Failure to prevent bribery – Scottish Court confirms shareholders can be punished

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Introduction

In April 2016 we talked about the proceedings brought in Scotland by the Crown Office and Procurator Fiscal Service against Braid Group (Holdings) Limited which is a holding company for various subsidiaries in the freight and logistics business. That case was one of the first prosecutions under Section 7 of the UK Bribery Act 2010 for failure to prevent bribery. The case has recently been back in court.

The case concerned an account for unauthorized expenses (such as personal travel, holidays, gifts, hotels, car hire and cash) which was paid for through dishonestly inflated invoices. You can find our full alert on the case here - http://www.corderycompliance.com/scottish-2-2-million-settlement-case-for-failure-to-prevent-bribery/.

New developments

The case was back in court again in Scotland on 23 August but this time in a civil action. The Court of Session rejected an appeal by a former Director, Nigel Gray against an Order requiring him to sell his stake in Braid below market value after he was implicated in the bribery scheme. Braid in its various guises had been in business for more than 50 years when the case came to court. Gray had been instrumental in putting an MBO together after its founder's death and had continued to be involved in Braid's management. The court found that Gray knew of the bribery schemes although he called them a 'profit share' scheme. The court also decided that his conduct had been properly investigated by the company as a result.

At issue was a court order in October 2015 in proceedings brought by some of Braid's shareholders. They agreed that because Gray had failed in his duties to the company they should be allowed to buy his shares at a lower value than the company's valuation indicated – a price of £2,444,000 instead of £20,614,400. This was in essence a loss of £18m for Gray.

The court decided that Gray's appeal would not succeed and that the original trial judge did have the power to mark down the value of Gray's shares. As one of the Judges, Lord Malcolm, explained:

"*There was no question but that conduct of the kind undertaken by Mr Gray could be predicted to be, and in fact has been highly damaging, both financially and to the reputation of the business.*"

Lessons to be learned

The case illustrates a number of points including:

1. Management is expected to stamp out corruption – if they do not there may be personal consequences;
2. Proper policies, procedures and training must be put in place; and
3. Companies must properly investigate bribery promptly – whoever is involved.

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