

Skansen Interiors Limited: The UK's first contested prosecution under S7 of the Bribery Act

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The recent conviction of UK company Skansen Interiors Limited (SIL), for the corporate offence of failure to prevent bribery has caused controversy. This is the first conviction under S7 of the Bribery Act after a contested trial where the company self-reported but was still brought to trial. Commentators are asking if this decision means that there is a shift in the UK's Deferred Prosecution Agreement (DPA) mechanism.

Since the Bribery Act came into force there has only been one other prosecution under S7, that of Sweett Group in 2015 which pleaded guilty.

The Facts

It was alleged that SIL agreed to pay a fee to a senior project manager at a company (DTZ) in order to ensure that SIL won the tenders for two office refurbishment contracts in London worth approximately £6m. This was achieved through the project manager passing confidential information to SIL, giving it an advantage over other tenderers.

The payment was to be made in three stages: two payments totaling £10,000 followed by a third payment of £29,000. The third payment was never paid after SIL's newly appointed CEO became concerned by the legitimacy of this arrangement. He launched an internal investigation and implemented a new anti-bribery policy. SIL did not previously have an anti-bribery policy. It was a small company with only thirty employees. Despite agreeing to comply with the new anti-bribery policy, the Managing Director tried to make the third payment of £29,000. The payment was stopped and he was dismissed. SIL then submitted a suspicious activity report to the National Crime Agency and self-reported the matter to the City of London Police.

During the criminal investigation, it was not disputed that SIL cooperated fully and even voluntarily providing confidential and legally privileged documents to the City of London Police.

SIL became dormant in 2014 whilst the investigation was ongoing.

The Section 7 Offence

Section 7 of the Bribery Act imposes liability on a company for failing to prevent bribery and has a statutory defence of "adequate procedures".

The Ministry of Justice Guidance on this offence (which mirrors the general CPS guidance on prosecution) states that: *"whether to prosecute an offence under the Act is a matter for the prosecuting authorities. In deciding whether to proceed, prosecutors must first decide if there is a sufficiency of evidence and, if so, whether a prosecution is in the public interest... The more serious the offence, the more likely it is that a prosecution will be required in the public interest."*

Self-Reporting and Deferred Prosecution Agreements ("DPAs")

The narrative from the SFO in various speeches and public statements of policy has been that whilst a DPA will not automatically follow self-reporting, co-operation is strongly encouraged in order to maximise chances of receiving such an agreement.

The outgoing SFO director, David Green, giving a speech in January 2018, said *"Companies feel they need certainty and now they have certainty. They know that if they cooperate with us, and I mean fully cooperate, then odds on they are heading for a DPA. If they do not they will be prosecuted."*

It has been reported that the SFO justified the decision not to offer SIL a DPA because, as a dormant company, SIL did not have the assets or resources to pay any fine that a DPA would carry.

The decision to prosecute

The judge, at an abuse of process hearing, queried why SIL had been prosecuted given its status as a dormant company and willingness to cooperate. It was said that a successful conviction would send a message to other small and medium-sized companies that bribery needs to be taken seriously, and appropriate procedures must be put in place regardless of the number of employees.

SIL was convicted of breaching s7 of the Bribery Act because the jury was not persuaded that the company had adequate procedures in place to prevent bribery. However, owing to its status as a dormant company and lack of assets, the only sentence available to the judge was an absolute discharge.

The question has been raised whether the decision to prosecute a dormant company was a proportionate and appropriate use of resources, given the end result, meaning that the conviction will not be registered on SIL's record and it will not face any penalties.

Conclusion

Whilst the prosecution of SIL has certainly shown that small and medium-sized companies will be prosecuted, the lack of a DPA means that some now query whether there is any meaningful incentive for offering DPAs to companies that self-report and cooperate throughout an investigation. SIL provided extensive documentation, conducted its own internal investigation and dismissed all senior executives previously involved. However, others argue that this case can be distinguished because of its particular facts, and does not represent a change to UK DPAs.

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<https://www.sfo.gov.uk/cases/sweett-group/>

<https://www.youtube.com/watch?v=UvFpgwUZgw8#action=share>

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