appropriate, an amended version of the Code. For more on DPAs and the draft Code of Practice, see our briefings [here](#) and [here](#).

Latest Transparency International Corruption Perceptions Index

At the end of 2013, Transparency International published its latest Corruption Perceptions Index which is widely used by businesses as a benchmark for bribery risk in dealings with overseas jurisdictions. China and Indonesia, the countries at the centre of the Rolls Royce allegations discussed above, continue to languish at the high risk end of the table in the 2013 CPI (China is in 80th place with a score of 40/100 and Indonesia in 114th place with a score of 32/100, in both cases little changed from 2012), and the Rolls Royce case illustrates the challenges involved in doing business in these "difficult" jurisdictions. According to the results in the 2013 CPI, 69% of countries scored less than 50, an indicator of a widespread corruption problem, including many of the territories which are predicted to be the drivers of economic growth in the coming years (for example, Mexico, Indonesia, Sub-Saharan Africa). The 2013 CPI can be found [here](#).