The Legal 500 Country Comparative Guides

United Kingdom: Bribery & Corruption

This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in United Kingdom.

For a full list of jurisdictional Q&As visit here
1. **What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?**

   The Bribery Act 2010 provides for a general offence of bribery, which criminalises both the receipt and payment of bribes.

2. **Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?**

   The Serious Fraud Office (SFO) is the main prosecutor with the responsibility for enforcing the Bribery Act. Broadly speaking, when determining whether to commence a prosecution (against corporates or individuals), the SFO will consider both the evidential case against the suspect and whether a prosecution would be in the public interest.

3. **How is bribery defined?**

   A bribe is paid where a person receives, offers or gives a bribe either (i) intending that, as a consequence, a function should be performed “improperly”; or (ii) where the bribe is or amounts to a reward for “improper” performance.

   The Bribery Act provides three examples of when a function would be deemed to have been carried out “improperly”:

   a) The person performing it is expected to perform the function or activity in good faith, but does not

   b) The person performing it is expected to perform it impartially, but does not

   c) The person is in a position of trust, but breaches that trust

   The types of functions that are covered by the Bribery Act are as follows:

   a) Functions of a public nature

   b) Activities connected with a business

   c) Activities performed in the course of a person’s employment

   d) An activity performed by or on behalf of a body of persons

   A corporate or commercial organisation will also commit an offence under Section 7 of the
Bribery Act, where a person “associated with” it bribes another person, intending to obtain or retain business for the organisation or to obtain or retain an advantage in the conduct of business for the organisation. This is a strict liability offence that can be committed in the UK or overseas. Note that:

- A person will be “associated with” the company for these purposes where the person acts on an organisation’s behalf. This could include an employee, agent or subsidiary of the organisation. Contractors, suppliers, joint venture entities and joint venture partners may also be associated persons.
- While there is a rebuttable presumption that an employee acts on behalf of his or her organisation, an individual’s association will be determined by reference to all relevant circumstances, not merely the relationship between the individual and the organisation.
- It is a defence for an organisation to prove that it had “adequate procedures” in place to prevent the bribery.

In addition, Section 6 of the Bribery Act includes a specific offence of “bribery of foreign public officials” (FPOs). Broadly, an offence will be committed where a person directly or through a third party offers, promises, or gives a financial or other advantage to an FPO in his capacity as an FPO (or to a third party at the FPO’s request) and intends to obtain or retain business or a business advantage.

For the purposes of the Bribery Act, an FPO includes an individual who: holds a legislative, administrative or judicial position of any kind; exercises a public function for or on behalf of a country or territory outside the UK or for any public agency or public enterprise of that country or territory; or is an official or agent of a public international organisation. Foreign political parties or candidates for foreign political office are not considered FPOs.

The offence is not committed where the FPO is either permitted or required by the written law applicable to the FPO to be influenced in his or her capacity as an FPO. Effectively, this is only likely to provide protection in the very limited circumstances where a written law explicitly permits or requires the payment to the FPO.

Section 7 of the Bribery Act further provides that a company or another commercial organisation will also commit an offence where a person “associated with” it bribes an FPO, intending to obtain or retain business for the organisation or to obtain or retain an advantage in the conduct of business for the organisation. This is a strict liability offence that can be committed in the UK or overseas.

4. **Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is ‘public official’ defined? Are there different definitions for bribery of a public official and bribery of a private person?**

The general offences of bribery in the UK anti-bribery legislation do not distinguish between bribes paid to a public official and those paid in the private sector. However, the Bribery Act
does provide an additional offence of bribery in relation to foreign public officials (the Section 6 offence, as described above).

5. **What are the civil consequences of bribery in your jurisdiction?**

The SFO has civil recovery powers to recover property obtained through unlawful conduct without resorting to criminal prosecution.

Victims of bribery may also make civil claims for damages against the briber and/or the recipient of the bribe for financial loss. In general, civil claims for bribery appear more common in the USA than in the UK. However, they are becoming more common in the UK. In particular, there have been new claims arising out of supposed mis-selling of derivatives and allegations of bribery against banks.

In *Libyan Investment Authority v Goldman Sachs* [2016] EWHC 2530 (Ch) the LIA argued that offering an internship within Goldman Sachs to the brother of the Deputy Chairman of the LIA improperly influenced the LIA to enter into trades of $1.2 billion; in this instance the LIA’s claim was unsuccessful. The High Court ruled that the internship offered by Goldman Sachs did not go beyond the normal cordial and mutually beneficial relationship between a bank and its client. The High Court noted that if the relevant derivative trades were in fact unsuitable, they were no more unsuitable than other investments made by the LIA in the same period. The High Court gave guidance on the issue at hand by stating that for banks to be found liable there needs to be an element of serious impropriety.

In *UBS v KWL* [2017] EWCA Civ 1567 the Court of Appeal ruled that a water company could rescind a credit protection contract in relation to derivatives entered into with a Swiss bank on the basis of bribes paid by the company’s financial advisor.

6. **What are the criminal consequences of bribery in your jurisdiction?**

An individual convicted of committing any of the general bribery offences may:

a) be imprisoned for a term of up to 10 years; and/or

b) be subject to an unlimited fine.

A company or partnership that commits any of the general bribery offences will be liable on conviction on indictment, to an unlimited fine, and to automatic and perpetual debarment from competing for public contracts.

Note that a conviction under Section 7 of the Bribery Act will attract discretionary rather than mandatory disbarment from competing for public contracts.
Where an organisation has been convicted of a bribery offence, senior officers of the organisation who have consented to or connived in the conduct can also be convicted of the offence concerned. As noted below (Question 23) there has been a noticeable lack of individual prosecutions even where an organisation has been found guilty of bribery offences.

7. **Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?**

Corporate hospitality will only amount to one of the general offences if there is improper conduct on the part of the person bribing or being bribed. If the act of hospitality is routine and inexpensive, it is unlikely to amount to a breach of an expectation of good faith, impartiality or trust. As a general point, it is important for an organisation to be able to show that payments to a third party or agent reflect a reasonable level of compensation for the services being provided; this would reduce the chances of any such payment being viewed as disproportionate or corrupt.

The UK government has confirmed that legislation should not be used to penalise legitimate and proportionate hospitality, including in respect of foreign public officials, but its view is that hospitality is also an issue best considered by prosecutors rather than by Parliament.

For hospitality events, it is important to check whether the proposed guests are subject to hospitality/gift restrictions imposed by their industry or professional governing bodies. By way of example, the UK’s Ministry of Defence has previously issued guidance restricting hospitality events for Ministry of Defence staff. Such guidance is not always publically available. When offering a hospitality invitation it is prudent to enquire about any applicable standards or guidance notes that may apply to the intended guest.

Various factors will be relevant to an objective analysis of whether an offer of hospitality or gift may be perceived to be improper and at risk of being viewed as a bribe. Such factors include:

- The context of the provision of the event / gift;
- Whether a reasonable person would regard the event / gift as unduly extravagant in the circumstances;
- Whether the event / gift would be proportionate;
- The nature of the benefits which might be secured from the guest or recipient;
- Whether the event / gift is being offered in conjunction with (or in close proximity to) any procurement or contract negotiations; and
- Whether there is transparency about the provision of the event / gift.

8. **Are political contributions regulated?**

The Bribery Act does not include any specific provisions in relation to political contributions,
although the general offences of giving or receiving a bribe may be applicable.

9. **Are facilitation payments regulated? If not, what is the general approach to such payments?**

A facilitation payment refers to the practice of paying a small sum of money to a public official as a way of ensuring that they perform their routine, non-discretionary duties, either promptly or at all.

Facilitation payments are illegal under the Bribery Act. In 2011 and thereafter, the UK government has recognised "the problems that commercial organisations face in some parts of the world and in certain sectors" (see here for a copy of the Government’s Guidance on the Bribery Act 2010). However, in May 2019, the House of Lords’ Select Committee on the Bribery Act 2010 recommended no changes in the law in relation to facilitation payments, stating that it would be a retrograde step to legalise facilitation payments. Moreover, in its response to the Select Committee’s conclusions, the UK Government agreed that facilitation payments will remain a form of bribery and should not be legalised. The Government confirmed that there was no plan to change the law in this regard. Even if prosecutions do not take place, the continuing illegality of facilitation payments causes issues from a money laundering point of view.

10. **Are there any defences available?**

There are no defences available to the general bribery offences where an individual or corporation pays or receives a bribe.

It is a defence, however, to the corporate offence under Section 7 of the Bribery Act for an organisation to prove, on the balance of probabilities, that it had “adequate procedures” in place to prevent persons associated with it from engaging in bribery.

11. **Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?**

It is a defence for an organisation to prove, on the balance of probabilities, that it had “adequate procedures” in place to prevent bribery. The UK Ministry of Justice has issued guidance on procedures that commercial organisations can put into place to prevent persons associated with them from bribing (see question 13 below).

Following the introduction of the Criminal Finances Act 2017, it is now also a criminal offence for a company to fail to prevent a person associated with it from facilitating tax evasion. Similar to the corporate bribery offence, the company will have a defence if it had prevention procedures in place which were “reasonable in all the circumstances” to prevent the criminal facilitation of tax evasion. It will also be a defence if it was not reasonable to
expect the company to have any prevention procedures in place.

12. **Who may be held liable for bribery? Only individuals, or also corporate entities?**

Both individuals and corporates can be held liable for bribery, with the exception of offences under Section 7 of the Bribery Act, which applies only to corporate bodies.

Senior officers can be held liable for the offences of their organisation if they consented to or connived in the offence and had a close connection to the UK.

It is important to note the broad jurisdictional nexus of the Bribery Act whereby the offences have both intra-territorial and extra-territorial application. For individuals, this means that a person will commit the offences of bribing another person, being bribed, and bribery of foreign public officials:

a) if any of the constituent acts or omissions take place in the UK, and

b) if: (i) no act or omission that forms part of the offence takes place in the UK; (ii) a person’s acts or omissions done or made outside the UK would form part of such an offence if done or made in the UK; and the person has a “close connection with the UK”. A close connection can mean that the person is, e.g. a British citizen, ordinarily resident in the UK or a body incorporated under the law of any part of the UK.

In addition, the specific offence which applies to a commercial organization under Section 7 includes a body that is incorporated under the law of any part of the UK and that carries on a business (whether in the UK or elsewhere) and any other body corporate/partnership (wherever incorporated/formed) that carries on a business, or part of a business, in any part of the UK. The Bribery Act does not define the term “carries on a business or part of a business”. UK Government Guidance indicates that with regard to organisations incorporated or formed outside the UK, whether they carry on a business in the UK will be determined by the courts but the Government advocates a common sense approach. A foreign parent which has a UK subsidiary alone would not necessarily be carrying on a business in the UK. The Government’s reasoning for this is that a subsidiary “may act independently of its parent company or other group companies”. The implication appears to be that, where there is no such independence, then the parent would be carrying on a business in the UK by owning a subsidiary which does carry on business in the UK.

13. **Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?**

The UK Ministry of Justice has issued guidance on procedures that commercial organisations can put into place to prevent persons associated with them from bribing.
The Ministry of Justice’s guidance is not prescriptive as to the nature of systems and procedures that firms should implement in order to meet the “adequate procedures” standard necessary to provide a defence against the Section 7 corporate offence. A one-size-fits-all approach is simply not possible; whether an organisation has adequate procedures in place to prevent bribery will depend on the specific facts and circumstances of the case. However, the guidance highlights six principles of bribery prevention that an organisation’s officers should consider when drafting an anti-bribery compliance program:

(a) Proportionate procedures

An organisation’s internal procedures to prevent bribery by persons associated with it ought to be proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation’s activities.

(b) Top-level commitment

The management of an organisation (i.e., directors, owners or any other equivalent body or person) ought to be committed to preventing bribery by persons associated with it. The management should endorse a culture in which bribery is never acceptable.

(c) Risk assessment

An organisation should consider the nature and extent of its exposure to potential risks of bribery on its behalf by persons associated with it. Its assessment ought to be “periodic, informed and documented”.

(d) Due diligence

An organisation must implement due diligence procedures, applying a proportionate approach, in respect of persons who perform or will perform services for or on its behalf.

(e) Communication (including training)

An organisation should seek to ensure that its anti-bribery policies are understood throughout the organisation via internal and external communication and, if appropriate, training.

(f) Monitoring and Review

An organisation needs to periodically monitor and review its anti-bribery procedures, and where necessary, make improvements.
14. **Does the law provide protection to whistle-blowers?**

The UK provides protection to whistle-blowers under the Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013. This legislation protects workers from unfair dismissal or other detriment where they disclose information about wrongdoing in specific circumstances.

The two key requirements to be met in order to qualify for protection are:

- There must be a “qualifying disclosure” of information. This means the worker must reasonably believe the disclosure is made in the public interest, and tends to show that one or more of six relevant failures has occurred, is occurring or is likely to occur (e.g. a criminal offence).
- The disclosure must be “protected”. Whether or not disclosure is protected depends in part on to whom the disclosure is made.

15. **How common are government authority investigations into allegations of bribery?**

The SFO is an active enforcement agency and there are at least 41 reported ongoing investigations and prosecutions under both the pre-Bribery Act corruption legislation and the Bribery Act itself. However, some of the SFO’s caseload is not public. The SFO’s Annual Report for 2018-19 states that only five of the 11 cases opened in 2018-19 had been made public. It claims to have around 60 live criminal cases at any given time. One reason for not announcing all investigations could be that negotiations towards Deferred Prosecution Agreements (DPAs) are ongoing.

There have been seven DPAs since 2015 (see question 16 below). The use of DPAs continues to rise and provide a mechanism for the SFO to delay prosecutions whilst they agree a form of settlement. The key features of DPAs are:

- They enable a corporate body to make full reparation for criminal behaviour without the collateral damage of a conviction (for example, sanctions or reputational damage that could put the company out of business and destroy the jobs and investments of innocent people).
- They are concluded under the supervision of a judge, who must be convinced that the DPA is ‘in the interests of justice’ and that the terms are ‘fair, reasonable and proportionate’
- They avoid lengthy and costly trials
- They are transparent, public events

16. **What are the recent trends in investigations and enforcement in your jurisdiction?**

*Deferred Prosecution Agreements:*

In recent years, the SFO has begun to use DPAs following corporate bribery investigations.
The SFO entered into its first DPA in 2015, with Standard Bank. Other examples have followed: Sarclad Ltd in 2016 and with Rolls-Royce and Tesco in 2017. In 2019, DPAs were agreed with Serco Geografix Ltd and Güralp Systems Ltd. In 2020, a DPA was agreed with Airbus SE.

In August 2019 the SFO released its long-awaited Corporate Cooperation Guidance (a copy of the guidance can be found here). The five-page document seeks to provide, for the first time, transparency around what the SFO expects in terms of cooperation if a corporate seeks leniency from the SFO and is hoping to avoid a criminal prosecution or to enter into a DPA.

Interestingly, in January 2020 the SFO entered into its highest value DPA with Airbus SA over allegations that Airbus had used external consultants to bribe customers to buy its civilian and military aircraft. This DPA has drawn much attention in recent months for a number of reasons. First, it potentially marks a clear shift away from grave conduct being an automatic bar to the use of DPAs. In the resulting judgment, the fact that Airbus had set a determined course of cooperation and remediation throughout the three year investigation was highlighted on multiple occasions. Second, the value of the DPA is significant, with the global financial sanction approaching EUR 1 Billion. This is greater than the total of all previous sums paid pursuant to previous DPAs. Third, the investigation was jointly led by the SFO and the PNF in France. The collaboration shown by the authorities arguably demonstrates the effectiveness of co-operation to achieve global enforcement.

*Legal Privilege in SFO Investigations:*

The SFO has also become more assertive in testing claims of legal professional privilege arising in internal investigations. Companies – particularly against the backdrop of negotiating a DPA – are coming under increasing pressure to waive arguments of privilege.

The SFO has now offered guidance on this issue in its 2019 Corporate Cooperation Guidance:

- The SFO noted that that a company’s refusal to waive privilege may undermine a request for a DPA, but will not otherwise be “punished” by the SFO.
- On the issue of interviewing witnesses and notes of those interviews the guidance provides that, to avoid prejudicing the SFO’s investigation, corporates should consult in a timely way with the SFO before interviewing potential witnesses or suspects, taking personnel/HR actions or taking other overt action.
- Where a corporate claims privilege over documents, the guidance confirms that the SFO has an expectation that it will be provided with a certification by independent counsel that the material in question is indeed privileged.

The issue of privilege was again considered during the recent Airbus SA investigation. It was noted in the Airbus judgment that the organisation was able to cooperate with the SFO and provide fulsome materials but that this did not mean that privilege had been waived completely. It was acceptable for Airbus to provide a schedule listing documents being
withheld and the reasons for the company asserting privilege.

**Stronger Enforcement Coordination:**

Finally, there is increased coordination between the SFO and its counterparts in foreign jurisdictions. The Airbus investigation is a key example of this as the SFO worked closely with overseas regulators to secure a high value DPA. Effective coordination between authorities can include sharing of information and documents, creating an increasing challenge for companies under investigation to manage their global regulatory risk.

Following the appointment of Lisa Osofsky as Director of the SFO in 2018, commentators have noted the “americanisation” of UK corporate crime scene. In particular, commentators have noted the rise of US-influenced techniques being used by UK law enforcement such as witness / individual cooperation and DPAs (see Question 25 for further details).

17. **Is there a process of judicial review for challenging government authority action and decisions?**

The decisions of UK government authorities, including the SFO, are subject to judicial review of the courts in certain, relatively limited, circumstances. Applicants have a narrow time frame to request review and must identify where a decision is irrational, improper or illegal.

The criteria to show irrationality are high, and rarely met in practice. Most successful judicial reviews rely upon showing that an authority has not followed its own procedures (an improper decision) or that human rights legislation has been infringed (an illegal decision).

Recent JR challenges to the SFO have focused on issues of disclosure and privilege [Note the following: (1) *R (on the application of AL) v Serious Fraud Office* [2018] EWHC 856; (2) SFO v *ENRC* [2018] EWCA Civ 2006 and subsequent JR applications; (3) *R (KBR Inc.) v SFO* [2018] EWHC 2368 (Admin)].

18. **Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?**

There are no immediate known plans to change the UK’s bribery and anti-corruption legislation. However, in 2017 the UK government published its Anti-Corruption Strategy 2017 to 2022, setting out a number of executive initiatives to tackle domestic and international corruption. This includes, for example, a commitment to prioritise anti-corruption provisions in any future trade agreements. Moreover, in May 2019, the House of Lords’ Select Committee on the Bribery Act 2010 published a number of recommendations or clarifications in relation to the Act. The overall response of the Government was mainly neutral, and it is therefore unclear whether many changes to the law will be made on the back of the Committee’s recommendations.
19. **To which international anti-corruption conventions is your country party?**

- The United Nations Convention Against Corruption
- The United Nations Convention Against Transnational Organised Crime
- The Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- The Council of Europe Criminal Law Convention on Corruption (with Additional Protocol)
- The Council of Europe Civil Law Convention on Corruption
- The Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union
- The Convention on the Protection of the European Communities Financial Interests and Protocols
- The Agreement for the Establishment of the International Anti-Corruption Academy (yet to be ratified)

20. **Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.**

The concept of legal professional privilege in England and Wales is considered to be a fundamental human right. If a document is covered by legal professional privilege, it entitles the party claiming privilege to withhold production from those seeking to inspect it. That is so even where the party seeking inspection is a governmental or regulatory body. Documents will attract legal professional privilege provided that they meet the tests for legal advice privilege or litigation privilege.

Legal advice privilege covers confidential communications between lawyers (acting in their professional capacity) and clients for the purposes of giving or obtaining legal advice. It does not matter whether the advice sought relates to contentious or non-contentious matters.

Litigation privilege covers confidential communications between clients and their lawyers or between either of them and a third party for the purpose of obtaining information or advice in connection with existing or contemplated litigation, that were made: (a) when litigation was in progress or reasonably in contemplation; and (b) with the sole or dominant purpose of conducting that litigation. Crucially, the litigation must be adversarial, not investigative or inquisitorial.

The meaning of “adversarial” when considering if litigation is in reasonable contemplation for the purposes of litigation privilege applying to investigation has been a developing area of discussion in the UK. This is because the line between an inquisitorial and an adversarial investigation is not always clear. As new facts emerge and regulatory correspondence develops, an organisation should continually assess where the tipping point lies. Case law on this point continues to develop; the following key cases should be noted:

- *Tesco Stores Ltd v Office of Fair Trading* [2012] CAT 6: the proceedings were considered adversarial once the OFT issued a Statement of Objections and a Supplementary
Statement of Objections and Tesco stood accused of wrongdoing (and not just when the OFT issued its decision notice). This case is helpful in highlighting the importance of determining the purpose of the notice served by a regulator and the relevant stage of the investigation. Where the notice has been served in the course of early stage investigations, litigation privilege may not apply. However, it may apply where the notice served sets out the relevant authority’s legal case against the company.

- **Property Alliance Group Ltd v Royal Bank of Scotland plc** [2018] WC2A 2LL considered the issue of litigation privilege but ultimately failed to clarify at what point an investigation by a regulator becomes adversarial.

- **ENRC v SFO** [2018] EWCA: This remains the key case on the issue of litigation privilege and investigations. ENRC sought to claim privilege over notes taken by external counsel of interviews that had been conducted in the context of an internal investigation. The Court of Appeal held that litigation was in reasonable contemplation from the outset of the SFO investigation into the company (2 years prior to the SFO formally commencing its criminal investigation). It was held that the ENRC materials in question (including interview notes and forensic accounting materials) were created for the dominant purpose of resisting or avoiding contemplated criminal proceedings, and so protected by litigation privilege. The judgment in ENRC was based on the particular facts of the case. But for an organisation in similar circumstances, ENRC shows the importance of constantly monitoring whether litigation is in reasonable contemplation, and taking practical steps to reinforce any such claim.

Some documents generated in a lawyer-led investigation may well be covered by legal advice privilege. However, it is unlikely that documents generated in a lawyer-led investigation (or, for that matter, any investigation) will be covered by litigation privilege. That is because, as noted above, litigation privilege is concerned with adversarial litigation only. This is an important point to draw out when considering the status of interview notes. In the past, organisations took steps to ensure lawyers led employee interviews to ensure that the subsequent interview notes could be withheld on the grounds of privilege. Following key judicial decisions in past years (notably, *Three Rivers (no 5) and the RBS Rights Issue Litigation*) the correct interpretation is that interview notes are not communications between a client and legal adviser and therefore, based on the test set out above, interview notes are not protected by legal advice privilege. It is thus the commonly accepted view in the UK that interview notes are not privileged documents unless the organisation can clearly assert that litigation privilege applies. This is different to the approach taken in the United States where working papers (including interview notes) can be withheld even where litigation is not in contemplation.

As a practical point, the SFO is putting investigated parties under an increasing amount of pressure to waive privilege claims over documents, against the backdrop of co-operation which is necessary to secure a DPA. It has also challenged rules on privilege through the courts (see questions 23 and 25 below).

Finally, organisations undertaking an investigation which relates to third party organisations should consider Common Interest privilege. This is not a separate privilege right, but rather,
it is a mechanism which may allow parties to share privileged materials between them, without waiving or otherwise losing that privilege.

When considering the issue of privilege in internal investigations and interactions with the SFO, the 2019 Cooperation Guidance should be kept in mind (see above).

21. **How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction’s approach to anti-bribery and corruption compares on an international scale?**

The UK has been described by the OECD as a “major enforcer of the foreign bribery offence”. Many perceive the UK to be one of the two most active enforcement regimes in the world (along with the US).

During the 2016 Anti-Corruption Summit, the UK committed to establishing and hosting the International Anti-Corruption Co-ordination Centre (IACCC). The IACCC was officially launched in July 2017 and will be hosted by the National Crime Agency in London until 2021. The IACCC aims to bring together specialist law enforcement officers from multiple jurisdictions into a single location to tackle allegations of grand corruption.

In December 2017, the UK government launched its Anti-Corruption Strategy 2017 to 2022, setting out plans to tackle domestic and international corruption. Commitments in the plan include better coordination in the fight against economic crime, and a new Ministerial position focused on economic crime.

The UK government has also put in place improved “blockbuster” funding for the SFO, allowing it greater financial resource to tackle the largest and most challenging cases.

In Transparency International’s Corruption Perception Index, the UK’s scores have been high. The UK ranking’s general trend has been improving each year despite the UK’s position dropping slightly in recent years. The UK’s ranking moved from 8th place in 2017 to 11th place in 2018. In 2019 the UK was ranked at 12th place.

22. **Generally how serious are organisations in your country about preventing bribery and corruption?**

UK organisations are governed by some of the toughest anti-corruption legislation in the world. The SFO is relatively well-funded (a budget of £53 million in 2018-9) and has a team of more than 400 staff including lawyers, investigators and forensic accountants. The SFO has had some high profile success in recent years – the Airbus SA case being particularly significant. A list of current cases can be viewed on the SFO’s website – here.

In our experience, UK organisations are increasingly aware of their anti-corruption
obligations and generally take a responsible approach to corporate risk. However, standards may vary depending on the type of company. Most large UK public companies now have compliance programs in place, backed by dedicated compliance teams. However, small to medium sized enterprises are sometimes less committed or simply less-well resourced, and here standards are more mixed.

23. **What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?**

There have been reported difficulties over the SFO’s retention and recruitment of senior staff. The SFO has also yet to establish the free flow of experienced legal professionals into and out of the organisation which, for example, has helped to make the US Department of Justice so successful. This high turnover of staff, combined with the complexity of the cases, has been a material cause of delay within the SFO. Recently, the SFO has dropped a number of investigations (including two very high-profile investigations) in order to ease the organisation’s backlog of cases.

Moreover, the SFO has been criticised over its apparent inability to progress from a DPA with companies to the prosecution of the individuals responsible for the offences committed. This is the case despite details of individuals’ illegal behaviour being published in the DPA. For example, investigations into senior individuals at Rolls Royce and Güralp Systems Ltd did not lead to prosecutions despite the DPAs confirming illegal activity of both corporations. Interestingly, the SFO has commenced proceedings against two former Serco directors following the agreed DPA with Serco in July 2019. The individuals have been charged with fraud by false representation and false accounting. The SFO has yet to confirm its position regarding individual prosecution following the agreed DPA with Airbus SA. Whether or not the SFO can secure individual prosecutions linked to the illegal activity of these organizations will be an interesting talking point this year – especially as the issue of individual accountability continues to be a predominant focus regulated sectors.

The SFO has faced challenges in the past regarding the funding of large “blockbuster” cases, although, as noted above, recent moves have been made to a more flexible budget structure which should reduce this challenge in the future.

Finally, there is a relative lack of enforcement precedent under the UK Bribery Act compared to, say, the FCPA. The body of case law is small and this can make it difficult for both the SFO and the investigated party to know where the boundaries lie.

24. **What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?**

The impact of Covid-19 will be felt across all business sectors and it is, unfortunately, most likely to expose a multitude of financial scams. Not all of these scams will fall into the SFO’s remit for investigating serious and complex frauds. There is undoubtedly going to be a
plethora of smaller retail scams which will be pursued by the police and/or the NCA. But it is possible that the SFO will be faced with specific frauds such as large scale frauds against healthcare providers or the NHS.

Mergers and acquisitions represent a key risk area. Buyer companies face real challenges in conducting pre-acquisition due diligence on a potential target which is sufficient to uncover corruption issues. Issues may not be discovered until after execution of the deal, at which point the buyer has “bought an investigation”. Similar risks exist in joint ventures.

A high proportion of bribery cases involve intermediaries such as consultants and agents. The Rolls-Royce case shows the issues which companies face in monitoring and policing action by intermediaries. Putting effective due diligence measures into place to manage this risk remains a significant challenge for UK businesses.

It is also difficult for businesses to keep pace with regulatory and legal developments. The UK has experienced a proliferation of changes in the last few years, but the challenge is not simply volume of law or the pace of change. Companies face a multitude of different business risks, some of which are still emerging (e.g. risks around technology). They face the challenge of applying evolving laws to the evolving business landscape.

Finally, businesses face the challenge of global investigations and increasing cooperation between jurisdictions – sharing information, and joint prosecutions. There are an increasing number of countries co-operating, beyond the UK and US. These include Canada, Australia, France, Russia, China, Brazil and other South American countries. The significant fines imposed under the Airbus DPA are clear evidence of the power of enforcement when authorities work together.

25. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

The UK Bribery Act is considered to provide a stringent framework for combating bribery and corruption. The SFO has also been one of the most active enforcing agencies.

The UK Bribery Act is considered to provide a stringent framework for combating bribery and corruption. The SFO has also been one of the most active enforcing agencies.

However, there are areas for improvement. For example, despite the information provided under the SFO’s 2019 Cooperation Guidance, there is still a need for clarity on how an organisation should cooperate. In addition, the issue of legal privilege during investigations remains an area of debate.

SFO Co-operation
There arguably remains a need for businesses and individuals to have improved clarity on what is expected of a corporate compliance programme, and what constitutes good cooperation during an investigation. What standards are good enough? The recent Airbus judgment is helpful in this regard as it set out clear examples of actions taken by Airbus which contributed to their effective and well received co-operative manner through the case. But there is still real uncertainty on these issues in the UK (and in most other parts of the world bar the US). This is perhaps not surprising given the body of UK Bribery Act case law is still in its infancy. But this may be mitigated by improved dialogue between the SFO and industry. To date, the SFO has not been particularly forthcoming in setting out the standards it expects – although the 2019 Cooperation Guidance goes some way to rectify this. Whilst the Guidance clarifies expectations, some key issues to assist a corporate in obtaining cooperation credit remain unclear. For example:

- What amount of internal investigation should be conducted before a corporate should first disclose potential wrongdoing to the SFO?
- How should an organisation seek input from the SFO before interviewing witnesses? The guidance suggests that preliminary interviews (e.g. for fact checking) cannot take place before a self-report is made, which presents practical issues for the corporate.
- How does an organisation act and involve the SFO promptly where it also needs to carry out additional work streams suggested in the guidance (such as obtaining an independent verification of the privilege status of documents)?

**Privilege**

There remains a degree of uncertainty over the question of how an organisation should address the issue of privilege in interview notes during an investigation.

As shown in the recent SFO v ENRC case, UK enforcement agencies have developed an aggressive stance towards claims of privilege and are testing the boundaries of the previously accepted law, particularly around claims to litigation privilege. This case highlighted the importance of continuously monitoring whether litigation is ‘in reasonable contemplation’. Companies need to pay particular attention to how interviews are conducted during internal investigations given that the presence of a lawyer at an interview does not necessarily mean the interview note will covered by litigation or legal advice privilege.

In conclusion, the SFO is moving towards a more open and transparent stance but there is still a way to go. Again, comparisons may be drawn with the US, where the DoJ is more open. The SFO may change its approach with its recently appointed Director, Lisa Osofsky. Ms Osofsky is a former US prosecutor and commentators expect that she will aim to add some US-style force to the SFO’s operations.

In addition, although enforcement agencies are co-operating more closely across national boundaries, there may be a need for global enforcement rules to avoid excessive penalties and ensure more effective coordination and enforcement. This is something we can expect to
see more of in coming years given that Ms Osofsky recently called for greater global co-operation to help flush out witnesses, documents, and monies hidden around the world.