



ForensicFocus

Failure-to-prevent

UK Bribery Act first contested case

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Today's reality

Almost two years after the Serious Fraud Office (SFO) successfully secured its first conviction under section 7 of the UK Bribery Act, the first ever contested “failure-to-prevent” case, in which a company sought to rely on having adequate procedures in place to prevent persons associated with it from bribing (as described in the UK Bribery Act), concluded with a small British refurbishment company being found guilty.

The decision that it was in the public interest to prosecute a company that had since become dormant sends out a strong message that a defense of adequate procedures may not be as straightforward as it seems on paper. While the case did not provide companies with explicit guidance on what constitutes “adequate procedures,” it at least provides some clarity on what may not be considered “adequate procedures.”

Understanding the case

The first contested “failure-to-prevent” case, in which a company sought to rely on having adequate procedures in place to prevent persons associated with it from bribing, concluded with a small British refurbishment company being found guilty. Despite the company now being dormant, the SFO felt it was in the public interest to try the case and, in doing so, sent out a strong message that companies of all sizes should be considering whether they have “adequate procedures” in place.

The case is not the typical headline-grabbing event often associated with bribery enforcement action, but it gives a first glimpse into how prosecutors (and, in turn, a jury) may assess the adequacy of procedures.

The facts outline that the former managing director of Skansen Interiors paid bribes in two payments to a former project manager at a real estate company totaling £10,000 (approximately \$14,000) to secure contracts worth £6 million (approximately \$8.4 million) for the refurbishment of offices in London.

In its defense, the company argued that it had adequate procedures in place. The jury disagreed and returned a guilty verdict. Skansen Interiors argued that because it operated a localized, domestic-focused business out of a small, open-plan office consisting of no more than 30 staff, it was not required to have substantial controls in place to prevent the actions of the former employee. It explained that while it did not have a separate anti-bribery and corruption policy,

it had various policies to ensure that business dealings were conducted in an ethical, open, and honest way, and not paying bribes was simply “common sense.” It also argued that the financial controls that might be expected at a smaller company were in place, and company contracts included provisions related to bribery.

While the case did not provide companies with explicit guidance on what constitutes “adequate procedures,” it at least provides some clarity on what may not be considered “adequate procedures.”

Lessons learned

Some of the many lessons that can be learned from this particular case include the need for companies to implement:

- A comprehensive, stand-alone bribery and corruption policy, with a senior individual that is accountable for cascading it across the business
- Periodic risk assessments in order to identify business locations, operations, and people that may present an increased bribery and corruption risk to the company
- A mechanism for those wishing to report suspected wrongdoing in an anonymous and confidential way that is appropriately communicated across the organization
- Robust procedures and controls in place that are proportionate to the company’s potential bribery risk

- Provision of training that is regular and appropriate to the roles and responsibilities of each employee
- Ongoing monitoring activities to identify potential unusual or anomalous transactions
- Regular review and benchmarking of a company’s compliance program against industry practices, evolving legislation, and ongoing enforcement action.

Sending a strong message

The decision that it was in the public interest to prosecute a company that had since become dormant sends out a strong message that:

- A defense of adequate procedures may not be as straightforward as it seems on paper
- The UK Bribery Act is not just for large multinational corporations
- Just having a policy and some controls does not necessarily constitute adequate procedures
- Companies may still be held responsible for the actions of rogue employees, even when they have some form of controls in place.

The case serves as a stark reminder of the need for companies of all sizes to periodically revisit their anti-bribery and corruption program. How would your company’s procedures measure up against this benchmark?

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