

# Client Alert

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## UK Bribery Act Comes To Life?

By Kevin Roberts, Jarod G. Taylor and Duncan Grieve

On August 14, 2013, the Serious Fraud Office (SFO) charged three British nationals with offenses under the UK Bribery Act 2010. This is the first Bribery Act prosecution brought by the SFO. While it is impossible to discern a pattern from one action, this prosecution may indicate the beginning of active enforcement by the SFO. This interpretation is consistent with the uncompromising, prosecution-led stance favored by the current Director of the SFO, David Green.<sup>1</sup>

### THE CHARGES

The SFO charged the former CEO and Financial Controller of an investment company specializing in investments in “sustainable” products, as well as an Independent Financial Advisor associated with the company, with “making and accepting a financial advantage contrary to Section 1(1) and 2(1) of the Bribery Act 2010.”<sup>2</sup> Section 1 of the Bribery Act criminalizes bribery of any person. Section 2 criminalizes accepting bribes. The bribery-related charges were brought in addition to charges of conspiracy to commit fraud by false representation and to furnish false information in connection with the promotion and selling of “bio fuel” investment products to UK investors. As can be seen in this prosecution, the Bribery Act was designed to bolster and complement existing criminal laws. The combination of offenses in this case serves as a timely reminder that bribery offenses frequently occur in tandem with other acts of dishonesty and wrongdoing.

The specific conduct underlying the bribery-related charges has not yet been disclosed. At least for now, it appears that the investment company itself will not be prosecuted. This may be a practical matter relating to difficulties in recovering fines against the holding group of companies, which were placed into administration under UK insolvency legislation in March 2012.

Further, the charges did not involve Section 6 of the Bribery Act, which criminalizes bribery of foreign public officials. On that basis, we can speculate that the bribery at issue was purely commercial and/or domestic. As the facts of this case become publicly known, they may help shed some light on the SFO's enforcement priorities.

### THE CONTEXT

The Bribery Act came into force more than two years ago, in July of 2011. The new law was described as one of the most draconian and far-reaching pieces of anti-corruption legislation in the world. This was due to, among other reasons, its broad extra-territorial reach, provisions for corporate criminal liability, and high penalties. At the

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<sup>1</sup> Nick Kochan, “Fraud squad's new bruiser,” *The Independent*, Nov. 7, 2012, available at <http://www.independent.co.uk/news/business/analysis-and-features/fraud-squads-new-bruiser-8290051.html>.

<sup>2</sup> SFO Press Release, “Four charged in 'bio fuel' investigation,” dated Aug. 14, 2013, available at <http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2013/four-charged-in-%27bio-fuel%27-investigation.aspx>.

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time, the SFO also promised to take a “zero-tolerance approach” to kickbacks and other inducements given in exchange for business.<sup>3</sup>

Until yesterday, however, the SFO had not prosecuted anyone under the Act. Other agencies in the UK had prosecuted three cases under the Bribery Act, but those cases did not involve the corporate bribery that the Act was expected and largely intended to deter and punish. The first case involved an administrative court clerk who accepted £500 in exchange for not entering a traffic summons in a court database. The second involved a cab driver who attempted to bribe a licensing officer. The third involved a university student who offered his professors £5,000 in exchange for a passing grade. Not only were yesterday’s charges brought by the SFO, but they were also the first to stem from the type of case expected when the Act was first enacted.

## TAKEAWAYS

Although some had speculated that the SFO’s lack of action indicated a lack of interest, this prosecution signals “the end of the quiet spell,” as recently noted by Paul Friedman, co-chair of Morrison & Foerster’s FCPA + Anti-Corruption Task Force, in the *Wall Street Journal*.<sup>4</sup> In fact, it is likely that the “quiet spell” was never as significant as some may have speculated. The Bribery Act has no retroactive effect, so it only applies to conduct that occurred after July 1, 2011. It was therefore impossible for the SFO to bring significant charges immediately. SFO officials made clear in June and July 2013 that the SFO has other Bribery Act investigations in progress.

In 2012, the SFO investigated and obtained convictions for bribery under the laws preceding the Bribery Act, showing that fighting corruption has always been a priority.<sup>5</sup> This case leaves little doubt that the SFO will continue to bring cases under the Bribery Act as the opportunity presents itself. It remains to be seen, however, what the SFO’s enforcement priorities will be and how courts will interpret the broad language of the Act.

Given the potential awakening of the SFO with respect to enforcement of the Bribery Act, this case should serve as a wake-up call for multinational companies conducting business in the UK. Companies should evaluate their anti-corruption compliance programs and ensure that they have adequate procedures in place to prevent and detect bribery and related offenses.

<sup>3</sup> See, e.g., Richard Wachman and Larry Elliott, “Serious Fraud Office promises crackdown on firms offering bribes abroad,” *The Guardian*, Oct. 10, 2010, available at <http://www.theguardian.com/law/2010/oct/10/serious-fraud-office-bribery-crackdown>.

<sup>4</sup> Samuel Rubinfeld, “SFO Files First Criminal Charges under Bribery Act,” *Wall Street Journal Online*, Aug. 14, 2013, available at <http://blogs.wsj.com/riskandcompliance/2013/08/14/sfo-files-first-criminal-charges-under-bribery-act/>.

<sup>5</sup> For more information, see Kevin Roberts and Duncan Grieve, “UK Serious Fraud Office Focuses on Overseas Corruption with Rolls Royce Investigation,” *Client Alert* (Dec. 10, 2012), available at <http://www.mofo.com/files/Uploads/Images/121210-UK-Serious-Fraud-Office-Rolls-Royce-Investigation.pdf>; Kevin Roberts and Duncan Grieve, “SFO Obtains Convictions in Private Sector Oil and Gas Corruption Case,” *Client Alert* (Feb. 16, 2012), available at <http://www.mofo.com/files/Uploads/Images/120216-SFO-Obtains-Convictions-in-Private-Sector-Oil-and-Gas-Corruption-Case.pdf>.

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