

Guidance

# Joint SFO-CPS Corporate Prosecution Guidance

This guidance sets out the common approach of the DPP and the Director of the SFO to the prosecution in England and Wales of corporate offending.

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From:  **Serious Fraud Office (/government/organisations/serious-fraud-office)**

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**Applies to England and Wales**

## Documents

[Joint SFO-CPS Corporate Prosecution Guidance \(/government/publications/joint-sfo-cps-corporate-prosecution-guidance/joint-sfo-cps-corporate-prosecution-guidance\)](/government/publications/joint-sfo-cps-corporate-prosecution-guidance/joint-sfo-cps-corporate-prosecution-guidance)

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## Details

### Purpose and Scope

This guidance sets out the common approach of the Crown Prosecution Service and the Serious Fraud Office to the prosecution of corporate offending in England and Wales. It should be read in conjunction with, and is subordinate

to, the [Code for Crown Prosecutors \(https://www.cps.gov.uk/publication/code-crown-prosecutors\)](https://www.cps.gov.uk/publication/code-crown-prosecutors).

This guidance does not cover offences of corporate manslaughter, for which separate guidance is issued (see [Corporate Manslaughter \(https://www.cps.gov.uk/node/5645\)](https://www.cps.gov.uk/node/5645)), or corporate prosecutions by other specialist agencies under their designated statutory framework (for example, offences contrary to the Health and Safety at Work Act 1974 prosecuted by the Health and Safety Executive).

## General Principles and Definitions

The prosecution of corporate entities, in appropriate cases, is an important part of the enforcement of criminal law and ensures the full range of criminality can be captured. Such prosecutions have a deterrent effect, protect the public, support ethical business practices and lead to increased confidence in the criminal justice system. Equally, prosecution of a corporate entity should not be a substitute for the prosecution of criminally culpable individuals such as directors, senior managers, officers, employees, shareholders or persons associated with the relevant corporate entity.

It is normally preferable for all connected offenders to be prosecuted together, but there can be good reason (for instance, different investigative timescales) for there to be separate prosecutions.

### Corporate Entity

For the purposes of this guidance, a corporate entity means any body that is capable of being prosecuted in its own name or through appropriate representatives. This includes:

- Bodies corporate such as companies incorporated under the Companies Act 2006 (or predecessor legislation), limited liability partnerships (LLPs), and other incorporated entities (including, in certain circumstances, those incorporated under foreign law);
- Unincorporated organisations, including partnerships, clubs, associations, and other collective bodies, where criminal liability can be attributed to the organisation as a whole under statute or common law.

A body corporate does not include a corporation sole, or a partnership that is not regarded as a body corporate under the law by which it is governed.

A company may also be created by a private Act of Parliament or by Royal Charter.

Unless expressly stated otherwise, the term “corporate entity” in this guidance is used generically to refer to any incorporated or unincorporated body that may incur criminal liability, except where distinctions are material (such as under sections 196 and 199 of the Economic Crime and Corporate Transparency Act 2023).

There is a presumption that a reference in any Act of Parliament to a “person” includes a body of persons corporate or unincorporated (Schedule 1 [Interpretation Act 1978]). This includes companies, unincorporated associations and partnerships, unless there is a contrary indication (express or implied) in the Act itself (section 5 IA 1978) or any accompanying subordinate legislation (section 11 IA 1978).

## Routes to Establishing Corporate Criminal Liability

Corporate liability may be established under statutory provisions or common law. Where available, statutory routes to corporate liability are generally preferable to reliance on common law principles; they provide clearer legal tests and avoid the limitations of the identification doctrine.

### Statutory Attribution under Section 196 ECCTA 2023

The Economic Crime and Corporate Transparency Act 2023 (“ECCTA 2023”), reformed the law of corporate criminal attribution for a wide range of economic crimes.

Criminal liability may be attributed to a body corporate or partnership under [section 196 ECCTA 2023](https://www.legislation.gov.uk/ukpga/2023/56/section/196/enacted) (<https://www.legislation.gov.uk/ukpga/2023/56/section/196/enacted>) for economic crime offences listed in [Schedule 12](https://www.legislation.gov.uk/ukpga/2023/56/schedule/12/enacted) (<https://www.legislation.gov.uk/ukpga/2023/56/schedule/12/enacted>) of that Act, where the offence is committed on or after 26 December 2023 by a “senior manager” acting within the actual or apparent scope of their authority, regardless of the size of the organisation.

The offences under Schedule 12 ECCTA 2023 include common law offences such as conspiracy to defraud and cheating the public revenue, and statutory offences relating to false accounting, fraudulent trading, bribery, money laundering, terrorist financing, market abuse, VAT and excise fraud, sanctions breaches and certain Companies Act offences.

Section 196(3) limits the extraterritorial application; liability under section 196(1) does not arise unless an act or omission occurred in this jurisdiction or the relevant offence would have applied to the organisation in the jurisdiction where the conduct occurred (for example, by virtue of the close connection test in the Bribery Act 2010).

## Statutory Failure to Prevent Offences

Corporate criminal liability may also arise where a relevant corporate entity fails to prevent the commission of certain criminal offences by persons associated with it. These “failure to prevent” offences require that an associated person has committed a substantive or “base” criminal offence within the scope of the legislation. The precise conditions for liability vary between the offences and prosecutors should consider the language of the offence alongside the relevant government guidance. In each case, the corporate entity may then be strictly liable unless it can establish a statutory defence that it had in place such prevention procedures as were reasonable (or adequate, in the case of bribery) in all the circumstances. Attribution under these provisions does not depend on establishing fault by senior management or application of the identification doctrine.

The current statutory failure to prevent offences include:

- **Bribery Act 2010, section 7:** failure to prevent bribery by an associated person. See [Bribery Act 2010: Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions](https://www.cps.gov.uk/legal-guidance/bribery-act-2010-joint-prosecution-guidance-director-serious-fraud-office-and/) (<https://www.cps.gov.uk/legal-guidance/bribery-act-2010-joint-prosecution-guidance-director-serious-fraud-office-and/>). To note, this offence requires personal consent of DPP or DSFO to prosecute.
- **Criminal Finances Act 2017, sections 45 and 46:** failure to prevent facilitation of UK or foreign tax evasion. To note, the latter requires the DPP’s personal consent to prosecute.
- **Economic Crime and Corporate Transparency Act 2023, section 199:** Effective from 1 September 2025, [section 199 ECCTA 2023](https://www.legislation.gov.uk/ukpga/2023/56/section/199#section-199-1) (<https://www.legislation.gov.uk/ukpga/2023/56/section/199#section-199-1>) is an either-way strict liability offence of corporate failure to prevent fraud by persons associated with a relevant body. The offence applies to “large organisations”, where an “associated person” commits a specified fraud offence with the intention of benefiting the organisation or a person to whom the organisation provides services, and also to certain parent undertakings where the fraud is committed by an associated person of a subsidiary for the benefit of the parent or a person to whom the parent provides services.

## Common Law Identification Principle (non-vicarious liability)

The common law identification doctrine, as set out in [Tesco Supermarkets Ltd v Natrass \[1972\] AC 153](https://www.bailii.org/uk/cases/UKHL/1971/1.html) (<https://www.bailii.org/uk/cases/UKHL/1971/1.html>), and confirmed in [Serious Fraud Office v Barclays Plc [2018] EWHC 3055 (QB),] continues to govern the attribution of criminal liability to corporate entities where neither section 196 ECCTA 2023 nor the “failure to prevent” offences apply. This includes offences to which no statutory attribution mechanism applies – for example certain offences under Companies Act 2006 (listed at Annex A), offences outside Schedule 12 ECCTA 2023, cases involving individuals who do not meet the statutory definition of “senior manager”, or where the conduct falls outside the individual’s actual or apparent authority.

Under common law, a corporate entity may be criminally responsible for offences requiring mens rea where individuals (most often company officers) who represent the “directing mind and will” of the company are deemed to be “controlling officers” and their “acts and states of mind” are attributed to the company. Consequently, corporate officers may be prosecuted for offences as individuals, and the company may also be prosecuted because of the individuals’ status within the company.

In [Tesco Supermarkets Ltd v Natrass](https://www.bailii.org/uk/cases/UKHL/1971/1.html) (<https://www.bailii.org/uk/cases/UKHL/1971/1.html>), the test was whether the evidence establishes that the individuals in question “are entrusted with the exercise of the powers of the company”. In considering that test, the Court of Appeal held in R v Andrews Weatherfoil [1972] 56 Cr.App.R. 31 CA that, “It is necessary to establish whether the natural person or persons in question have the status and authority which in law make their acts in the matter under consideration the acts of the company, so that the natural person is to be treated as the company itself.”

In [Serious Fraud Office v Barclays Plc \[2018\] EWHC 3055 \(QB\)](https://www.judiciary.uk/wp-content/uploads/2020/02/sfo-v-barclays-judgment-12-11-18.pdf) (<https://www.judiciary.uk/wp-content/uploads/2020/02/sfo-v-barclays-judgment-12-11-18.pdf>), Davis LJ, sitting as a Judge of the High Court in the Queen’s Bench Division, approved the principle in Tesco Supermarkets v Natrass, emphasising that for corporate criminal liability to arise the individuals whose conduct is to be attributed to the corporate defendant should be the “directing mind and will” of the company with full discretion to act independently of the board with regard to the relevant function. There is no assumption that a director or other senior officer is the “directing mind and will” of the company for all purposes.

In seeking to identify the “directing mind” of a company, prosecutors need to consider the constitution of the company concerned (with the aid of memoranda/articles of association/actions of directors or the company in

general meeting), the governance of the company and any appropriate delegation of authority.

## **Common Law Vicarious Liability**

The doctrine of vicarious liability may operate to attribute criminal liability to a corporate entity for the acts of its employees or agents predominantly for strict liability offences, which do not require proof of a mens rea. In general, where an employee or agent commits a strict liability offence in the course of their employment or agency, the corporate employer may also be liable, even absent fault, for example, offences under the Road Traffic Act 1988.

Prosecutors should consider the statutory context of the offence in consideration. Vicarious attribution may be appropriate where the legislative scheme does not expressly exclude corporate liability and the nature of the offence supports it. Prosecution on this basis is likely to proceed in parallel with proceedings against individual officers or employees involved in the commission of the offence.

## **Limitations to corporate liability**

It is essential to identify the correct corporate entity from the outset of any prosecution and accurately name that entity on the summons/indictment. Later amendment of the name may not be possible.

To establish corporate liability the offence must be punishable with a fine; a corporate entity cannot be imprisoned.

It is not possible to prosecute a dissolved company unless an application has been made to declare the dissolution void or to restore the corporation to the register and with the leave of the court responsible for the winding up or liquidation. It may be appropriate to seek an order under the Companies Act 2006 to declare the dissolution void or to restore the company to the register where prosecution remains in the public interest—such as in cases involving serious offending, the absence of an alternative effective enforcement mechanism, or the risk that the conduct would otherwise remain unaddressed.

## **Evidential Considerations and Forms of Liability**

### **Corporate Criminal Liability for Economic Crimes under Schedule 12 ECCTA**

By virtue of section 196, prosecutors no longer need to establish that the individual was the “directing mind and will” of the company for Schedule 12 ECCTA 2023 offences. This statutory mechanism broadens the traditional common law approach by allowing attribution irrespective of whether the individual holds a formal board position; It is sufficient to show that the individual was a senior manager acting within their actual or apparent scope of their authority.

A “senior manager” is defined as an individual who plays a significant role in either the making of decisions about how the whole or a substantial part of the organisation’s activities are to be managed or organised; or the actual managing or organising of the whole or a substantial part of those activities.

## **Evidencing “Failure to Prevent” Offences**

Corporate entities may be held criminally liable for a failure to prevent offence irrespective of whether they intended or were aware of the commission of the specified underlying criminal conduct. Liability arises where a person associated with the organisation commits a specified criminal offence intending (or, under certain statutes, risking) benefit to the organisation or another on its behalf. The corporate entity will have a defence if it can demonstrate that it had in place adequate (for the purposes of the Bribery Act 2010) or reasonable (under the Criminal Finances Act 2017 and the ECCTA 2023) procedures to prevent such offending, or that it was not reasonable to expect such procedures in the circumstances.

## **Associated Persons**

An Associated Person, in the context of “failure to prevent” offences – such as those under section 7 of the Bribery Act 2010, sections 45 and 46 of the Criminal Finances Act 2017, and section 199 of the ECCTA 2023, is someone who performs services for or on behalf of a relevant organisation within the scope of the relevant offence. This may encompass directors, employees, agents, subsidiaries, intermediaries, and, in certain circumstances, contractors or consultants. The test is purposive rather than formal, turning on the nature of the relationship in practice and whether, in all the relevant circumstances, the individual was acting in the capacity of performing services for or on behalf of the organisation, irrespective of their contractual status or title.

While the concept of an “associated person” is broadly aligned across the three “failure to prevent” offences, its precise meaning and scope may vary slightly depending on the statutory context. Prosecutors and investigators should therefore refer to the relevant statute and accompanying government

guidance to determine whether an individual or entity qualifies as an associated person for the purpose of the specific offence under consideration.

For the failure to prevent bribery offence under section 7 of the Bribery Act, it is important to note that the associated person must be the giver, not the recipient, of a bribe. A commercial organisation is only liable if an associated person bribes another person intending to obtain or retain business or a business advantage. Prosecutors must therefore consider the direction of the benefit when assessing liability.

## Reasonable / Adequate Procedures

When determining whether the evidential part of the Full Code Test is met in relation to a failure to prevent offences - such as section 7 of the Bribery Act 2010, sections 45 and 46 of the Criminal Finances Act 2017, or section 199 ECCTA 2023 - prosecutors should give careful consideration to the statutory defences. That is, whether the corporate entity had in place such procedures as were adequate (for the purposes of the Bribery Act) or reasonable (under the Criminal Finances Act and ECCTA) in all the circumstances to prevent the relevant offending.

The government has published guidance to explain what prevention procedures a reasonable corporate entity might have had in place, for each of the failure to prevent offences above. The government guidance sets out six principles that organisations are expected to follow and provides useful context for what is expected of corporate entities. It may assist in structuring interviews, identifying lines of inquiry, examining areas of weakness or omissions in the prevention procedures, informing prosecutors' assessment of the strengths or weakness of any claimed defence during evidential reviews and charging decisions. It may also be helpful in providing a structure for presentation of evidence at any subsequent trial. Prosecutors may wish to consider an appropriate witness adducing the relevant government guidance (on bribery, tax evasion, or fraud) as an exhibit to assist the jury's understanding of the statutory defence.

See hyperlinks to government guidance below:

- **Bribery:** [The Bribery Act 2010: Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing \(https://www.gov.uk/government/publications/bribery-act-2010-guidance\)](https://www.gov.uk/government/publications/bribery-act-2010-guidance).
- **Tax evasion:** [Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion](#)

<https://www.gov.uk/government/publications/corporate-offences-for-failing-to-prevent-criminal-facilitation-of-tax-evasion>).

- **Fraud:** [Economic Crime and Corporate Transparency Act 2023: Guidance to organisations on the offence of failure to prevent fraud](https://www.gov.uk/government/publications/offence-of-failure-to-prevent-fraud-introduced-by-eccta) (<https://www.gov.uk/government/publications/offence-of-failure-to-prevent-fraud-introduced-by-eccta>).

## Failure to Prevent Fraud – Large Organisations

The section 199 ECCTA offence applies only to large organisations which are defined in [section 201] as bodies satisfying at least two of the following conditions:

- a turnover of more than £36 million,
- a balance sheet of more than £18 million,
- and/or more than 250 employees.

The list of offences to which section 199 applies is set out in [Schedule 13] ECCTA 2023. These include:

- Cheating the public revenue (common law).
- An offence under any of the following provisions of the Theft Act 1968:
  - Section 17 (false accounting);
  - Section 19 (false statements by company directors etc).
- An offence under section 993 of the Companies Act 2006 (fraudulent trading).
- An offence under any of the following provisions of the Fraud Act 2006:
  - Section 1 (fraud);
  - Section 9 (participating in fraudulent business carried on by sole trader);
  - Section 11 (obtaining services dishonestly).

It should be noted that an organisation facing liability under the Failure to Prevent Fraud offence (section 199 ECCTA 2023) may also face prosecution for the underlying substantive fraud or other economic crime offence, where the conduct of the associated person can be attributed to the organisation by other means – such as through section 196 of the ECCTA 2023.

## Individual liability from consent, connivance or neglect

Certain types of offences committed by a corporate entity with the consent or connivance of a director, manager or secretary of a company may make those officers criminally liable. When proceeding against company officers in these circumstances, the offence by the corporate entity must be proved. It may not always be possible to secure the conviction of the company, and this is not required, for example, prosecutors may consider proceedings against company officers where the company has been dissolved.

Liability on this basis is most commonly encountered in regulatory or administrative offences, including under the Companies Act 2006. Annex A contains a list of possible offences under the Companies Act 2006 for consideration when reviewing a case against a company. These Statutory provisions create derivative liability for company officers – such as directors, managers, secretaries, or other similar officers – if the offence was committed with their consent, connivance, or attributable to their neglect. These provisions typically supplement primary corporate liability and allow parallel proceedings against individuals where appropriate.

The nature and extent of evidence the prosecution must adduce in order to establish “consent, connivance or neglect” on the part of a corporate officer will vary depending on the facts of each case. In [R v Charget Ltd \(t/a Contract Services\) \[2008\] UKHL 73](#) (<https://publications.parliament.uk/pa/ld200809/ldjudgmt/jd081210/chargo-1.htm>), the Court noted that a corporate officer “had to be proved to know the material facts which constituted the offence by the corporate entity and to have agreed to its conduct on the basis of those facts”, but that “consent can be established by inference as well as by proof of an express agreement”. Thus, “the state of mind that the words ‘connivance’ and ‘neglect’ contemplate is one that may also be established by inference”.

## Casework Handling

### Charging Strategy: Bribery-Fraud Nexus

In some cases, there may be a close factual nexus between bribery and fraud offences; where it is not possible to proceed under section 7 of the Bribery Act 2010, careful consideration should be given to whether the facts support a charge under the failure to prevent fraud offence (section 199 of the ECCTA 2023) or vice versa. The availability of an alternative offence may materially affect the formulation of the indictment and the overall case strategy; prosecutors should be mindful of this from the outset of any investigation where this may be an issue.

## Use of Notices under Section 51B Crime and Disorder Act

Where a corporate entity is charged with an indictable offence involving serious or complex fraud, including the failure to prevent cases, prosecutors may consider issuing a notice under section 51B of the Crime and Disorder Act 1998 to send the matter directly to the Crown Court. The use of section 51B can assist in ensuring appropriate judicial oversight, case management, and sentencing powers in serious or complex fraud cases. This power is available to the Director of Public Prosecutions and the Director of the Serious Fraud Office, or an officer acting on their behalf, where they are satisfied that:

- The evidence is sufficient to put the defendant on trial for the offence, and
- The case reveals fraud of such seriousness or complexity that it is appropriate for the Crown Court to take over the case management without delay.

## Corporate Assets and Financial Disclosure

Assess early in the case what assets a corporate entity may have available to satisfy any financial penalties. In line with [sentencing guidelines](https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/corporate-offenders-fraud-bribery-and-money-laundering/) (<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/corporate-offenders-fraud-bribery-and-money-laundering/>), companies or partnerships are expected to provide comprehensive accounts for the last three years. Where a company fails to provide such disclosure, the court may draw adverse inferences and conclude that it has sufficient means to pay an appropriate fine.

**For CPS only:**

## Investigatory Tools and Early Case Building

Investigators should be encouraged to seek early pre-charge advice. In complex corporate cases, early advice to the investigating agency on the use of statutory investigatory powers can be critical to shaping the evidential foundation of the prosecution. This will assist to identify the issues and reasonable lines of enquiry, and may include consideration of the potential liability of a company as well as relevant individuals. For example, disclosure notices under section 62 of Serious Organised Crime and Policy Act (SOCPA) 2005 provide a means to obtain material from a corporate entity where it is believed to be of substantial value to the investigation. This power can be particularly useful in failure to prevent offences where contemporaneous records may demonstrate whether the organisation had reasonable prevention procedures in place. The absence of such material may itself be probative.

See separate guidance on [DPP's Investigatory Powers](https://www.cps.gov.uk/legal-guidance/dpps-investigatory-powers) (<https://www.cps.gov.uk/legal-guidance/dpps-investigatory-powers>).

## Early Consideration of Asset Restraint

Prosecutors should also consider the early use of asset restraint powers to prevent the dissipation or transfer of assets, and remain alert to any risk that the company may seek to enter liquidation to avoid enforcement. Prosecutors are encouraged to liaise with the CPS Proceeds of Crime Division at an early stage in respect of any restraint of assets. See the Asset Recovery section below for further details.

## Jurisdiction and Multi-Agency Referrals

Prosecutors and investigators should be aware that corporate offending may engage overlapping criminal and regulatory responsibilities across multiple agencies, and ensure decisions reflect this wider enforcement context. Early communication, collaboration and where necessary de-confliction between agencies is encouraged.

## Domestic Investigations and Referrals to Regulators

In relevant cases, prosecutors should consider whether a referral to a regulatory authority is suitable, either as an alternative to criminal prosecution or in parallel. This may be appropriate where the conduct of individuals engages distinct regulatory frameworks or where parallel enforcement may better secure the public interest. Regulatory sanctions may complement criminal proceedings by addressing systemic failings, governance issues, or fitness to operate. Prosecutors are advised to consult the [Prosecutors' Convention](https://www.cps.gov.uk/publication/prosecutors-conventions-2009) (<https://www.cps.gov.uk/publication/prosecutors-conventions-2009>).

### For CPS only:

See guidance on [Relations with Other Prosecuting Agencies](https://www.cps.gov.uk/legal-guidance/relations-other-prosecuting-agencies-and-prosecutors-convention) (<https://www.cps.gov.uk/legal-guidance/relations-other-prosecuting-agencies-and-prosecutors-convention>). At the pre-charge stage, investigators may be best placed to make or initiate the referral in practice, given their operational lead and access to the relevant material. In such cases, prosecutors should work closely with investigators to agree the timing, scope, and content of the referral. Although investigators may often be best placed to consider referrals at the pre-charge stage, prosecutors should regard the question of referral as a continuing consideration throughout the case, particularly where new information or developments suggest regulatory engagement may be

appropriate. This does not require the prosecutor to form a view on the merits or likely outcome of any regulatory action, but rather to ensure timely notification, in consultation with the investigator, where appropriate.

Prosecutors should be satisfied that any referral or disclosure is necessary, proportionate, and made in accordance with applicable data protection legislation, including the Data Protection Act 2018.

## International Investigations and Coordination

In respect of overseas investigations and prosecutions, both Eurojust and the European Judicial Network play a crucial role in the coordination and facilitation of prosecutions. There is also the [Agreement for handling criminal cases with concurrent jurisdiction between the United Kingdom and the United States of America](#) ([https://www.cps.gov.uk/sites/default/files/documents/legal\\_guidance/Agreement-handling-criminal-cases-concurrent-jurisdiction-UK-USA.pdf](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/Agreement-handling-criminal-cases-concurrent-jurisdiction-UK-USA.pdf)) - In cases with international elements, prosecutors are encouraged to make contact with these agencies or other relevant jurisdictions as early as possible.

**For CPS only:** see the prosecution guidance on [Jurisdiction](#) (<https://www.cps.gov.uk/node/5632>)

## Charging Corporate Entities- Additional Public Interest Factors to be Considered

The Code for Crown Prosecutors sets out the approach to assessing the public interest in prosecution. Additional guidance is provided in the [Bribery Act 2010 Joint Prosecution guidance](#) (<https://www.cps.gov.uk/legal-guidance/bribery-act-2010-joint-prosecution-guidance-director-serious-fraud-office-and>) and the [Deferred Prosecution Agreements](#) (<https://www.cps.gov.uk/publication/deferred-prosecution-agreements-code-practice>) – Code of Practice.

When applying this guidance, indicators of the seriousness of an offence may include: the value of any gain or loss; and the risk of harm, or the actual harm caused, to the public, to unidentified victims, shareholders, employees and creditors and to the stability and integrity of financial markets and international trade. The impact of the offending in other countries, as well as in the UK, should be taken into account.

Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence, which includes the culpability of the

defendant and the harm to the victim. A prosecution will usually take place unless there are public interest factors against prosecution which clearly outweigh those tending in favour of prosecution.

In addition to considering the public interest factors set out in the [Code for Crown Prosecutors \(https://www.cps.gov.uk/publication/code-crown-prosecutors\)](https://www.cps.gov.uk/publication/code-crown-prosecutors), prosecutors should also consider the further non-exhaustive list of factors set out below when assessing seriousness:

### **Additional Public Interest Factors in Favour of Prosecution:**

- A history of similar conduct (including prior criminal, civil and/or regulatory enforcement action)

\*The conduct alleged is part of the established business practices of the company

- The offence was committed at a time when the company had an ineffective corporate compliance programme
- The company had been previously subject to warning, sanctions or criminal charges and had failed to take adequate action to prevent future unlawful conduct, and/or had continued to engage in the conduct
- Failure to report wrongdoing within reasonable time of the offending coming to light (if so, consider also whether it is appropriate to charge the company officers responsible for the failures/breaches)
- Failure to report properly and fully the true extent of the wrongdoing
- Significant level of harm caused directly or indirectly to the victims of the wrongdoing or a substantial adverse impact to the integrity or confidence of markets, local or national governments.

### **Additional Public Interest Factors Against Prosecution:**

- A genuinely proactive approach adopted by the corporate management team when the offending is brought to their notice, involving self-reporting and remedial actions, including the compensation of victims. In applying this factor, consider whether sufficient information about the operation of the company in its entirety has been supplied in order to assess whether the company has been proactively compliant, including (where appropriate) making witnesses available and disclosure of the details of any internal investigation.

- A lack of a history of similar conduct involving prior criminal, civil and/or regulatory enforcement action. Contact should be made with the relevant regulatory departments to ascertain whether investigations are being conducted regarding due diligence of the company.
- The existence of a genuinely proactive and effective corporate compliance programme.
- The availability of civil or regulatory remedies which are likely to be more effective and proportionate. Appropriate alternatives to prosecution may include civil recovery orders combined with a range of agreed regulatory measures. However, the totality of the offending needs to have been identified. Prosecutors should refer to the [Guidance on Asset recovery powers 2021 \(https://www.gov.uk/government/publications/the-proceeds-of-crime-act-section-2a\)](https://www.gov.uk/government/publications/the-proceeds-of-crime-act-section-2a) which sets out guidance for prosecutors and investigators on asset recovery powers under section 2A Proceeds of Crime Act 2002.
- The offending represents isolated actions by individuals, for example by a rogue director.
- The offending is not recent in nature, and the company in its current form is effectively a different body to that which committed the offences; for example, it has been taken over by another company, it no longer operates in the relevant industry or market, all of the culpable individuals have left or been dismissed, or corporate structures or processes have been changed in such a way as to make a repetition of the offending impossible.
- A conviction is likely to have disproportionately adverse consequences for the corporate entity, bearing in mind the seriousness of the offence and any other relevant public interest factors. Note that under UK procurement rules, a conviction for certain offences may lead to the exclusion of a corporate entity from participation in public contracts, either mandatorily or at the discretion of the contracting authority (see Cabinet Office [Guidance: Debarment \(https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-procure-phase/guidance-debarment.html\)](https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-procure-phase/guidance-debarment.html)). Prosecutors should be aware that such exclusion can apply both domestically and internationally, depending on the nature of the offence and the company's market. Although the UK has left the EU, similar provisions continue to apply under the Public Contracts Regulations 2015 and the Procurement Act 2023. Prosecutors should note that a decision not to prosecute solely because the domestic or EU debarment regimes may be engaged could undermine their intended deterrent effect.
- The company is in the process of being wound up.

Prosecutors dealing with bribery cases are reminded of the UK's commitment to abide by Article 5 of the [OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#)

<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0293>), namely, that the investigation and prosecution of the bribery of a foreign public official shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved.

## Sentencing and Ancillary Orders

At sentencing, prosecutors should consider whether any ancillary orders are appropriate, including [Director Disqualification Orders \(DDOs\)](https://www.cps.gov.uk/legal-guidance/sentencing-ancillary-orders#a36) (<https://www.cps.gov.uk/legal-guidance/sentencing-ancillary-orders#a36>) and [Serious Crime Prevention Orders \(SCPOs\)](https://www.cps.gov.uk/legal-guidance/serious-crime-prevention-orders) (<https://www.cps.gov.uk/legal-guidance/serious-crime-prevention-orders>).

**For CPS only:** In cases of corporate offending, DDOs should ordinarily be given consideration and pursued where appropriate. SCPOs may also be appropriate in cases involving repeat offending, risk of circumvention (for example through shadow directors), or where additional preventative measures are necessary. See [Sentencing – Ancillary Orders](https://www.cps.gov.uk/legal-guidance/sentencing-ancillary-orders) (<https://www.cps.gov.uk/legal-guidance/sentencing-ancillary-orders>) guidance for further details on criteria and procedural requirements.

## Asset Recovery

Asset recovery in corporate prosecutions requires careful handling. Prosecutors should:

- Seek early advice from their Proceeds of Crime Division when considering whether a case is suitable for restraint and / or recovering the proceeds of crime.
- Recognise that restraint and confiscation are linked to a criminal prosecution, and a Restraint Order that preserves assets can be obtained from the beginning of a criminal investigation, and remain alert to any risk that the company may seek to enter liquidation to avoid confiscation.

Prosecutors also have the ability to pursue assets through civil recovery in advance of, parallel with, after or instead of a criminal prosecution.

For CPS only: Prosecutors should request that the investigative agency appoints a financial investigator in appropriate cases and liaise with the CPS Proceeds of Crime Division at an early stage in respect of any restraint of assets. Cases that do progress to asset recovery should generally be referred to CPS Proceeds of Crime Division to handle that aspect of the case.

## Deferred Prosecution Agreements (“DPA”)

A DPA is an agreement between a designated prosecutor and a person whom the prosecutor is considering prosecuting (see paragraph 1 of [Schedule 17 \(https://www.legislation.gov.uk/ukpga/2013/22/schedule/17\)](https://www.legislation.gov.uk/ukpga/2013/22/schedule/17) Crime and Courts Act 2013 [“CACA 2013”]) for an offence specified in Part 2 of Schedule 17 CACA 2013. Only a body corporate, a partnership or an unincorporated association may enter into a DPA (see paragraph 4 of Schedule 17 CACA 2013).

Under a DPA, the person agrees to comply with the requirements imposed by the agreement and the prosecutor agrees that, upon approval of the DPA by the Court, the proceedings will be suspended (see paragraph 7 of Schedule 17 CACA 2013).

The SFO and CPS [Deferred Prosecution Agreements \(https://www.cps.gov.uk/publication/deferred-prosecution-agreements-code-practice\)](https://www.cps.gov.uk/publication/deferred-prosecution-agreements-code-practice) – Code of Practice sets out in detail when a DPA might be a possible disposal, factors for a prosecutor to consider when deciding to enter into a DPA instead of commencing an immediate prosecution, the process for entering into negotiations and of obtaining a DPA.

The existence or negotiation of a DPA with a corporate entity does not preclude the prosecution of individuals. In accordance with paragraph 2.9.1 of the DPA Code of Practice, a corporate self-report will often involve allegations of wrongdoing by identifiable individuals. It will ordinarily be appropriate that those individuals – such as directors, senior managers, or associated persons – are investigated and, where appropriate, prosecuted. Prosecutors should make charging decisions in line with the Code for Crown Prosecutors and must remain alert to any attempt by the organisation to withhold material that could frustrate the effective investigation or prosecution of individuals. Such conduct will weigh strongly in favour of prosecution rather than resolution by DPA.

## Annex A - Companies Act 2006, Schedule of Company Offences

[Companies Act 2006, Schedule of Company Offences \(https://www.cps.gov.uk/sites/default/files/documents/legal\\_guidance/Corporate-Prosecutions-Annex-A-Companies-Act-2006-Schedule-of-Company-Offences-updated-June-2020.pdf\)](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/Corporate-Prosecutions-Annex-A-Companies-Act-2006-Schedule-of-Company-Offences-updated-June-2020.pdf)

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