

Happy Birthday! Ten takeaways as we chart the tenth birthday of the UK Bribery Act.

1 July 2021

On 1 July 2021, the UK Bribery Act (the **Act**) – one of the world’s global bribery and corruption benchmark laws – turns 10.

It’s been an eventful 10 years: the Serious Fraud Office (**SFO**), the Act’s primary enforcement agency, have had their ups and downs. Equally, it cannot be denied that the Act has successfully reformed bribery law in the UK; indeed, it has provided a blueprint for similar legislation at home and abroad. But many commentators feel that the statutory guidance provided to corporates on the compliance defence has been far from “adequate”. The fact that there have been so few contested corporate prosecutions means there is a dearth of precedent.

Here’s a look back over the past 10 years –

1. The **first** prosecution under the Act came in November 2011 and related to a £500 bribe taken by Munir Yakub Patel, the Court clerk at Redbridge Magistrates’ Court, as a reward for deliberately not putting all the details of a traffic summons on the court’s database.
2. In the **second** case prosecuted under the Act, an individual attempted to persuade a local council official to alter the result of a test to obtain a taxi driving licence, with offers of £200 and £300. He received a suspended two-month prison sentence. There followed a further case involving a postgraduate student at a UK university who failed to pass his dissertation and was prosecuted for trying to bribe his professor with £5,000. Such prosecutions may not have succeeded under the old law.
3. There have been **three** successive Directors of the SFO in the 10 years – Richard Alderman oversaw the introduction of the Act, David Green QC oversaw the introduction of Deferred Prosecution Agreements (**DPAs**) to help enforce it, and current incumbent Lisa Osofsky now seems determined to see the law of corporate liability change to help the SFO pin companies with liability for the acts of their directors.
4. But for corporates, it’s taken a while to get things off the ground! It was **four** years before the first corporate prosecutions were achieved – with Brand-Rex Limited reaching a settlement with the Scottish authorities, and Standard Bank concluding the first DPA with the SFO – interestingly, in relation to a US\$6million bribe paid in Tanzania by the Bank’s “associated person” sister company.

5. And it took **five** years for the first successful conviction under section 7 of the Act. Under David Green QC, the SFO secured its first corporate conviction, with Sweet Group pleading guilty to bribery offences and being left to pay £2.25million – this remains the highest penalty for a non-DPA section 7 conviction.
6. To date there have been **six** DPAs concluded in respect of bribery offences under the Act: the first, Standard Bank in 2015; followed by Sarclad Ltd, Rolls-Royce PLC, Güralp Systems Ltd, Airbus SE, and Airline Services Limited. And we shouldn't be waiting too long for the next one, with the SFO's DPA with Amec Foster Wheeler Energy, a subsidiary of John Wood Group Plc, for bribery conduct in Brazil expected to be approved very soon. Under these DPAs, billions of pounds have been issued in penalties. Yet there have been a total of zero successful convictions of individuals connected with the corporate DPAs and prosecutions – this must be seen as a major failure. The stark contrast reveals the priority of corporate settlements over individual prosecutions.
7. Section **Seven's** strict liability for corporates has dominated high-profile prosecutions under the Act. Despite this attention, the pivotal concept of "adequate procedures" remains uncertain. The Ministry of Justice guidance adds some flesh to the bones, with case studies and examples to show how organisations might behave in a given situation. Some have criticised the quality and reliability of this guidance. There remains little concrete guidance on what businesses – particularly smaller enterprises – must do to comply with the Act. The risks of non-compliance were laid bare for all to see in 2018 with the prosecution of Skansen Interiors Limited. A dormant SME with no assets, Skansen discovered bribery conduct within its business, dismissed the wrongdoers, self-reported to the police, and co-operated with their investigation, only to be brought to trial and found guilty by the jury: a clear message to all companies of the importance of having adequate procedures to prevent bribery.
8. The SFO's latest annual accounts show its net contribution to HM Treasury to be over **eight** times the amount it receives annually by way of core funding. Questions remain as to whether its core funding of £52m is adequate for the complex and multi-jurisdictional bribery enforcement work the Act needs, and while Conservative Party proposals to abolish the SFO lost traction amid the chaos of Brexit, its future as the principal enforcer of the Act remains uncertain.
9. 2020 saw the SFO's largest DPA for bribery offences under the Act to date. An investigation spanning **nine** jurisdictions culminated in a fine of EUR991million for Airbus for its failure to prevent bribery, as part of the world's largest global resolution for bribery offences. Addressing conduct in Sri Lanka, Malaysia, Indonesia, Taiwan and Ghana, committed on behalf of a Dutch company, and coupled with parallel proceedings in France and the US, this investigation exemplifies the significant geographical reach of the Act – and the section 7 offence in particular.
10. What will the next **ten** years hold? Will adolescence for the Act spark more individual prosecutions; an uptick that has been prevalent in FCPA cases in recent years? Will it be overshadowed by a new sibling in the form of an act covering "failure to prevent economic crime?"

Expect the focus on how the SFO investigates bribery offences and enforces the Act to grow, and DPAs to remain an important weapon in the SFO's enforcement armoury.

Indeed the ambit of DPAs is expanding as their popularity increases - the recent G4S DPA, for example, introduced unprecedented external compliance oversight requirements, which may well be a sign of heavy-handed US-style monitorship arrangements in years to come.

But for all the SFO's success with DPAs, high-profile failures in individual prosecutions will likely add to the calls for greater pursuit of the individuals responsible for acts of bribery.

The global collaboration between regulators, the Act's extraterritorial effect, and its offences for private sector bribery mean that it will continue to be a global gold standard for companies to abide by. And section 7's "adequate procedures" defence, coupled with last year's Evaluation of Corporate Compliance guidance by the US Department of Justice, ensures that corporate compliance is not only a business benefit, but a regulatory necessity.

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