

# Practical Law

## Business Crime & Investigations



**USAGE  
SCENARIO**

### Bribery

#### Client problem

You are the in-house counsel for a company which has recently won a contract to provide services to another company. The board have approached you stating they have received information that the contract may have been won with a bribe and have chosen to investigate.

The following outlines the steps which should be taken throughout the investigation.

#### The criminal offence of bribery

To ensure the board understand the criminal offence of bribery and how it affects the company, you should provide them with standard document, *Note for the board on the Bribery Act 2010 criminal offences*, ([uk.practicallaw.com/5-619-1227](http://uk.practicallaw.com/5-619-1227)). This provides a high level, non-legalistic explanation of the Bribery Act criminal offences, including information on implications, jurisdictional reach and common red flags. The practice note, *Bribery Act 2010* ([uk.practicallaw.com/5-500-8692](http://uk.practicallaw.com/5-500-8692)), explains the offence in greater detail.

The board may also wish to know whether the liability for criminal behaviour concerns the company or individuals. The practice note, *Corporate Criminal Liability in the UK* ([uk.practicallaw.com/7-595-5466](http://uk.practicallaw.com/7-595-5466)), explains how criminal liability can attach to a corporate entity.



## The investigation

The internal investigation process will need to be thorough. For this the checklist, *Internal investigation following discovery of wrongdoing* ([uk.practicallaw.com/3-617-1466](http://uk.practicallaw.com/3-617-1466)), should be used to explain what steps to take when co-ordinating the investigation and how to deal with issues systematically.

The board ask you to advise on maintaining privilege as they do not want areas on which they have asked for advice to be disclosed. The practice note, *Waiving privilege on an internal investigation* ([uk.practicallaw.com/0-616-3566](http://uk.practicallaw.com/0-616-3566)), explains to you what it means to waive privilege and if it is appropriate in this situation.

The board decided to self-report at the conclusion of the investigation. The SFO have emphasised the desirability of self-reporting however it does not guarantee the company will not be prosecuted. The practice note, *The Serious Fraud Office: Self: reporting and co-operation* ([uk.practicallaw.com/9-590-4065](http://uk.practicallaw.com/9-590-4065)), explains the SFOs stance on self reporting and the benefits and disadvantages of co-operating with them.

## Negotiation towards disposal

After the matter has been self reported, the SFO may wish to conduct additional investigations, including obtaining further material from the company, or requiring individuals to attend for interview. The practice note, *Serious Fraud Office: powers under section 2 of the Criminal Justice Act 1987* ([uk.practicallaw.com/2-589-4913](http://uk.practicallaw.com/2-589-4913)), explains the statutory investigative powers of the SFO.

The board are keen not to be prosecuted and you are exploring alternative disposal. You are aware that a Scottish company facing a charge of failure to prevent bribery were able to achieve a civil recovery order. For further information you could consider practice note, *SFO approach to civil recovery orders* ([uk.practicallaw.com/2-595-9626](http://uk.practicallaw.com/2-595-9626)) which explains how the approach of the SFO has changed towards civil recovery after a period in which they were used predominantly as a means of alternative disposal for company offenders.

The board do not think that a civil recovery order will be a viable means of disposal and seek advice on alternatives methods of disposal. You may consider the possibility of negotiating a Deferred Prosecution Agreement (DPA). A DPA is an agreement between a prosecutor and the company for the suspension of a prosecution for a defined period of time.

To inform the board of the DPA process and what it could mean for the company, you could use the standard document, *Note for the board on Deferred Prosecution Agreements* ([uk.practicallaw.com/5-619-1784](http://uk.practicallaw.com/5-619-1784)). It will provide a comprehensive explanation of the benefits and key points of the process.

The SFO commence negotiations for a DPA. The SFO inform you a monitor will be imposed as a term of the DPA as the company does not have an effective corporate compliance programme. The standard document, *Note for the board on monitoring* ([uk.practicallaw.com/9-619-0928](http://uk.practicallaw.com/9-619-0928)), could be used to explain to the board the role of monitors.

## Prosecution

The negotiations fail and the company is notified by the SFO that it is to be prosecuted for Bribery Act offences. The board are concerned about the possible sentences that could be handed down to the company, and any other orders that could result. The practice note, *Corporate sentencing for bribery offences* ([uk.practicallaw.com/8-595-7158](http://uk.practicallaw.com/8-595-7158)) and standard document, *Note for the board on sentencing corporate offenders* ([uk.practicallaw.com/0-619-1220](http://uk.practicallaw.com/0-619-1220)) explain the sentencing process following conviction. You would also want to advise the board as to the likelihood of confiscation proceedings, explained in practice note, *Confiscation under POCA 2002* ([uk.practicallaw.com/9-595-7105](http://uk.practicallaw.com/9-595-7105)) and debarment from public contracts, explained in practice note, *Debarment from public contracts and the Bribery Act 2010* ([uk.practicallaw.com/1-505-6883](http://uk.practicallaw.com/1-505-6883)).