

# UNITED KINGDOM

## Active enforcement

3.6% of global exports

### Investigations and cases

In the period 2016-2019, the UK opened 35 investigations, commenced seven cases and concluded 10 cases with sanctions.

In February 2019, David Lufkin, former Head of Global Sales at **Petrofac International Limited**, an energy service provider, pleaded guilty to 11 counts of bribery as part of a wider investigation into **Petrofac Limited** and its subsidiaries.<sup>1</sup> His offences related to corrupt payments intended to secure oil contracts worth over US\$4.2 billion in Iraq and Saudi Arabia. In another case, **Alstom Network UK Ltd** was found guilty in April 2018 of paying €2.4 million (US\$2.8 million) in bribes in order to secure a tram and infrastructure contract in Tunisia worth €85 million (US\$99.7 million).<sup>2</sup> In addition, **Alstom Power Ltd** and two individuals pleaded guilty to paying senior Lithuanian figures over €5 million (US\$5.9 million) in bribes to secure a contract worth €240 million (US\$281 million) to upgrade and refit a power station. In November 2019, the company was

ordered to pay a fine of £15 million (US\$19.3 million) and £1.4 million (US\$1.8 million) in costs.<sup>3</sup>

In 2018, the Serious Fraud Office (SFO) charged four **Unaoil** employees with conspiracy to make corrupt payments to secure the award of contracts in Iraq, and filed additional charges against two of them. One pleaded guilty in July 2019 and the trial of the other three began in January 2020.<sup>4</sup> The SFO had commenced an investigation into Unaoil, its officers, employees and agents in July 2016.<sup>5</sup>

In July 2019, three individuals working for **Sarclad Limited** were acquitted of bribery charges relating to 27 overseas companies. On their acquittal, the SFO's deferred prosecution agreement (DPA) with their employer, Sarclad Limited, expired and lifted reporting restrictions on the DPA.<sup>6</sup> In October 2019, the SFO and **Güralp Systems Ltd** finalised a DPA in which the company agreed to pay a little over £2 million (US\$2.6 million) for conspiracy to bribe and failure to prevent bribery of the Korea Institute of Geoscience and Mineral Resources.<sup>7</sup>

Long-running investigations include those into **ENRC Ltd** (previously **ENRC PLC**)<sup>8</sup> and **GPT Special Project Management**. Charges were brought to court in the GPT case in 2020. More recent SFO investigations include those into **De La Rue PLC** and the **Glencore** group of companies.<sup>9</sup> In February 2019, the SFO closed its long-running investigation into

<sup>1</sup> <https://www.sfo.gov.uk/2019/02/07/former-senior-executive-convicted-in-petrofac-investigation/>; The SFO's wider case against Petrofac Limited is ongoing.

<sup>2</sup> <https://www.sfo.gov.uk/2018/12/19/five-convictions-in-sfos-alstom-investigation-into-bribery-and-corruption-to-secure-e325-million-of-contracts/>

<sup>3</sup> <https://www.sfo.gov.uk/2019/11/25/sfos-alstom-case-concludes-with-sentencing-of-alstom-network-uk-ltd/>

<sup>4</sup> <https://www.sfo.gov.uk/2019/07/19/former-unaoil-executive-pleads-guilty-to-conspiracy-to-give-corrupt-payments/>; <https://www.sfo.gov.uk/cases/unaoil/>

<sup>5</sup> <https://www.sfo.gov.uk/cases/unaoil/>; The SFO has also summonsed Unaoil Monaco SAM and Unaoil Ltd.

<sup>6</sup> [http://files.transparency.org/content/download/2318/14294/file/2018\\_Report\\_ExportingCorruption\\_English.pdf](http://files.transparency.org/content/download/2318/14294/file/2018_Report_ExportingCorruption_English.pdf), p.88. In the 2018 report, Sarclad Limited was referred to as "XYZ Limited", <https://uk.reuters.com/article/uk-britain-sarclad-acquittal/london-jury-acquits-three-sarclad-staff-despite-corporate-plea-deal-idUKKCN1UB279>

<sup>116</sup> <https://www.sfo.gov.uk/2019/12/20/three-individuals-acquitted-as-sfo-confirms-dpa-with-guralp-systems-ltd/>

<sup>8</sup> The investigation into ENRC Ltd is subject to numerous legal disputes. In November 2019, ENRC Ltd lost an application for judicial review of the SFO's investigation into the company's acquisition of mineral assets in Africa, <https://www.reuters.com/article/us-britain-enrc-lawsuit/london-court-rejects-enrcs-attempt-to-challenge-uk-fraud-office-idUSKBN1XG2N5>. In 2018, it had won a separate appeal to withhold information from the SFO on the basis it was privileged information (Director of the Serious Fraud Office v Eurasian Natural Resources Corp'n Ltd (Law Society intervening) - [2019] 1 WLR 791). The daughter of one of its founders, Anna Machkevitch, failed to overturn a criminal charge brought against her by the SFO for failing to produce documents that would support its investigation into ENRC Ltd, <https://www.ft.com/content/84e73aa4-111c-11ea-a225-db2f231cfeae>

<sup>9</sup> <https://www.sfo.gov.uk/cases/de-la-rue-plc/>; <https://www.sfo.gov.uk/2019/12/05/sfo-confirms-investigation-into-suspected-bribery-at-glencore-group-of-companies/>

**GlaxoSmithKline PLC** without seeking prosecution.<sup>10</sup>

## Recent developments

In May 2018, the House of Lords scrutiny committee reviewed implementation of the Bribery Act 2010, publishing its report in March 2019.<sup>11</sup> It counselled against legalising facilitation payments and reserved judgement on whether there was merit in introducing vicarious liability for bribery offences.<sup>12</sup> (See also points mentioned below.) In May 2019, the UK government published its response to the report.<sup>13</sup>

In 2018, the National Economic Crime Centre (NECC) was established within the National Crime Agency (NCA) to coordinate the UK response to economic crime, including strategic oversight of bribery cases. The NECC contains officers or representatives from seven key law enforcement agencies and government departments.<sup>14</sup> The International Anti-Corruption Coordination Centre (IACCC) – an international initiative launched in July 2017 and hosted in the NCA – has reported on impact that includes progressing nine grand corruption cases and identifying 227 suspicious bank accounts across 15 different jurisdictions.<sup>15</sup>

## Transparency of enforcement information

The main investigatory and prosecutorial bodies in England and Wales are the SFO and the NCA, with the Crown Prosecution Service (CPS) for England and Wales prosecuting.<sup>16</sup> Police Scotland and the Procurator Fiscal, and the equivalent bodies in Northern Ireland, can also pursue cases in Scotland and Northern Ireland. The SFO publishes some information on investigations, and cases in its annual report.<sup>17</sup> Scotland's Procurator Fiscal publishes separate statistics on enforcement under the Bribery Act, but without disaggregating cases of bribery of foreign public officials.<sup>18</sup> UK authorities do not routinely publish mutual legal assistance (MLA) statistics, except in response to freedom of information requests.<sup>19</sup> In such cases, the data released covers all MLA requests, not only those regarding foreign bribery. The UK Central Authority was due to introduce a new case management system in April 2019, but there have thus far been no updates. When introduced, it should allow for more accurate measurement of the time taken to respond to foreign bribery-related MLA requests.<sup>20</sup>

The OECD WGB has commended the SFO for “exemplary” publishing of information about concluded foreign bribery cases on its website.<sup>21</sup> This includes the date and location of offending, value of the bribe and the advantage received, and how penalties imposed were calculated. The

<sup>10</sup> <https://www.sfo.gov.uk/2019/02/22/sfo-closes-glaxosmithkline-investigation-and-investigation-into-rolls-royce-individuals/>

<sup>11</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/ldbriact/303/303.pdf>

<sup>12</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/ldbriact/303/303.pdf>, p.44 para 146 and p.32 para 109.

<sup>13</sup> <https://www.parliament.uk/documents/lords-committees/Bribery-Act-2010/govt-response-hol-select-committee-bribery-act-2010.pdf>

<sup>14</sup> The National Crime Agency, Serious Fraud Office, Financial Conduct Authority, City of London Police, HM Revenue and Customs, Crown Prosecution Service and the Home Office.

<sup>15</sup> It is not yet clear how many of these cases relate to the scope of this report, <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/bribery-corruption-and-sanctions-evasion/international-anti-corruption-centre>

<sup>16</sup> The Financial Conduct Authority can help with investigations, but not prosecute. The City of London Police are winding up legacy cases.

<sup>17</sup> <https://www.sfo.gov.uk/publications/corporate-information/annual-reports-accounts/>

<sup>18</sup> <https://www.copfs.gov.uk/publications/bribery-act/>; For 2018 data for Scotland and Northern Ireland, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/713454/bribery-act-2010-post-legislative-scrutiny-memorandum-print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/713454/bribery-act-2010-post-legislative-scrutiny-memorandum-print.pdf)

<sup>19</sup> Such data is only released when it would not breach the confidentiality of any individual request. The most recent dataset available is for MLA requests between January 2012 and December 2013, published subject to a May 2014 Freedom of Information request, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/302347/FOI\\_30607\\_-\\_Annex\\_A.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302347/FOI_30607_-_Annex_A.pdf)

<sup>20</sup> <https://www.oecd.org/corruption/United-Kingdom-phase-4-follow-up-report-ENG.pdf>, p.9. This has yet to occur and as at 26 May 2020, the reasons for the delay are unknown.

<sup>21</sup> <http://www.oecd.org/corruption/anti-bribery/UKPhase-4-Report-ENG.pdf>, p.59, para 156. In such cases, the data released covers all MLA requests, not only those regarding foreign bribery.

publication of court decisions regarding foreign bribery offences remains inconsistent.<sup>22</sup>

## Beneficial ownership transparency

The UK was the first G20 country to launch a public register of company beneficial ownership, the Persons with Significant Control (PSC) register. In 2018, it was extended to incorporate Scottish Limited Partnerships. PSC data is available free of charge from the Companies House website, in a readable excel format (CSV files) as a bulk download, and via the Companies House application programming interface.<sup>23</sup> The UK government also funds and sponsors the global Open Ownership register, which includes UK PSC data alongside beneficial ownership data from around the world.<sup>24</sup>

In January 2018, the UK established a central register of beneficial ownership for express trusts with tax consequences in the UK, maintained by Her Majesty's Revenue and Customs.<sup>25</sup> The register is not publicly available, but is accessible to any law enforcement agency in the UK.<sup>26</sup> The UK has not yet complied with the 5th EU Anti-Money Laundering Directive, which requires that the details of trust beneficiaries be made available to those with a "legitimate interest" – a term disputed between civil society and the government.<sup>27</sup>

The UK's Crown Dependencies in Guernsey, the Isle of Man and Jersey have voluntarily committed to introducing public beneficial ownership registers by 2023.<sup>28</sup> The 5th EU Anti-Money Laundering Directive required Gibraltar, a UK Overseas Territory, to introduce a public register by January 2020. This is now live.<sup>29</sup> UK law enforcement agencies have access to information on beneficial owners of companies incorporated in the Crown Dependencies and Overseas Territories, on request. A statutory review by the UK government in June 2019 found this information exchange very useful.<sup>30</sup>

## Inadequacies in legal framework

The Bribery Act 2010 continues to provide a sound legal basis for prosecuting foreign bribery by both natural and legal persons. However, three legal aspects could be improved. The defence of adequate procedures has only been tested recently by the courts and is still largely defined by guidance; the jurisdiction of the Bribery Act does not extend to legal persons incorporated in the Crown Dependencies and Overseas Territories,<sup>31</sup> and a longstanding issue regarding corporate liability in the UK<sup>32</sup> inhibits the successful prosecution of large multinationals for substantive bribery offences.<sup>33</sup>

<sup>22</sup> <https://www.oecd.org/corruption/United-Kingdom-phase-4-follow-up-report-ENG.pdf>, p.8.

<sup>23</sup> <https://beta.companieshouse.gov.uk/>; <https://www.gov.uk/guidance/companies-house-data-products>; and <https://developer.companieshouse.gov.uk/api/docs/>

<sup>24</sup> <https://register.openownership.org/>

<sup>25</sup> <http://www.legislation.gov.uk/ukxi/2017/692/regulation/45/made>, Regulation 45

<sup>26</sup> <http://www.legislation.gov.uk/ukxi/2017/692/regulation/45/made>, Regulation 45(12)

<sup>27</sup> The consultation was conducted between January and February 2020, <https://www.gov.uk/government/consultations/technical-consultation-fifth-money-laundering-directive-and-trust-registration-service>

<sup>28</sup> <https://www.gov.gg/CHttpHandler.ashx?id=119716&p=0>. Under the Sanctions and Anti-Money Laundering Act 2018, the UK government is required to provide all reasonable assistance to help the UK's Overseas Territories introduce public beneficial ownership registers by the end of 2021, and to legislate via Order in Council if they fail to do so voluntarily by this date, <http://www.legislation.gov.uk/ukpga/2018/13/section/51/enacted>, Section 51.

<sup>29</sup> <https://ubosearch.egov.gi/Login?ReturnUrl=%252f>

<sup>30</sup> <https://www.gov.uk/government/publications/statutory-review-of-the-exchange-of-notes-arrangements/statutory-review-of-the-implementation-of-the-exchange-of-notes-on-beneficial-ownership-between-the-united-kingdom-crown-dependencies-and-overseas-te>

<sup>31</sup> <http://www.oecd.org/corruption/anti-bribery/UKPhase-4-Report-ENG.pdf>, page 26, paragraph 57

<sup>32</sup> The "identification doctrine", defined by case law, holds that for a company to be guilty of bribery it must be established that someone who can be described as its "directing mind and will" was involved in committing the bribery. It is very difficult to prosecute large companies for substantive bribery offences (as opposed to the lesser crime of failure to prevent bribery), as it requires evidence that a very senior person was complicit in the illegal activity. The principle can incentivise senior members of a corporation to turn a blind eye to criminal acts committed by its representatives, insulating the company (and themselves) from liability. The result is an unfair situation in which the "low-hanging fruit" of small companies, with simpler corporate structures, are more easily targeted.

<sup>33</sup> <https://www.transparency.org.uk/wp-content/plugins/download-attachments/includes/download.php?id=7701>, p.13, para 5.1.

## Inadequacies in enforcement system

The core purpose of the DPA regime is to incentivise the exposure and self-reporting of corporate wrongdoing. The recent Airbus judgement explicitly shifts away from self-reporting being a condition for a DPA when it states, “there is no necessary bright line between self-reporting and co-operation”.<sup>34</sup> The failure to differentiate penalty discounts for those companies that self-report and cooperate and those that start cooperation once under investigation seriously reduces the incentive for companies to self-report their wrongdoing in the first place, calling into question the use of DPAs.

The Crime and Courts Act states that a DPA may impose on companies a requirement to compensate victims of an alleged offence.<sup>35</sup> However, compensation has only been pursued and given in one foreign bribery DPA, with **Standard Bank**.<sup>36</sup> In both the **Rolls Royce** (2017)<sup>37</sup> and **Airbus** (2020)<sup>38</sup> cases, which involved hundreds of millions of pounds in disgorged profits, the SFO did not seek compensation. Under the joint NCA, CPS and SFO principles for compensation of victims of foreign bribery and other economic crimes, UK law enforcement agencies should seek compensation where it is appropriate – e.g., where there is a clearly identifiable victim.<sup>39</sup> Based on the Rolls Royce and Airbus DPAs, it appears that the more egregious, widespread and complex a bribery scheme, the less likely it is that compensation will be sought, despite the greater harm self-evidently caused by such a scheme.

In October 2019, Transparency International UK and Spotlight on Corruption wrote to the Attorney General expressing concern over ongoing delays in the prosecution of an Airbus subsidiary, **GPT**, for

alleged corruption. The SFO’s investigation started in 2012, and it sought consent to prosecute in 2018, which was never provided. The alleged corruption relates to a government-to-government contract with Saudi Arabia, and the investigation may have been obstructed on national security grounds. Airbus shut down GPT as of the end of 2019,<sup>40</sup> precluding its prosecution.<sup>41</sup>

The House of Lords scrutiny committee’s report found areas for improvement in the implementation and enforcement of the Bribery Act. These include the speed of bribery investigations, the provision of sufficient training for law enforcement officers, and the adequacy of guidance provided to businesses, especially small and medium-sized enterprises.<sup>42</sup>

There is a lack of dedicated crown courts to try cases of serious economic crime. Coupled with underfunding of the court system, this results in long delays. There are also no provisions to ensure courts can impose a review of compliance procedures within sentencing.

## Recommendations

- Publish court sentencing remarks and judgements for cases of economic crime, including bribery
- Task the Law Commission to review the UK’s outdated and inadequate corporate liability laws on a priority basis
- Broaden corporate criminal liability beyond failure to prevent foreign bribery and tax evasion
- Extend the jurisdiction of the Bribery Act to legal persons incorporated in Crown Dependencies and Overseas Territories
- Provide greater support and education on the UK Bribery Act for small and medium-sized enterprises
- Ensure that DPAs are used only in cases of strong public interest, with utmost transparency, and as a

<sup>34</sup> <https://www.judiciary.uk/wp-content/uploads/2020/01/Director-of-the-Serious-Fraud-Office-v-Airbus-SE.pdf>, para 68. While technically outside the reporting period for this report, this decision provides guidance as to future uses of DPAs.

<sup>35</sup> <http://www.legislation.gov.uk/ukpga/2013/22/schedule/17> Crime and Courts Act 2013, Schedule 17 Paragraph 5(3)(b)

<sup>36</sup> <https://www.sfo.gov.uk/download/deferred-prosecution-agreement-sfo-v-icbc-sb-plc/?wpdmml=7600&refresh=5ecd7a2fba1a11590524463>

<sup>37</sup> <https://www.judiciary.uk/wp-content/uploads/2017/01/sfo-v-rolls-royce.pdf>

<sup>38</sup> <https://www.sfo.gov.uk/cases/rolls-royce-plc/>; <https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/>; <https://www.judiciary.uk/wp-content/uploads/2020/01/Director-of-the-Serious-Fraud-Office-v-Airbus-SE.pdf>

<sup>39</sup> <https://www.cps.gov.uk/sites/default/files/documents/publications/General-Principles-to-compensate-overseas-victims-December-2017.pdf>

<sup>40</sup> <https://beta.companieshouse.gov.uk/company/02984211/filing-history/MzIzNzAwMzZOWFkaXF6a2N4/document?format=pdf&download=0> page 1

<sup>41</sup> <https://www.theguardian.com/business/2019/jun/23/airbus-shuts-down-subsiary-at-centre-of-bribery-investigation>

<sup>42</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/ldbriact/303/303.pdf>, page 107 paragraphs 5, 6 and 13.

means to encourage self-reporting by others in the future • Ensure the NCA, CPS and SFO principles for compensation of victims are incorporated into the use of DPAs • Strengthen mechanisms to determine whether companies convicted of bribery should be debarred from public contracts • Ensure that the SFO's role as the principal actor for enforcing foreign bribery offences is maintained and consolidated •

Include anti-corruption and transparency provisions in future trade agreements • Continue to support the timely introduction of public beneficial ownership registers in the UK's Overseas Territories and Crown Dependencies • Closely monitor the impact of Brexit on the UK's foreign bribery enforcement, particularly in relation to international cooperation arrangements with EU countries.