

Scottish £2.2 million settlement case for failure to prevent bribery

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The Scottish prosecution service, the Crown Office and Procurator Fiscal Service, recently announced that a Glasgow logistics company has paid UK £2.2 million (USD \$,3,113,810) under a civil settlement after self-reporting to the authorities in a matter concerning failure to prevent bribery under the UK Bribery Act 2010 (“the Act”).

Section 7 of the Act introduced a new criminal offence of failure to prevent bribery which essentially means that a company commits an offence if a person “associated” with it bribes another for the company’s benefit. A person is “associated” with the company if they perform services for or on its behalf, regardless of the capacity in which they do so, which covers agents, employees, subsidiaries, intermediaries, joint venture partners and suppliers, all of whom could make the company guilty of this offence. Earlier this year saw the first conviction in a UK court for this offence for the company Sweett Group PLC, which was ordered to pay UK £2.25 million - you can read more about this case [here](#).

The details about the Scottish case are quite limited but it is understood that the company Braid Group (Holdings) Limited (“Braid”), which is a holding company for various subsidiaries in the freight and logistics business, became aware of certain activities relating to two forwarding contracts as regards one of its subsidiaries. The first contract related to an agreement between a UK employee of Braid and a Braid customer’s employee. Apparently, an account was used for unauthorised expenses (personal travel, holidays, gifts, hotels, car hire, and, cash) for the customer’s employee which was funded by dishonestly inflated invoices provided to the customer.

Braid conducted an internal investigation and determined that the Act had been infringed. During that investigation other separate infringements of the Act were uncovered as regards the second contract concerning a profit-sharing scheme with a director of a customer company under which the profit on service provided to the customer was divided in return for orders continuing to be placed with one of the Braid subsidiaries.

Braid then self-reported to the prosecution authorities and apparently accepted responsibility for infringing section 7 of the Act and also section 1 of the Act (which is the general offence of making a bribe).

Under the self-reporting mechanism the Scottish authorities decided that the matter was suitable for civil recovery (i.e. not prosecution through a court) based on the gross profit made in relation to the relevant contracts. Consequently, Braid is to pay UK £2.2 million, which will be used for community projects in Scotland. In addition, Braid has also implemented new policies and training in its subsidiaries to ensure future compliance. It is also understood that due to ongoing investigations into individuals involved in this matter no other details about the corrupt payments are being made available at this time.

This would appear to be an interesting new bribery case but it is disappointing that there are so few public details available about it which would help with a better understanding about the offence of the failure to prevent bribery and the related issue of the adequate procedures defence, and indeed the particular Scottish approach to enforcement. Interestingly last autumn saw the very first official UK failure to prevent bribery case which was also a Scottish case. There, the company in question, Brand-Rex Limited, also self-reported and was ordered to pay UK £212,800 (then about USD \$326,450) - you can read more about this case [here](#). What is interesting in both Scottish cases is that the companies in each case were fortunate in avoiding prosecution and instead availed themselves of a civil recovery mechanism. In England and Wales, despite the existence of civil recovery orders their use is considered as exceptional, and instead a so-called “Deferred Prosecution Agreement” might apply, the first one having been applied late last year in the Standard Bank case, which you can both read about and watch a video about [here](#).

At the very least this case serves as a reminder to companies to check their anti-corruption and bribery compliance policies and training.

For more about Cordery’s anti-corruption practice please see [here](#). We have also written some FAQs on the UK Bribery Act 2010 and so if you would like a copy of these just get in touch [here](#).

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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