

Corruption

Introduction

The role of the SFO

The SFO investigate and prosecute corruption offences when they arise in the context of an investigation into serious or complex fraud.

Range of corruption offences

“Corruption offences” include common law bribery and a range of statutory provisions in:

- Public Bodies Corrupt Practices Act 1889;
- Prevention of Corruption Act 1906;
- Prevention of Corruption Act 1916;
- Anti-Terrorism Crime and Security Act 2000.

Jurisdiction for Corruption Offences

The offence of corruption is a conduct crime and stands by the “last act” rule, *Harden* ([1962] 1 All ER 286). The *actus reus* of the crime must be completed in England or Wales for its courts to have jurisdiction over the offence. This applies in respect of all offences completed prior to 14th February 2002.

Anti-Terrorism Crime and Security Act 2001 (ATCS)

The ATCS came into force on 14 February 2002 and applies to any potential offence committed on or after this date.

S108-110 ATCS deals with corruption and extends the jurisdiction of the English courts.

S108(1) ATCS states for the purposes of the common law offence of bribery, it does not matter if the functions of the person who receives or is offered a reward have no connection with the UK and are carried out in a country or territory outside the UK.

This clarifies current law and put beyond doubt that the existing offences of corruption apply to the bribery of foreign public office holders, including foreign MPs, judges, ministers and ‘agents’ under PCA 1906.

Ingredients of s109 ATCS offence

S109 ATCS states that if:

- *A UK national or a legal body in the UK does anything in a country or territory outside the UK and...;*
- *the act would, if done in the United Kingdom, constitute a corruption offence then...;*
- *proceedings for the offence may be taken in the United Kingdom.*

Definitions in s109 ATCS

A “corruption offence” is defined in s109(3) to mean any common law offence of bribery and the offences under s1 PBCPA 1889 and s1 PCA 1906.

A “UK national” is defined in s109(4) broadly to include British citizens, subjects and protected persons under British Nationality Act 1981.

Burden of Proof in ATCS

S110 ATCS states the presumption of corruption under s2 PCA 1916 does not apply to s108 and 109.

Common Law Bribery

The common law creates an offence of bribery which occurs when a bribe is given or offered to a public official in order to persuade them not to act in line with their public duty, *R v Whitaker* [1914] 3 K.B. 1283.

The key ingredients of the common law offence are also reflected in statute law.

Public Bodies Corrupt Practices Act 1889 (PBCPA)

Ingredients of offence under s1 PBCPA

S1 PBCPA deals solely with corruption in public bodies.

S1(1) PBCPA makes it an offence for any person, alone or in conjunction with others to:

corruptly ask for or receive, or agree to receive any gift, loan, fee, reward or for or by any member a public body advantage to reward doing or not doing any action in which the public body is concerned

S1(2) PBCPA creates a separate offence by replacing “ask for or receive” with “offer or give”.

Definition of terms in s1 PBCPA

“Corruptly” is defined in common law to mean “purposely doing an act which the law sees as corrupt” (*Cooper v Slade* (1858) 6 H.L.Cas 746).

A “public body” is defined in s7 PBCPA, it covers local government, but not central government departments or the Crown (*R v Naci Vedat Natji* (2002) EWCA Crim 271).

Prosecuting under s1 PBCPA

Under s4 PBCPA the consent of the Attorney General is required before a prosecution under the PBCPA can be commenced.

Prevention of Corruption Act 1906 (PCA 1906)

Ingredients of offence under s1 PCA 1906

S1 PCA1906 concerns corrupt dealing with agents. Under s1(1) PCA 1906 it is an offence to:

corruptly accept or obtain, or agree or attempt to obtain any gift or as a reward for doing or not doing any act, or favouring or not favouring any in relation to his employer's affairs or business person consideration

S1(1) also creates the offence to provide false material to a principal in order to mislead him.

Definition of terms in s1 PCA 1906

"Consideration" includes any valuable consideration of any kind under s1(2) PCA 1906.

"Agent" is defined in s1(2) PCA 1906 to mean "any person employed by or acting for another".

An employer's affairs or business is defined very widely in case law (*Morgan v DPP* [1970] 3 All.E.R. 1053). S1(4) PCA also states that it does not matter if the business or the agent's functions have no connection with the United Kingdom (UK).

Prosecuting under s1 PCA 1906

Under s2 PCA 1906 the consent of the Attorney General is required before a prosecution under the PCA 1906 can be started.

Prevention of Corruption Act 1916 (PCA 1916)

The Burden of Proof under the PBCPA 1889 and PCA 1906

Under s2 PCA 1916, once receipt of consideration has been proven, the burden of proof shifts on to the defendant to show that the money, gift, or other consideration was not received corruptly. This burden can be discharged by the defence on the balance of probabilities.