

Who owns a bribe: the bribed public official or the defrauded state?

March 23, 2015

A public official receives a bribe to award a contract. Does the bribe “belong” to the official or to the state that he or she represents?

The answer to the question can matter a great deal to the success of a claim. But the issue has been controversial and the answer was for a long time unclear in English law, particularly in recent years.

The English position has been conclusively resolved by the the United Kingdom’s Supreme Court. It decided that the bribe belongs to the state. The decision ensures that English law is identical to other major common law jurisdictions.

This is important for a number of reasons:

- First, if the official becomes insolvent, all of the funds can be claimed by the state in preference to the claims of other (innocent) creditors.
- Secondly, if the funds are invested in assets that increase in value, such as property in a rising market, the state will be entitled to recover the entirety of those assets. This means the state takes the benefit of the increase in value. In the absence of ownership, this would be more difficult, if available at all, because the increase in value is not itself usually a result of any wrongdoing.
- Thirdly, claims based on ownership offer more effective mechanisms to trace and recover funds.
- Fourthly, a claim by the state may be subject to less onerous requirements that claims must be brought within a certain period.
- Fifthly, the state may be able to obtain better rates of interest on sums awarded to it. That can make a difference when bribes are substantial and uncovered only after a significant period of time.

Our fuller briefing on the English legal position, linking to the judgment, appears [here](#).

Contributors

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as “Cooley”). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our [AI Principles](#), may be considered Attorney Advertising and is subject to our [legal notices](#).