

DOJ Announces Secondment to UK's Corruption Prosecutor

The announcement reflects the increasing cooperation between US and UK anti-corruption prosecutors, a trend with significant implications on both sides of the Atlantic.

Key Points:

- Two-year secondment marks the first time that the DOJ's Criminal Division has sent a prosecutor to work full-time with foreign agencies on regulatory and financial crime matters.
- The secondment comes as the UK is taking a more aggressive role in enforcing anti-corruption statutes.

Introduction

On May 24, 2017, Acting Principal Deputy Assistant Attorney General Trevor N. McFadden announced that the United States Department of Justice (DOJ) will send an anti-corruption prosecutor to work with the United Kingdom's Financial Conduct Authority (FCA) and Serious Fraud Office (SFO).¹ The two-year secondment will mark the first time that the DOJ's Criminal Division has sent a prosecutor to work full-time with foreign agencies on regulatory and financial crime matters.²

The move is part of the DOJ's ongoing effort to increase cooperation with foreign prosecutors in combatting white collar crime. In his speech, McFadden highlighted the recent growth in foreign partners' requests for legal assistance.³ He noted a 147% increase in the number of foreign requests for US-based evidence for foreign bribery and corruption investigations and a 75% increase in the number of requests from the US government to foreign counterparts since 2012.⁴ The DOJ has expanded its Office of International Affairs and has set up additional units in response to this growth.⁵

The secondment, which is the latest example of increasing collaboration between American and British agencies, comes as the UK is seen as taking an expanded role in foreign corruption and anti-bribery investigations and enforcement matters. This development has been evident in several recent high-profile enforcement actions, including the SFO's ongoing investigation of Airbus and Rolls-Royce's recent US\$809 million settlement with the SFO, the DOJ and Brazil's Ministerio Publico Federal (MPF), which included a £497 settlement agreement with the British prosecutor — the highest amount paid in any UK criminal settlement to date.⁶

Key Takeaways

- ***The UK is becoming increasingly aggressive in enforcing anti-corruption statutes.*** This recent development, in which the UK authorities will be collaborating with their US counterparts, indicates

that the UK is strengthening its domestic framework for enforcing anti-corruption laws. The secondment of a senior American prosecutor with extensive experience in foreign bribery and corruption enforcement suggests that the SFO, in particular, is serious about expanding its role in anti-corruption and anti-bribery enforcement matters.

- ***International cooperation in the fight against white collar crime continues.*** On the back of global investigations such as Libor and FX, agencies on both sides of the Atlantic are increasingly collaborating in white collar criminal investigations and prosecutions. This trend has been the subject of considerable prior commentary, but it bears repeating. Multinational companies, and in particular those doing business in the UK and US, will want to understand the various anti-corruption regulatory and enforcement frameworks at play, develop compliance programs to address these growing risks, and be prepared to engage with regulators across multiple jurisdictions that may be implicated should compliance issues arise. Companies that are under investigation in one jurisdiction would be wise to assume that information provided to one regulatory body is being — or will be — shared with others, regardless of geographic boundaries.
- ***The DOJ and SEC are not backing down from corporate fraud and anti-corruption cases.*** The UK-US secondment program reflects the current US administration's continued interest in pursuing white collar criminal matters — including large-scale corporate fraud and Foreign Corrupt Practices Act of 1977 (FCPA) investigations and prosecutions — despite some initial uncertainty. Attorney General Jeff Sessions has emphasized this continued prioritization;⁷ indeed, there has to date been no substantial reallocation of resources away from FCPA or other white collar matters at DOJ. In this climate, clients with international reach will want to continue to ensure that their systems and controls are adequate to comply with federal standards.
- ***The move towards globalized enforcement actions may blur geographic boundaries.*** As agencies like the SFO and the DOJ co-locate their personnel, enforcement priorities that previously only existed at one agency may carry over to the other agency. The increase in international cooperation could lead to a blurring of enforcement strategies and priorities between different jurisdictions, which in turn could affect what cases regulators are willing to bring in any given jurisdiction. Jurisdictions that may have been deemed lower risk from a UK anti-corruption perspective, for example, may carry increased risk of enforcement actions moving forward.
- ***Data privacy matters will continue to require careful consideration.*** The globalization of anti-corruption enforcement means multinational actors will want to carefully consider the various data privacy laws and regulations that may be at issue. Companies will want to be well-versed on applicable (or potentially applicable) data protection laws that any investigation may trigger in order to comply with these various laws and regulations.

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Endnotes

- ¹ Trevor N. McFadden, Acting Principal Deputy Assistant Attorney General, DOJ, Remarks prepared for the American Conference Institute's 7th Brazil Summit on Anti-Corruption in Sao Paulo, Brazil (May 24, 2017), available at <https://www.justice.gov/opa/speech/acting-principal-deputy-assistant-attorney-general-trevor-n-mcfadden-speaks-american>
- ² Sue Reisinger, DOJ Will Assist UK Agencies Pursuing Corruption, Fraud, NAT'L L. J., May 25, 2017, <http://www.nationalawjournal.com/id=1202787498932?kw=DOJ%20Will%20Assist%20UK%20Agencies%20Pursuing%20Corruption%2C%20Fraud&et=editorial&bu=National%20Law%20Journal&cn=20170526&src=EMC-Email&pt=Daily%20Headlines>
- ³ *Id.*
- ⁴ Remarks by Trevor N. McFadden, Acting Principle Deputy Assistant Attorney General, DOJ, in Sao Paulo, Brazil (May 24, 2017)
- ⁵ *Id.*

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- ⁶ Rolls Royce settles bribery probes with U.K., U.S. and Brazil, Reuters, Jan. 16, 2017, <http://www.reuters.com/article/us-rolls-royce-hldg-fraud-settlement-idUSKBN15025C>.
- ⁷ See Jeff Sessions, Attorney General, DOJ, Remarks at Ethics and Compliance Initiative Annual Conference in Washington, D.C. (April 24, 2017), available at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-ethics-and-compliance-initiative-annual>.