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BRIBERY AND MONEY LAUNDERING

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14.1 THE BRIBERY ACT 2010

Bribery is a worldwide scourge to rival almost any other modern global ill, such as pollution or people-trafficking.[1] The cost of corruption is estimated to be more than 2 per cent of global GDP—between $1.5 billion and $2 trillion: the World Bank calculates that more than $1 trillion is paid in bribes every year.[2] The European Union Parliament has estimated that corruption costs the EU between €179 and €990 billion each year.[3] In terms of business impact, corruption can increase the cost of doing business by as much as 10 per cent, by distorting markets and deterring trade and investment. In terms of social impact, Transparency International's 2015 Corruption Perception Index estimated that six billion people live in societies where corruption is rife, leading to widespread inequality and poverty.[4] The UK rose to become the eighth cleanest country in the 2017 Corruption Perception Index,[5] but a key issue for UK criminal lawyers is not simply the amount of corruption that occurs within the UK. It is how

[1] See Department for International Development, 'Why Corruption Matters: Understanding Causes, Effects and How to Address Them' (2015), <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf>, chapter 4.

[2] <https://homeofficemedia.blog.gov.uk/2017/12/11/economic-crime-factsheet/>.

[3] European Parliamentary Research Service, *The Cost of Non-Europe in the Area of Organised Crime and Corruption* (2016), <http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579319/EPRS_STU%282016%29579319_EN.pdf>.

[4] Transparency International, 'Corruption Perceptions Index 2015', <https://www.transparency.org/cpi2015>.

[5] Transparency International, 'Corruption Perceptions Index 2017', <file:///H:/Bribery/2017_CPI_Brochure_EN.PDF>.

much corruption is sanctioned or tolerated by officials, or by those with business interests in the UK, in relation to the conduct of their employees or agents working outside the UK (especially in 'at risk' countries that struggle to eliminate corruption). Since 2004, more than £180 million of property in the UK has been brought under criminal investigation as the suspected proceeds of corruption. In more than 75 per cent of these cases, offshore corporate secrecy had been used.[6] This reminds us that in almost no other field is the transnational character of crime better illustrated than in the field of financial crime.[7] It is frequently claimed that the UK is not a corrupt country, based on the UK's favourable placing in Transparency International's Corruption Perception Index (referred to previously). But the degree of the UK's corruption can be judged by a different yardstick: how much of the global proceeds of crime (and of corruption in particular) is laundered through the UK and its Crown Dependencies and Overseas Territories? Judged by that criterion, an alternative view is that, for far too long, successive governments have turned a blind eye to the UK's status as a global corruption 'honey pot'.[8]

It is important to dispel the image of bribery solely involving one wealthy person or business enriching another in order to oil the wheels of commerce, important though that problem may be. Globally, corruption is in fact closely associated with income inequality and poverty. Poorer people have to pay bribes more often for public services, and researchers have found that:

> lower income households and businesses pay a higher proportion of their income in bribes than do middle- or upper-income households: as such, bribes are like a regressive tax, since they [the poor] must allocate a greater amount of their income than the rich to bribes.[9]

In 2010, Parliament swept away most of an ancient patchwork of statutes governing bribery, and replaced them with a single piece of legislation, the Bribery Act 2010. The immediate motivation for doing so was not simply a wish to simplify and modernize the law. Along with many other countries, the UK is a signatory to the Anti-Bribery Convention of the Organisation for Economic Co-operation and Development (OECD).[10] The Convention's main focus is the 'supply side' of bribery, as its affects government and administration in overseas jurisdictions. In other words, the focus is on those—companies or individuals—who pay bribes to foreign public officials. Following a well-publicized scandal involving serious allegations of bribery against a UK-based multinational company, BAE Systems,[11] the OECD Working Group on

[6] <https://homeofficemedia.blog.gov.uk/2017/12/11/economic-crime-factsheet/ (last accessed 08/09/2021).

[7] Mark Button, 'Cross-Border Fraud and the Case for an "Interfraud"' (2012) 35 Policing: An International Journal of Police Strategies & Management 285.

[8] http://www.euronews.com/2017/04/03/the-uk-is-the-most-corrupt-country-in-the-world-anti-mafia-journalists-saviano (last accessed 09/08/2021).

[9] Department for International Development, n 1, at 46.

[10] https://www.oecd.org/corruption/oecdantibriberyconvention.htm (last accessed 09/08/2021).

[11] https://www.theguardian.com/world/bae (last accessed 09/08/2021).

bribery[12] became concerned that the UK lacked the legal resources to prosecute bribery committed overseas by UK corporate entities. The Working Group recommended that the UK 'enact modern foreign bribery legislation and establish effective corporate liability for bribery as a matter of high priority'.[13] The 2010 Act was the result.

The 2010 Act did not, though, simply modernize the language of the existing law and extend corporate liability for bribery. The 2010 Act is recognized as a radical piece of legislation, for two main reasons. First, the 2010 Act is almost unique worldwide in drawing no formal distinction in its main offences between bribery in the public sector and bribery in the private sector (although there is a specific OECD-compliant offence of bribing a foreign public official). Instead of relying on this distinction, prohibitions on bribery in both sectors are defined through a focus on a shared concept of wrongful conduct: the 'improper performance' of a function, in connection with the provision of an advantage of some kind (such as a payment).[14] Whether that function is, say, that of a passport official (a public sector function) or that of a company accounts manager (a private sector function) is not a consideration relevant to liability, although the corrupt betrayal of a public office may in many instances warrant a substantially higher sentence. There are two main reasons for departing from orthodoxy by defining the general offences of bribery without regard to whether the offence involved a public official. The first is pragmatic, albeit important. This is the difficulty, in the modern world, of identifying who is to be regarded as a 'public official' for the purposes of any offence specifically targeted as such persons. For example, are those working for private firms delivering correctional services (aspects of punishment) public officials? Or are they simply private sector workers delivering public services? If the latter are to be included within the scope of any offence focused exclusively on the public sector, then the difficulty of deciding what is a 'public service' arises. Are those who clean the windows of public sector buildings providing a 'public service'? Second, there is an element of arbitrariness in a focus specifically on public sector bribery. For example, many people might regard corruption in the charitable sector as involving a betrayal of the public interest every bit as great as that involved in corruption in (say) local government.

The second reason why the 2010 Act is considered radical is that s 7 of the Act introduced a relatively novel species of offence to English law: the corporate offence of 'failing to prevent' bribery anywhere in the world engaged in by an employee or agent of the commercial organization in question. The offence is aimed at deterring and punishing commercial organizations which fail to ensure proper steps are taken to prevent their employees or agents committing bribery when acting to further the organization's business interests. However, in seeking to achieve its goal, s 7 does not follow the dictates of orthodox criminal law theory by creating a fault-based offence of (say)

[12] The Group is responsible for monitoring the implementation and enforcement of the Convention by member countries.

[13] <http://www.oecd.org/daf/anti-bribery/oecdgroupdemandsrapidukactiontoenactadequateanti-briberylaws.htm>.

[14] 'Improper performance' is defined in s 4.

'negligently allowing bribery to be committed'. Instead, s 7 takes a more sophisticated approach. Section 7 makes it a matter of strict criminal liability that the commercial organization failed to prevent bribery by an employee or agent, while providing a complete defence in s 7(2) if the organization can show that, at the relevant time, it had in place 'adequate procedures' to prevent bribery by employees or agents. So, what the prosecution has to prove beyond reasonable doubt is that the organization failed to prevent bribery. In response to that, if the defence in s 7(2) is invoked, it will be for the organization to show—and not for the prosecution to disprove—that its procedures to prevent such conduct were adequate in relevant respects. The offence is a new departure in English law, because it applies a technique of criminal law creation from the field of regulation (strict liability, plus defence) to the construction of an offence attracting stigma upon conviction (a *malum in se*). Most unusually, when introducing the offence, the government also introduced non-binding guidelines for companies on how to ensure that their procedures would meet the adequacy requirement.[15] The procedures are based around six principles:

(i) *Proportionate procedures* (ie procedures proportionate to the risks involved in doing the business, in context, bearing in mind the size and resources of the firm);

(ii) *Top-level commitment*. Bribery prevention is not just for employees and agents doing deals. There must be a lead taken at Board and senior management level.

(iii) *Risk assessment*. Companies should not do business 'blind'. There needs to be risk assessment, not just in relation to profit-making activity, but also in relation to (say) sub-contracting, joint ventures, and the hiring of employees and agents.

(iv) *Due diligence*. This is in one sense applied risk assessment. It involves, for example, the development of proper procedures for assessing the *bona fides* of individual contracting parties, partners, employees, and agents.

(v) *Communication*. Bribery prevention needs to be 'dynamic', not static. Putting procedures on paper and then filing them in a drawer is not sufficient. There needs to be continuous, active engagement with contracting partners, employees, and agents on the issues, so that they become part of the culture of the firm.

(vi) *Monitoring and review*. The adequacy of procedures in a medium to large-sized firm will almost always, in part, fall to be judged in terms of way in which it seeks to judge its own success or failure, in achieving the goals in (i) to (v). If it has no system for doing that, then its procedures are unlikely to be judged adequate.

It is not a legal requirement that firms follow these guidelines to the letter. However, ignoring them will inevitably involve the risk that, if a firm fails to prevent bribery by one of its employees, agents, or subsidiaries, it will also struggle to establish that its bribery-prevention procedures were adequate.

[15] https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf.

(a) OFFERING, GIVING, REQUESTING, AND RECEIVING A BRIBE

The 2010 Act divides 'bribery' into two offences, one concerned with offering or giving a bribe and one with requesting or receiving a bribe. Two threshold points should be made about both offences. First, the offence of bribery does not require an advantage in fact to be given or received (the point made earlier about the inchoate mode in which the offence is defined). It is enough, for example, that a bribe has been promised. Second, each offence can be committed in one of two sets of circumstances. The first is where the bribe relates to the improper performance of a function. This is called the 'improper influence' model of bribery. The second is where the acceptance of the bribe would itself constitute the improper performance of a function. This is the 'wrongful conduct' model of bribery. This distinction is best illustrated by example.

So far as paying bribes is concerned, s 1 says:

> A person ('P') is guilty of an offence if either of the following cases applies.
> (2) Case 1 is where—
> (a) P offers, promises or gives a financial or other advantage to another person, and (b) P intends the advantage, (i) to induce a person to perform improperly a relevant function or activity, or (ii) to reward a person for the improper performance of such a function or activity.

Case 1 is an example of the 'improper influence' model of bribery. Suppose that P promises R (the recipient) a promotion if R will use his or her position in the company accounts department to conceal some excessive expenditure incurred by P on company business. This promise is an example of 'Case 1' bribery, because P has promised R an advantage (promotion) to induce—influence—R to perform a function improperly.

A key element of Case 1 bribery is that the impropriety lies in the connection between P's conduct and the (non-)performance of the function by R, in the circumstances. In that regard, there need not necessarily be any impropriety in offering the advantage as such. In the example given, it could be that P was going to promote R on merit anyway (so it was not wrong to offer the promotion, as such). What was wrong was seeking to use the opportunity to induce R to do something improper to benefit P (P's 'improper influence'). By contrast, in Case 2, set out in s 1(3), the focus is on the impropriety of offering an advantage as such, in the circumstances (P's 'wrongful conduct'):

> Case 2 is where—
> (a) P offers, promises or gives a financial or other advantage to another person, and (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

In Case 2, there need be nothing specific to be done on R's (the recipient's) part in exchange for P's offer or promise. What matters is that P knows or believes that it would be improper for R to accept the offer or promise. For example, suppose P offers R—a passport officer—£1,000 to process P's passport more quickly, and R accepts the offer. However, in accepting the offer, R conceals from P that P's passport application

has already been successfully processed. This might be fraud on R's part (if the gain is intentionally made through a false implied representation that the passport has not yet been processed) but it is certainly Case 2 bribery, contrary to s 1(3). P must know or believe that for R to (agree to) accept the advantage, in the circumstances, would itself be improper, an improper performance of R's official functions.

In the example just given, R was in a position to perform his or her function improperly in exchange for the advantage offered by P. It is just that the timing of P's offer meant that the facts were such that the function had already been performed. However, the wording of the offence is intentionally meant to cover cases going beyond this, where—as P knows—it would be an improper performance of function for R to accept the advantage. Consider this example:

> A judge, R, rules in P's favour in a case, entirely on the merits, resulting in P receiving a huge award of damages. A year later, P meets R by chance, and offers R an expensive skiing holiday paid for by P's company, as a 'reward' for deciding the case in P's favour.[16]

In this example, P will be liable under s 1(3) for Case 2 bribery, if P knows or believes that it would be an improper performance of R's function for R to accept the offer.[17] In this, UK law goes further than many jurisdictions in its conception of 'bribery'. In the USA, for instance, there must be a connection between an advantage and a specific act requested or performed if the conduct in question is to be regarded as bribery.[18] Simply giving a gratuity to an official is not, in itself, regarded as bribery (although it may be treated as a lesser offence). So, in this respect, UK law is considerably wider.

What about the fault element in s 1? In Case 1, P must be proved to have intended the advantage to induce R to behave improperly, or to have intended to reward R for behaving improperly. In Case 2, P must be shown to have known or believed that it would involve the improper performance of a function for R to accept the advantage as such (Case 2). In Case 1, it is probably accurate to say that the intention that must be proved is a 'conditional' intention; that is, an intention that R should perform his or her function improperly, *if need be*. It would be perverse if P could escape liability by saying that he only intended R to perform the relevant function (in connection with the advantage) if it would be improper for R to do so, and not if R found a way to do it that fell within his or her powers. Case 2 is rightly restricted to cases where P knows or believes that R will perform a function improperly by accepting the advantage. Otherwise the law would be too broad, by including too much risk-taking behaviour.

In broad terms, s 2 of the 2010 Act mirrors s 1, in the way that it defines the offence of bribery as it relates to the person—'R'—who receives or requests the bribe. In other words, the focus is either on cases in which the focus is on improper influence: the improper performance connected to the advantage ('Case 3'); or on cases of wrongful

[16] See the discussion in Law Commission, n 22, para 3.184.

[17] Courts and Tribunals Judiciary, *Guide to Judicial Conduct (2018)*, <https://www.judiciary.uk/wp-content/uploads/2016/07/judicial-conduct-v2018-final-2.pdf>, 12–13.

[18] *US* v *Sun-Diamond Growers of California* 526 US 398 (1999).

conduct: where the focus is on the impropriety in itself of asking for an advantage ('Case 4'). The relevant part of s 2 says:

> Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).
>
> Case 4 is where (a) R requests, agrees to receive or accepts a financial or other advantage, and (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.[19]

So, if a university lecturer asks a student for payment in order to write an unduly favourable testimonial for the student, such conduct will fall within s 2(2) as an example of Case 3: improper influence. By contrast, suppose that a passport officer writes to an applicant asking for sexual favours in exchange for processing the passport application, without telling the applicant that the application has already been successfully processed. Such a case will be a 'Case 4' case, falling under s 2(3): wrongful conduct. The first conviction under the 2010 came under s 2 of the 2010 Act. A Court Clerk at Redbridge Magistrates Court wrote to people charged with traffic offences offering to remove the details of their cases from the system, in exchange for payment. He was sentenced to imprisonment for six years.[20]

Section 2 makes it clear that R may be liable, even when the relevant function is performed improperly by someone else (eg at R's direction), and even when the advantage is to benefit another person. The latter provision (s 2(6)(b)) is crucial, because R will commonly request advantages for his or her family or friends, or for a nominally independent organization in fact controlled by R. Most importantly, s 2(7) also makes it clear that in Case 4,[21] 'it does not matter whether R knows or believes that the performance of the function or activity is improper'. In Case 4, by way of contrast with Case 3, there is no mental element to be proved by the prosecution separate from the intention to request or receive the advantage. Section 2 thus creates significant and stigmatic offences of no fault liability for bribery, where R's liability is concerned. Considering the contrast between Case 2 and Case 4, while, as we have seen, P must know or believe that it would be improper for R to accept the advantage, it is not necessary for R to know or believe that his or her acceptance of the advantage would be improper. So, were P and R to be jointly charged in the same proceedings in respect of the same course of conduct, the prosecution would have to prove fault against P, but not against R.

One justification for this difference is that R (who is after all responsible for performing the relevant function) is simply assumed to know what the limits of propriety are in relation to performance. The argument is that it should not be necessary for the prosecution to have to prove that, say, a police officer was aware that it would be improper for him or her privately to accept a reward for doing his or her duty. It can be taken for

[19] The Bribery Act 2010, s 2 also deals with two further sets of cases targeted at R, in s 2(4) and s 2(5).
[20] https://www.bbc.co.uk/news/uk-england-london-15689869 (last accessed 10/08/2021).
[21] Also, in cases 5 and 6, not discussed here.

granted that the officer knows this.[22] While that may be true in this instance, it may be more doubtful in other cases covered by s 2. Suppose a newspaper's restaurant critic (R) accepts a weekend stay offered by a hotel, some weeks after the hotel noticed that the critic had favourably reviewed its restaurant. It seems harsh to say that it is irrelevant to the question of R's liability for bribery, contrary to s 2, whether or not R knew or believed that acceptance of the offer would be improper. There is, though, a second justification for the hardline stance on (no) fault dictated by s 2(7). This is that the Law Commission, whose draft Bill formed the basis for the new law, did not wish to retain in the new law vestiges of the old that had led to persistent uncertainty, such as the requirement that a defendant have acted 'corruptly' (possibly meaning 'dishonestly').[23] In that respect it should be noted that, in its proposals for reform of the offence of misconduct in a public office, the Law Commission took the view that, amongst other things, D need only be 'aware of the circumstances which determine that the position in question is a public office'.[24] The Law Commission did not stipulate that D must be aware that he or she in fact occupied a public office. Such an approach is not all that dissimilar to the approach taken to Case 4 in the 2010 Act. It follows, thus, that if cases such as that of the restaurant critic should not be prosecuted, this must come about through a favourable exercise of prosecutorial discretion.

(b) WHAT IS THE 'IMPROPRIETY' IN BRIBERY?

Something must be said about what makes it 'improper' for someone to offer or request an advantage. Suppose that R, who is employed by P, finds that he or she has had to work exceptionally hard to meet a work deadline set by P. In consequence, R asks P for a salary supplement as a reward for his or her hard work. Such conduct should clearly not fall foul of s 2, because the making of such a request for an advantage does not constitute an 'improper' performance of R's function. Similarly, suppose Company X is competing for a contract with Company Y. An agent of Company X contacts Company Y to suggest that Company X should be awarded the contract because of Company X's history of prompt and efficient performance of contracts with Company Y. Quite obviously, such a request for an advantage—the award of the contract—cannot be regarded as improper; on the contrary, it is perfectly legitimate market practice. Sections 3 and 4 of the 2010 Act seek to address the difficult problem of distinguishing between proper and improper performances of a function for the purpose of defining bribery.

Section 3 says that a function or activity will only be capable of being performed 'improperly', for the purposes of the law of bribery, if it meets one or more of the following conditions:

> (3) Condition A is that a person performing the function or activity is expected to perform it *in good faith*.

[22] Law Commission, *Reforming Bribery* (Law Com no 313, 2008), para 3.190.
[23] Law Commission, n 22, part 1.
[24] Law Commission, *Reforming Misconduct in Public Office: Summary* (CP 229, 2006), para 1.43.

(4) Condition B is that a person performing the function or activity is expected to perform it *impartially*.

(5) Condition C is that a person performing the function or activity is *in a position of trust* by virtue of performing it.[25]

The 2010 Act sought to avoid giving overly technical descriptions of when someone was under an obligation to behave with integrity in relation to the offer or acceptance of advantages in the public or commercial spheres. So, s 3(3)–(5) gives ordinary language understandings, suitable for application by juries, of when such obligations arise. Crucially, as indicated earlier, no distinction is drawn between functions performed in the public and in the private sectors. Seeking to employ that distinction inevitably entails the drawing of difficult, and perhaps arbitrary, distinctions when, as suggested earlier, the activities of officers of major charities are in issue. Most people think of charities as performing public services, but many are in fact private bodies, albeit private bodies regulated by a public body, the Charity Commission. So if, for example, a charity worker offers aid in exchange for sexual favours, under the 2010 Act there will be no need—by way of contrast with almost all other jurisdictions—to decide whether the worker is performing some kind of 'public' function. What will matter is whether he or she is in the course of employment—s 3(2)(c)—and whether he or she is in a position of trust—s 3(5). The answer to both of those questions will clearly be 'yes'.

It is, obviously, not enough simply that R is performing a function or activity that meets the criteria set out in s 3. R must (offer to) do something *wrong*, or P must ask R to act *wrongly*. In that regard, s 4 says:

For the purposes of this Act a relevant function or activity—

(a) is performed improperly if it is performed in breach of a relevant expectation, and

(b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

This is an abstract statement of principle, but what it requires the prosecution to show is simply that it was in the nature of the function or activity being performed (or to be performed) by R that it involved an 'expectation' that R would act, to use the language of s 3, in good faith, impartially, or in accordance with the position of trust they were in. To go back to our example of the charity worker, he or she is in a 'position of trust' vis-à-vis the recipients of aid (s 3), and has—or so we may assume—clearly breached an 'expectation' of how he or she will behave in relation to the discharge of that position of trust, although this is ultimately a matter for the jury. The broad, ordinary language terms in which ss 3 and 4 are drafted means that there will be controversy in some cases over the application of the 2010 Act. Suppose that a search engine places advertisements on the first search page if the companies being advertised pay for that to happen, or imagine that a supermarket accepts payment to display goods at the checkout if the producers pay them enough to place the goods for sale there. Is the search engine

[25] Our emphasis throughout.

or the supermarket under a duty of good faith or impartiality, or in a position of trust, in relation to these marketing activities (s 3)? Even if one or other of them is found by the jury to be under such a duty, has there been a breach of an expectation about how the duty will be performed (s 4)? Perhaps such activities by search engines and supermarkets are so well-known and broadly tolerated, even if we might wish they did not engage in them, that there has been no breach of a relevant expectation.

(c) TACKLING BRIBERY OVERSEAS

A key aim of the 2010 Act was to provide a legal basis for deterring and punishing individuals, and in particular commercial organizations, who seek to engage in (or in some way tolerate or permit) bribery overseas. It could be argued that, in some countries, it is all but impossible to do business without engaging in bribery, and so to prohibit such conduct shuts businesses out of these countries, to the detriment of both. Such arguments should be resisted. It is in principle wrong for firms who know they must obey the rule of law and respect ethical commercial practice at home to throw off those constraints when doing business abroad, effectively undermining any efforts the relevant countries might make to establish and enforce such obedience and respect. International (commercial) relations are not worth establishing if such an ethical price must be paid. For that reason, English law resists the principle, embedded in US law and some other jurisdictions as it applies to overseas bribery, that the provision of small bribes (so-called facilitation payments) is acceptable.[26]

To begin with, in describing the relevant functions respecting which improper performance may amount to bribery, s 3(6) of the 2010 Act says that a function or activity is a relevant function or activity even if it:

(a) has no connection with the United Kingdom, and

(b) is performed in a country or territory outside the United Kingdom.

Further, in terms of the expectations one should have of people performing such functions, s 4 of the 2010 Act says:

> (1) For the purposes of sections 3 and 4, the test of what is expected is a test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned.
>
> (2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of any part of the United Kingdom, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.

[26] See TRACE, 'The High Cost of Small Bribes' (2015), <https://www.traceinternational.org/Uploads/PublicationFiles/TheHighCostofSmallBribes2015.pdf>. However, it does not follow that it will always be in the public interest to prosecute a company for paying a small facilitation payment. See Serious Fraud Office, 'Bribery Act Guidance' (2012), <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/bribery-act-guidance/>.

Put together, in effect, what these sections entail is that when deciding what is expected of, say, a foreign commercial agent engaging in a tendering process in an overseas jurisdiction on behalf of a UK firm, the standard of ethical conduct to be expected of that agent is the standard that would be expected of a comparable person engaging in such a process in the UK. There is not one (highly ethical) rule for commercial agents and public officials in the UK, and another (lax ethical) rule for commercial agents and public officials overseas. A number of the Deferred Prosecution Agreements reached between Companies and the Serious Fraud Office have involved bribery that took place overseas.[27]

Second, the 2010 Act creates specific offences of bribing a foreign public official (s 6)[28] and, as indicated earlier, of corporate failing to prevent bribery by someone associated with the company—anywhere in the world—who was seeking to obtain business or an advantage in the conduct of business for the commercial organization in question (s 7). The latter offence, as we have seen, is subject to a defence that the commercial organization had in place 'adequate procedures' to prevent bribery, even though bribery was in fact committed by someone associated with the organization. The key part of s 7 reads:

> A relevant commercial organisation ('C') is guilty of an offence under this section if a person ('A') associated with C bribes another person intending—
>
> (a) to obtain or retain business for C, or
>
> (b) to obtain or retain an advantage in the conduct of business for C.
>
> (2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

As indicated above, Parliament has provided guidance for commercial organizations on what will amount to 'adequate procedures'.[29] What is 'adequate' will depend very much, amongst other things, on the nature of the organization, on the kind of business in which it is engaged (and how it does its business), and on where and with whom it trades. To give one kind of contrast, the bureaucratic demands of adequate procedures on a multinational firm engaged in the arms trade in a number of vulnerable countries are likely to be heavy, whereas the demands on a UK-based window cleaner employing only one family member are going to be all but non-existent. In 2018 the Serious Fraud Office obtained its first conviction under s 7, in a contested case where the defendant

[27] See e.g. https://www.sfo.gov.uk/download/airbus-se-deferred-prosecution-agreement-statement-of-facts/ (last accessed 10/08/2021).

[28] In practice, the offence under s 1 of the 2010 Act is likely to cover all instances of s 6. The purpose of s 6, as a separate offence, is to mirror the language used in the OECD Anti-Bribery Convention, which has been adopted in other jurisdictions. That will make it easier for UK courts to interpret s 6 in the light of bribery law jurisprudence in those other jurisdictions.

[29] <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>, analysed by Transparency International in 2010, <http://www.transparency.org.uk/publications/adequate-procedures-checklist-pdf/#.WzfANdJKjIU>.

had pleaded that its procedures to prevent bribery were adequate, a claim rejected by the jury. The managing director of Skansen Interior Ltd had made two payments—bribes—totalling £10,000 to a Manchester property company, as part of an attempt to secure a £6 million refurbishment contract. Skansen's new CEO discovered the payments, fired the managing director, put in place an anti-bribery policy, informed the authorities of what had happened, and assisted with the investigation.[30] The company was nonetheless charged with, and convicted of, failing to prevent bribery.[31] The prosecution was arguably harsh because, even though the case against Skansen was evidentially strong, if a prosecution is undertaken even when a company has reformed itself, disclosed its wrongdoing, and assisted the authorities then there seems to be little incentive for other firms to be co-operative in this way, although evidence of such actions may of course lead to a reduced sentence.[32]

A crucial element of the s 7 offence is the way in which, in virtue of s 8, it attributes liability to the commercial organization (C) for the acts of persons ('agents')—including corporate persons—who in fact engaged in the bribery for C's benefit, while being 'associated with' C, albeit not as employees. An example would be where C (a UK-based firm) sets up a subsidiary company (A) in a country with weak corruption controls, or where regulators can be paid to ignore the subsidiary's activity. The subsidiary then pays bribes—perhaps in a third country—to secure contracts that will, in fact, benefit C. In this way, C hopes to secure contracts through bribery, but without the bribery being traced back to C in law. As a matter of general principle, in company law, the acts of subsidiary companies are not attributable to the parent company,[33] although in some instances the courts will impose liability in tort on a parent company for the acts of a subsidiary.[34] Section 8(4) seeks to ensure that, when in reality the subsidiary is acting to benefit the parent company through corruption, the criminal consequences are visited on the parent company (C).[35] In 2016, the first ever conviction under s 7 was obtained by the Serious Fraud Office against Sweett Group (PLC).[36] Sweett's Middle Eastern subsidiary, CSI, made corrupt payments to Khaled Al Badie, a senior board member of Al Ain Ahlia Insurance (AAAI), in order to secure a contract relating to the building of a £63 million hotel in Dubai.[37]

[30] See https://publications.parliament.uk/pa/ld201719/ldselect/ldbribact/303/30309.htm, paras 218–226.

[31] The managing director, Banks, was subsequently convicted of bribery and sentenced to 12 months' imprisonment, and was disqualified from acting as a company director for six years: <https://www.cps.gov.uk/cps/news/company-directors-jailed-bribery>.

[32] This was, though, an unusual case, because Skansen was a dormant company with no assets. It could not, thus, pay a fine as part of an agreement to avoid prosecution, and indeed, following conviction, was given an absolute discharge by the judge.

[33] *Adams* v *Cape Industries* [1990] Ch 433.

[34] *HRH Emere Godwin Bebe Okpabi & Ors* v *Royal Dutch Shell Plc & Anor* [2017] EWHC 89 (TCC).

[35] For more detailed analysis, see Jeremy Horder and Gabriele Watts, 'The Scope of Liability for Failure to Prevent Economic Crime' [2021] Crime LR 851.

[36] <https://www.sfo.gov.uk/cases/sweett-group/>.

[37] https://www.sfo.gov.uk/2016/02/19/sweett-group-plc-sentenced-and-ordered-to-pay-2-3-million-after-bribery-act-conviction/ (last accessed 15/12/2021).

Since then, a number of Deferred Prosecution Agreements have been reached between the Serious Fraud Office and companies admitted liability under s 7. For example, in 2020, a settlement was reached with Airbus SE under which it agreed to pay a fine and costs amounting to €991m in the UK, and in total €3.6bn worldwide. This was the world's largest global resolution for bribery, involving authorities in France and the United States, following allegations that the company had used external consultants to bribe customers to buy its civilian and military aircrafts. The conduct covered by the UK agreement took place across five jurisdictions: Sri Lanka, Malaysia, Indonesia, Taiwan, and Ghana, between 2011 and 2015. In spite of the extent and gravity of the company's wrongdoing, a settlement was approved by a High Court Judge in the light of the full cooperation given by Airbus SE in the investigation, and the programme of corporate reform and compliance put in place by new leadership at the top of the company.[38] That might sound like an ideal outcome for all concerned. However, there is a considerable irony about the success of the Serious Fraud Office in concluding Deferred Prosecution Agreements relation to s 7 offending. This is that the strict liability 'failure to prevent' offence was designed to make *prosecution* of companies easier, because prosecutors would not have to satisfy the identification doctrine requiring proof that a director (or equivalent person) committed an offence that involved a fault element. Insofar as the introduction of the 'failure to prevent' offence has not led to completed prosecutions for bribery that would have failed before 2010 because of the need to prove high-level fault, then it cannot be counted as a success.

14.2 MONEY LAUNDERING

In order for their activities to produce stable profits, criminals must manage their assets, just like legitimate asset-holders. A key aim will be to give the appearance that money in fact derived from criminal activity—trafficking, fraud, bribery, and so on—is legitimately owned, or at least to ensure that the illegitimacy of the holding cannot be proved. The process engaged in to achieve this is known as the money laundering 'cycle' (placement, layering, and integration[39]). The Home Office estimates that the impact of money laundering on the UK economy is likely to exceed £90 billion, yet in 2016, only 1,435 people were convicted of money laundering offences.[40] In spite of efforts to freeze or to recover them, the value of assets frozen or recovered lags well behind the total value of laundered assets in the economy. The recently established Joint Money Laundering Intelligence Taskforce contributed to more than 1,000 bank-led investigations into suspicious customers, and to the closure of more than 450 suspicious bank accounts, in 2016–17, but it enabled the recovery of only £7 million in criminal funds.[41]

[38] https://www.sfo.gov.uk/download/airbus-se-deferred-prosecution-agreement-statement-of-facts/ (last accessed 10/08/2021).

[39] <http://www.unodc.org/unodc/en/money-laundring/laundrycycle.html>.

[40] <https://homeofficemedia.blog.gov.uk/2017/12/11/economic-crime-factsheet/>.

[41] <https://homeofficemedia.blog.gov.uk/2017/12/11/economic-crime-factsheet/>. Although, under the Proceeds of Crime Act 2002, law enforcement agencies confiscated £201 million from criminals during 2016/17.

The ability to move the proceeds of crime—such as fraud, bribery, and drug-related offences—into the legitimate economy more or less undetected provides an undoubted incentive to invest time and effort into the development of large-scale, long-term criminal activity. In turn, the flourishing of such criminal activity may pose a threat to vulnerable economies, to the integrity of public officials, and in some instances to people's physical safety. Legislation in this area has three principal aims: to recover the proceeds of crime, to establish appropriate regulatory systems to detect and deter money laundering, and to punish activity that involves engaging in, or assisting or encouraging, money laundering. We will be concerned mainly with the last of these, the role of the criminal law, although this role is inextricably tied to the regulatory aims of the legislation.[42] A controversial issue concerns the right balance to be struck in terms of focus and prioritizing as between these three aims. Arguably, the criminal law should be concerned solely or largely with those actively engaged in dishonest conduct associated with money laundering. Those whose culpability (if any) lies solely in a failure to set up adequate systems to detect and deter money laundering, or in a simple failure to provide information of use to law enforcement authorities, should perhaps face regulatory but not criminal sanctions. Currently, the UK applies the criminal law to the latter as well as to the former.

The main criminal offences connected to money laundering are to be found in the Proceeds of Crime Act 2002, the inspiration for which is to be found in a series of European Directives seeking to establish a common European approach to the problem.[43] The 2002 Act introduces a draconian regime designed not only to provide as a matter of civil law for, among other things, asset recovery and the prevention of the movement of criminal assets (restraint proceedings) but also to punish and deter those who engage in and assist money laundering. Here, the focus is on some of the key criminal law aspects of the legislation. As we saw in the discussion of bribery and corporate activity, a key question that arises is whether the criminal law or regulatory law is a more appropriate way to address some of the problems that arise. That is because the criminal part of legislation targets not only those seeking to launder money but also, for example, banks which open accounts that are then used for money laundering.[44]

The key sections of the 2002 Act are ss 327–9, which create the money laundering offences. These are serious offences, carrying a maximum sentence of 14 years' imprisonment. They must be read in conjunction with s 340 that defines 'criminal conduct' and 'criminal property' for the purposes of applying ss 327–9. To begin with, under s 340, 'criminal conduct' is conduct that is an offence under UK law, or—where the conduct occurs overseas—would be considered an offence under UK law had it occurred

[42] L. Campbell, 'Dirty Cash (Money Talks): 4AMLD and the Money Laundering Regulations 2017' (2018) Criminal Law Review 102. See also the Criminal Finances Act 2017.

[43] M. Levi, 'Money Laundering and Its Regulation' (2002) Annals of the American Academy of Political and Social Science 181.

[44] S. Kebbell, '"Everybody's Looking at Nothing"—The Legal Profession and the Disproportionate Burden of the Proceeds of Crime Act 2002' [2017] Crim LR 741.

here.[45] This provision is one of those designed to ensure that the 2002 Act is not unduly hampered by jurisdictional limitations. Criminal conduct is sometimes called the 'predicate offence', to distinguish it from the money laundering offences created by the 2002 Act. It is not necessary for the prosecution to prove that any particular crime, or type of crime, was committed constituting the 'criminal conduct' (predicate offence). It will be sufficient for the prosecution to introduce evidence of circumstances in which the property was handled capable of giving rise to an irresistible inference that the property in question was derived from criminal conduct (whether or not there has been a conviction for the criminal conduct in question).[46] It is not necessary to show that the property was the derived from the commission of a particular crime.[47] So, for example, if D is caught in possession of £2 million in cash and a sawn-off shotgun, the irresistible inference may very well be that D has acquired property that is a benefit from 'criminal' conduct.[48] However, it would be open to D to claim that, for example, the cash was legitimately acquired, even though D admits that it was to be used to commit an offence in the future—for then D's possession of the cash is not based on or connected to prior criminal conduct.[49]

Second, under s 340, 'criminal property' is property that constitutes or represents (directly or indirectly) a benefit[50] from 'criminal conduct', and where the suspected offender knows or suspects that this is the case. Unusually, thus, a circumstance element of the crime—that the property is criminal property—is defined in terms of a combination of an external element (the property must be the product of crime) and a fault element (the suspect's knowledge or suspicion that this is the case). It follows that D will not be guilty if he or she did not know or suspect that property was a benefit from criminal conduct (when the fault element is missing), but D will also not be guilty where—even if, for example, D acquires property strongly suspecting that it is criminal—the property is not in fact a benefit from criminal conduct.[51] By s 340(4), it will not matter who carried out the criminal conduct or who benefited from it, though: D may be guilty in handling the criminal property even though D does not him or

[45] This is known as the 'all crimes' approach to money laundering, sometimes criticized for drawing too much conduct within the scope of the money laundering net. By contrast, EU legislation focuses on serious crimes as a basis for its money laundering provisions.

[46] *Anwoir* [2008] EWCA Crim 1354; Crown Prosecution Service, https://www.cps.gov.uk/legal-guidance/money-laundering-offences (last accessed 10/08/2021). The criminal conduct extends to D's own conduct: *Greaves* [2010] EWCA Crim 709. In other words, D need not be laundering money that is the proceeds of someone else's crime.

[47] *Anwoir* [2008] EWCA Crim 1354.

[48] See the discussion in D. Ormerod and K. Laird (eds), *Smith and Hogan's Criminal Law* (14th edn, 2015), 1132–4.

[49] See *Geary* [2010] EWCA Crim 1925.

[50] Meaning that it was acquired as a result of or in connection with the criminal conduct. In that regard, it will not matter how small or insignificant the sum or nature of the property is: there is no 'de minimis' principle governing the legislation. For criticism, see House of Lords, EU Committee Report, July 2009, para 4.

[51] *R* v *Montila* [2005] 1 WLR 3141. In such a case, D may still be guilty of an attempt to commit the offence, contrary to the Criminal Attempts Act 1981.

herself benefit from the criminal conduct, and even though D has no connection with or knowledge of the person who engaged in the criminal conduct (an example might be one in which D finds a very large sum of money in a barrel abandoned on a beach). The prosecution must prove that the property was already the product of criminal activity at the time of any concealment, disguise, conversion, or transfer;[52] however, an arrangement made in advance of engaging in one of these acts to handle property that is not yet criminal property (eg because it is yet to be stolen) will be covered if and insofar as the property will be criminal property by the time the act of concealment *etc* takes place.[53]

With that background in mind, we can turn to the offences created by ss 327–9. Section 327 is concerned with the 'concealing etc' of criminal property:

(1) A person commits an offence if he—

- (a) conceals criminal property;
- (b) disguises criminal property;
- (c) converts criminal property;
- (d) transfers criminal property;
- (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

Thus defined, the offence includes common or garden handling of stolen goods: an example is *Thompson*, in which D sold a stolen train set for £180 when its true value was £3,500.[54] However, it extends beyond such cases to include, for example, allowing one's bank account to be used to pay in the proceeds of fraud.[55] Section 329 creates an allied offence in which the external element is complete when D 'acquires . . . uses . . . [or] . . . has possession of' criminal property.[56] The offence is wide enough to cover anyone who themselves steals money by one of the specified means, making them a thief and a money launderer at the same time. Section 328 creates a very wide offence of entering into or becoming concerned in an arrangement which D 'knows or suspects facilitates . . . the acquisition, retention, use or control of criminal property by or on behalf of another person'. The Crown Prosecution Service regards the offence contrary to s 328 as targeted principally at the so-called layering and integration stages of money laundering.[57] Bearing in mind the definition of criminal property in s 340, ss 327–9 require the prosecution to prove that D engaged in one or more of the acts mentioned, 'knowing or suspecting' that relevant circumstance element obtains. So,

[52] *Haque* [2019] EWCA Crim 1028. [53] *GH* [2015] UKSC 24.

[54] [2010] EWCA Crim 1216. [55] *Fazal* [2009] EWCA Crim 1697.

[56] It should be noted that this offence has a defence not available in respect of the other offences, namely that the property was acquired in exchange for adequate consideration.

[57] See n 10; Crown Prosecution Service, <https://www.cps.gov.uk/legal-guidance/proceeds-crime-act-2002-part-7-money-laundering-offences>: 'This is the offence which will often be apt for the prosecution of those who launder on behalf of others. It can catch persons who work in financial or credit institutions, accountants etc, who in the course of their work facilitate money laundering by or on behalf of other persons.'

for example, in the s 327 offence, D must be shown to have known or suspected that the property constitutes or represented the benefit of criminal conduct when he or she did one of the acts mentioned in s 327(1)(a)–(e). Similarly, in s 328, D must be shown to have known or suspected that the arrangement facilitated the acquisition and so on of criminal property when entering into or becoming concerned in that arrangement.

The inclusion of cases not only in which D knows or believes but also in which D merely 'suspects' that the relevant circumstance element obtains (eg that the property in question constitutes or represents the benefit of criminal conduct), at the time of the relevant act, casts the net of liability very wide indeed. The Court of Appeal has held that a 'suspicion', for the purposes of this offence, need be neither 'clear' nor 'firmly grounded and targeted on specific facts', nor 'based upon reasonable grounds'.[58] Suspicion need be no more than 'a state of conjecture or surmise where proof is lacking'.[59] Suppose that D1 lives next door to D2. D1 knows that D2 engages from time to time in the theft of household goods. On D1's birthday, D2 calls round to give D2 an electric clock radio as a present. Reluctant to ask any questions about the possible origins of the gift, D1 accepts it. D1 will be guilty of the s 329 offence if the clock is in fact criminal property (unless one of the specialized defences in the 2002 Act applies).

As indicated above, the offences under ss 327–9 bear some similarity to the offence of handling stolen goods, contrary to s 22 of the Theft Act 1968.[60] However, the latter offence requires proof that D knew or *believed* that the goods were stolen at the time of handling. Proof that D suspected that the goods handled were stolen is not enough. Further, under s 22 of the 1968 Act, even proof that D knew or believed that the goods were stolen at the time of handling is not sufficient. The prosecution must prove that D was dishonest as well. There is no evidence that the wider concept of fault—embracing suspicion alongside knowledge—gives law enforcement under ss 327–9 significant capabilities that would be lacking, if proof was required of knowledge or belief (excluding mere suspicion). Furthermore, the absence of a dishonesty requirement means that the offences under ss 327–9 can in some circumstances, in effect, be committed through ignorance or negligence. Suppose that, in a variation on the example just given, D1 recognizes that the clock D2 offers him as a present belongs to V, and knows that D2 has stolen it; but because V is a great friend of D1 and has many such clocks, D1 thinks that V would welcome D1 having the clock as a birthday present. In this example, D1 would be able to deny acting 'dishonestly' if charged with handling the stolen clock, but would have no such defence to a charge contrary to s 329.

There is an important defence to the offences created by ss 327–9 under s 338.[61] This is where D makes an 'authorized disclosure' of his or her acts to nominated officials.

[58] *R* v *Silva* [2006] EWCA Crim 1654, at 16.

[59] *Hussein* v *Chang Fook Kam* [1970] AC 942, at 948, cited by D. Ormerod and K. Laird (eds), n 48, 1136–7.

[60] Although the regulatory orientation of the former, as compared with the latter, is highlighted by the ability of the Financial Conduct Authority to bring prosecutions for offences against sections 327–9 but not for handling: *R* v *Rollins* [2010] UKSC 39.

[61] See further *Bowman* v *Fels* [2005] 1 WLR 3083. A further defence was created by the Serious Organised Crime and Police Act 2005, to cover the situation in which D knows or reasonably believes that the allegedly criminal conduct occurred in a country where it was not a criminal offence to engage in it.

The defence may apply (a) before D engages in one of the prohibited acts; (b) when D has innocently engaged in one of the acts prohibited by ss 327–9, but then becomes suspicious and on his own initiative makes a disclosure as soon as practicable; or (c) after D has engaged in the prohibited acts with the fault element, but has a reasonable excuse for having failed to disclose beforehand, and then voluntarily discloses as soon as practicable. The regulatory cast to this defence is strengthened by the creation of an offence, in s 339, of failing with reasonable excuse to make a 'disclosure' in a specified statutory form. This defence is a nod towards the fact that many organizations—law firms, banks, and other commercial organizations—will not infrequently be confronted with transactions about which they are (at the very least) suspicious. In that regard, one possible law enforcement strategy would have been to rely solely or largely on the threat of prosecution of such organizations, to deter them from having anything to do with such transactions. The defence in s 338 introduces a more sophisticated approach. It makes it possible to shape prosecution policy through a strategy of deterrence of would-be money launderers themselves, by providing an incentive to organizations to expose the potential launderers' activities to the authorities.[62] The approach is buttressed by the offences in ss 333 and 338 of 'tipping off' a suspected money launderer about a disclosure to the authorities. The importance of this strategy is emphasized in a recent report highlighting the role of professional advisers in money laundering:

> The substantial risk from high end money laundering . . . typically involv[es] the laundering of major frauds, corruption or tax evasion through exploitation of financial and other professional services . . . Professional services are a crucial gateway for criminals looking to disguise the origin of their funds.[63]

In that regard, s 330 of the 2002 Act also makes it a serious offence for any person to fail to disclose the identity of a suspected money launderer, or the whereabouts of laundered property, if the information comes to them in the course of working in the regulated (broadly, financial) sector.[64] To make such a failure subject to severe criminal sanctions rather than simply regulatory penalties (as in many other countries) is a draconian step. It is designed, in the words of the Crown Prosecution Service, 'to emphasise the importance of proper systems of reporting and control', but that is normally the kind of goal achieved through regulation rather than though the threat of criminal sanctions.[65]

In virtue of s 330(2), the offence is only committed where the information comes to D and he or she '(a) knows or suspects, or (b) has reasonable grounds for knowing

[62] However, it should be noted that the making of the disclosure is voluntary. A person could decide to run the risk of non-disclosure.

[63] HM Treasury, 'National Risk Assessment of Money Laundering and Terrorist Financing 2017', <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf>, p 5.

[64] The offence is punishable by up to five years' imprisonment.

[65] Crown Prosecution Service, 'Proceeds of Crime Act 2002 Part 7: Money Laundering Offences', <https://www.cps.gov.uk/legal-guidance/proceeds-crime-act-2002-part-7-money-laundering-offences>.

or suspecting, that another person is engaged in money laundering'. So, a failure to report is subject to criminal sanctions even if the person failing to make the disclosure had no knowledge or suspicion that money laundering might be taking place; it is enough that there were reasonable grounds for knowing or suspecting this, making the offence one that can be committed by negligence.[66] Unsurprisingly, thus, many regulated institutions have taken a safety-first approach, making 'suspicious activity reports' ('SARs') whenever there might be the slightest doubt about the integrity of a transaction.[67] However, such institutions may find themselves on the horns of a dilemma when it comes to information provision. It is an offence to 'tip off' someone suspected of money laundering that a disclosure to the authorities has been made or that an investigation is in train (s 333), punishable by up to five years' imprisonment. Further, under the Money Laundering Regulations 2017, if, in purported compliance with the regulatory obligations imposed by those regulations, a regulated institution knowingly or recklessly provides information that is false or misleading in a material particular, an offence is also committed, which is punishable by up to two years' imprisonment (s 88).

The UK Financial Intelligence Unit received 354,186 SARs in 2013–14 and 419,451 in 2015–16.[68] Finding a criminal 'needle' in such an information 'haystack' inevitably poses considerable challenges. In 2016, only 1,435 individuals were convicted of money laundering in the UK.[69] There are nearly ten times as many prosecutions for bicycle theft. Further, the extent of confiscation of the proceeds of crime by national authorities remains disappointing. The National Audit Office reported in 2015–16 that enforcement agencies collected £155 million from confiscation orders in 2014–15, but the cost of administering the process was itself more than £100 million. That compares with the estimated figure of £100 billion in assets thought to be laundered through the UK each year, a figure large than the GDP of more than 130 countries worldwide.[70] A more sophisticated regulatory, as opposed to purely criminal law, approach to the problem may be required. That would involve more systematic collaboration between regulators and the regulated industry, aimed at encouraging the disruption of money laundering activity in the most serious cases, with the threat of sanctions playing only a background role.

[66] Williams et al, *Millington and Sutherland Williams on the Proceeds of Crime* (5th edn, 2018), at para 21.20. See the decision of the Supreme Court, relating to similar wording governing terrorist funding, in *R* v *Lane; R* v *Letts* [2018] UKSC 36.

[67] Williams et al, n 66, at para 21.05.

[68] That contrasts with the numbers in other EU countries, where there is a focus on serious crimes: Germany, 9,080 SARs in 2007; Italy, 12,894 SARs in 2008; Spain, 2,783 SARs in 2007.

[69] HM Treasury, 'National Risk Assessment of Money Laundering and Terrorist Financing 2017', <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf>, para 1.22. It should be noted that criminals may also be charged and convicted under the relevant predicate offence.

[70] Williams et al, n 66, Preface.

Further Reading

Nicholas Cropp, 'The Bribery Act 2010: Part Four: A Comparison with the Foreign Corrupt Practices Act: Nuance v. Nous' [2011] Crim LR 122.

Stephen Gentle, 'The Bribery Act 2010: Part Two: The Corporate Offence' [2011] Crim LR 101.

Jeremy Horder and Gabriele Watts, 'The Scope of Liability for Failure to Prevent Economic Crime' [2021] Crim LR 851

S. Kebbell, '"Everybody's Looking at Nothing"—The Legal Profession and the Disproportionate Burden of the Proceeds of Crime Act 2002' [2017] Crim LR 741.