

From Kick-off to Kick-back: the latest Bribery Act prosecutions

9 April 2014

Bribery Act prosecutions are growing in number, and while still the tip of the iceberg, enforcement is also happening.

On 25 March five individuals pleaded not guilty in Birmingham Crown Court to charges under the Bribery Act 2010. This brings to nine the total number of individuals currently facing charges under the act, in addition to the three already convicted.

The charges arise out of match-fixing allegations in the lower leagues of English football. Two Singaporean nationals were charged under sections one and two of the act (respectively, those regarding the giving and receiving of bribes) as well as conspiracy to commit bribery. Two other individuals were charged under section one for giving bribes, and with conspiracy to commit bribery. The last individual was charged solely for giving a bribe. No details are publically available as to the scale of the payments, nor exactly when the events in question took place.

As sparse as the details are, it is possible to draw out a number of points, especially in light of the National Crime Agency's arrest on 3 April of a further 13 individuals on suspicion of bribery and money laundering.

Fundamentally, this most recent set of prosecutions shows that enforcement of the act continues apace. These cases reinforce the theme of prosecuting authorities other than the Serious Fraud Office (SFO) playing a significant role in prosecuting individuals under the UK's anti-corruption legislation, including the Bribery Act.

This has been the pattern for some time now. Of the 53 individuals convicted in the UK of bribery or corruption offences since 2008, only 26 were

prosecuted by the SFO. Of the 12 individuals prosecuted under the act so far only four have been prosecuted by the SFO (the bio-fuel case). Moreover, the three successful convictions have all been secured by prosecutors other than the SFO. With this growing body of expertise developing beyond the confines of the SFO, we can expect more prosecutions in the future.

This is the neglected flip-side to the SFO director's stated policy of taking on only the top tier of offending. Those who have concluded that this means low-level bribery will not be prosecuted should clearly think again. The prosecutor may not be the SFO, but that does not mean there will not be a prosecution, nor that other enforcement bodies lack the resources and skills to investigate and prosecute these crimes. This is perhaps most relevant in relation to companies considering making facilitation payments, which they may consider unlikely to attract the interest of a prosecutor. The prosecution in 2010 of an individual who gave a bribe consisting of a DVD player and £100 of Paypal credit to a Cambridgeshire council official is a case in point.

The slavish attention paid in some quarters to the SFO's guidance on when it will bring prosecutions under the act needs to be seen in this light. Other prosecutors may apply different sets of charging criteria and apply lower thresholds than would the SFO.

While many await the commencement of "flagship" corporate prosecutions by the SFO under the Bribery Act as the starting gun for proper enforcement, the continuing role of other prosecutors in prosecuting and convicting lower-value bribery is equally important if the act is going to be properly enforced.

Mark Handley is a Solicitor-Advocate at Gibson, Dunn & Crutcher