



# **UNITED KINGDOM: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS**

**September 2014**

This report, submitted by the United Kingdom, provides information on the progress made by the United Kingdom in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 29 September 2014.

The Phase 3 report evaluated the United Kingdom's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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## SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

### Summary of Findings

1. In June 2014, the UK presented a Written Follow-Up Report on the Recommendations and Follow-Up Issues described in the Working Group on Bribery's Phase 3 Report dated March 2012. Overall, the UK has implemented many of the Working Group's Phase 3 recommendations. Investigations and prosecutions are ongoing in certain foreign bribery cases. However, the level of enforcement by the Serious Fraud Office (SFO) has decreased since the Phase 3 evaluation. In the 30 months before the Phase 3 Report was adopted, the SFO concluded 9 enforcement actions. In the 27 months since, sanctions have been imposed in 2 SFO cases (*Oxford Publishing* and *Innospec*). One case (*Dahdaleh*) resulted in an acquittal when key foreign witnesses did not appear at trial. Two SFO foreign bribery cases (*Smith & Ouzman* and *Swift*) have produced charges of conspiracy to corrupt contrary to section 1 of the Prevention of Corruption Act 1906. There have not been foreign bribery charges under the UK Bribery Act which entered into force in July 2011. Additional foreign bribery-related cases were resolved by the City of London Police (COLP) and the Financial Conduct Authority (FCA).

2. The SFO continues to be the lead agency for investigating large and complex corporate bribery and corruption cases. The National Crime Agency will oversee the overall law enforcement response to bribery and corruption. Recommendation 7(a) is thus fully implemented. Regarding the attribution and assignment of foreign bribery cases, relevant law enforcement bodies signed two Memorandums of Understanding (MOUs) in May 2014. The UK states that the SFO and FCA (which has replaced the Financial Services Authority) would conduct co-ordinated action where appropriate. Recommendation 4(a) and 4(b) are also fully implemented.

3. Regarding resources and priority, the SFO's 2013/2014 core budget is roughly at 2008/2009 levels (without adjusting for inflation), although it has received additional "blockbuster funding" from HM Treasury to cover large cases. The SFO Director "is keen that an 'appropriate and more certain funding model can be agreed by all those with an interest.'"<sup>1</sup> The COLP Overseas Anti-Corruption Unit and the Metropolitan Police Proceeds of Corruption Unit reported budget increases, however. Recommendation 7(c) is thus only partially implemented.

4. Regarding the prosecution of foreign bribery, the SFO confirmed to the Working Group that whether a joint venture is created before or after the Act's entry into force would not affect the decision to prosecute, thus implementing Recommendation 3(a). The UK further stated that it has prosecuted both natural and legal persons in the same foreign bribery-related case since the Phase 3 Report. Recommendation 3(b) is thus fully implemented. A new Code for Crown Prosecutors issued in 7 January 2013 did not refer to mandatory exclusion from EU public procurement contracts. Recommendation 3(c) is also fully implemented.

5. Concerning the settlement of cases, the SFO issued a revised policy in October 2012 stating that there would not be a presumption in favour of civil settlements. Under the Guidance on Corporate Prosecutions (GCP) a self-report tends against prosecution only if it forms part of a "genuinely proactive approach adopted by the corporate management team when the offending is brought to their notice". The revised policy further indicated that "the timing of any self-report is very important." Recommendation 5(a) and 5(b) are thus fully implemented. Regarding the transparency of settlements, the SFO committed in October 2012 to provide "its reasons, the details of the illegal conduct and the details of the disposal" in cases settled through civil recovery orders. Although the press release in the *Oxford Publishing* settlement

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<sup>1</sup> Justice Committee (28 February 2014), "[Serious Fraud Office Supplementary Estimate 2013-14](#)".

(which pre-dated the SFO's revised policy) provided more information than earlier settlements, it omitted some important factual details, e.g. dates and location of individual offences, and the values of the bribe and the contract won through bribery. The settlement agreement was not published. There have been no other settlements after the *Oxford Publishing* case that would illustrate the application of the revised SFO policy. Recommendation 5(c) and 5(d) are therefore only partially implemented.

6. As for the scope of settlements, the October 2012 policy also stated that, where the SFO does not prosecute a self-reporting corporate body, it reserves the right (i) to prosecute it for any unreported violations of the law; and (ii) lawfully to provide information on the reported violation to other bodies (such as foreign police forces). The SFO added that its senior management scrutinise settlements to ensure that they do not preclude prosecutions of unknown or undisclosed conduct or the provision of mutual legal assistance (MLA) to foreign authorities. Recommendation 5(f) is fully implemented.

7. Concerning corporate monitors, the UK introduced deferred prosecution agreements (DPAs) in February 2014. A DPA may require a defendant to submit to a corporate monitor. The DPA is approved by a court in a hearing and published thereafter. It may set out the consequences for breaching the agreement. The DPA Code of Practice addresses the basis for imposing a monitor; costs and appointment process; duration and terms of monitoring etc. The SFO undertakes to apply the DPA Code of Practice to cases settled through civil recovery orders. Recommendation 6(a) is fully implemented but the application of these policies in practice. A DPA may also require a defendant to pay reparations and compensation to foreign countries, and set out the consequences of breaching the agreement, including a failure to pay. The UK has undertaken to conclude agreements with a recipient country to ensure that such payments are managed in a transparent and accountable way. This would involve the Department of International Development (DfID) if an aid relationship with the country exists. Recommendation 6(b) is fully implemented.

8. As the UK has not taken measures since the Phase 3 Report to make Article 5 of the Convention clearly binding, Recommendations 8(a) and 8(b) are not implemented. The May 2014 MOU states that the Convention "establish[es] legally binding standards to criminalise [foreign bribery]". However, this indicates that the Convention is binding under international law on the UK as a State but falls short of stating that it is also binding on individual prosecutors and investigators. The MOU also only applies to law enforcement bodies that are signatories. It does not apply to the Attorney General or other relevant parts of the government.

9. In the area of MLA, the UK Central Authority is developing a new database which will provide more detailed statistics. The SFO has a new database but has not provided actual data. Recommendation 10(a) is partially implemented. The UK stated that, if the SFO opens an investigation and receives an MLA request involving the same case, the responsible case team would also execute the request. As noted above, the SFO has undertaken to ensure that its settlements would not prevent MLA from being provided to foreign authorities. Recommendation 10(b) is fully implemented.

10. Regarding the SFO's advisory role, the revised October 2012 policy stated that SFO would not give advice on the likely outcome of a self-report until the completion of the process. Its website adds that, "the SFO is primarily an investigator and prosecutor of serious and/or complex fraud, including corruption." Other government departments including the Foreign and Commonwealth Office, the Department of Business, Innovation and Skills, and UK Trade and Investment have provided some support to the UK private sector to address foreign bribery. Recommendation 5(e) and 7(b) are thus fully implemented. Nevertheless, further awareness-raising efforts could be made, especially in the area of small- and medium-sized enterprises. There was no information on the UK Corporate Governance Code and the Listing Principles. Recommendation 11 is partially implemented.

11. In October 2012, the SFO issued new guidance regarding facilitation payment cases. The new policy stated that, in deciding whether to prosecute such cases, the SFO would apply the Full Code Test in the Code for Crown Prosecutors and the Bribery Act Joint Prosecution Guidance (JPG). This brings the SFO's approach in line with other UK prosecuting agencies. The UK has not, however, amended the different definitions of facilitation payments in various guidance documents. The UK reiterated that the concept of "facilitation payments" is not recognised in UK law. Recommendation 1(a) and 1(b) are thus partially and fully implemented respectively.

12. Regarding the Guidance to Commercial Organisations (GCO), the UK stated that it would consider the Working Group's recommendations if it revises the GCO in the future. Similarly, the UK stated that it would consider the Working Group's recommendation on debarment after it implements a new EU Directive on public procurement which entered into force in April 2014. In the meantime, Recommendation 2(a) and 2(b) and 6(c) are not implemented.

13. Concerning Crown Dependencies (CDs) and Overseas Territories (OTs), the UK has extended the Convention to the British Virgin Islands and Gibraltar since March 2012 and prepared a roadmap for extension to four other OTs. Recommendation 9(a) is therefore fully implemented. No steps have been taken to extend the jurisdiction of the Bribery Act to legal persons incorporated in the CDs and OTs, as the UK maintains that this is constitutionally impractical. Recommendation 9(b) is therefore not implemented.

14. Concerning tax-related measures, HMRC continued to state that its policy is to review the tax returns of defendants in foreign bribery cases. However, there was no information that this was done in practice, such as in the *Oxford Publishing* case. HMRC has not examined why it had failed to detect proven cases of bribery. Recommendation 12(a) is partially implemented. Recommendation 12(b) has been fully implemented with the training of HMRC compliance staff. Recommendation 12(c) is not implemented since no steps have been taken. HMRC may - but is not obliged to - disclose information to the SFO. Recommendation 12(d) is fully implemented since the SFO has undertaken to alert HMRC to resolutions of future foreign bribery cases.

15. Recommendation 13(a) and (b) concerning export credits are not implemented. The Export Credits Guarantee Department takes the same position as it did at the time of the Phase 3 Report. It has not changed its internal rules or policies.

### **Conclusions of the Working Group**

16. The Working Group concludes that the UK has fully implemented Recommendations 1(b), 3(a), 3(b), 3(c), 4(a), 4(b), 5(a), 5(b), 5(e), 5(f), 6(a), 6(b), 7(a), 7(b), 9(a), 10(b), 12(b), 12(d); partially implemented Recommendations 1(a), 5(c), 5(d), 7(c), 10(a), 11, 12(a); and not implemented Recommendations 2(a), 2(b), 6(c), 8(a), 8(b), 9(b), 12(c), 13(a) and 13(b). Follow-up Issues 14(a)-(f) remain outstanding. In its Phase 4 evaluation of the UK, the Working Group will revisit the outstanding Recommendations, Follow-up Issues, and the issues relating to Recommendations 3(b), 4(a), 4(b), 5(a), 5(b), 6(a), 6(b), 7(c), and 9(a).

## PHASE 3 EVALUATION OF THE UNITED KINGDOM: WRITTEN FOLLOW-UP REPORT

Name of country: United Kingdom  
Date of approval of Phase 3 evaluation report: 16 March 2012  
Date of information: 6 May 2014

### PART I: RECOMMENDATIONS FOR ACTION

#### *Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery*

##### *Text of recommendation:*

1. With respect to facilitation payments, the Working Group recommends that the UK:  
(a) co-ordinate its approach to facilitation payment cases to ensure a coherent approach across the SFO, CPS and other UK prosecuting agencies, such as the Scottish Crown Office and Procurator Fiscal Office, as well as use a consistent definition of facilitation payments in its published guidance including the JPG, GCO and Quick Start Guide (Convention Article 5; 2009 Recommendation VI, X.C.i);

##### *Action taken as of the date of the follow-up report to implement this recommendation:*

No action, see below.

##### *If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:*

There is no inconsistency in approach between CPS, SFO, COPFS and MOJ ( i.e. the UK approach) to facilitation payments. Facilitation payments are not an exempted category under the Bribery Act 2010 and we have no definition or concept of facilitation payments as there is under the US FCPA:

“facilitation or expediting payment to a foreign official, political party, or party official for the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official”.

The MOJ Guidance gives as an example a payment to speed payments through customs without specifying to whom the payment is made: private sector employee or public official. This reflects the policy of the Bribery Act which extends to both the private sector and the public sector. The JPG refers to:

“unofficial payments made to **public officials** in order to secure or expedite the performance of a routine or necessary action. They are sometimes referred to as ‘speed’ or ‘grease’ payments. The payer of the facilitation payment usually already has a legal or other entitlement to the relevant action”

The SFO website refers to:

“A facilitation payment is a type of bribe and should be seen as such. A common example is where a **government official** is given money or goods to perform (or speed up the performance of) an existing duty”

The point is that the Bribery Act contains no exemption for payments which other jurisdictions refer to as facilitation payment.

***Text of recommendation:***

1. With respect to facilitation payments, the Working Group recommends that the UK:

(b) develop firm criteria for assessing whether companies are moving towards a zero tolerance policy within a reasonable timeframe (Convention Article 5; 2009 Recommendation VI, X.C.i)

***Action taken as of the date of the follow-up report to implement this recommendation:***

The SFO published revised guidance on facilitation payments on 9 October 2012. The guidance contains clear and unequivocal statement that facilitation payments are illegal:

A facilitation payment is a type of bribe and should be seen as such. A common example is where a government official is given money or goods to perform (or speed up the performance of) an existing duty. Facilitation payments were illegal before the Bribery Act came into force and they are illegal under the Bribery Act, regardless of their size or frequency.

This replaces earlier guidance from the SFO about companies moving towards a zero tolerance policy of facilitation payments.

The full guidance can be found at: <http://www.sfo.gov.uk/bribery--corruption/the-bribery-act/facilitation-payments.aspx>.

“Whether or not the SFO will prosecute in respect of a facilitation payment (or payments) will be governed by the Full Code Test in the [Code for Crown Prosecutors](#) and the [Joint Prosecution Guidance of the Director of the SFO and the Director of Public Prosecutions on the Bribery Act 2010](#). Where relevant, the [Joint Guidance on Corporate Prosecutions](#) will also be applied.

If on the evidence there is a realistic prospect of conviction, the SFO will prosecute if it is in the public interest to do so. In appropriate cases the SFO may use its powers under proceeds of crime legislation as an alternative (or in addition) to prosecution; see the [Attorney General's guidance](#) to prosecuting bodies on their asset recovery powers under the [Proceeds of Crime Act 2002](#).

This statement of policy has immediate effect. It supersedes any statement of policy or practice on facilitation payments previously made by or on behalf of the SFO.”

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

2. With respect to the Guidance to Commercial Organisations (GCO), the Working Group recommends that the UK:

(a) concerning hospitality and promotional expenditures, (i) clarify the significance of reasonable and proportionate in the GCO, including the reference to industry norms; and (ii) amend the GCO to note that certain examples represent a high risk of bribery (Convention Articles 1, 5; 2009 Recommendation, X.C.i);

***Action taken as of the date of the follow-up report to implement this recommendation:***

No action, see below.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

The MOJ and prosecutors have within the respective areas of competence under law issued appropriate guidance. As matters become further clarified by judicial decision it may be possible to reflect this in the guidance issued by prosecutors, or, if the law is further changed, by the guidance promulgated by the MOJ.

***Text of recommendation:***

2. With respect to the Guidance to Commercial Organisations (GCO), the Working Group recommends that the UK:

(b) clarify the significance of indirect benefits in determining whether persons may be an associated person under section 7 of the Bribery Act (Convention Articles 2, 5).

***Action taken as of the date of the follow-up report to implement this recommendation:***

No action, see below.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

The MOJ and prosecutors have within the respective areas of competence under law issued appropriate guidance. As matters become further clarified by judicial decision it may be possible to reflect this in the guidance issued by prosecutors, or, if the law is further changed, by the guidance promulgated by the MOJ.

***Text of recommendation:***

3. With respect to investigation and prosecution, the Working Group recommends that the UK:

(a) ensure that the Bribery Act applies equally to joint ventures that were created before and after the entry into force of the Act (Convention Article 5);

***Action taken as of the date of the follow-up report to implement this recommendation:***

No action (see the argument below that this recommendation is implemented).

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

The Bribery Act provides a new form of corporate liability (a failure to prevent bribery on the part of those associated with a “relevant commercial organisation” in order to obtain business, or an advantage in the conduct of business, for the commercial organisation under section 7) that is available alongside the existing common law rules on the attribution of corporate liability (identification doctrine). A joint venture can take various forms but is identifiable, generally, as an entity which falls under either or both the common law rules and the definition of a “commercial organisation” at section 7(5) of the Bribery Act. The date of creation of the corporate body for the purposes of the identification doctrine, and the relevant commercial organisation for the purposes of a failure to prevent under section 7, is irrelevant. Therefore the Bribery Act applies equally to joint ventures that were created before, and those that were created after, the entry into force of the Act. However the Bribery Act is not retrospective in conformity with the general rule for UK statutory criminal law. Therefore the Act only applies to events occurring after 1 July 2011, when the Act commenced, regardless of when the joint venture was created. Any conduct that amounts to bribery that occurs before 1 July 2011 will be subject to the law in existence before the Bribery Act was commenced, which will, in the case of the liability of joint ventures for bribery offences, be the common law rules (identification doctrine).

***Text of recommendation:***

3. With respect to investigation and prosecution, the Working Group recommends that the UK:

(b) continue prosecuting both natural and legal persons in a foreign bribery-related case whenever appropriate (Convention Article 5);

***Action taken as of the date of the follow-up report to implement this recommendation:***

In 2010 the company Innospec was prosecuted for foreign bribery: two individuals related to that case were found guilty in 2012 (David Turner and Paul Jennings). Two more prosecutions related to foreign bribery by Innospec are ongoing and were the subject of further hearings in April 2014 (Dennis Kerrison and Miltos Papachristos). Following the publication of the Phase 3 report in March 2012 the SFO has sanctioned one foreign bribery case using a Civil Recovery Order (Oxford Publishing Ltd) and the Financial Conduct Authority has sanctioned two companies (JLT Specialty Ltd and Besso) for a lack of bribery controls. There have been two acquittals of natural persons since March 2012 and in June 2013 Alexander Capelson was prosecuted following an investigation by the City of London Police.

*If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:*

N/A

***Text of recommendation:***

3. With respect to investigation and prosecution, the Working Group recommends that the UK:  
(c) consider removing the reference in the Code for Crown Prosecutors to mandatory exclusion from EU public procurement contracts (Convention Article 5).

***Action taken as of the date of the follow-up report to implement this recommendation:***

A new edition of the *Code for Crown Prosecutors* was published in January 2013. There is no reference to mandatory exclusion from EU public procurement contracts.

*If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:*

N/A

***Text of recommendation:***

4. Regarding the attribution and assignment of cases, the Working Group recommends that:  
(a) the UK update the 2008 Memorandum of Understanding to clarify attribution rules for Scotland and to account for the Bribery Act's broader jurisdictional rules (Convention Article 5);

***Action taken as of the date of the follow-up report to implement this recommendation:***

A revised MoU clarifying the procedure for allocation of foreign bribery cases between investigators and prosecutors and reflecting the Bribery Act jurisdictional rules was agreed on 25 April 2014 and is annexed.....

*If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:*

N/A

***Text of recommendation:***

4. Regarding the attribution and assignment of cases, the Working Group recommends that:

(b) where appropriate, the SFO and FSA conduct co-ordinated enforcement actions, and consider seeking criminal and/or civil sanctions in addition to FSA penalties (Convention Articles 3, 5, 8(2)).

***Action taken as of the date of the follow-up report to implement this recommendation:***

In April 2013, the FSA split into the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). The FCA has taken over the FSA's financial crime remit.

The UK is not planning a move to US-style joint enforcement actions. This does not mean that joint action is not possible; there might be prosecutions of individuals at the same time as regulatory action against a firm. But in practice, the SFO would likely deploy deferred prosecution agreements against firms which would mitigate against regulatory action by the FCA unless we can differentiate between systems and controls failures (which FCA is responsible for) and a Bribery Act offence under s.7. In addition, where regulatory action is being pursued against individuals and the SFO is also investigating the individuals for the same matters, the FCA will have regard to the principle of "double jeopardy" but may not necessarily defer its own investigations if it is likely to unreasonably delay or prejudice regulatory proceedings.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

5. With respect to the settlement of cases, the Working Group recommends that the UK:

(a) reconsider the SFO's policy of systematically settling self-reported foreign bribery cases civilly wherever possible, and ensure that self-reported cases result in effective, proportionate, and dissuasive sanctions (Convention Articles 3, 5; 2009 Recommendation, IX.i);

***Action taken as of the date of the follow-up report to implement this recommendation:***

SFO does not have a policy of systematically settling self-reported foreign bribery cases through the use of Civil Recovery Orders. Each case is taken on its merits. A range of routes to disposal for bribery offences have been taken by the SFO and other prosecutors and regulators in the UK including; the Bribery Act, the Prevention of Corruption Act 1906, the Companies Act 1985, the Iraq (UN Sanctions) Order 2000, the Criminal Justice Act 1967, Conspiracy to corrupt and the Financial Services and Markets Act 2000.

The SFO revised its self-reporting policy in October 2012. The revised policy applies to all financial crime dealt with by the SFO not just foreign bribery. The following appears on the [SFO website](#):

Following his appointment, the new Director of the SFO in April 2012 decided to review SFO policies and take forward recommendations made by the OECD Working Group on Bribery. The revisions have been published to:

1. restate the SFO's primary role as an investigator and prosecutor of serious and/or complex fraud, including corruption;
2. ensure there is consistency with the approach of other prosecuting bodies; and
3. take forward certain OECD recommendations.

The SFO's primary role is to investigate and prosecute. The revised policies make it clear that there will be no presumption in favour of civil settlements in any circumstances.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

5. With respect to the settlement of cases, the Working Group recommends that the UK:

(b) amend the SFO's Approach to Dealing with Overseas Corruption to distinguish between cases reported directly by the company prior to investigation, and cases where a company admits guilt after the commencement of an investigation (Convention Article 5; 2009 Recommendation, IX.i);

***Action taken as of the date of the follow-up report to implement this recommendation:***

The SFO published revised guidance on 9 October 2012;

Whether or not the SFO will prosecute a corporate body in a given case will be governed by the Full Code Test in the [Code for Crown Prosecutors](#), the joint prosecution [Guidance on Corporate Prosecutions](#) and, where relevant, the [Joint Prosecution Guidance of the Director of the SFO and the Director of Public Prosecutions on the Bribery Act 2010](#).

If on the evidence there is a realistic prospect of conviction, the SFO will prosecute if it is in the public interest to do so. The fact that a corporate body has reported itself will be a relevant consideration to the extent set out in the Guidance on Corporate Prosecutions. That Guidance explains that, for a self-report to be taken into consideration as a public interest factor tending against prosecution, it must form part of a "genuinely proactive approach adopted by the corporate management team when the offending is brought to their notice". Self-reporting is no guarantee that a prosecution will not follow. Each case will turn on its own facts.

In appropriate cases the SFO may use its powers under proceeds of crime legislation as an alternative (or in addition) to prosecution; see the [Attorney General's guidance](#) to prosecuting bodies on their asset recovery powers under the [Proceeds of Crime Act 2002](#). If the SFO uses its powers under proceeds of crime legislation, it will publish its reasons, the details of the illegal conduct and the details of the disposal.

In cases where the SFO does not prosecute a self-reporting corporate body, the SFO reserves the right (i) to prosecute it for any unreported violations of the law; and (ii) lawfully to provide information on the reported violation to other bodies (such as foreign police forces).

This statement of policy has immediate effect. It supersedes any statement of policy or practice on self-reporting previously made by or on behalf of the SFO.

This guidance can be found here <http://www.sfo.gov.uk/bribery--corruption/corporate-self-reporting.aspx>.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

5. With respect to the settlement of cases, the Working Group recommends that the UK:

(c) make public, where appropriate and in conformity with the applicable rules, as much information about settlement agreements as possible, including on the SFO's website (Convention Articles 1, 3, 8);

***Action taken as of the date of the follow-up report to implement this recommendation:***

The SFO's former policy was to disclose the fact of a settlement with a press release which did not provide details of the illegal conduct or the rationale for a civil settlement being pursued as opposed to a prosecution. The terms of the settlement itself were kept confidential and that part of the court order recording its terms was sealed. This was the approach to the first settlement in relation to Balfour Beatty:

<http://www.sfo.gov.uk/press-room/press-release-archive/press-releases-2008/balfour-beatty-plc.aspx>.

Shortly after coming to office the new Director oversaw the amendment of the SFO Guidance on self-reporting which emphasised the SFO's commitment to transparency (see <http://www.sfo.gov.uk/bribery--corruption/corporate-self-reporting.aspx>)

"If the SFO uses its powers under proceeds of crime legislation, it will publish its reasons, the details of the illegal conduct and the details of the disposal.

In cases where the SFO does not prosecute a self-reporting corporate body, the SFO reserves the right (i) to prosecute it for any unreported violations of the law; and (ii) lawfully to provide information on the reported violation to other bodies (such as foreign police forces).

This statement of policy has immediate effect. It supersedes any statement of policy or practice on self-reporting previously made by or on behalf of the SFO."

Although the Guidance was published on 9 October 2013 the approach was evidenced in the first civil settlement following the OECD's recommendations concerning the Oxford Publishing Ltd case which occurred in July 2012 (see <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/oxford-publishing-ltd-to-pay-almost-19-million-as-settlement-after-admitting-unlawful-conduct-in-its-east-african-operations.aspx> )

The announcement gave the background to the settlement; details of the facts, the reasons for the civil settlement and details of the monitoring arrangements put into place to reduce the risk of future breaches of the legislation. The Director said:

"This settlement demonstrates that there are, in appropriate cases, clear and sensible solutions

available to those who self-report issues of this kind to the authorities. The use of Civil Recovery powers has been exercised in accordance with the Attorney General's guidelines. The company will be adopting new business practices to prevent a recurrence of these issues and these new procedures will be subject to an extensive and detailed review."

In Scotland the policy is that settlements are made public unless there are compelling reasons not to do so.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

5. With respect to the settlement of cases, the Working Group recommends that the UK:

(d) avoid entering into confidentiality agreements with defendants that prevent the disclosure of information to the public about case resolutions (Convention Articles 3, 8);

***Action taken as of the date of the follow-up report to implement this recommendation:***

The SFO Guidance on corporate self-reporting says:

"If the SFO uses its powers under proceeds of crime legislation, it will publish its reasons, the details of the illegal conduct and the details of the disposal.

In cases where the SFO does not prosecute a self-reporting corporate body, the SFO reserves the right (i) to prosecute it for any unreported violations of the law; and (ii) lawfully to provide information on the reported violation to other bodies (such as foreign police forces).

This statement of policy has immediate effect. It supersedes any statement of policy or practice on self-reporting previously made by or on behalf of the SFO."

In Scotland there have been no such confidentiality agreements.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

5. With respect to the settlement of cases, the Working Group recommends that the UK:

(e) establish clear procedures and criteria for communicating with companies which clearly distinguish between companies seeking advice and those that self-report wrongdoing, as well as make public (where appropriate and in conformity with the applicable procedural rules) in a more detailed manner sufficient information to increase transparency of written advice and provide guidance to companies and decisions not to prosecute in cases of self-reported misconduct (Convention Article 5);

***Action taken as of the date of the follow-up report to implement this recommendation:***

New SFO guidance was published on 9 October 2012. It sets out the process to be followed by companies who want to self-report;

The SFO's restatement of policy on [corporate self reporting](#) explains that, in determining whether or not to prosecute, the fact that a corporate body has reported itself will be a relevant consideration to the extent set out in the [Guidance on Corporate Prosecutions](#).

According to the guidance, for a self-report to be taken into account as a public interest factor tending against prosecution it must form part of a genuinely proactive approach adopted by the corporate management team when the offending is brought to their notice, involving self-reporting and remedial actions, including the compensation of victims. The guidance also explains that, in considering whether a self-reporting corporate body has been genuinely proactive, prosecutors will consider whether it has provided sufficient information, including making witnesses available and disclosing the details of any internal investigation, about the operation of the corporate body in its entirety.

Prosecutors will also be mindful that a failure to report the wrongdoing within a reasonable time of the offending coming to light is a public interest factor in favour of a prosecution. It should be borne in mind that the SFO may have information about wrongdoing from sources other than the corporate body's own self-report. The timing of any self-report is therefore very important. A failure to report properly and fully the true extent of the wrongdoing a further public interest factor in favour of a prosecution.

The following is an outline of the process to be adopted by corporate bodies and/or their advisers when self-reporting to the Serious Fraud Office.

1. Initial contact, and all subsequent communication, must be made through the SFO's Intelligence Unit ([confidential@sfo.gsi.gov.uk](mailto:confidential@sfo.gsi.gov.uk)). The Intelligence Unit is the only business area within the SFO authorised to handle self-reports.
2. Hard copy reports setting out the nature and scope of any internal investigation must be provided to the SFO's Intelligence Unit as part of the self-reporting process.
3. All supporting evidence including, but not limited to emails, banking evidence and witness accounts, must be provided to the SFO's Intelligence Unit as part of the self-reporting process.
4. Further supporting evidence may be provided during the course of any ongoing internal investigation.

As stated within the SFO's revised policy, self-reporting is no guarantee that a prosecution will not follow. Each case will turn on its own facts.

Apart from the information provided above, the SFO will not advise companies or their advisers on the format required for self-reports. Nor will the SFO give any advice on the likely outcome of a self-report until the completion of that process. For further information visit our [Q&A](#) section.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

5. With respect to the settlement of cases, the Working Group recommends that the UK:

(f) ensure that its settlements agreements (i) explicitly reserve the right to provide MLA, and (ii) are not overbroad, including by explicitly reserving the right to prosecute the defendant for conduct unknown to the UK authorities at the time of the settlement (Convention Articles 3, 5, 9(1)).

***Action taken as of the date of the follow-up report to implement this recommendation:***

Civil settlements (and plea agreements) are thoroughly scrutinised by senior management at the SFO before they are executed in order to ensure that they are not overbroad; that they preserve the right to prosecute for unknown or undisclosed conduct and so that investigations can be conducted on behalf of overseas authorities under mutual legal assistance provisions.

As stated above current SFO Policy addresses the OECD's concerns.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

6. With respect to sanctions, the Working Group recommends that the UK:

(a) regarding corporate monitors, (i) provide guidance on when and on what terms the UK authorities would seek a monitor; (ii) make public where appropriate the monitoring agreement, the reasons for imposing a monitor, and the basis for the scope and duration of the monitoring; and (iii) ensure that breaches of monitoring agreements result in effective sanctions (Convention Article 3);

***Action taken as of the date of the follow-up report to implement this recommendation:***

(i) Deferred Prosecution Agreements (DPAs) have been introduced into legislation (Schedule 17 of the Crime and Courts Act 2013), for use in England and Wales, which came into force on 24 February 2014.. As part of the process of introducing DPAs for England and Wales, the Director of Public Prosecutions and the Director of the Serious Fraud Office consulted on a DPA Code of Practice for Prosecutors. The Code, published on 14 February 2014, includes a section on the use of monitors under a DPA, which provides guidance on when and on what terms a prosecutor should seek to use a monitor to ensure compliance with the terms of the DPA.

(ii) Monitors are currently used under Civil Recovery Orders (CROs), and it is envisaged that monitors will also be used under some DPAs. There is provision to publish details about the monitoring agreement under both DPAs and CROs:

DPAs: Under the relevant legislation, the prosecutor is required to publish details of any DPA, which would include any term relating to the use of a monitor.

CROs: The SFO has adopted a number of transparency measures when using civil recovery powers in relation to corporate entities. These include publishing a detailed narrative of why civil recovery is the appropriate disposal for the matter and making the Order of the court publicly available. This approach was brought into force with effect from 1 April 2012. The process can be seen in the case of Oxford University Publishing. The SFO proposed to use the elements of the DPA Code of Practice for Prosecutors (published on 14 February 2014) relevant to monitors as best practice in relation to their use in civil recovery cases.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

6. With respect to sanctions, the Working Group recommends that the UK:

(b) ensure that (i) payments of reparations and compensation to foreign countries by defendants are not lost to corruption (Convention Article 3);

***Action taken as of the date of the follow-up report to implement this recommendation:***

The MoU between DfID and the Government of Tanzania in the BAE case illustrates that in appropriate situations steps have been taken to ensure that payments of reparations and compensation to foreign countries by defendants are not lost to corruption.

Where feasible, approaches analogous to those adopted for return of stolen assets under the provisions of the UN Convention Against Corruption (UNCAC) will be followed. UNCAC (Art 57(5)) urges State Parties to give 'special consideration' to concluding agreements for the final disposal of returned funds.

While global practice on return of stolen assets is still emerging, there is wide recognition of the importance of ensuring that such returns are managed in transparent and accountable ways, not least to provide assurance to all parties concerned, including the citizens of the state to which the funds are being

returned, that the funds are not re-corrupted. UK will seek to conclude such arrangements where possible in relation to returned assets, and where practicable, use the avenues at its disposal, such as offices of the Department for International Development where an aid relationship exists, to assist in overseeing the management of returned funds. As in the BAE Tanzania case, this may also be possible for 'compensation' payments, where circumstances permit.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

6. With respect to sanctions, the Working Group recommends that the UK:

(b) ensure that (ii) plea and settlement agreements impose further specified sanctions if defendants fail to make the required payments by a specified deadline (Convention Article 3);

***Action taken as of the date of the follow-up report to implement this recommendation:***

The Attorney General Guideline for Prosecutors on Plea Discussions in Serious and Complex Fraud makes clear that the prosecutor must act openly, fairly and in the interest of justice. The need for transparency is strongly emphasised in the Attorney General Guidelines.

Where a plea agreement is reached between the prosecution and defence it sets out:

- A list of the charges
- A statement of the facts; and
- A declaration signed by the defendant personally, to the effect that he or she accepts the stated facts and admits he or she is guilty of the agreed charges.

The court will then proceed to sentence the defendant upon acceptance of the plea agreement. One of the sanctions the court can impose is a fine. The court can order that the defendant proceeds to pay a specified amount by a specified deadline. Failure by the defendant to pay is a matter to be dealt with by the court. This is also the case with civil recovery.

The Crime & Courts Act 2013 introduced deferred prosecution agreements (DPAs) into UK law. DPAs are due to come into force in early 2014. DPAs will be made between specified prosecutors and companies, partnerships or unincorporated associations. The legislation provides examples of the terms that a DPA may impose including financial penalties, disgorgement of profits and time limits for compliance. In the event that payments are not made by the agreed dates set out in the DPA then the prosecutor may apply to the Court with proposals to remedy the breach, or otherwise to terminate the DPA. If the DPA is terminated by the Court, the prosecutor will publish fact of the decision and the reasons for it and may resume the full criminal prosecution.

The Proceeds of Crime Act 2002 makes provision for confiscating the proceeds of crime from individual offenders in the UK. The UK criminal courts have powers to impose prison sentences up to 10 years as sanctions for those offenders who default on the terms of confiscation orders and fail to make the required payments on specified dates.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

6. With respect to sanctions, the Working Group recommends that the UK:

(c) regarding public procurement, (i) consider undertaking a systematic approach to allow relevant agencies to easily access information on companies sanctioned for corruption such as through the establishment of a national debarment register;

***Action taken as of the date of the follow-up report to implement this recommendation:***

For reasons discussed in the next section immediately below, the UK has deferred consideration of specific action on a national debarment register until the modernised EU procurement directives are agreed and come into effect. Of course, under EU public procurement rules, companies must be excluded if directors or other persons with powers of representation decision or control, as well as or instead of the firm itself, have been convicted of various offences including corruption. The Disclosure and Barring Service (successor to the Criminal Records Bureau) is a central body responsible for processing criminal records checks relating to individual persons.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

As much UK public procurement, depending on nature and value, is subject to EU public procurement rules and these rules govern exclusion of economic operators for corruption (and other reasons), any decision by the UK regarding exclusionary provisions and evidence must have regard to those EU rules. The EU rules have been subject to re-negotiation in Brussels through 2012 and 2013, and the modernised procurement directives came into force in April 2014.

The new directives continue the basic requirements related to the exclusion of suppliers under the previous directives, but update the grounds of exclusion (both mandatory and discretionary), and for the first time include provisions to enable the ending of a mandatory exclusion if the excluded economic operator has taken steps to remedy the problem and prevent recurrence. The new rules also include new and updated provisions concerning information and evidence on exclusionary and selection criteria. (These provisions will include a “single European procurement document” and an enhanced role for “e-certis” the information system that helps identify the different certificates and attestations frequently requested in European procurement procedures).

Once the new European Directives have come into effect, and been implemented in UK legislation, it will be more appropriate for the UK Government to consider further the issue of a debarment register (or similar) for companies sanctioned for corruption. At present we do not have firm evidence that in practice there are specific problems which a UK Register would address. Therefore it would be appropriate to

undertake review and analysis of the potential benefits, costs, advantages and disadvantages of a debarment register, taking into account the views of stakeholders both in the UK and abroad. The UK proposes to undertake such an analysis in due course, and intends to ensure that OECD is kept informed. The UK will also wish to undertake such analysis in the context of its other anti-corruption initiatives (not just public-procurement related).

If an analysis suggests a net benefit from such a Register, the UK will then wish consider how such a Register could operate. This would need to consider such matters as: the statutory basis; how it should be funded; who will be responsible for managing and maintaining it; how it would be populated; what detail should be held; how it would interrelate with the existing Disclosure and Barring Service; who should have access to the information held in a Register; how it would relate to the e-certis and single European procurement document initiatives discussed above; and implications for equal treatment of foreign companies. There would no doubt be other matters as well. The form and activities of a debarment register, if any, will depend on the answers to those questions

***Text of recommendation:***

6. With respect to sanctions, the Working Group recommends that the UK:

(c)(ii) train public contracting authorities to carry out this due diligence more effectively, including by checking for any convictions of the tenderer awarded the contract; and

***Action taken as of the date of the follow-up report to implement this recommendation:***

There is a framework of Learning and Development including commercial and procurement learning programmes in place aligned to the Procurement Professional Curriculum (eg LEAN Sourcing, Procurement Fraud, Category Management eLearning, commercial awareness, contract management, CIPS professional training) via the Government Procurement Service online learning platform and Civil Service Learning. The EU public procurement rules (see further discussion immediately below) are integral to these training programmes, and knowledge of the obligation to exclude suppliers for offences including corruption is a part of the training.

Public procurers will require training in the modernised rules; for existing competent procurement staff that are familiar with the current rules, this will concentrate on the changes introduced by the new directive.

This will include training on the changes covering exclusion of suppliers. Initial training on the new rules has been developed and is being delivered (through a “cascade” approach) starting in May 2014. An electronic training package has been developed and will be delivered through a central provision run by the Crown Commercial Service. This programme will ensure that substantial numbers (thousands) of public sector procurers will have had the training in the new rules in time for the UK’s planned transposition of the new directive before the end of 2014. More detailed information and advice covering various specific areas in the new regulations, and policy implications and interpretation is expected to be developed during the second half of 2014. Exclusion is one of these topics.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation:***

6. With respect to sanctions, the Working Group recommends that the UK:

(c) (iii) make available on the Cabinet Office's website guidance on excluding economic operators, including factors to be considered in deciding whether to exclude a company convicted under Section 7 of the Bribery Act (Convention Article 3(4); 2009 Recommendation, XI.i).

***Action taken as of the date of the follow-up report to implement this recommendation:***

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

As noted above in respect of other matters relating to exclusion, the new EU directives have only recently been adopted. The Government expects to update guidance and advice covering exclusion as part of its implementation of the directives in due course. The 2010 Bribery Act will be included.

***Text of recommendation:***

7. With respect to resources and priority, the Working Group recommends that the UK:

(a) maintain the SFO's role in criminal foreign bribery-related investigations and prosecutions as a priority (Convention Article 5);

***Action taken as of the date of the follow-up report to implement this recommendation:***

HM Government published the Serious and Organised Crime Strategy in October 2013 and at the same time created the National Crime Agency (NCA). The Strategy states (para.6.41) *the Economic Crime Command (ECC) in the NCA will oversee the law enforcement response to bribery and corruption more broadly. ....The NCA will work closely with other law enforcement partners including:*

- The Serious Fraud Office, which remains the lead agency for investigating large and complex cases of corporate bribery and corruption, and enforcing the Bribery Act in respect of overseas corruption by British businesses;

At the start of his four-year term as Director of SFO, David Green said, *"The SFO is here to stay. It is and will remain a key crime fighting agency targeting top-end fraud, bribery and corruption. We will play our part in maintaining in the national interest a level playing field for investors and the business community. We will work cooperatively with others in the emerging counter-fraud landscape. We will press for all the tools necessary to maximise our impact. The SFO will be tough but approachable. I am delighted to take on the leadership of the agency at this exciting and challenging time. There is much to be done."*

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

7. With respect to resources and priority, the Working Group recommends that the UK:  
(b) ensure that other government departments assume a greater responsibility in assisting companies to prevent corruption (Convention Article 5);

***Action taken as of the date of the follow-up report to implement this recommendation:***

The advice and views of Directors of the Serious Fraud Office and Public Prosecutions are inevitably going to be sought because of their unique role in providing consent to prosecute any Bribery Act offence. It is unlikely that business will seek legal advice about investigation and prosecution from other government departments and it is not something that can be provided.

The resource challenges described in paragraphs 134-137 of the Phase 3 report will apply to all government departments. However, Foreign & Commonwealth Office (FCO), UK Trade and Investment (UKTI) and Business, Innovation and Skills (BIS) continue to invest and improve the advice they provide. In *A Charter for Business* <https://www.gov.uk/government/publications/a-charter-for-business> FCO committed to providing assistance to UK business.

The FCO recognises the important role that its network of overseas posts play in reinforcing Government efforts to combat bribery and corruption, and provides a range of guidance and support to staff working overseas, so that they:

- Are aware of the provisions of the UK Bribery Act and able to promote it to overseas governments and UK businesses
- Can support UK businesses facing bribery risks overseas
- Know how to report allegations of bribery and their obligations to do so.

A new anti-corruption intranet site for the network was launched by the FCO in June 2013. As well as reminding officials of their reporting obligations, and guidance on the Bribery Act, it provides a range of materials to assist posts with local and regional anti-corruption activities, including business engagement, and links to practical resources aimed at the business community.

Posts have been able to draw on the FCO's Prosperity Fund to support anti-corruption activities overseas, particularly in emerging markets. Some of these directly involve working with the private sector, while others involve capacity-building or providing technical assistance to promote domestic reform, such as a move to electronic procurement systems. Examples include:

- Promoting best practice in public procurement in Brazil;
- Prevention and control of commercial bribery in China; and
- Reducing the risk of corruption in business in India

A new central anti-corruption and transparency team has been established in FCO (August 2013) whose remit includes improving the support and guidance provided to officials overseas and exchanging best practice across the network.

In November 2012, the Financial Services Authority (FSA) updated its regulatory guidance *Financial Crime, a Guide for Firms* <http://fshandbook.info/FS/html/handbook/FC/link/PDF> with specific examples of good and poor practice in relation to firms' anti-bribery and corruption controls.

The UK has committed to continue to co-sponsor (along with Austria, Germany, Norway and Sweden) the Business Anti-Corruption Portal <http://www.business-anti-corruption.com/>. BIS has continued to invest in the publication of additional country profiles freely available on the website. This includes new country profiles on Australia, Canada, Colombia, Japan, and the USA.

The Serious and Organised Crime Strategy published in October 2013 recognises the role of UK Trade and Investment has in advising UK business overseas on ways to protect themselves from corruption and protects incoming investment from bribery and corruption <https://www.gov.uk/government/publications/serious-organised-crime-strategy>. Online advice from UKTI is available from <http://www.ukti.gov.uk/export/howwehelp/overseasbusinessrisk.html>.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

7. With respect to resources and priority, the Working Group recommends that the UK:  
(c) ensure that SFO and police resources for foreign bribery-related cases are adequate (Convention Article 5).

***Action taken as of the date of the follow-up report to implement this recommendation:***

The SFO has adequate funding from HM Treasury to deliver its regular caseload. In the event that the SFO is required to fund an exceptionally large case HM Treasury will consider whether it needs to make further funds available. The SFO will not be prevented from investigating any case as a result of insufficient resources.

As part of the UK response to anti-corruption, the Department for International Development (DFID) has funded two police law enforcement teams since 2006: The City of London Police Overseas Anti-Corruption Unit (OACU), which investigates allegations of bribery and corruption by UK nationals and businesses in developing countries; and, the Metropolitan Police Proceeds of Corruption Unit (POCU), which investigates overseas grand corruption by Politically Exposed Persons where the proceeds have been laundered in or through the UK.

The funding secured for OACU for 2013-16 is £3.827 million, representing a 30% increase when compared to the funding allocated for 2010-2013 (£2.943 million).

The funding secured for POCU for 2013-16 is £4.541 million, representing a 58% increase when compared to the funding allocated for 2010-2013 (£2.871 million). The substantial funding increase for POCU reflects their additional role within the UK Anti-Corruption Task Force set-up to assist with the corruption investigations and asset recovery efforts of the 'Arab Spring' countries.

The enhanced funding for both police units reflects the UK's commitment to tackling international

corruption.

The SFO's funding for 2013-14 was £53.6 million which includes £24 million to cover exceptionally large cases, under the arrangement with HMT as set out above.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

8. With respect to Article 5 of the Convention, the Working Group recommends that the UK:

(a) take steps to ensure that Article 5 is clearly binding (though not necessarily through legislation) on investigators, prosecutors (including Scotland), the Attorney General and the Lord Advocate at all stages of a foreign bribery-related investigation or prosecution, and in respect of all investigative and prosecutorial decisions (Convention Article 5);

***Action taken as of the date of the follow-up report to implement this recommendation:***

Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("the OECD Convention") is binding on investigators and prosecutors in the United Kingdom, including the Lord Advocate, as independent head of the prosecution service in Scotland. All relevant investigatory and prosecution agencies are signatories to the Memorandum of Understanding on Tackling Foreign Bribery which outlines the arrangements for fulfilling the international obligations of the UK as a party to the OECD Convention.

The Serious Fraud Office (SFO) is the lead agency in England, Wales and Northern Ireland for investigating and prosecuting cases of domestic and overseas corruption. The Crown Prosecution Service (CPS) is the other main UK prosecuting agency likely to be concerned with prosecutorial decisions relating to foreign bribery cases.

The "*Protocol between the Attorney General and the Prosecuting Departments*" sets out how the Attorney General and the Directors of the CPS and the SFO exercise their functions in relation to each other. The Attorney General is responsible for safeguarding the independence of the Directors and the prosecutors in their departments. Decisions to prosecute or not to prosecute are taken entirely by prosecutors and the Attorney General will not seek to give a direction in an individual case save very exceptionally where necessary to safeguard national security.

CPS and SFO prosecutors will exercise prosecutorial judgment in cases of foreign bribery in accordance with:

- The Code for Crown Prosecutors
- The Joint Guidance on Corporate Prosecutions
- Bribery Act 2010: Joint Guidance of The Director of the Serious Fraud Office and the Director of Public Prosecutions

The Joint Guidance on Corporate Prosecutions expressly states that prosecutors dealing with bribery cases are reminded of the UK's commitment to abide by Article 5 of the OECD Convention. The Lord Advocate

has taken steps to ensure that all prosecutors in Scotland dealing with cases of foreign bribery are aware of the obligation imposed by Article 5.

*If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:*

***Text of recommendation:***

8. With respect to Article 5 of the Convention, the Working Group recommends that the UK:  
(b) ensure that all relevant parts of the government are fully aware of their duty to respect the principles in Article 5, so that they can assist investigators and prosecutors to act in accordance with that Article (Convention Article 5).

***Action taken as of the date of the follow-up report to implement this recommendation:***

The UK is bound by the Convention that includes all government departments and agencies. The Bribery Act joint prosecution guidance states *prosecutors dealing with bribery cases are reminded of the UK's commitment to abide by Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*: and goes on to reproduce as follows;

“Investigation and prosecution of the bribery of a foreign public official...shall not be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved”.

*If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:*

N/A

***Text of recommendation:***

9. With respect to Crown Dependencies (CDs) and Overseas Territories (OTs), the Working Group recommends that the UK:

(a) promptly adopt a roadmap setting out specific goals, concrete steps, deadlines, and the provision of technical assistance for implementing the Convention in the OTs (Convention Article 1);

***Action taken as of the date of the follow-up report to implement this recommendation:***

The Convention has been extended to all of the Crown Dependencies and to the Overseas Territories of British Virgin Islands, Cayman Islands and Gibraltar.

The UK Government published its White Paper on the Overseas Territories in June 2012 which included the Government's expectation that the territories adhere to relevant standards to combat bribery and corruption and to put into place the necessary legislation so that these Conventions can be extended to them.

This was endorsed by Overseas Territories' leaders in the Overseas Territories Joint Ministerial Council Communiqué of November 2013 - that we resolve to work together as priority on "extending to the Territories international treaties on tackling corruption, bribery and the financing of terrorism and of organised crime (the UN Convention Against Corruption; the OECD Bribery Convention; the UN Convention on Suppression of Financing of Terrorism; and the UN Convention on Transitional Organised Crime)."

The UK Government is responsible for the overseas relations of OTs but they are not part of the United Kingdom. The UK can encourage and assist the OTs to put in place good quality legislation that would enable the extension of the Convention. HMG continually encourage OTs to use the Bribery Act as a model for their legislation. The Isle of Man (a Crown Dependency) has recently done this by replacing their existing legislation with a new Act modelled on the Bribery Act which includes a failure to prevent offence as proposed in Annex 1 of the Convention. The bribery legislation introduced as part of the Crimes Act in Gibraltar in 2012 is closely modelled on the Bribery Act.

The UK cannot plan on behalf of the territories or their Governments, the Overseas Territories govern themselves. However, the UK accepts the recommendation and has produced a roadmap setting out specific goals, concrete steps and deadlines for four OTs, which have the most significant financial service sectors. They are Bermuda, Turks and Caicos, Montserrat and Anguilla. A copy of the roadmap is attached. The UK continues to offer technical assistance, advice and guidance to help OTs introduce the necessary legislation and have the Convention extended to them.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

9. With respect to Crown Dependencies (CDs) and Overseas Territories (OTs), the Working Group recommends that the UK:

(b) extend jurisdiction of the Bribery Act to legal persons incorporated in the CDs and OTs (Convention Article 4(2)).

***Action taken as of the date of the follow-up report to implement this recommendation:***

The Overseas Territories (OTs) and Crown Dependencies (CDs) are not part of the United Kingdom and are separate jurisdictions. The UK has responsibility for OT and CD international relations. It is a matter for the OTs and CDs which Conventions they adhere too and what laws they make.

The Bribery Act applies to natural persons in the OTs and CDs because they are British subjects. Bribery Act section 7 would be engaged if a company based in an OT or CD failed to prevent bribery and which carried on some or part of their business in the UK.

The United Kingdom will not extend the Bribery Act to legal persons incorporated in the CDs and OTs.

The Bribery Act does not contain an extension clause which would enable its extension to the three separate Crown Dependencies of the Isle of Man, Jersey and Guernsey; the islands have their own domestic legislation which implements the provisions required in the OECD Bribery Convention.

The Isle of Man has recently replaced its Corruption Act 2008 with a new Act which includes a failure to prevent offence similar to the section 7 offence in the Bribery Act. We welcome this development which provides high standard legislative framework for tackling foreign bribery by business and the people of the Isle of Man.

The other CDs –Jersey and Guernsey- have foreign bribery legislation and had the Convention extended to them in 2010. Extension of the Bribery Act to them would duplicate existing laws.

Three OTs -British Virgin Islands, Cayman, and Gibraltar- all have foreign bribery legislation and have had the Convention extended to them. Extension of the Bribery Act to them would duplicate existing laws.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

10. With respect to measures for mutual legal assistance (MLA), the Working Group recommends that the UK:

(a) produce more detailed statistics on formal MLA requests received, sent and rejected, so as to identify more precisely the proportion of those requests that concern foreign bribery (Convention Article 9(1));

***Action taken as of the date of the follow-up report to implement this recommendation:***

The UK Central Authority (which is responsible for all incoming MLA requests to England & Wales and Northern Ireland) is developing a new database which will provide more detailed statistics regarding MLA requests received (and outgoing MLA requests that the UK Central Authority is responsible for) and rejected. This database is currently being tested and is expected to be operational later in 2014. In the interim improvements have been made to the existing database to ensure more data is captured and reported on. The SFO has also recently established a database of incoming and outgoing MLA requests which identify requests concerning bribery of foreign public officials.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

10. With respect to measures for mutual legal assistance (MLA), the Working Group recommends that the UK:

(b) ensure, where possible, that pending MLA requests are not adversely affected by the UK's conclusion of its own investigations.

***Action taken as of the date of the follow-up report to implement this recommendation:***

When the SFO accepts an MLA request from the Home Office for execution there will already have been internal consultation in order to identify whether or not there is any domestic interest in the case. Where there is domestic interest the case team will be responsible for the execution of the request which means that there is the necessary communication and co-ordination between interested jurisdictions. This may include reaching agreement about which jurisdiction will prosecute which defendant.

Plea negotiations and civil recovery settlements are concluded in terms which make clear that they relate only to offences and/or unlawful conduct that falls within the United Kingdom's jurisdiction. The SFO when concluding cases by civil agreement or in by way of agreeing a basis of plea will ensure that such agreements do not bar it from assisting other jurisdictions in their investigations. The SFO will continue to provide MLA and will seek to ensure that it does not conclude any case in a way that prevents the UK providing MLA.

As discussed at the oral follow up report to the OECD Working Group on Bribery in March 2013, the SFO's revised policy statements of 9 October 2012 make clear that the terms of the civil settlements and plea agreements are thoroughly scrutinised by senior management at the SFO before they are concluded. All agreements preserve the right for the SFO to prosecute for unknown or undisclosed conduct and for the SFO to be able to conduct investigations on behalf of overseas authorities under mutual legal assistance provisions.

The transparency policy has been followed, as illustrated in the Oxford University Publishing case, to ensure the reasons for not bringing a criminal prosecution are explained and available to the public.

DPA legislation allows for a bespoke set of terms to be agreed with an organisation subject to a DPA. The terms therefore may include the organisation's co-operation with the Prosecutor as it assists investigation or prosecutions in other jurisdictions. The DPA and any term in it has to be approved by a judge as being "in the interests of justice" and both "fair and reasonable."

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

11. With respect to awareness-raising, the Working Group recommends that the UK continue its efforts, in co-operation with business associations, to encourage companies in particular SMEs to develop internal control and compliance mechanisms; raise awareness of the FSA's foreign bribery-related enforcement actions, the UK Corporate Governance Code, and the FSA's Listing Principles (2009 Recommendation X.C., and Annex II).

***Action taken as of the date of the follow-up report to implement this recommendation:***

The FCA took over the FSA's financial crime remit in April 2013.

In addition to its ongoing supervisory and policy work, the FCA is continuing the FSA's programme of thematic reviews of financial services firms' anti-corruption controls.

- Following a public consultation, the FCA updated its regulatory guidance in November 2012 with examples of good and poor practice taken from its review of investment management firms' anti-corruption systems and controls;
- The results from a review of asset managers' anti-corruption controls will be published later this year; and
- A review of insurance brokers' anti-corruption controls is now underway.

Where appropriate, findings will be incorporated into the FCA's regulatory guidance.

The issuing of regulatory guidance, two anti-corruption briefing sessions, several high profile speeches and the publication of thematic reviews, articles and enforcement notices have been very effective in raising the profile of the FCA's anti-corruption guidance and expectations across the financial services industry.

CoLP have driven awareness raising issues over the past year to encourage SME's to seek further advice and guidance on internal controls and compliance. CoLP actively engaged in the drafting committee of the BS10500 British Standard Anti Bribery Management System now available for accreditation by companies and which recently passed the first Project committee phase for adoption as an international (ISO) standard. CoLP training academy have partnered BSI training in producing training courses and BSI accreditation facilities for UK and international companies. CoLP OACU have produced a Bribery prevention video due for launch in September 2013, along with a information pack (currently in draft format awaiting wider consultation) on how to work practicably with the UK Bribery Act suggesting coping mechanisms and contingencies and including a simplified bribery reporting template to encourage enhanced reporting.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

12. With respect to tax-related-measures, the working group recommendations that the UK:

(a) ensure that Her Majesty's Revenues and Customs (HMRC) proactively enforces the non-tax deductibility of bribe payments against defendants in past and future foreign bribery-related enforcement actions, including by systematically re-examining defendants' tax returns for the relevant years to verify whether bribes had been deducted, and examining why HMRC failed to detect proven cases of bribery (2009 Recommendation, VIII.i; 2009 Tax Recommendations);

***Action taken as of the date of the follow-up report to implement this recommendation:***

When HMRC receives information that enforcement action has been taken in respect of a foreign bribery related offence, HMRC compliance staff responsible for the business will review their tax position for current and previous years, and will take intervention action if appropriate.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

12. With respect to tax-related-measures, the working group recommendations that the UK:

(b) strengthen HMRC's training and awareness-raising programmes for tax examiners to detect, prevent and report foreign bribery (2009 Recommendation, VIII.i; 2009 Tax Recommendations);

***Action taken as of the date of the follow-up report to implement this recommendation:***

HMRC compliance staff are trained in investigation techniques and we have also been increasing our emphasis on commercial understanding. This means that tax specialists are skilled in investigating business transactions to understand their true nature. Awareness of skilled in investigating business transactions to understand their true nature. Awareness of potential bribes is raised in our training material within the "Business Profits" Tax Professional Learn Product (TPLP) which is studied by our trainee tax professionals. This includes a specific activity in which "a company with substantial contracts abroad claims a deduction in its accounts for commissions" the commissions are found by the caseworker to be bribes and subsequently disallowed.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

12. With respect to tax-related-measures, the working group recommendations that the UK:  
(c) ensure that HMRC is obliged to provide information for use in foreign bribery-related investigations upon request and report suspicions of foreign bribery to the SFO (2009 Recommendation, VIII.i; 2009 Tax Recommendations);

***Action taken as of the date of the follow-up report to implement this recommendation:***

With regard to information in relation to foreign bribery HMRC confirm that the statutory “gateway” to enable information exchange between HMRC and the SFO is in place and that appropriate information is being passed to the SFO.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

12. With respect to tax-related-measures, the working group recommendation that the UK:  
(d) ensure that the SFO continues to share information on foreign bribery-related enforcement actions with HMRC (2009 Recommendation, VIII.i; 2009 Tax Recommendations).

***Action taken as of the date of the follow-up report to implement this recommendation:***

A statutory “gateway” to enable information exchange between SFO and HMRC is in place and that appropriate information is being passed to the HMRC. They are aware of all the foreign bribery disposals relevant to the OECD Bribery Convention and SFO will alert HMRC to future disposals as they occur.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

N/A

***Text of recommendation:***

13. Regarding export credits, the Working Group recommends that Export Credits Guarantee Department (ECGD):  
(a) in any case where a criminal investigation into a transaction supported by ECGD has been blocked for reasons other than on the merits, make vigorous use of all of its powers, including notably its audit powers, to investigate whether the transaction involves foreign bribery (Convention Article 3(4); 2009 Recommendation, XI.i);

***Action taken as of the date of the follow-up report to implement this recommendation:***

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

The circumstance described in the recommendation has not occurred since it was made in March 2012 and, therefore, there has not been an occasion where it has been necessary for ECGD to consider the application of the recommendation. It should be noted that ECGD has no investigatory powers although it routinely refers allegations of bribery and corruption and money laundering to the investigating and prosecuting authorities.

***Text of recommendation:***

13. Regarding export credits, the Working Group recommends that Export Credits Guarantee Department (ECGD):

(b) review its general contracting policies for future transactions to address policy issues raised by cases that cannot be investigated by criminal law enforcement authorities (Convention Article 3(4); 2009 Recommendation, XI.i).

***Action taken as of the date of the follow-up report to implement this recommendation:***

No action, see below.

***If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

For the reasons previously given the recommendation has not been accepted. However, it is the policy of ECGD to apply international agreements that relate to the operation of official Export Credit Agencies. In this regard, ECGD follows the OECD Council Recommendation on Bribery and Officially Supported Export Credits. This provides for situations where support is requested by exporters and where there is credible evidence of bribery and also convictions of bribery offences. Any application made to ECGD for support where there is credible evidence and/or conviction of bribery would trigger enhanced due diligence as required by the Recommendation.

## PART II: FOLLOW-UP BY THE WORKING GROUP

***Text of issue for follow-up:***

14. The Working Group will follow up the issues below as case law and practice develop:

(a) the following matters under the Bribery Act and associated guidance: facilitation payments; hospitality payments; the written law exception; corporate liability; and the interpretation of carries on a business or part of a business, in any part of the United Kingdom (Convention Articles 1, 2; 2009 Recommendation, VI);

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

The SFO published revised guidance on 9 October 2012 <http://www.sfo.gov.uk/bribery--corruption/the-bribery-act/facilitation-payments.aspx> including facilitation payments and hospitality.

***Text of issue for follow-up:***

14. The Working Group will follow up the issues below as case law and practice develop:

(b) legislative and other efforts concerning plea negotiations, civil settlements, deferred prosecution agreements and plea agreements (Convention Article 5);

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

The SFO have used another civil recovery order following publication in March 2012 of the OECD Bribery WG Phase 3 report. However, the press release acknowledges the criticisms and discloses considerable background material <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/oxford-publishing-ltd-to-pay-almost-19-million-as-settlement-after-admitting-unlawful-conduct-in-its-east-african-operations.aspx>

The Government consulted on introduction of deferred prosecution agreements for use in cases of economic crime (including Bribery Act offences) by corporate offenders in May 2012. Legislative provisions were taken forward in the Crime and Courts Bill, which received Royal Assent in April 2013 - a new scheme for DPAs is provided for in Schedule 17 of the Crime and Courts Act 2013. The Government intends to implement the legislation in spring 2014. Consultations are underway in relation to key materials to underpin the scheme including a Code of Practice for Prosecutors on DPAs (developed by the Serious Fraud Office and Crown Prosecution Service) and criminal procedure rules (drawn up by the Criminal Procedure Rule Committee).

***Text of issue for follow-up:***

14. The Working Group will follow up the issues below as case law and practice develop:

(c) impact of the National Crime Agency on the UK's priority, co-ordination, resources and framework for investigating and prosecuting foreign bribery-related cases (Convention Article 5);

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

As the Serious and Organised Crime Strategy (published in October 2013) set out, the UK Government is committed to improving the response to bribery and corruption at both the policy and operational level. The National Crime Agency (NCA) will now oversee the law enforcement response to bribery and corruption, working closely with other law enforcement partners including the Serious Fraud Office, the City of London Police and the Metropolitan Police Service. The NCA will oversee the register of foreign bribery cases and ensure effective action is being taken by the range of law enforcement agencies.

***Text of issue for follow-up:***

14. The Working Group will follow up the issues below as case law and practice develop:

(d) impact of the UK's disclosure framework on the enforcement of foreign bribery-related offences (Convention Articles 3, 5);

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

***Text of issue for follow-up:***

14. The Working Group will follow up the issues below as case law and practice develop:

(e) whistleblower protection to determine if whistleblowers who report in good faith and on reasonable grounds are protected under the Public Interest Disclosure Act (PIDA) (2009 Recommendation, IX, X.C.v);

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

Changes were made to the whistleblowing framework through the Enterprise and Regulatory Reform Act 2013. A public interest test was introduced, requiring individuals who make a claim at an employment tribunal, to show a reasonable belief that their disclosure was made in the public interest test. At the same time, Government amended the good faith test to ensure that individuals were not faced with two tests to satisfy, by making the outcome of the good faith test affect remedy rather than liability. As such, if a person is now unable to show that they made a disclosure in good faith, the Employment Tribunal has the power to reduce any compensation award by up to 25% if it considers the disclosure was made predominantly in bad faith. The change to the good faith test was made to mitigate the prospect of two tests needing to be satisfied acting as a deterrent to whistleblowers.

***Text of issue for follow-up:***

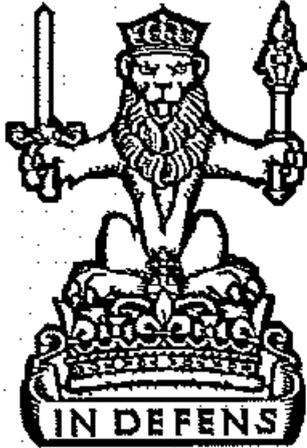
14. The Working Group will follow up the issues below as case law and practice develop:

(f) implementation of the forum bar to extradition (Convention Article 10).

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

The Home Secretary announced the introduction of a new forum bar test on 16 October 2012. The forum bar would halt extraditions on the grounds that the alleged crime that constitutes the extradition request was committed wholly or substantially in the UK. A forum bar exists in the Extradition Act 2003 but has yet to be brought into force and is reportedly not suitable.

**ANNEX 1  
MEMORANDUM OF UNDERSTANDING BETWEEN SERIOUS FRAUD OFFICE AND CROWN  
OFFICE AND PROCURATOR FISCAL SERVICE**



# **Memorandum of Understanding**

**Serious Fraud Office**

– and –

**Crown Office and Procurator Fiscal Service**

## Preamble

This Memorandum is a bilateral agreement between the Crown Office and Procurator Fiscal Service (“COPFS”) and the Serious Fraud Office (“SFO”). It is not a legally enforceable instrument, but these two organisations (“the organisations”) nevertheless consider themselves to be bound by its terms.

The SFO was established by the Criminal Justice Act 1987 to investigate and prosecute cases of serious or complex fraud in England, Wales and Northern Ireland. The SFO is also the lead organisation in England, Wales and Northern Ireland for investigating and prosecuting cases of bribery or corruption. COPFS, under the direction of the Lord Advocate, is responsible for the investigation and prosecution of crime in Scotland, including cases involving bribery and corruption. Either the SFO or COPFS may prosecute cases of overseas bribery or corruption over which United Kingdom courts have jurisdiction.

This Memorandum has been concluded in response to the changes to the United Kingdom’s law introduced by the Bribery Act 2010, which came into force on 1 July 2011. The principal purpose of this Memorandum is to provide a framework for co-operation between the SFO and COPFS for cases of bribery or corruption which both organisations have (or may have) jurisdiction to prosecute under the Bribery Act 2010. But this Memorandum also applies more broadly to any case of bribery, corruption or fraud (or indeed any other offence) in which both organisations have an interest, including cases involving offences abolished by the Bribery Act 2010 (but which still apply in relation to conduct occurring wholly or partly before 1 July 2011).

This Memorandum therefore applies to any relevant case:–

- which was (or may have been) committed partly in Scotland and partly in England, Wales or Northern Ireland and, for that reason, falls or seems to fall within the jurisdiction of each organisation;
- which was (or may have been) committed overseas but within or seemingly within the jurisdiction of each organisation on account of the applicable law on extraterritoriality; or
- which is of interest to both organisations for some other reason, for example because there are victims/complainants in each jurisdiction or there are suspects from (or with interests in) each jurisdiction.

Issues covered by this Memorandum include:–

- (i) whether the SFO or COPFS should take forward a particular case which both organisations have (or may have) jurisdiction to prosecute (*the issue of primacy*);
- (ii) the undertakings to be given by the SFO or COPFS when primacy is ceded (*the issue of assurances*);
- (iii) the approach to be taken by the SFO and COPFS to bodies which self-report wrongdoing (*the issue of self-reporting*);

- (iv) a framework for general collaboration, communication and information sharing in relation to issues which are likely to be of mutual interest (*the issues of collaboration and information sharing*).

To the extent that there is any conflict with the Memorandum of Understanding on Tackling Foreign Bribery revised in 2014, this Memorandum takes precedence as between the SFO and COPFS.

## **Part 1 – Primacy**

1. This Part applies to any case (“relevant case”) which appears to involve an offence for which a prosecution could be brought by either organisation. A reference in this Part to a “person” is a reference to an individual or body in a relevant case that could be prosecuted for such an offence in any part of the United Kingdom; and a reference to an “address” is a reference (a) in the case of an individual to his or her last home address and (b) in the case of a corporate body or partnership, its registered office or headquarters.
2. For any relevant case, the organisation responsible for determining what (if any) action should be taken against a person, including a decision on whether to pursue an investigation or prosecute or recover the proceeds of crime, and for taking any such action, is “the responsible organisation”.
3. The organisations will always endeavour to co-operate fully with each other with a view to reaching early agreement on the responsible organisation in accordance with this Part. To this end, the organisations will apply the principle that there should be early sharing of information.
4. Where a relevant case comes to the attention of one organisation and that organisation comes to the preliminary view in accordance with this Part that it should be the responsible organisation in respect of a person, that organisation will inform the other organisation of this preliminary view, with reasons, as soon as possible and seek its opinion.
  - (i) If the other organisation agrees, it will cede primacy in this respect and immediately communicate its decision to the responsible organisation.
  - (ii) If the other organisation is of the view that it has insufficient information to come to an informed position on primacy in this respect, it will immediately respond with that view and the organisations will then endeavour to reach agreement on the issue as soon as they reasonably can. To this end, the organisations will keep each other informed of relevant developments as they arise.

(iii) Where more than one person or corporate body is involved in the case, the process is repeated for each

5. Where a relevant case comes to the attention of one organisation and that organisation comes to the preliminary view that the other organisation should be the responsible organisation in respect of a person, the organisation holding that preliminary view should inform the other organisation as soon as it reasonably can and seek the other organisation's opinion. If the other organisation accepts that it should be the responsible organisation, the case (or relevant part of it) should be referred to it as soon as this can reasonably be done. As at 4 (iii) above, the process is repeated if necessary.
6. Where agreement is needed on which organisation should be the responsible organisation for a given case, designated representatives from the two organisations will meet and work towards a mutually acceptable agreement on primacy in accordance with the rest of this Part.
7. The "principal rule" when determining primacy in respect of a person's alleged criminal conduct is that:–
  - (i) the SFO is the responsible organisation if all or most of the alleged criminal conduct, or all or most of the alleged financial loss, occurred in England, Wales or Northern Ireland;
  - (ii) COPFS is the responsible organisation if all or most of the alleged criminal conduct, or all or most of the alleged financial loss, occurred in Scotland.
8. The principal rule is inapplicable if all or most of the alleged criminal conduct occurred in the territorial jurisdiction of one organisation (e.g., England) but all or most of the financial loss occurred in the territorial jurisdiction of the other (e.g., Scotland).
9. In any relevant case where the principal rule is inapplicable, or cannot be shown to be applicable, or the organisations expressly agree to disapply it given the special circumstances of the case, the responsible organisation will be determined by agreement in accordance with paragraphs 10 to 13 below (which are not otherwise relevant).
10. If all the alleged criminal conduct and all the financial loss occurred outside the United Kingdom:–
  - (i) the SFO is the responsible organisation if the alleged offender's address is in England, Wales or Northern Ireland;

- (ii) COPFS is the responsible organisation if the alleged offender's address is in Scotland;

but the organisations may expressly agree to disapply this test (and so apply the test in paragraph 11) if they conclude that this is warranted by the special circumstances of the case (e.g. because the alleged offender's business activities in the United Kingdom are or were predominantly carried out in the territorial jurisdiction of the other organisation).

11. In any relevant case where paragraph 9 applies, and the test in paragraph 10 is not (or is no longer) applicable, the organisations will reach agreement on primacy by taking into consideration, and attaching due weight to, all relevant factors including (where relevant) the following:–

- (i) the territorial jurisdiction within the United Kingdom where the criminal conduct allegedly occurred;
- (ii) the territorial jurisdiction in the United Kingdom where the alleged offender's address is located;
- (iii) whether the alleged offender's business activities are or were predominantly carried out in Scotland or in England, Wales or Northern Ireland;
- (iv) the location and interests of victims / complainants;
- (v) the location and likely attendance of witnesses;
- (vi) available resources.

12. Although the principal rule is inapplicable if all or most of the alleged criminal conduct occurred in the territorial jurisdiction of one organisation but all or most of the financial loss occurred in the territorial jurisdiction of the other, in such cases significant weight will be attached to where within the United Kingdom the criminal conduct allegedly occurred.

13. The factors set out in paragraph 11 have been listed in no particular order, and this list is not exhaustive.

14. Nothing in this Part is to be construed to prevent the organisations from:–

- (i) concluding an agreement to divide a relevant case, with each organisation being a responsible organisation in a limited respect;
- (ii) establishing a joint investigation team with a view to dividing a relevant case;
- (iii) concluding a further agreement during the course of an investigation which has the effect of amending or altering the respective roles of the two organisations in relation to a given case.

15. The organisations recognise there will be some cases where one organisation will be the responsible organisation for the investigation of a partnership or corporate body with the other organisation being the responsible organisation for the investigation of individuals (such as employees of the partnership or corporate body). The procedure set out at paragraph 4 above will apply to each person or corporate body being considered.
16. Part 1 applies to any relevant case regardless of how or in what circumstances an organisation or the organisations first became aware of it.
17. Both organisations will aim to meet the following time-scales: (i) two weeks from receipt of a (written) report (in acceptable form) to advise the other organisation of its receipt and its initial view as to how it should be dealt with (ii) two weeks for second organisation to reply, with intimation of its initial view and (iii) four weeks for agreement to be reached if there is no initial consensus. During said periods of time the organisations will agree what level of investigation each will carry out pending a decision as to primacy.

## **Part 2 – Assurances**

18. Where for a relevant case there is agreement under Part 1 on the responsible organisation, the other organisation will recognise this fact for the purposes of the case (or the relevant parts of a divided case).
19. In any such case the other organisation will, upon request, provide a written undertaking or assurance to the responsible organisation that it will take no action in relation to the specific matters for which the responsible organisation has responsibility.
20. The other organisation may decide on the form of any such written undertaking or assurance.

## **Part 3 – Reporting and self-reporting**

21. Without prejudice to the obligation to determine primacy in accordance with Part 1, the organisations acknowledge:–

- (i) that the SFO is the focal point for receiving all overseas bribery and corruption allegations involving United Kingdom nationals, partnerships or corporate bodies;
- (ii) that the SFO has responsibility for maintaining the United Kingdom's register of all allegations of overseas bribery and corruption involving United Kingdom nationals, partnerships or corporate bodies;
- (iii) that any United Kingdom law enforcement body or government department wishing to pass on a case which seems to fall within the jurisdiction of each organisation will, in the first instance, wish to notify both organisations about the case and its cross-jurisdictional features;
- (iv) that while any individual, partnership or corporate body wishing to self-report wrongdoing which may be relevant to both organisations has the right to choose which organisation to contact, the individual, partnership or corporate body in question will be expected to self-report to the organisation thought most likely to have primacy under Part 1.

22. Any individual, partnership or corporate body which self-reports wrongdoing to one of the organisations will be notified at the earliest opportunity of the organisations' obligation to determine primacy in accordance with Part 1.

23. Primacy will be determined by the organisations, taking into account all relevant factors. The fact that an individual, partnership or corporate body has reported itself to one organisation rather than the other will not solely determine primacy; but all relevant information provided by the individual, partnership or corporate body in question will be taken into consideration when primacy is determined under Part 1.

## **Part 4 – Information and intelligence sharing**

24. This Part concerns the sharing of intelligence and any other information which is likely to be of interest to the other organisation ("relevant information"), where such sharing is legally permissible.

25. The organisations will provide relevant information to each other and protect such information against unauthorised access or disclosure.

26. The organisations will not release or disclose any relevant information obtained from the other organisation to any third party without the prior written consent of the other organisation, unless compelled to do so by law.
27. The organisations will comply with their obligations relating to early information sharing under paragraphs 3 to 5 regardless of how the information comes to their attention. If an individual, partnership or corporate body identifies a relevant case to one organisation, that organisation will bring this to the attention of the other organisation promptly and endeavour in good faith to supply further information if the other organisation reasonably requires it.

## **Part 5 – Collaboration and consistency**

28. The organisations fully recognise the importance of collaboration and constructive communication.
29. The organisations will therefore:–
- (i) liaise in relation to any cases in which they are both likely to have an interest; and
  - (ii) liaise more generally on matters of mutual interest, for example by sharing best practice, practical guidance and thoughts on relevant policy issues.
30. Subject to compelling countervailing considerations, the organisations recognise the desirability of consistency in their respective guidelines and policies and will work together to achieve this end.
31. The organisations recognise that paragraph 29 imposes a general obligation on each organisation to keep the other organisation informed of relevant internal policy developments, and to invite and consider observations from the other organisation, before any such developments are finalised and published.
32. The following individuals are the first point of contact for all communications between the two organisations:
- (i) Kristin Jones (SFO, Head of Strategic Relations):  
e-mail: [kristin.jones@sfo.gsi.gov.uk](mailto:kristin.jones@sfo.gsi.gov.uk)
  - (ii) Ernie Shippin (COPFS, Deputy Head of Serious and Organised Crime Division);  
e-mail: [Ernie.Shippin@copfs.gsi.gov.uk](mailto:Ernie.Shippin@copfs.gsi.gov.uk); or
- Laura Buchan (COPFS, Principal Depute, Economic Crime Unit, Serious and Organised Crime Division);

e-mail: [Laura.Buchan@copfs.gsi.gov.uk](mailto:Laura.Buchan@copfs.gsi.gov.uk).

33. Principal decision makers will be :

- (i) Kristin Jones (SFO, Head of Strategic Relations):
- (ii) Lindsey Miller (Procurator Fiscal, Organised Crime and Counter Terrorism)  
e-mail: [Lindsey.Miller@copfs.gsi.gov.uk](mailto:Lindsey.Miller@copfs.gsi.gov.uk)

## **Part 6 – Distribution**

- 34. Each organisation will circulate this Memorandum internally in such way as to ensure that all relevant individuals are aware of it and that they will act in accordance with its terms.
- 35. The SFO will provide copies of this Memorandum to the Attorney General's Office, the Crown Prosecution Service, the Ministry of Justice and the City of London Police.
- 36. The organisations will make this Memorandum available to the public.

## **Part 7 – Duration and review**

- 37. The SFO and COPFS will each undertake a review of the effectiveness of this Memorandum as and when required, but at least biennially.
- 38. Following such a review, either organisation may ask for the Memorandum to be amended. If the organisations agree on a revision, a revised Memorandum will be signed to replace this Memorandum.
- 39. This Memorandum and any revised Memorandum made under paragraph 37 will come into force on the date of signature. The "date of signature" is the first date on which it bears the signatures of the SFO's Director and the COPFS Crown Agent.
- 40. This Memorandum and any revised Memorandum made under paragraph 37 will remain in force until terminated by either organisation or by mutual agreement.
- 41. Subject to paragraph 40, if either organisation wishes unilaterally to terminate this Memorandum (or any revised Memorandum made under paragraph 37) it must give the other organisation 28 days' written notice of termination.
- 42. An organisation considering unilateral termination will not give the other organisation notice of termination under paragraph 41 unless it has first (a) met the other organisation to discuss and resolve its concerns and (b) considered and discussed the possibility of a revision or revisions with a view to reaching agreement on a revised Memorandum.

## Part 8 – Non compliance

43. If there is a dispute as to the application of this Memorandum or a complaint that either organisation has acted in breach of its terms, the Crown Agent and the Director of the SFO will jointly investigate the matter and determine an appropriate solution.

SIGNED for and on behalf of COPFS

SIGNED for and on behalf of the SFO by

Catherine Dyer, Crown Agent

David Green CB QC, Director

.....

.....

Date

Date

## **ANNEX 2: TACKLING FOREIGN BRIBERY – MEMORANDUM OF UNDERSTANDING**

### **1. Overview**

**1.1** This MoU has been agreed between all parties named in paragraph 8.1. It outlines the arrangements for fulfilling the international obligations of the United Kingdom as a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Bribery Convention), the Council of Europe Criminal Law Convention against Corruption (and its Additional Protocol) and the United Nations Convention against Corruption with regard to the investigation and prosecution of foreign bribery, including Section 7 Bribery Act 2010.

**1.2** It replaces the MoU agreed in January 2008 relating to the implementation of part 12 of the Anti-Terrorism, Crime and Security Act 2001.

**1.3** It is intended to outline the relationships between the parties in dealing with allegations of foreign bribery affecting United Kingdom associated individuals, organisations and corporate bodies.

**1.4** It is not intended to alter the legal position of any of the parties nor to limit or otherwise affect any discretion available to them in the performance of their duties.

### **2. Background**

**2.1** The United Kingdom signed the OECD Bribery Convention on 17 December 1997 and deposited its instrument of ratification on 14 December 1998.

**2.2** The United Kingdom signed the Council of Europe Criminal Law Convention against Corruption on 27 January 1999. The United Kingdom deposited its instrument of ratification on 9 December 2003 and the Convention came into force for the United Kingdom on 1 April 2004. The United Kingdom signed the Additional Protocol to the Convention on 15 May 2003. The United Kingdom's instrument of ratification was deposited on 9 December 2003 and the Additional Protocol came into force on 1 February 2005.

**2.3** The UK signed the UN Convention against Corruption on 9 December 2003 and deposited its instrument of ratification on 9 February 2006.

**2.4** These Conventions establish legally binding standards to criminalise the bribery of foreign public officials and officials of public international organisations.

### **3. Scope**

**3.1** This MoU covers any alleged or reported case of foreign bribery with a link to the United Kingdom. This includes allegations that corporate bodies have failed to prevent bribery, contrary to section 7 of the Bribery Act 2010.

**3.2** It includes the regulation and enforcement of the systems and processes to guard against bribery in the regulated financial sector.

### **4. Parties to the MoU**

**4.1** The National Crime Agency (NCA) is responsible for maintaining a register ('the Register') of all allegations or reports of bribery:

- Of foreign public officials;
- Other instances of foreign bribery.

It is imperative that any such allegation or report received by a party to this MoU is promptly reported to the NCA for inclusion in the Register (whether or not it has been possible to verify or substantiate the offence). The NCA will maintain the Register in such a way that it is possible to interrogate it for both types of reports listed above.

**4.2** The NCA produces tactical intelligence on bribery in overseas countries (including through the DfID-funded International Corruption Intelligence Cell (ICIC) in respect of developing countries) by persons or companies based in or operating from the UK. It receives intelligence from domestic and international sources pertaining to possible foreign bribery offences. It may also investigate foreign bribery cases, or deploy other specialist resource where appropriate.

**4.3** The Serious Fraud Office (SFO) is the lead agency for investigating serious or complex cases of corporate bribery and enforcing the Bribery Act in respect of foreign bribery by businesses in

England, Wales and Northern Ireland.

**4.4** The City of London Police (CoLP) investigates cases of domestic bribery and corruption, and its Overseas Anti-Corruption Unit, funded by DfID, investigates allegations or reports of UK citizens and companies involved in bribery and corruption in countries eligible for official development assistance and can assess and advise the holder of the register of such allegations received. When a case relevant to this MoU does not appear likely to meet the CoLP criteria for investigation, CoLP will, where appropriate, refer the case to SFO or to another police force or prosecution authority.

**4.5** The Crown Office and Procurator Fiscal Service (COPFS) is the lead agency for receiving, investigating and prosecuting all allegations or reports of foreign bribery in or from Scotland, involving a UK national, partnership or corporate body or non-UK “relevant commercial organisation” (as defined by section 7(5) of the Bribery Act 2010). This includes allegations which come to the attention of any party to this MoU.

**4.6.** The Financial Conduct Authority (FCA) requires firms authorised under the Financial Services and Markets Act 2000 (FSMA) to put in place and maintain policies and processes to prevent bribery and corruption. This is additional to obligations imposed under the Bribery Act 2010, which the FCA does not enforce.

**4.7** The Ministry of Defence Police (MDP) is responsible for investigating allegations of overseas bribery and corruption committed by MoD personnel. The MoD will maintain a reporting point for such allegations and will in turn refer cases to the MDP. Cases will be reported to the NCA for inclusion in the register.

## **5. Assessment**

**5.1** All the investigative bodies with a jurisdiction in England, Wales & Northern Ireland that are signatories to this MoU will meet on a monthly basis in a ‘Bribery Intelligence Clearing House’ (hereafter ‘Clearing House’) meeting, to be organised and chaired by the NCA. The purpose of this meeting will be to carry out a high-level assessment of all new leads, referrals and intelligence with a view to agreeing which agency is best placed to take responsibility for subsequent action.

**5.2** The SFO will carry out preliminary enquiries in co-operation with investigative agencies, police forces or the NCA to ascertain whether there is sufficient evidence to prepare an intelligence file for the consideration of the Director of the SFO. SFO cases relevant to this MoU must meet their Statement of Principles for investigation. If the case relates to or includes Scottish jurisdiction, the SFO will liaise with COPFS (Head of Serious and Organised Crime Division) regarding the initial assessment.

**5.3** When a case relevant to this MoU does not meet the SFO criteria for investigation, the SFO will, as appropriate, refer the case to CoLP (in accordance with the agreements between CoLP and DfID) or bring it back to the Clearing House for discussion as necessary.

**5.4** In the event that a potential case is not suitable for either the SFO or CoLP, the NCA will take responsibility for exploring whether it can be taken forward by the NCA or another agency or police force.

**5.5** In the event that the Clearing House, or a member of that group, encounters a case that appears to have a significant Scottish element, that case will be discussed with COPFS with a view to agreeing which agency is best placed to lead. Where such engagement with the COPFS is not initiated by the NCA, the NCA should be informed of the outcome.

**5.6** In the event that the COPFS encounters a case that appears to have a significant English, Welsh or Northern Irish element, the COPFS will refer that case to the NCA for discussion by the Clearing House meeting with a view to agreeing which agency is best placed to lead. COPFS will be invited to contribute to any reports to be submitted to the Clearing House and to attend meetings as appropriate.

**5.7** If the allegation concerns a case relevant to Scotland, the COPFS will undertake a development exercise to establish who is best placed to lead the investigation. Should an agency have established primacy inferred from this MoU and engaged on an investigation, any other party will defer any interest, activity or engagement in the case until the primacy issue has been reviewed and resolved as appropriate through negotiation.

**5.8** For all other cases, which are not taken forward by SFO, CoLP, MoD or NCA, the relevant

local police force will be identified as follows:

- where the allegation involves a corporate body, the force where its registered office is located;
- where the allegation is against a British national<sup>2</sup> (and no corporate body is involved), the force for his or her last known address.

**5.9** Where a local police force leads an investigation and requests assistance from the SFO or COLP, the SFO or CoLP will do what it reasonably can to assist by providing support, guidance and advice.

**5.10** The FCA does not carry out enquiries to verify allegations or reports of bribery or corruption by FSMA-authorized financial institutions; where the FCA identifies a case that is relevant to this MoU, it will refer the case to the Clearing House. Where appropriate, it will consider whether there are grounds for regulatory action for failure to put in place adequate anti-bribery and corruption policies and processes to mitigate bribery and corruption risk. In the event that the Clearing House encounters a case that involves a FSMA-authorized financial institution, it will inform the FCA.

**5.11** The investigative agencies (SFO, CoLP, COPFS, MoD Police and the NCA) may request information and help from other parties to this MoU, and any party to whom the request is made will take all reasonable steps to comply with the request (to the extent permitted by law).

### **Timescales**

**5.12** Organisations will aim to meet the following timescales: (i) two weeks from receipt of a (written) report (in acceptable form) to advise the other organisation of its receipt and its initial view as to how it should be dealt with; (ii) two weeks for second organisation to reply, with intimation of its initial view; and (iii) four weeks for agreement to be reached if there is no initial consensus. During these periods of time the organisations will agree what level of investigation each will carry out pending a decision as to primacy.

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<sup>2</sup> In this context a “British national” is an individual falling within section 12(4) of the Bribery Act 2010 or section 109(4) of the ACSA 2001 (depending on which provision applies).

## **6. Prosecution of Offences Covered by this MoU**

**6.1** In cases in which prosecution might be undertaken in more than one UK jurisdiction there will be a discussion as to which organisation should lead. In SFO cases this should be in accordance with the principles set out in the MoU between SFO and COPFS.

**6.2** Part 12 of the Anti-Terrorism, Crime and Security Act 2001 applies only to England and Wales and Northern Ireland. Similar provision was made for Scotland by sections 68 and 69 of the Criminal Justice (Scotland) Act 2003, which were commenced on 28 June 2003. For offences occurring before 1 July 2011 the jurisdictional rules under this legislation will apply. The Bribery Act 2010 applies to England, Wales, Northern Ireland and Scotland. If the person's last address or the incorporated/UK associated body's office is in Scotland, the case should be referred to the Head of the Serious and Organised Crime Division, Crown Office, who will oversee the investigation and prosecution of all such cases.

## **7. Distribution**

**7.1** This MoU will be circulated to all police forces in England and Wales by the Director General of the NCA and distributed to the Police Service of Northern Ireland by the Northern Ireland Office. A copy will also be sent to Police Scotland by the Crown Office and Procurator Fiscal Service.

## **8. Parties to this MoU**

**8.1** This MoU has been agreed by City of London Police, Crown Office Procurator Fiscal Service, Crown Prosecution Service, the Financial Conduct Authority, MoD Police, National Crime Agency, and the Serious Fraud Office.

**8.2** This MoU will be reviewed annually and updated as necessary.

**8.3** This MoU will be placed on the websites of all signatories.

## **9. Additional**

**9.1** The parties to this MoU will note the bilateral Memorandum of Understanding agreed between the SFO and Crown Office and Procurator Fiscal Service on 1 May 2014 (appended hereto as Annex 1).

Revised 2 May 2014

### **ANNEX 3: ROADMAP FOR EXTENSION OF THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS (OECD BRIBERY CONVENTION)**

#### **Background:**

The OECD Anti-Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides related measures that make this effective. It is the only international anti-corruption instrument focused on the 'supply side' of the bribery transaction. The 34 OECD member countries and six non-member countries - Argentina, Brazil, Bulgaria, Colombia, Russia, and South Africa - have adopted this Convention.

#### **The Territories:**

The OECD Bribery Convention has already been extended to three Overseas Territories (OTs) (British Virgin Islands, Caymen Islands and Gibraltar). OTs with significant financial services industries are recommended to put in place the necessary legislation and have the OECD Bribery Convention extended to them. There are four priority OTs (Anguilla, Bermuda, Montserrat and Turks & Caicos) with significant financial services industries that the UK would specifically target as important for extension. Territory leaders agreed at the Joint Ministerial Council in 2012 that territories "continue to meet international standards on tax co-operation, financial sector regulation and combating financial crime, bribery and corruption". The G8 Summit has brought the focus on to the OTs and their status as offshore financial centres. The OECD Bribery Convention is one of five Conventions HMG has identified as a key indicator of international standards.

**Link to OECD Anti-Bribery Convention**

<http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

**Link to UK Bribery Act**

<http://www.legislation.gov.uk/ukpga/2010/23/contents>

	Current Position on OECD Bribery Convention extension and Action taken so far to meet compliancy	Next Steps / Action to be taken	Deadline for Action to be Taken	Provision/request for any technical assistance required. Details of request	Timescale for when OECD Bribery Convention is likely to be extended to Territory
<b>BERMUDA</b>	Cabinet Office and Attorney General's Chambers working on legislation to enable request for extension. In early Feb 2014, Cabinet Secretary and Chair of NAMLC reaffirm commitment on this important matter.	Legislation to be tabled in Summer parliamentary session, expected before end July 2014	Summer 2014	N/A	Following tabling of legislation which we expect to be in early Autumn 2014
<b>TURKS &amp; CAICOS</b>	<i>TCI has some bribery legislation in the Integrity Commission Ordinance. Received consultant's report. Some work still needed.</i>	TCI reviewing recommendations from consultant and verifying whether new legislation prepared since the consultant's report covers the conventions obligations	Autumn 2014		By end 2014

<b>MONTserrat</b>	Montserrat intends to bring into force the Penal Code (Amendment) Bill, which includes bribery of foreign public officials. UK Bribery Act legislation passed to GoM as a guide to what is expected	Montserrat encouraged to put in place bribery law modelled on the UK Bribery Act. Ensure Monserrat meets Article 3.3 which requires parties can seize and confiscation the proceeds of bribery, and Article 8 which requires parties to be able to sanction books and records offences.	October 2014	Montserrat has limited resources but have worked hard to complete an overview of their legislation. Their revised legislation will be passed to HMG for consideration of whether it meets the obligations of the convention.	Early 2015
<b>ANGUILLA</b>	19 Oct 2012 EXCO agreed to introduction of a bribery Act and instructed AG to take forward this work	(i) AG's Chambers to draft based on UK model. (ii) EXCO approval, Public Consultation and HoA pass (iii) UK assess legislation and Anguilla capability to meet Convention Requirements (iv) Anguilla formally request extension of Convention	Governor currently working with EXCO to fix Anguilla's 2014 legislative priorities. Timeframe will depend on this process. Aim to have (i) completed by August 2014.	No request received to date.	December 2014