

Client Alert: Oil bribery cases in the news again

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Introduction

Bribery has been in the spotlight again in recent weeks with two large UK bribery investigations nearing a close.

Glencore

The UK Serious Fraud Office (SFO) investigation into Glencore started in June 2019 with the SFO investigating deals in Cameroon, Equatorial Guinea, Ivory Coast, Nigeria and South Sudan. According to the SFO, Glencore's agents and employees paid \$25m for access to oil contracts. Glencore has been charged with 7 bribery offences – 5 under s.1 of the Bribery Act 2010 and 2 under the s.7 failure to prevent offence.

There will be a hearing in London on 21 June 2022 for Glencore to set out its position. Glencore has said however that it intends to plead guilty. It recently settled similar charges with authorities in the US and Brazil. The SFO has said that it is also working with prosecutors in Switzerland and the Netherlands.

Petrofac

Petrofac has said it spent \$10 million in legal fees last year dealing with the fallout from its prosecution by the SFO which saw it pay more than \$100 million in fines and confiscations for bribery. The Aberdeen-based oil company also said today that it was withholding share payments to four senior executives who were at the company during the period of wrongdoing

In its 2021 Annual Report Petrofac outlined the legal and professional fees it had paid. It also said that its senior executives had spent a considerable amount of their time in dealing with the investigation.

“Casting its shadow over the past four years, this has been a painful learning experience. The commercial and reputational impact was significant. Our teams felt badly let down by the actions of former colleagues,” Petrofac said in its Annual Report.

Former Petrofac executive David Lufkin was convicted of bribery offences alongside the company last year. He was given a two-year prison sentence suspended for two years. A SFO investigation into other individuals connected with Petrofac continues.

In sentencing in October last year Judge Deborah Taylor said that Petrofac had “wholly inadequate” compliance procedures and had failed to prevent corruption. Petrofac said today it had boosted its compliance staff from two people to twelve in the past five years.

What do these cases tell us?

The cases illustrate a number of points including:

1. Rumours of the death of the UK Bribery Act 2010 were premature – the Act does have teeth and these cases shows the SFO's intention to play their role in investigating and prosecuting corrupt conduct;
2. Companies need to supervise those they do business with properly – this will include their sales channel and those that negotiate contracts on its behalf. We predicted this as a key trend in compliance in 2017 and this case illustrates those concerns. You can find out more in our video here – <http://www.corderycompliance.com/predictions-for-2017-the-rise-of-the-digital-world/>
3. Management is expected to help stamp out corruption too – if they do not there may be personal consequences – including dismissal and the cancellation of share options. In an earlier case in 2016 in Scotland the price of existing shares was also re-written by a court - <https://www.corderycompliance.com/failure-to-prevent-bribery-scottish-court-confirms-shareholders-can-be->

[punished/](#);

4. Proper policies, procedures and training must be put in place. This will be especially important as a defence to charges under s.7 for failing to prevent bribery; and
5. Companies must properly investigate bribery promptly – this will enable them to secure some resolution without the need for court proceedings if appropriate. Companies do get recognition for co-operation but they will need to take pro-active steps to secure this.

For more information

Jonathan Armstrong has written the section on the UK Bribery Act 2010 in the Society of Compliance & Ethics Complete Compliance and Ethics Manual 2022 which will explain some of the terms used in this alert. You can read that here <https://compliancecosmos.org/uk-bribery-act-2010-0>.

There is more information about this and other bribery related topics on the Cordery website here <https://www.corderycompliance.com/category/bribery-corruption/>. There are more details of Cordery's expertise in this area here <http://www.corderycompliance.com/bribery-corruption/> and details of our investigations expertise here <http://www.corderycompliance.com/internal-investigations/>

Glencore's statement on the US & Brazilian charges is here <https://bit.ly/3xdllSE>. The SFO's statement is here <https://bit.ly/3wYyZ5q>.

For more information please contact Jonathan Armstrong or André Bywater who are lawyers with Cordery in London where their focus is on compliance issues.

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