

Client Alert

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UK Jury Verdict Clarifies “Adequate Procedures” Under UK Bribery Act

In an important decision given on February 21, 2018, a jury in English court proceedings has considered for the first time what “adequate procedures” should be for the purpose of a defense to the corporate offense of failing to prevent bribery under the UK Bribery Act 2010.

Skansen Interiors Limited, an office interiors contractor, self-reported to the UK National Crime Agency that its former managing director had paid a bribe to secure a £6 million refurbishment contract. As a result, the company was prosecuted under the Section 7 corporate offense under the Bribery Act for failing to prevent bribery. Given that Skansen had self-reported and that it was now a dormant company, there was some surprise that the Crown Prosecution Service (CPS) had decided to prosecute. It may be that the CPS considered that imposing conditions against a dormant company under a deferred prosecution agreement was not practicable and/or that a prosecution would send out a useful message about the need for compliance.

At trial, Skansen had the evidential burden of establishing that it had “adequate” antibribery procedures in place. The jury found that the company had failed to discharge that burden and hence was guilty of the offense. The following factors appear to have been relevant to that outcome:

- While Skansen did have policies concerning transparency and integrity, and it had financial controls requiring multiple approvals for transactions, it did not have a policy specifically directed to preventing offenses under the Bribery Act. The fact that it had only around 30 employees who worked in a single open-plan office does not appear to have justified the absence of such a policy.
- It did not have a dedicated compliance officer. The company’s self-reporting and its cooperation with the authorities does not appear to have made up for that omission:
- There was no evidence that Skansen had trained its staff or that employees had read or been reminded of the company’s existing policies or had agreed to comply with them.

This case is of considerable importance in emphasizing not only the appetite of the U.K. authorities to pursue corporate prosecutions, but also the high hurdle to be satisfied in order to achieve “adequate procedures” and to avoid corporate criminal liability, which can be additional to individual liability in respect of acts of bribery.

The jury’s verdict also illustrates the distinctions between the U.K. and U.S. approaches to corporate criminal liability. In the United States, strict liability criminal offenses are virtually unknown. Instead, corporations may be held criminally liable in the United States on a respondeat superior theory based on

the unlawful acts of their employees and agents. However, in both the United States and the United Kingdom, it is clear that prosecutors will carefully scrutinize a company's compliance program and other controls in making discretionary decisions about whether to bring criminal charges against the entity.

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