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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

United Kingdom Phase 4 – Additional follow-up report

2019 Two-year follow-up – updated 2021

JT03487342

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2021 Additional Follow-Up Report – Addendum to the Summary and Conclusions by the Working Group on Bribery

Introduction¹

1. In March 2017, the Working Group on Bribery (WGB or Working Group) adopted its Phase 4 report, which evaluated and made recommendations on the United Kingdom's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation).² On 6 March 2019, the WGB assessed the level of implementation by the United Kingdom (UK) of its Phase 4 recommendations, based on a progress report by the UK.³

2. In June 2021, the United Kingdom presented a report to the WGB, providing information on the progress made in implementing Phase 4 recommendations 1(a)-(b), 2(a)-(b), 7(a)-(d), 9(b), 10, 11(a), (b) and (e), 14(b)-(f), and 15(a)-(b). In light of the information provided, the Working Group considers that recommendation 7(a) should be deemed partially implemented, recommendations 9(b), 10, 14(c), 14(e)-(f) and 15(a) should be deemed fully implemented, and recommendations 7(b), 14(b) and 14(d) should be deemed fully implemented but converted into a follow up. The status of other Phase 4 recommendations remains unchanged. The Working Group invites the UK to report back in two years (i.e. by June 2023) on recommendations 7(a), (c) and (d), 11(a)-(b) and 11(e). The UK will also report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

¹ The evaluation team for this Phase 4 additional written follow-up evaluation of the UK was composed of lead examiners from **Norway** (*Ms. Mona Ransedokken*, Policy Director, International Section, Ministry of Justice and Public Security and *Ms. Sissel Gørrissen*, Special Investigator, Anti-Corruption Team, ØKOKRIM (National Authority for Investigation and Prosecution of Economic and Environmental Crime)) and **South Africa** (*Adv. Malini Nadasen-Govender*, Deputy Director of Public Prosecutions, Regional Head: Western Cape, Cape Town, Special Commercial Crimes Unit, National Prosecuting Authority), as well as members of the **OECD Anti-Corruption Division** (*Ms. France Chain*, Coordinator of the Phase 4 Evaluation of the UK and Senior Legal Analyst, and *Ms. Elisabeth Danon*, Legal Analyst). See [Phase 4 Procedures](#) paragraph 60 concerning 'Updates to the written follow-up report'.

² United Kingdom, Phase 4 Monitoring Report: <https://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf>

³ United Kingdom, Phase 4 Two-Year Follow-Up Report: <https://www.oecd.org/corruption/United-Kingdom-phase-4-follow-up-report-ENG.pdf>

3. The Working Group's summary and conclusions on the Phase 4 recommendations for which the level of implementation has been reassessed are presented below. These summary and conclusions should be read in conjunction with the report prepared by the UK, annexed to the present document. They constitute an addendum to the Summary and Conclusions adopted by the WGB in March 2019.

Regarding the independence of investigation and prosecution of foreign bribery:

- **Recommendation 7(a)** – *Partially implemented*: The Working Group welcomes the 2021 amendment to the Memorandum of Understanding (MoU) between law enforcement authorities, which clarifies that Article 5 of the Anti-Bribery Convention is binding on Participants. However, the MoU does not apply to the Attorney General and other relevant parts of the government, which are specifically mentioned under this recommendation 7.
- **Recommendation 7(b)** – *Fully implemented, converted into a follow-up*: The Working Group welcomes the steps taken to further raise awareness of the duty to respect the principles in Article 5 of the Convention. Nevertheless, in light of the concerns raised at the time of Phase 4, this recommendation should be followed up in the context of future evaluations.

Regarding sanctions through public procurement measures:

- **Recommendation 9(b)** – *Fully implemented*: Adequate training has been provided to contracting authorities on mandatory and discretionary exclusion of economic operators including with regard to companies convicted under section 7 of the Bribery Act.

Regarding international cooperation:

- **Recommendation 10** – *Fully implemented*: The changes made to the UK case management system, iCasework, allow for better monitoring of the time taken to obtain evidence on all types of mutual legal assistance requests that the UK receives.

Regarding tax-related measures:

- **Recommendations 14(c), 14(e)-(f)** – *Fully implemented*: The Working Group welcomes steps taken to enhance detection of bribery by HMRC. In particular, changes to HMRC's electronic compliance work management system as well as Guidance and awareness-raising initiatives developed for tax auditors should facilitate the detection of bribe payments disguised as legitimate allowable expenses. The adoption of a new MoU in 2019 between HMRC and the SFO, which clarified the legal basis for information sharing, should also allow for increased exchanges between these authorities on foreign bribery cases.
- **Recommendation 14(b) and (d)** – *Fully implemented, converted into a follow-up*: The figures provided by the UK suggest that the mechanisms in place for HMRC to be routinely informed of foreign bribery convictions are efficient and used in practice. Furthermore, HMRC has completed a comprehensive review of its methods and capacity to detect and report foreign bribery, and developed Guidance developed for tax auditors as well as a "reverse engineering" project with the SFO, which should help enhance HMRC's detection capacities. The Working Group welcomes these developments and will follow up on their effectiveness in practice in the context of future evaluations.

Regarding export credits:

- **Recommendation 15(a)** – *Fully implemented*: The Working Group welcomes the conclusion by UKEF of the major and comprehensive review initiated in 2018 of its financial crime compliance policies and procedures (including in relation to bribery). This review has led to several positive outcomes, such as a dedicated Due Diligence Unit, and an update and enhancement of procedures relating to due diligence and financial counterparts, thus denoting important efforts to address the recommendation.

2019 – Summary and Conclusions by the Working Group on Bribery

Summary of findings⁴

1. In March 2019, the United Kingdom (UK) presented its written follow-up report to the OECD Working Group on Bribery (Working Group), outlining the steps taken to implement the recommendations received and to address the follow-up issues identified during its Phase 4 evaluation in March 2017.⁵ In light of the information provided, the Working Group considers that the UK has fully implemented 16 recommendations, partially implemented 18 recommendations, and not implemented 10 recommendations. The Working Group considers that the UK has addressed a number of key Phase 4 recommendations, notably asserting the SFO's⁶ role in foreign bribery cases and generally enhancing the capacity for enforcement of the foreign bribery and related offences, as well as to engage with the private sector, which the Working Group hopes will further enhance foreign bribery enforcement results. The Group further notes efforts are underway in a number of areas, notably to enhance detection of foreign bribery through certain key government agencies or whistleblower protection, or to engage with the CDs and OTs on foreign bribery-related issues, and encourages the UK to pursue these efforts. On the other hand, the Working Group regrets that no steps have been taken to address long-standing recommendations to ensure the independence of foreign bribery investigations and prosecutions, or to enhance detection through AML-reporting mechanisms. The Working Group's summary and conclusions are presented below. They should be read in conjunction with the report prepared by the UK, annexed to the present document.

⁴ The evaluation team for this Phase 4 two-year written follow-up evaluation of the UK was composed of lead examiners from **Norway** (*Ms. Mona Ransedokken*, Policy Director, International Section, Ministry of Justice and Public Security and *Ms. Sissel Gørrissen*, Special Investigator, Anti-Corruption Team, ØKOKRIM (National Authority for Investigation and Prosecution of Economic and Environmental Crime)) and **South Africa** (*Adv. Malini Nadasen-Govender*, Deputy Director of Public Prosecutions, Regional Head: Western Cape, Cape Town, Special Commercial Crimes Unit, National Prosecuting Authority), as well as members of the **OECD Anti-Corruption Division** (*Ms. France Chain*, Coordinator of the Phase 4 Evaluation of the UK and Senior Legal Analyst, and *Ms. Catherine Marty*, Legal Analyst). See [Phase 4 Procedures](#), paras 54 et seq. on the role of Lead Examiners and the Secretariat in the context of two-year written follow-up reports.

⁵ See [Phase 4 Report of the United Kingdom](#), and the [Phase 4 procedures](#).

⁶ List of abbreviations: AML: anti-money laundering; CDs and OTs: Crown Dependencies and Overseas Territories; SFO: Serious Fraud Office; COLP: City of London Police; CPS: Crown Prosecution Service (CPS); COPFS: Crown Office and Procurator Fiscal Service (Scotland); NCA: National Crime Agency.

2. Despite an increased level of enforcement of foreign bribery laws, the total number of finalised and ongoing cases relative to the UK economy remains relatively low. Since Phase 4 in 2017, the status of foreign bribery enforcement is as follows:

- 3 foreign bribery cases have been concluded (SFO), resulting in:
 - Conviction of 12 individuals and 9 acquittals +1 civil recovery order (1 individual);
 - Conviction of 1 legal person in 2018 to GBP 18,038,000(GBP 6,375,000 fine + GBP 10,963,000 compensation to third country + GBP 700,000 in prosecution costs).⁷
- 1 case was discontinued (COPFS).
- Prosecutions are ongoing in 4 cases, of which 1 civil case (SFO).
- At least 32 investigations are underway (at least 16 SFO; 1 COLP/CPS; 12 NCA/CPS; 3 COPFS), of which at least 16 at pre-charge stage and 5 opened since Phase 4.

Regarding whistleblower protection:

- ◆ *Recommendation 1 (a) and (b) – Partially implemented:* The Working Group notes that an initial review of the effectiveness of the Whistleblowing Guidance and Code of Practice was inconclusive and that a further review is expected to be launched in Spring 2019, as foreseen in the [UK Anti-Corruption Strategy 2017-2022](#) (1(a)). Regarding awareness raising, the Working Group is encouraged by efforts made by the Department for Business, Energy and Industrial Strategy (BEIS) to strengthen the implementation of the whistleblowing framework. It welcomes the SFO's efforts to promote and raise awareness of the importance of whistleblowers as one (of many) sources of information, including through the publication of its [Annual Report on Whistleblowing Disclosures](#). Further non-case specific information could nevertheless be made available by the SFO and other law enforcement authorities highlighting the usefulness of these disclosures for enforcement actions (1(b)).

Regarding detection of foreign bribery through anti-money laundering reporting:

- ◆ *Recommendations 2(a) and (b) – Partially implemented:* With respect to anti-money laundering, the Working Group welcomes the adoption of the *Criminal Finances Act 2017* which grants the UKFIU new powers, including the authority to direct reporting entities to disclose additional information on the basis of a Suspicious Activity Report (SAR). A reform of the SARs system has been called for since 2015 but has not been adopted yet. Proposals for such a reform are expected to be delivered in 2019 and scheduled to be completed by 2023 (2(a)). The Working Group welcomes the Home Office's "Flag It Up" campaign to raise awareness about some red flags that may relate to foreign bribery, but notes that it only targets a limited number of reporting entities (solicitors, accountants and real estate agents) and is not tailored to specifically detect foreign bribery. The NCA reports that two of their foreign bribery cases have been detected through SARs since Phase 4 (2(b)).

Regarding detection of foreign bribery through other sources:

- ◆ *Recommendations 3(a) and (b) – Fully implemented:* The Working Group welcomes the participation of bodies such as the HMRC and the UKEF in multi-agency groups that ease information sharing and bribery case management, as well as efforts to mobilise UK agencies with particular potential for detecting foreign bribery. The Working Group encourages the UK to pursue these efforts with regard to certain departments or agencies (see in particular recommendations 2 and 14) (3(a)). Significant efforts have also been made to enhance exploitation of existing sources of foreign bribery allegations:

⁷ On 10 April 2018, Alstom Network UK Ltd was found guilty of conspiracy to make corrupt payments. Alstom Network UK Ltd is appealing the conviction.

In the FH Bertling case (see Phase 4 Report and Annex to this report), FH Bertling Ltd. pleaded guilty to conspiracy to make corrupt payments but has since ceased trading and is in liquidation, which resulted in the closing of proceedings against the legal person.

in line with the [2017 Tackling Foreign Bribery MOU](#), the OECD Matrix of cases⁸ is now reviewed on a quarterly basis as part of the Clearing House process, and the SFO has increased its ability to proactively develop information from open source material in particular (3(b)).

Regarding investigation and prosecution of foreign bribery:

- ◆ *Recommendations 4(a)-(c) – Fully implemented:* The Working Group welcomes developments in the SFO and NCA that have the potential to enhance the investigation and prosecution of foreign bribery cases, in particular:
 - Additional resources have been allocated to the SFO (see also recommendation 6(a)), which has enhanced its capacity to carefully and fully review foreign bribery allegations. Efforts by the NCA to build up foreign bribery intelligence are also encouraging (4(a));
 - With respect to transnational foreign bribery cases, the SFO's Intelligence Unit reviews incoming MLA requests as a potential source for opening UK investigations, bearing in mind double jeopardy issues. Similarly, the NCA ICU regularly updates information on foreign bribery investigations and reviews whether UK action is appropriate (4(b));
 - The new SFO Director reviewed the SFO case acceptance criteria and adopted a Statement of Principle in January 2019, which is more concise and clarifies applicable factors. The Working Group encourages the SFO to review regularly its case acceptance policy to ensure it achieves expected results, and will continue to follow this up (4(c)).

Recommendations regarding enforcement of the foreign bribery offence

- ◆ *Recommendations 5(a)-(d) – Fully implemented:* Efforts to enhance capacity for foreign bribery enforcement within different agencies have also been made, although further steps could be taken with respect to engagement with the COPFS and the FCA. In particular:
 - A long-standing Working Group concern over the uncertainty of the SFO's role in foreign bribery-related enforcement has been addressed. The SFO's position is reaffirmed in the [2017 Tackling Foreign Bribery MOU](#), and the SFO has launched several new investigations since Phase 4. A new Director was appointed in June 2018 for a five-year term, which ensures continuity (see also 6(c) on resources) (5(a));
 - Measures have been taken to improve communication between law enforcement authorities from England and Wales and those in Scotland, including through participation of the COPFS in Clearing House meetings and revision of the MOU between the COPFS and the SFO in December 2018. However, the COPFS currently has no staff seconded to the National Economic Crime Centre (NECC) (5(b));
 - Parties to the 2017 MOU now include HMRC, which has also joined the Clearing House since March 2017, and is represented in the NECC. The UK reports that while the UKFIU is not included formally in such mechanisms, it can nevertheless be present in relevant meetings, as a branch of the NCA (5(c));
 - Coordination mechanisms have been put in place between the FCA and SFO to discuss investigations, sharing of intelligence, and to consider whether a foreign bribery matter should be taken forward either by the SFO, the FCA or both in a coordinated way. (5(d)).

⁸ The OECD Matrix is a collation of allegations of foreign bribery prepared by the OECD Secretariat based on public sources. It is used by the Working Group on Bribery to track case progress.

Regarding resources for foreign bribery enforcement:

- ◆ *Recommendations 6(a) – Fully implemented, and (b) – Partially implemented:* The increase in 2018-19 of the SFO’s core budget from the planned GBP 34.3M to GBP 52.7M is a positive development, as are the new arrangements that govern “blockbuster” funding. These changes should enable the SFO to manage its budget more flexibly and efficiently. Nevertheless, the fact that a few cases are still eligible to blockbuster funding, to be approved by the executive,⁹ is an issue that the Working Group will continue to follow up closely (6(a)). Efforts since 2017 to provide specialised foreign bribery training to NCA ICU investigators is also welcome, but the Working Group continues to consider that the NCA ICU should be provided with adequate resources to enable it to efficiently carry out foreign bribery investigations, including where these concern foreign bribery occurring outside developing countries (6(b)).¹⁰

Regarding the independence of investigation and prosecution of foreign bribery:

2021 update: Recommendation 7(a) – Partially implemented; Recommendation 7(b) – Fully implemented, converted to a follow-up.

- ◆ *Recommendations 7(a), (c) and (d) – Not implemented, (b) – Partially implemented:* The Working Group regrets that the UK has not taken steps to address most of the Working Group’s concerns – some of which date back to Phase 3 – regarding conformity with Article 5 of the Convention, which seeks to protect foreign bribery investigations and prosecutions from undue interference. The UK holds the view that sufficient safeguards are in place. More specifically, the Working Group notes that:
 - Article 5 continues not to be clearly binding on investigators, prosecutors (including in Scotland), the Attorney General and the Lord Advocate at all stages of a foreign bribery investigation or prosecution (7(a));
 - Limited steps have been taken to raise awareness among relevant parts of the government of the duty to respect the principles in Article 5 with a view to assisting investigators and prosecutors to act accordingly. The Anti-Corruption Champion circulated a letter on 26 February 2019 to the National Security Council, the Social Reform (Home Affairs) Sub-committee, the Department for International Trade and the Devolved Administrations recalling Article 5; plans appear to be underway to carry out further awareness-raising (7(b));
 - No evidence has been provided that would address the use of Shawcross exercises in foreign bribery cases, which the Working Group recommended should be publicised and transparent, as the circumstances permit (7(c));¹¹ and
 - Conditions regarding the appointment and dismissal of the SFO Director remain unchanged since Phase 2bis (7(d)).

Regarding the conclusion of foreign bribery cases:

- ◆ *Recommendations 8(a), (b) and (d) – Fully implemented, (c) – Not implemented:* While the UK has taken steps to respond to the Working Group’s Phase 4 recommendations concerning effective

⁹ As noted by the Working Group in Phase 4, the reliance of the SFO on blockbuster funding represents a risk of political interference, and could, at the very least, result in an unfortunate perception of influence of the executive over law enforcement.

¹⁰ As noted in Phase 4, as it is largely financed by the Department for International Development (DFID), the NCA ICU’s focus is limited to bribery and corruption affecting DFID priority countries.

¹¹ The Working Group expressed the view that such consultations may generally not be appropriate in foreign bribery cases, in which the national economic interest and relations with other states may be involved. For the Working Group, the lack of information on the use made of this practice in foreign bribery cases undoubtedly contributes to challenge its appropriateness under the Convention.

sanctioning in foreign bribery cases, further efforts could be made to enhance transparency of court decisions. In particular:

- No civil settlements have been imposed in foreign bribery cases since Phase 4 (8(a));¹²
- In 2017 and 2018, several meetings took place among the Scottish authorities, and between the Scottish authorities and those from England and Wales to discuss the possible merits of introducing DPAs in Scotland (8(b));
- No steps have yet been taken to ensure that court sentencing remarks and judgments in foreign bribery cases are routinely published and available. However, the Court Reform Programme launched to modernise the courts and enhance digital services, due to be completed in 2022, could allow for implementation of this recommendation (8(c)); and
- Legal persons have been the subject of all new foreign bribery investigations launched by the SFO, and one company has been subject to financial sanctions and compensation to a foreign country (8(d)).

Regarding sanctions through public procurement measures:

2021 update: Recommendation 9(b) – Fully implemented.

- ◆ *Recommendations 9(a) and (b) – Partially implemented:* While a procedure is being considered to allow contracting authorities to access directly company and individual conviction information to ensure that corrupt bidders are not awarded government contracts, this does not cover DPAs or settlement agreements (9(a)). Furthermore, guidance was provided in February 2019 to contracting authorities on mandatory and discretionary exclusion of economic operators, including with regard to companies convicted under section 7 of the Bribery Act, but training remains to be carried out (9(b)).¹³

Regarding international cooperation:

2021 update: Recommendation 10 – Fully implemented.

Recommendation 10 – Partially implemented: The Working Group welcomes the upgrades made by the UK Central Authority to its case management system that, when operational as of April 2019, will enhance measurement of MLA performance.

Regarding UK Crown Dependencies (CDs) and Overseas Territories (OTs):

- ◆ *Recommendations 11(a)-(d) – Partially implemented, and (e)-(f) – Not implemented:* Following positive dialogue during Phase 4, limited steps have been taken to further engage with the CDs and OTs to extend application of the Convention and generally enhance foreign bribery enforcement. The Working Group urges the UK and its CDs and OTs to actively pursue these efforts. In particular:
 - Despite an ongoing dialogue between the UK and its OTs, the extension of the Convention has not been finalised in all remaining territories (11(a));
 - The Working Group notes as a positive development the deployment of private central registers of company beneficial ownership or similarly effective systems in all three CDs and in the OTs with major financial centres, which are now effectively sharing company beneficial ownership information with UK law enforcement agencies and tax authorities. However, the Group regrets that limited efforts have been made to ensure that appropriate resources, training, expertise and capacity to investigate and prosecute foreign bribery and related offence are available (11(b));

¹² In Phase 3 and 4, the Working Group had expressed concern that the mere disgorgement of profits in civil settlements did not result in sufficiently effective, proportionate and dissuasive sanctions in foreign bribery cases.

¹³ These recommendations are outstanding since Phase 3.

- While some CDs and OTs (Jersey, Isle of Man, Gibraltar) report several investigations into money laundering cases predicated on foreign bribery, other CDs and no OTs report any investigation into foreign bribery-related offences (11(c));
- Legal persons may be held liable for foreign bribery only in the CDs and OTs that have adopted foreign bribery legislation. Since certain OTs still do not have such legislation, legal persons incorporated therein cannot be held liable for foreign bribery (11(d));
- No review has taken place between the UK and its CDs and OTs on the institutional framework and arrangements to respond to foreign bribery-related MLA requests. This could be particularly problematic where international cooperation is concerned, given the role that some of these financial centres may play in foreign bribery transactions (11(e)); and
- No MLA statistics have been compiled in collaboration with the CDs and OTs, with a view to identifying obstacles or difficulties in delivering international assistance (11(f)).

Regarding liability of legal persons:

- ◆ *Recommendations 12(a) and (b) – Not implemented:* The Working Group welcomes the UK's expressed intention to review the Guidance to Commercial Organisations following the findings of the House of Lords' Select Committee review of the UK Bribery Act (expected for March 2019). It notes, however, that no steps have yet been taken to address the Working Group's Phase 4 recommendations in this respect.

Regarding engagement with the private sector:

- ◆ *Recommendations 13(a) and (b) – Fully implemented:* The Working Group welcomes the launch in 2018 of the Business Integrity Initiative, a new support service to help companies, including SMEs, operating internationally. This Initiative provides high-level integrity guidance, as well as tailored anti-corruption guidance for SMEs on compliance, prevention and collective action. Three country pilot projects are due to be launched in 2019, notably to provide business integrity support from UK diplomatic missions to international companies.

Regarding tax-related measures:

2021 update: *Recommendations 14(c), 14(e)-(f) – Fully implemented; Recommendations 14(b) and (d) – Fully implemented, converted into a follow-up.*

- ◆ *Recommendations 14(a) – Fully implemented, (b), (c) and (d) – Partially implemented, (e) and (f) – Not implemented:* Given long-standing concerns since Phase 2bis, the Working Group is encouraged to see the initiatives already taken or underway to enhance the effectiveness of tax measures to enforce the non-deductibility of bribes and to detect foreign bribery. It considers that efforts should be pursued and notes in particular:
 - HMRC is engaging more actively in reviewing a number of past foreign bribery enforcement actions, and is preparing interim guidance on actions to take following a conviction or DPA for bribery. Regular discussions also take place with the SFO, including in the context of the Clearing House (14(a));
 - The participation of HMRC in the Clearing House and the NECC and its recent status as a signatory of the 2017 MoU can assist HMRC to be informed of foreign bribery investigations or report related allegations and to cooperate and exchange intelligence with relevant enforcement bodies. Since the focus of the Clearing House appears to be on incoming cases, further evidence is necessary to demonstrate that mechanisms are also in place for HMRC to be routinely informed of foreign bribery convictions (14(b));
 - HMRC's electronic compliance work management systems are being amended to include an extra category for recording enquiry work on bribery. These changes are expected to be operational by the end of March 2019 (14(c));

- HMRC is conducting a review of its methods and capacity for detecting and reporting foreign bribery, and is in the process of revising its professional guidance in this respect. The Working Group encourages HMRC to proceed with this project, and to include in this review an analysis of the reasons for lack of detection of proven cases of foreign bribery (14(d)); and
- With respect to enhancing detection and reporting of foreign bribery by tax authorities, the Working Group encourages HMRC to proceed with its expressed intention to develop training in 2019 on the detection of bribe payments disguised as legitimate allowable expenses. The Working Group regrets that the reporting framework by tax authorities to law enforcement remains the same as in Phase 4: HMRC may, but is not obliged to, disclose information for the purpose of assisting criminal investigations.¹⁴ The Working Group is however encouraged by the current development of operational guidance which it hopes can at least partly address this concern (14(e) and (f)).

Regarding export credits:

2021 update: Recommendation 15(a) – Fully implemented.

- ◆ *Recommendations 15(a) and (b) – Partially implemented:* The Working Group welcomes the review undertaken by UKEF in 2018 of its financial crime compliance policies and procedures, including in relation to bribery. It looks forward to the recommendations that may result from this review due in 2019, and to a potential upgrade of existing policies to ensure their effectiveness at an operational level, including in terms of detection of foreign bribery (15(a)). Furthermore, steps have been taken to strengthen some of UKEF's due diligence policies vis-a-vis agents, as well as the extended due diligence framework is also in place when a counterparty is subject to investigation. The Working Group looks forward to seeing the UKEF make use of its audit powers, as appropriate in the future, to carry out due diligence in cases of suspected foreign bribery (15(b)).

Dissemination of the Phase 4 report¹⁵

3. The UK's Phase 4 report is referenced in key government publications, including the 2017-2022 Anti-Corruption Strategy. The UK does not report further efforts to publicise and disseminate the Phase 4 report, for example, through public announcements, press events, or by sharing the report with relevant stakeholders, in particular those involved in the Phase 4 on-site visit.

Conclusions of the Working Group on Bribery

4. Based on these findings, the Working Group concludes that recommendations 3(a), 3(b), 4(a), 4(b), 4(c), 5(a), 5(b), 5(c), 5(d), 6(a), 8(a), 8(b), 8(d), 13(a), 13(b) and 14(a) have been fully implemented; recommendations 1(a), 1(b), 2(a), 2(b), 6(b), 7(b), 9(a), 9(b), 10, 11(a), 11(b), 11(c), 11(d), 14(b), 14(c), 14(d), 15(a) and 15(b) have been partially implemented; and recommendations 7(a), 7(c), 7(d), 8(c), 11(e), 11(f) 12(a), 12(b), 14(e) and 14(f) have not been implemented. The Working Group invites the UK to report back in writing in two years (i.e. March 2021) on outstanding recommendations.¹⁶ As per the [Phase 4](#)

¹⁴ Since Phase 2bis, the WGB has recommended that “the UK ensure that HMRC is obliged to provide information for use in foreign bribery investigations upon request. HMRC should also be obliged to report suspicions of foreign bribery to the SFO.”

¹⁵ The [Phase 4 procedures](#), para. 50, provide that “the evaluated country should make best efforts to publicise and disseminate the report and translated documents, for example, by making a public announcement, organising a press event, and translating the full report into the national language. In particular, the evaluated country should share the report and translated documents with relevant stakeholders, particularly those involved in the evaluation”.

¹⁶ The Working Group will discuss procedural issues relating to the general practice of Phase 4 additional reports at its June 2019 meeting. Following the conclusion of these discussions, this paragraph may be updated as relevant.

[procedures](#) (para. 60), the UK may also ask for a particular recommendation to be re-assessed at that time. The Working Group will continue to monitor follow-up issues 16a-l as case law and practice develop, as well as the possible impact of Brexit on the UK's foreign bribery enforcement, in particular in relation to international cooperation arrangements with EU countries. The UK will also report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

Annex 1: 2021 Additional Written Follow-Up Report by the United Kingdom

Instructions

This document seeks to obtain information on the progress that the United Kingdom has made implementing outstanding recommendations of its Phase 4 evaluation report.

Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Please submit completed answers to the Secretariat on or before 16 April 2021.

Name of country: UNITED KINGDOM
Date of approval of Phase 4 evaluation report: 15 March 2017
Date of approval of Phase 4 two-year written follow-up: 6 March 2019
Date of information: 16 April 2021

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation 1(a):

1. Regarding whistleblower protection, the Working Group recommends that the UK:

a) Proceed with its intention expressed in the 2014 Anti-Corruption Action Plan to review whistleblowing provisions with a view to their possible improvement [2009 Recommendation IX and X.C.v].

Action taken as of the date of the follow-up report to implement this recommendation:

- If no action has been taken to implement recommendation 1 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:
- In the 2014 Anti-Corruption Action Plan, HM Government committed to evaluate the implementation of whistleblowing provisions introduced through the Enterprise and Regulatory Reform Act 2013. This made four significant changes to the whistleblowing framework: i) Introduction of a "public interest test", requiring individuals claiming under the Public Interest Disclosure Act 1998 to show a reasonable belief that their disclosure was made in the public

interest; ii) amendment to the "good faith test" to affect remedy rather than liability; iii) amendment to the definition of "worker" in section 43K of the Employment Rights Act 1996 (the definition which specifically covers whistleblowers), to include certain new contractual arrangements within the NHS and iv) introduced vicarious liability into whistleblowing protections, allowing individuals who have suffered a detriment from the actions of co-workers as a result of blowing the whistle, to bring a claim against their co-workers or employer in respect of that detriment.

- In the UK Anti-Corruption Strategy (2017-2022) we committed to also review the effectiveness of the Whistleblowing Guidance for Employers and Code of Practice. This is produced by the Department for Business Energy and Industrial Strategy (BEIS) and aims to ensure that more employers follow good practice when responding to disclosures relating to whistleblowing. In the UK Anti-Corruption Strategy (2017-2022) we also committed to review the effectiveness of BEIS' Whistleblowing Guidance for Employers and Code of Practice. This aims to ensure that more employers follow good practice when responding to disclosures relating to whistleblowing.

Progress

- The UK has made a number of improvements to the UK whistleblowing landscape since the 2014 Action Plan. These include a legislative requirement introduced in 2017 for most prescribed persons to produce an annual report on whistleblowing disclosures made to them by workers (as we reported in the March 2019 Update). These reports increase confidence that prescribed persons are taking whistleblowing disclosures seriously through greater transparency about how disclosures are handled. Prescribed Persons must publish their reports online by the end of September every year. The information from these reports will be useful when considering the scope of any future review of the UK's framework.
- As we also reported on in the March 2019 Update, we proceeded with our intended review of the effectiveness of the Whistleblowing Guidance and Code of Practice, but this was inconclusive due to a limited response rate from employers. We also want to consider wider sources of evidence and good practice regarding whistleblowing, which have been generated in the period since we made these commitments and reforms in deciding the scope of a review.
- Work to consider the scope and timing of a review of the wider whistleblowing landscape has begun, but pace has been slower due to resources being prioritised for the pandemic response.

Text of recommendation 1(b):

1. Regarding whistleblower protection, the Working Group recommends that the UK:

b) Raise public awareness of the utility of whistleblower reports in finalised cases with a view to bolstering the confidence of potential whistleblowers in the value of their reports [2009 Recommendation IX and X.C.v].

Action taken as of the date of the follow-up report to implement this recommendation:

HM Government continues to explore how we can best raise public awareness of the utility of whistleblower reports. However, we note that due to the need to maintain adequate protections for whistleblowers, our law enforcement agencies do not publicise details of the involvement of whistleblower reports in finalised cases.

The law enforcement agencies do continue to publish the statutory Annual Whistleblowing Reports on

their websites and have regular engagement with different bodies across government and with parliamentarians to discuss the HM Government's approach to whistleblowing.

If no action has been taken to implement recommendation 1 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(a):

2. Regarding detection of foreign bribery through anti-money laundering reporting measures, the Working Group recommends that the UK:

a) Implement the announced reform of the UKFIU through the adoption of the Criminal Finances Bill and adopt further reforms of the UKFIU and the reporting regime, with a view to ensuring that detection of foreign bribery through suspicious activity reports is improved [Convention, Article 7; 2009 Recommendation III.i and IX.i].

Action taken as of the date of the follow-up report to implement this recommendation:

The Suspicious Activity Reports (SARs) Reform Programme started in Summer 2019 and has begun to deliver outcomes and benefits.

The Programme has increased staff to the UK Financial Intelligence Unit (UKFIU) enabling better analysis of SARs, a faster turnaround, as well as more timely and meaningful feedback to regulated reporters. The UKFIU has also introduced a new target operating model (TOM) which is currently being piloted including increased reporter feedback and engagement through targeted webinars and podcasts and specific reporter SARs training all leading to improved operational efficiencies amongst reporters.

The Programme is due to run until March 2024 and is expected to deliver the following:

- a new digital service for SARs reporting and analysis, including search, data visualisation and analytics;
- UK Financial Intelligence Unit (UKFIU) staff uplift to a total 70 additional FTEs (subject to funding) to gather, analyse, and disseminate SARs, and increase feedback and engagement with reporters and law enforcement agencies; and
- additional 22 financial investigators in Regional Organised Crime Units (ROCU), dedicated to SARs analysis to disrupt criminals and increase asset recovery.

If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(b):

2. Regarding detection of foreign bribery through anti-money laundering reporting measures, the Working Group recommends that the UK:

b) Raise awareness among reporting professions, including non-financial professions, about red flags that may indicate foreign bribery [Convention, Article 7; 2009 Recommendation III.i].

Action taken as of the date of the follow-up report to implement this recommendation:

In the 2019 Report, we outlined the work the *Flag It Up* campaign to raise awareness of financial crime red flags to the private sector, including the non-financial professions of lawyers, estate agents and accountants.

Since 2019, the UK regularly engages with the private sector to raise awareness of the red flags that might indicate foreign bribery. In particular, the National Economic Crime Centre (NECC) based in the National Crime Agency has expanded its public-private work. This includes the establishment of various public-private cells working on a range of topics including a cell dedicated to bribery and corruption. The purpose of this cell is to improve the public and private understanding of the threat, and also produce relevant products of a typically preventative nature. These products typically take the form of alerts, which contain red-flags and case studies, and are usually distributed to the regulated sector. Increasingly these alerts have been distributed more widely to non-regulated sectors and the public in general. Some recent examples include public alerts on the bribery and corruption risks associated with:

- South Sudan
- the Extractives Sector
- Art Market Participants
- the UK Independent Schools Sector
- Chinese investment

The NECC also delivers other forms of outreach to the private sector, for example last year on anti-corruption day they presented to over one hundred UK charities operating abroad, raising awareness of bribery and corruption risks and potential liability under UK law.

The Serious Fraud Office also engages regularly with the private sector to raise awareness. These include:

- a presentation by the Director of the Serious Fraud Office to the UK Oil and Gas Industry Association Limited Legal Conference in September 2020;
- a keynote address by a senior SFO official at the ABC Minds Energy & Extractives 2020 in September 2020, specifically focused on anti-bribery and corruption and relevant compliance topics in the energy and extractives sector. The audience was made up of senior representatives from extractives/energy companies and city legal firms; and
- a keynote speech by a senior SFO official to the ADS Group Anti-Bribery & Corruption seminar hosted by Baker McKenzie LLP for the aerospace industry event in November 2020. This covered anti-bribery and corruption issues and developments. It was run by the ADS Group which is the largest aerospace and defence trade association in Europe and which represents and supports over 1000 UK businesses operating in the aerospace, defence, security and space industries.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(a):

7. Regarding the independence of investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

- a) Ensure that Article 5 of the Convention is clearly binding on investigators, prosecutors (including in Scotland), the Attorney General and the Lord Advocate at all stages of a foreign bribery investigation

or prosecution [Convention, Article 5; Phase 3 recommendation 8(a)].

Action taken as of the date of the follow-up report to implement this recommendation:

The OECD Convention is an instrument of international law and therefore HM Government recognises it imposes an obligation on States that investigations and prosecutions should not be subject to improper influence of the sort described in Article 5. In previous submissions we have highlighted that prosecutorial guidance adequately covers the applicability of Article 5:

Any decision to prosecute unlawful activity will be governed by the following codes, which apply to all cases including foreign bribery:

1. [The Full Code Test in the Code for Crown Prosecutors](#). The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions, which applies to the Crown Prosecution Service and Serious Fraud Office, that sets out the general principles Crown Prosecutors should follow when they make decisions on cases. Crown Prosecutors must be satisfied there is enough evidence to provide a "realistic prospect of conviction" and it is in the public interest. This code is kept under review and was recently updated in October 2018 – applies to all offences including bribery.
2. The applicable [joint prosecution guidance](#) on corporate prosecutions.
3. The [joint guidance for prosecutors](#) issued by the Director of Public Prosecutions and the Director of the Serious Fraud Office. This sets out the Director's approach to deciding whether to bring a prosecution under the Bribery Act. Further information on the prosecution process in Scotland, including instructions to prosecutors is set out below.

However, we understand that the Working Group wished to see more to ensure that the obligations specified in Article 5 are adhered to. As a result, we have agreed an amendment to the **Memorandum of Understanding** between the UK law enforcement organisations to include a specific reference to Article 5 and a recognition that UK prosecutors should adhere to it. The wording to the agreed change to the MoU is provided.¹⁷

In Scotland the Lord Advocate, the Ministerial Head of the Crown Office and Procurator Fiscal Service (COPFS), exercises his functions independently of any other person and issues standing instructions in relation to prosecutorial decision-making, which are binding on all prosecutors in Scotland. The instructions issued by the Lord Advocate regarding bribery cases make specific reference to Article 5 of the Convention, and expressly state that prosecution decisions must take no account of considerations of national interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved.

Before a decision is taken in a bribery case in Scotland, specific instructions must be obtained from Crown Counsel. These are senior prosecutors drawn from the private Bar and from within COPFS, who hold a commission from the Lord Advocate to exercise their functions in the context of the prosecution of crime.

These constitutional arrangements and processes ensure that prosecutorial decisions in bribery cases

¹⁷ Please note that the Parties are currently discussing other, unrelated, amendments. We intend to supply a copy of the new MoU containing the consolidated amendments ahead of the June plenary

are taken independently, fairly, and in the public interest, and that there is no risk of undue interference with such decisions.

If no action has been taken to implement recommendation 7a, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(b):

7. Regarding the independence of investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

b) Raise awareness among all relevant parts of the government of the duty to respect the principles in Article 5 of the Convention, so that they can assist investigators and prosecutors to act in accordance with that Article [Convention, Article 5; Phase 3 recommendation 8(b)].

Action taken as of the date of the follow-up report to implement this recommendation:

The following measures have been taken to raise awareness of Article 5 to all relevant parts of Government:

- the amendment to the MoU as described in the submission on Recommendation 7(a) above;
- since 2020, the duty to respect the principles of Article 5 is a standing part of the Joint Anti-Corruption Unit's update to the quarterly cross HM Government Bribery, Corruption & Financial Sanctions Evasion Threat Group. An extract of the minute of a recent meeting is supplied;
- briefing on Article 5 has been included in introductory briefing packs for the new incoming Attorney General and Solicitor General (an extract is provided);
- in addition to the letter from the Prime Minister's Anti-Corruption Champion to relevant Government ministers submitted as part of the evidence for the Year 2 Update of the UK, there has been periodic communication between the Champion, ministers and the Director of the SFO. Copies of letters from the Champion and the Director of the SFO are supplied to the Lead Examiners; and,
- information on Article 5 and the duties to respect its principles are part of the standard briefing from the Head of the UK Delegation to OECD Working Group on Bribery to colleagues across government. This briefing has been given to ministers, special advisors, senior civil servants, and officials based in embassies.

If no action has been taken to implement recommendation 7b, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(c):

7. Regarding the independence of investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

c) Ensure that the use of Shawcross exercises in foreign bribery cases is publicised and transparent, as the circumstances permit [Convention, Article 5].

Action taken as of the date of the follow-up report to implement this recommendation:

Due to the need for confidentiality and in order to respect the independent investigation and prosecution of foreign bribery cases, the circumstances will not permit the use of Shawcross exercises to be publicised and transparent in live and on-going cases. Since Phase 4, no such case has completed which has involved a Shawcross exercise.

The Shawcross exercise is not unique to foreign bribery cases. It is a Cabinet-level consultation whereby the Attorney General may seek the views of relevant Ministerial colleagues on the public interest implications for their departments of proceeding, or not proceeding, with a criminal investigation or prosecution.

A Shawcross exercise will only be conducted in the most exceptional cases where the Attorney General considers it necessary to consult their Ministerial colleagues so that they or the relevant Director, the Director of Public Prosecutions or the Director of the Serious Fraud Office as the case may be, can fully understand the wider implications for the public interest of an investigation or a prosecution decision.

When conducting a Shawcross exercise, the Attorney General acts independently of HM Government as the guardian of the public interest and not as a party politician or a government minister. This is because of the fundamental constitutional principle that prosecution decisions are taken independently of government. This principle is derived from the separation of powers which prevents political interference in criminal investigations and prosecution decisions and protects the rule of law.

HM Government is committed to continued transparency and integrity will in each completed case which involves a Shawcross exercise, will consider if the circumstances permit publication of details. To embed this consideration in the post-case process, the internal Handbook to the UK Delegation to Working Group on Bribery has been amended to direct the Head of the UK Delegation to consult with officials in the Attorney General’s Office and officials from the relevant law enforcement agencies on the conclusion of any foreign bribery case involving a Shawcross exercise to consider if the circumstances permit public disclosure. An extract from the Handbook is supplied.

If no action has been taken to implement recommendation 7c, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(d):

7. Regarding the independence of investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

d) Ensure sufficient safeguards are in place regarding the appointment and dismissal of the SFO Director [Convention, Article 5].

Action taken as of the date of the follow-up report to implement this recommendation:

In January 2019 a [framework agreement between the Law Officers and the Director of the Serious Fraud Office](#) was entered into that sets out the main points of the relationship which the Law Officers (Attorney General and Solicitor General) and the Director expect to conduct, in the discharge of their respective functions in relation to the SFO. As well as highlighting wider safeguards, this helps to ensure in several

places that there are sufficient safeguards regarding the appointment and dismissal of the SFO Director this publicly sets out the Director's independence in casework decisions and the Law Officers role in safeguarding this independence:

- paragraph 7 confirms that the appointment process is subject to the relevant Civil Service appointment rules;
- paragraphs 11 and 12 confirm that the Director is a statutory office holder and that the role is a statutory role set out in the Criminal Justice Act 1987 and subject to statutory superintendence of the Attorney General;
- paragraph 13 confirms that the Director is responsible for deciding with criminal investigations the SFO should open and those which should be prosecuted and that the Director exercises independence in individual casework decisions (both investigation and prosecution);
- paragraph 19 confirms that the Law Officers are responsible for safeguarding the independence of the SFO in taking individual investigation and prosecution decisions;
- paragraph 39 confirms that the Attorney General's Office supports the performance of the framework agreement by advising the Attorney General and Solicitor General about their powers, duties and responsibilities in relation to the SFO and supporting the discharge of their relevant functions and supporting the performance, accountability and independence of the Director, and advising the Director about the policy, strategic and legislative framework relevant to the SFO;
- paragraph 69 confirms that the Director ensures that, consistently with maintaining proper independence in taking prosecution decisions, policies and guidance adopted by the SFO are consistent with and give due effect to relevant government policy.

We would like to reiterate that no SFO Director has ever been dismissed for matters relevant to Article 5 of the OECD Convention.

If no action has been taken to implement recommendation 7d, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(b):

9(b). Provide suitable training and guidance to contracting authorities on mandatory and discretionary exclusion of economic operators including with regard to companies convicted under section 7 of the Bribery Act. [Convention, Article 3(4); 2009 Recommendation XI.i; Phase 3 recommendation 6(c)]

Action taken as of the date of the follow-up report to implement this recommendation:

In March 2021, the WGB assessed this Recommendation as "Partially Implemented" stating that:

"Furthermore, guidance was provided in February 2019 to contracting authorities on mandatory and discretionary exclusion of economic operators, including with regard to companies convicted under section 7 of the Bribery Act, but training remains to be carried out"

In February 2019 we published the procurement policy note and guidance "Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing". This applies to all Central Government Departments, their Executive Agencies and Non-Departmental Public Bodies in conducting

procurement procedures regulated by the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016. It is also relevant to the wider public sector such as local authorities and NHS bodies in carrying out procurements for public, utilities and concession contracts.

We have provided training to commercial policy personnel in support of implementing the note and guidance in 2019. This training has been cascaded within departments. A copy of the slides to this training is supplied. This training confirms that exclusion may occur in the case of a conviction of serious criminal offences even where these are not mandatory exclusion grounds, which would include a conviction under section 7 of the Bribery Act.

If no action has been taken to implement recommendation 9b, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10:

10. Regarding international cooperation, the Working Group recommends that the UK improve the tools available to measure MLA performance, to systematically gather information on the actual amount of time taken to execute incoming MLA requests in relation to foreign bribery and related offences [Convention Article 9(1)].

Action taken as of the date of the follow-up report to implement this recommendation:

As we reported in the March 2019 Update, the UK Central Authority had begun the process of making a number of key changes to its case management system, iCasework to allow better monitoring of the time taken to obtain evidence on all types of Mutual Legal Assistance requests the UK receives. These changes, which relate to all offences and case types including foreign bribery and related offences, are now complete.

In addition, for asset recovery cases we have added additional fields to iCasework to better track the assets being requested and what has been recovered.

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(a):

11. Regarding UK Crown Dependencies and Overseas Territories, the Working Group recommends that the UK:

a) Proactively engage with the Overseas Territories to accelerate and finalise the extension of the Convention to the Overseas Territories that have not yet ratified it [Convention, Article 1].

Action taken as of the date of the follow-up report to implement this recommendation:

As stated in previous OECD evaluations, HM Government is responsible for the international relations of Overseas Territories (OTs) and Crown Dependencies (CDs) but they are not part of the United Kingdom. The UK can encourage and assist them to put in place good quality legislation that would enable the extension of the Convention. The UK cannot plan on behalf of the CDs or their Governments, they are self-governing in respect of domestic affairs. The OTs are largely self-governing jurisdictions and responsibility for the matters which are the subject of the Convention are generally the responsibility of OT governments.

The UK therefore accepts the Recommendation and continues to work with the remaining OTs with the most significant financial service sectors, namely Bermuda, Turks and Caicos Islands and Anguilla on extending the Convention by offering technical assistance, advice and guidance to help OTs introduce the necessary legislation and have the Convention extended to them.

The status of the remaining OTs is as follows:

- Anguilla: The Government of Anguilla are committed to the extension of the Anti-Bribery Convention to Anguilla. For this, the Government of Anguilla will need to introduce new legislation and they have agreed that work should begin on legislative drafting. The UK Government is looking to support the Government of Anguilla to complete this work, particularly given the acute challenges Anguilla faces due to the pandemic.
- Bermuda: the Government of Bermuda has enacted its [anti-bribery ordinance](#) (modelled on the UK Bribery Act 2010) and is currently in active discussions with us to progress the extension of the Convention.
- Turks & Caicos Islands: the TCI Government has indicated its wish to have the Convention extended and has provided a transposition table to the UK Government. This outlines the legal framework for implementing the Convention based around its [Bribery Ordinance](#). Unfortunately, due to resourcing pressures associated with the pandemic and other constraints, the Ordinance has not yet been implemented and is not in force. Once this has been done, we will proceed with assessing suitability for extension.

If no action has been taken to implement recommendation 11(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(b):

11. Regarding UK Crown Dependencies and Overseas Territories, the Working Group recommends that the UK:

b) Work in collaboration with the Crown Dependencies and Overseas Territories to enforce the Convention, including by ensuring appropriate resources, training, expertise and capacity to investigate and prosecute foreign bribery and related offences [Convention, Article 5 and Annex I D].

Action taken as of the date of the follow-up report to implement this recommendation:

HM Government does not consider this appropriate given the constitutional relationship between the CDs and OTs with the UK. Such matters are for consideration for each jurisdiction.

Nevertheless, HM Government is willing to assist the CDs and OTs with their efforts to tackle threats arising from serious and organised crime, including their capacity to investigate and prosecute foreign bribery and related offences. The UK provides a Law Enforcement Advisor for the OTs. The Advisor works with Governors on their responsibilities around security and is funded by the UK Government's Conflict, Stability and Security Fund. The UK has also provided financial investigation training across the OTs, which increases their capability to investigate aspects of bribery allegations. All OTs with financial centres now have at least one officer that has been trained.

If no action has been taken to implement recommendation 11(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(e):

11. Regarding UK Crown Dependencies and Overseas Territories, the Working Group recommends that the UK:

e) Review, in collaboration with the Crown Dependencies and Overseas Territories, their institutional framework and arrangements to respond to international cooperation requests [Convention Article 9 and 2009 Recommendation XIII].

Action taken as of the date of the follow-up report to implement this recommendation:

HM Government does not consider this review appropriate given the constitutional relationship between the CDs and OTs with the UK. Such reviews are a matter of consideration for each jurisdiction. However, it is willing to actively assist any efforts of the CDs and the OTs in this area.

Each of the CDs and the OTs with major financial centres are actively engaged with international processes and committed to the implementation of an effective Convention-compliant regime. Linked with this, numerous international processes such as those of the FATF, MONEYVAL and UNCAC also focus on international cooperation. Hence, the CDs, the OTs with major financial centres and international bodies routinely review institutional frameworks and arrangements to respond to international cooperation requests.

In any case, the UK is the most frequent contributor of international cooperation requests to the CDs and OTs and any issues in practice would be covered by bilateral liaison and/or the processes outlined in previous updates to the Working Group on Bribery.

Nevertheless, we have worked collaboratively with our colleagues in the jurisdictions to assess our respective approaches to international cooperation requests and to share examples and practices. For example, in July 2019 we held workshop for officials from the OTs and CDs which involved:

- a presentation from the UK Central Authority on what a good central authority should have in place to respond effectively to international cooperation requests;
- the UK financial intelligence unit and the Serious Fraud Office presented on the arrangements that they use and their experience; and
- feedback from the delegates on the challenges they face and potential solutions.

If no action has been taken to implement recommendation 11(e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(b):

14. Regarding tax-related measures, the Working Group recommends that the UK:

b) Ensure that the mechanisms in place for HMRC to be routinely informed of foreign bribery convictions are efficient and used in practice [2009 Recommendation, VIII.i, 2009 Tax Recommendations]

Action taken as of the date of the follow-up report to implement this recommendation:

HMRC continues to attend the Bribery, Corruption and Financial Sanctions Evasion Threat Group co-chaired by the SFO and the National Economic Crime Centre (NECC) and has attendance at the Intelligence Clearing House meetings. As a result, it is able to be aware of new cases and monitor the outcomes of older cases of foreign bribery. It has also implemented a register which includes all open and concluded SFO investigations relating to large businesses, which allows it to keep a watching brief on them.

It has also continued to build on the positive relationship with the SFO who it engages with on a case by case basis. As a result of this outreach and its participation in the relevant meetings, it has increased the number of disclosures to the SFO significantly:

	No of disclosures
2017	1
2018	9
2019	18
2020	40

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(c):

14. Regarding tax-related measures, the Working Group recommends that the UK:

(c) Collect data on instances where HMRC re-examines tax returns of individuals and corporations sanctioned for foreign bribery [2009 Recommendation, VIII.i, 2009 Tax Recommendations]

Action taken as of the date of the follow-up report to implement this recommendation:

In our Year 2 Report, we noted that HMRC's electronic compliance work management systems are being amended to include an extra category for recording enquiry work on bribery. These changes were

operational in 2019 and which now allows HMRC to keep a record of all instances of identification of bribes allowing for further analysis of the tax returns of individuals and corporations for foreign bribery. The bribery register described in Recommendation 14(b) and the Guidance described in Recommendation 14(d) enhance these changes.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(d):

14. Regarding tax-related measures, the Working Group recommends that the UK:

(d) Ensure HMRC conducts as a matter of priority a comprehensive review of its methods and capacity to detect and report foreign bribery, including to examine why HMRC has failed to detect proven cases of foreign bribery [2009 Recommendation, VIII.i; 2009 Tax Recommendation; Phase 3 Recommendation 12(a)]

Action taken as of the date of the follow-up report to implement this recommendation:

HMRC has reviewed its methods and capacity to detect and report foreign bribery and, as a result has:

- produced and rolled out Guidance for tax specialists dealing with the largest businesses in the UK. This guidance which is targeted at the biggest threat factor to HMRC is aimed to reduce the risk of tax advantages being gained by corrupt actors in order to combat bribery and corruption. The Guidance covers situations where a large business is being investigated by law enforcement under the Bribery Act 2010 or by an overseas law enforcement agency. This Guidance also provides indicators of bribery and corruption that case teams can use to identify high risk case (with links to the OECD handbook on bribery and corruption awareness for tax examiners and tax auditors) and details how to make disclosures to the Serious Fraud Office;
- undertaken a “reverse engineering” project with the SFO which led to a comprehensive bribery risk matrix being produced. This matrix highlights potential indicators of bribery (e.g. in relation to the jurisdiction or the sector) and where these risks might be seen or at which state of an investigation might they appear. These risks have been incorporated in HMRC’s auditor training; and
- undertaken a successful trial of using sensitive intelligence to identify alleged bribery. This is being incorporated into HMRC’s “business as usual” functions.

As a result of these changes, four disclosures have been made to the SFO and we anticipate that these could increase as the changes are embedded.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(e):

14. Regarding tax-related measures, the Working Group recommends that the UK:

e) Provide regular training to tax inspectors on the detection of bribe payments disguised as legitimate allowable expenses [2009 Recommendation, VIII.i; 2009 Tax Recommendation; Phase 3 Recommendation 12(a)].

Action taken as of the date of the follow-up report to implement this recommendation:

The Guidance described in Recommendation 14(d) provides information to tax inspectors on the detection of bribe payments disguised as legitimate allowable expenses.

This Guidance was accompanied by a series of workshops. This workshop has been delivered ten times since August 2020 when the Guidance was issued and additional sessions have been delivered as part of wider counter fraud awareness sessions. A copy of the slides that accompanied this training is supplied to the Lead Examiners and Secretariat.

Further workshops in the next few months and an e-learning package has been commissioned to supplement the face to face sessions and ensure wider coverage.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(f):

14. Regarding tax-related measures, the Working Group recommends that the UK:

f) Ensure that there is an adequate framework in place which enables HMRC to provide information for use in foreign bribery investigations upon request, and report suspicions of foreign bribery to the SFO [2009 Recommendation, VIII.i; 2009 Tax Recommendation; Phase 3 Recommendation 12(c)].

Action taken as of the date of the follow-up report to implement this recommendation:

The framework for the exchange of information between HMRC and the SFO was reviewed in 2009 which resulted in a new Memorandum of Understanding in April 2019 and Statement of Cooperation in November 2019, copies of both are supplied.

The Memorandum covers (a) providing information to law enforcement for use in foreign bribery investigations upon request and (b) proactive disclosure of suspicious activity to law enforcement. Such disclosures can only be made in accordance with the legal gateway set out in s.19 of the Anti-Terrorism, Crime and Security Act 2001.

Requests for information made by the Serious Fraud Office are handled by the National Coordination Unit in HMRC's Risk and Intelligence directorate, while proactive disclosures are handled by the HMRC Intelligence Bureau and should be accompanied by a statement of explanation on the appropriateness of the disclosure.

The Statement of Cooperation sets out the increasing aligned strategic intentions of the SFO and HMRC to more clearly define the purposes of information sharing and clearly defines the collaborative intent to tackle serious and complex fraud and corruption and confirms the senior level sponsorship for further collaborative operational activity between the two bodies.

The Guidance described in Recommendation 14(b) and the accompanying training, together with the increased relationship building between HMRC and the SFO provide a framework which we believe is adequate and, as demonstrated by the table in Recommendation 14(b).

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(a):

15. Regarding export finance credit, the Working Group recommends that UKEF:
 a) Undertake a comprehensive review of its policies to identify how they could be better applied in practice to enable detection of foreign bribery [Convention Article 3(4); 2009 Recommendation XI.i. and 2006 Export Credit Recommendation];

Action taken as of the date of the follow-up report to implement this recommendation:

Following a comprehensive review of its policies as reported in our Year 2 Report, during the course of 2019-20, UKEF enhanced its approach to financial crime, including foreign bribery where it:

- established a dedicated Due Diligence Unit. This Unit sits in a separate management chain from staff responsible for underwriting transactions to ensure a clear separation of duties between transaction management and due diligence. The Unit uses industry standard software (and open-source searches) in respect of companies and individuals in roles giving rise to the highest risk of financial crime;
- revised its procedures for identifying and, in certain circumstances, verifying the identity of the parties on whom due diligence is undertaken. The level of due diligence undertaken is informed by a transaction risk score derived from factors such as jurisdiction, presence of a third-party Agent, sector, etc. All red flags discovered as part of this due diligence will be escalated to UKEF’s Compliance Division (again, sitting under a separate management chain to both underwriting and due diligence) for further consideration;
- introduced a dedicated Crimes Compliance module in one of UKEF’s IT systems which went live in August 2020. This ensures that policies are adhered to, practices and approaches are consistent and that UKEF has available to it a central auditable record of its due diligence and its outcomes. This system also allows transactions involving certain identified parties to be subject to “auto-escalation”, regardless of the underlying transaction risk score;
- amended its policy to require new financial counterparts to complete a compliance questionnaire, enabling UKEF to understand the approach that each party takes to financial crime, and that it is sufficiently aligned with UKEF’s expectations;
- refreshed all of its financial crime related policies, which are supported by comprehensive procedural guidance, and by advice from UKEF’s Compliance Division as needed; and

- gained professional qualifications for the Head and Deputy Head of UKEF's Compliance Division and both are currently working on a post-graduate qualification. All staff joining the Unit will be expected to gain a relevant qualification.

These changes supplement the approach UKEF was already taking in relation mitigating the risk that bribery is involved in a UKEF backed transaction. Financial Crimes Compliance is increasingly embedded throughout the life of a transactions, with UKEF's Compliance Division involved at very early stages, where there is potential for suspicion of wrongdoing, for example, as well as post-issue should relevant facts come to light.

UKEF requires detailed and comprehensive declarations from all applicants in the area of corrupt activity and requires applicants to take appropriate action against anyone who is found to have acted corruptly. Applicants must also report to UKEF details of corrupt activity or of any that would potentially be deemed to constitute corrupt activity in time.

Applicants for UKEF support must, in all cases, provide details about the use, identity of, and payments to, overseas Agents. This goes beyond the practice of the majority of OECD Export Credit Agencies.

UKEF continues to undertake due diligence on all Agents about which UKEF is notified. This includes obtaining local legal advice to ensure the terms of engagement comply with local laws/rules, as well as seeking advice and intelligence from staff in relevant UK Embassies and High Commissions abroad. Further, we also ask the applicant about the work the Agent does, where they pay the Agent and how much (both as an amount and as a percentage of the contract value), and the experience the Agent has which makes them suitable for the role in question. Red flags on any of these points result in further scrutiny by UKEF's Compliance Division.

UKEF's due diligence is supplemented by the taking of contractual rights of financial recourse to the applicant or the cancellation of insurance cover, which can be exercised if they subsequently admit to, or are convicted of, corruption. However, where a guarantee is given to a bank (who was an innocent party), it would not be appropriate to withdraw the benefit of the UKEF guarantee from that bank.

In addition to due diligence undertaken prior to providing support, UKEF also has inspection rights with financial institutions and the relevant UK exporters across all products, which are utilised as appropriate.

UKEF closely and comprehensively follows the OECD Recommendation on Bribery and Officially Supported Export Credits 2006 and would not provide cover if UKEF due diligence concluded that bribery was involved in a transaction.

If no action has been taken to implement recommendation 15(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(b):

15. Regarding export finance credit, the Working Group recommends that UKEF:
- b) Where appropriate, take a firmer stance against exporters and applicants engaging in corrupt behaviour, by making vigorous use of all its powers, including its audit powers, to carry out due diligence with a view to refusing, suspending or withdrawing support if applicable [Convention, Article 3(4); 2009 Recommendation XI.i; 2006 Export Credit Recommendation].;

Action taken as of the date of the follow-up report to implement this recommendation:

UKEF continues to due diligence its applicants and make vigorous use of all its powers, including enhanced due diligence processes. Where appropriate it has used its comprehensive enhanced due diligence rights, with a view to refusing, suspending or withdrawing support where needed.

For example, UKEF undertook a complex program of enhanced due diligence when it became aware of potential corrupt activity on the part of Airbus, suspending all business as usual transaction activity and only supporting matters that had been through the enhanced due diligence process.

Also, where appropriate, concerns have in several cases been referred to the SFO/NCA for further investigation. A range to indicate the number of referrals made by UKEF to law enforcement bodies is available on request – as would further information in relation to those referrals on a confidential basis (due to potential prejudice to commercial interests).

To consolidate this process, UKEF launched a new “Raising a Business Concern” policy. This policy clarifies and streamlines the process for staff anywhere in UKEF to raise any concerns they may have related to financial crime. This can include suspicion arising from hearsay. The policy forms part of UKEF’s training programme.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Annex 2: 2019 Two-year Written Follow-Up Report by the United Kingdom

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 4 Evaluation Procedure](#) (paragraphs 55-67).

Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Please submit completed answers to the Secretariat on or before **21 January 2019**.

Name of country: UNITED KINGDOM
Date of approval of Phase 4 evaluation report: 15 March 2017
Date of information: 22 January 2019

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation 1(a):

2. Regarding whistleblower protection, the Working Group recommends that the UK:
- a) Proceed with its intention expressed in the 2014 Anti-Corruption Action Plan to review whistleblowing provisions with a view to their possible improvement [2009 Recommendation IX and X.C.v].

Action taken as of the date of the follow-up report to implement this recommendation:

The 2014 Anti-Corruption Action plan promised as follows:

“BIS to evaluate the implementation of whistleblowing provisions introduced through the Enterprise and Regulatory Reform Act 2013.” (Goal 9)

As this was a 5-year commitment, it was reiterated in the UK’s Anti-Corruption Strategy 2017-22 (Commitment 3.10)

The Department for Business, Energy and Industrial Strategy (BEIS) succeeded the Department for Business, Innovation and Skills (BIS) as the department of HM Government responsible for the whistleblowing framework.

BEIS completed a review of the effectiveness of its Whistleblowing Guidance for Employers and Code of Practice in May 2018. The response rate from business was insufficient to reach conclusions and therefore, it will incorporate a review of guidance in the Enterprise and Regulatory Reform (ERR) Act 2013 Review in 2018/19.

If no action has been taken to implement recommendation 1 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

As a result of the insufficient response rate from businesses, BEIS will conduct a review of the changes to the whistleblowing framework as introduced by the Enterprise and Regulatory Reform Act 2013. It is envisaged that discussions will take place with key industry professionals including charities providing advice to whistleblowers, legal bodies representing whistleblowers and respondents as well as representatives from industry bodies and trade unions. Scoping work for the review has already begun with analysis expected to commence in Spring 2019.

Text of recommendation 1(b):

1. Regarding whistleblower protection, the Working Group recommends that the UK:

b) Raise public awareness of the utility of whistleblower reports in finalised cases with a view to bolstering the confidence of potential whistleblowers in the value of their reports [2009 Recommendation IX and X.C.v].

Action taken as of the date of the follow-up report to implement this recommendation:

HM Government introduced the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 requiring prescribed persons (as set out in the Public Interest Disclosure (Prescribed Persons) Order 2014, as amended) to report annually on the total number of qualifying whistleblowing disclosures that they have received and a high-level summary of action taken as a result. These measures are designed to increase confidence in the actions taken by prescribed persons through greater transparency about how whistleblowing disclosures are handled and to bolster public confidence in the value of whistleblower reports. The regulations came into force on 1 April 2017.

Alongside these regulations, BEIS also published guidance to prescribed persons which outlined best practice for how they should publish these reports.¹⁸ This guidance was circulated amongst the prescribed persons when it was first issued in April 2017.

BEIS has compiled the reports created under this new duty and provided them to Parliament in early January. The number of disclosures reported by prescribed persons indicates that whistleblowing disclosures appear to be concentrated in certain sectors. High reporting numbers concentrated around areas relating to health care, safety and financial industries.

Those bodies with the highest number of disclosures received were:

- Care Quality Commission (8,449)
- The Pensions Regulator (3,648)
- Health and Safety Executive (3,500)
- Financial Conduct Authority and Payment Systems Regulator (1,106)

According to a YouGov survey for the charity “Public Concern at Work”,¹⁹ public awareness of whistleblowing continues to increase steadily. Over the last 5 years, public awareness of the UK’s whistleblowing legislation has increased by 46%. Similarly, 84% of respondents stated that they would be willing to raise concerns. An increase of 3% compared to 2015.

¹⁸ See pages 9 and 10 on <https://www.gov.uk/government/publications/whistleblowing-guidance-for-prescribed-persons>

¹⁹ <https://www.pcaw.org.uk/attitudes-to-whistleblowing/>

In spite of these promising statistics, HM Government will continue to explore how we can best raise public awareness of the utility of whistle-blower reports in order to further bolster the confidence of potential whistleblowers. For example, in her first week as Director of the SFO in September 2018, Lisa Osofsky publicly highlighted the use of whistleblowers who want to work with the SFO as a key part of how the agency brings the most compelling evidence before judges and juries.

If no action has been taken to implement recommendation 1 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(a):

2. Regarding detection of foreign bribery through anti-money laundering reporting measures, the Working Group recommends that the UK:

a) Implement the announced reform of the UKFIU through the adoption of the Criminal Finances Bill and adopt further reforms of the UKFIU and the reporting regime, with a view to ensuring that detection of foreign bribery through suspicious activity reports is improved [Convention, Article 7; 2009 Recommendation III.i and IX.i].

Action taken as of the date of the follow-up report to implement this recommendation:

Following the adoption of the Criminal Finances Act 2017, the UKFIU now has the power to compel regulated bodies to disclose additional information if needed, but HM Government has a clear preference to work cooperatively with the reporting sector and does so on a continuous basis. The power to compel is there for use only where such cooperation is not possible.

In relation to the reporting regime, the UK is currently reviewing and reforming its suspicious activity reports (SARs) regime, with a view to ensuring that the UK is better able to tackle illicit finances, including bribery and corruption. This work will include identifying how information can be better used, and how it can be shared with the reporting sector to assist with their understanding of the threat.

The reform programme aims to:

- modernise the IT system within the FIU with improved data processing, storage, reporting analytics and distribution;
- increase the use and value obtained from financial intelligence by law enforcement; and
- improve information sharing across the system to drive up quality and use of SARs.

The reform programme is due to deliver its proposals in 2019.

In addition, NCA will increase the staffing of the UKFIU by 30% since the start of the year, with further appropriate increases to take place in the following years

If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(b):

2. Regarding detection of foreign bribery through anti-money laundering reporting measures, the Working Group recommends that the UK:

b) Raise awareness among reporting professions, including non-financial professions, about red flags that may indicate foreign bribery [Convention, Article 7; 2009 Recommendation III.i].

Action taken as of the date of the follow-up report to implement this recommendation:

The UK's ongoing anti-money laundering communications campaign "*Flag It Up*" is being used to implement this Recommendation. This Campaign was set up in 2014 and is working to intensify

priority sectors' resilience to criminal activities by increasing awareness and engagement with best practice in compliance and submitting Suspicious Activity Reports (SARs).

Campaign activities deliver consistent anti-money laundering messages through key influential channels to deter professionals in the legal, accounting and property sectors from involvement in money laundering.

Campaign content includes consistent and repeated references to bribery and corruption as predicate offences for money laundering. Additionally, key campaign red flags are closely related to associated risks. These include (but are not limited to):

- **Political Status**²⁰: Is the client engaged in unusual private business given that they hold a prominent public title or function? Or do they have ties to an individual of this nature?
- **Resources**: Are a client's funds made up of a disproportionate amount of private funding, bearer's cheques or cash, in relation to their socioeconomic profile?
- **Geographical Area**: Is the collateral provided, such as property, located in a high-risk country, or are the client or parties to the transaction native to or resident in a high-risk country?

The scope of the professionals chosen is based on the National Risk Assessment of Money Laundering and Terrorist Financing 2017. While accountants, lawyers and estate agents make up the core audience of campaign activity, the campaign utilises communication channels accessed by other professionals offering similar services (such as company formation agents) who will also be exposed to the campaign.

The campaign has undergone a significant evolution since initial pilot activity in 2014, which primarily targeted solicitors. In 2015 activity was expanded into the accountancy sector, and in 2018 the campaign was launched for the first time into the property sector, targeting estate agents.

This campaign has proven success in driving professionals' engagement with best practice in due diligence and SARs reporting. The 2016/17 campaign evaluation demonstrated that accountants and lawyers who recognised Flag It Up were twice as likely to have submitted a SAR, compared to those professionals who did not have knowledge of the campaign and this trend continued in 2017/18.

Flag It Up utilises a range of channels including professional sector press, digital advertising and public relations activity to reach professionals. This includes media partnerships with high-profile national outlets such as the Daily Telegraph, The Economist and The Times.

The campaign's delivery model includes partnership activity with professional bodies and regulators, (e.g. The Law Society, Institute of Chartered Accountants England and Wales, and NAEA PropertyMark) as credible and authoritative voices within their sector, and as a direct channel to the campaign's audience.

Through an ongoing strategy of strengthening engagement with key partners, the Campaign will continue to drive behaviours and promote a shared understanding and ownership of money laundering priorities, maximise cost-efficiencies and gradually move towards mainstreaming the campaign within partner organisations.

Each year of campaign activity builds on the success of the previous, by continually optimising paid-for digital activity and national media partnerships to develop the campaign's 'always on' activity through enhanced targeting strategies. Content and editorial developed for media partnerships will continue to highlight the risks to professionals from bribery and corruption as predicate offences to money laundering amongst other risks.

In line with HM Government priorities and available resource there may be scope to expand the

²⁰ In July 2017, the Financial Conduct Authority published guidance on Politically Exposed Persons and money-laundering, including how to ensure a proportionate approach that reflects risk
<https://www.fca.org.uk/publications/finalised-guidance/fg17-6-treatment-politically-exposed-persons-peps-money-laundering>

campaign into other professional sectors.

Future campaign activity beyond the financial year 2018/2019 is contingent on funding.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(a):

3. Regarding enhancing detection of foreign bribery through other sources, the Working Group recommends that the UK:

a) Consider ways to further mobilise UK agencies with particular potential for detecting foreign bribery committed by UK companies operating abroad [2009 Recommendation III, and IX.ii].

Action taken as of the date of the follow-up report to implement this recommendation:

This Recommendation is being met through the Bribery and Corruption Threat Group which is designed to ensure multi-agency co-ordination and delivery against the identified threat. The group meets on a quarterly basis and tends to focus on international bribery and corruption, particularly bribery committed by UK companies in international business transactions.

The group is attended by the key departments and agencies which have potential for detecting threats. The group was originally comprised of the Serious Fraud Office (SFO), Crown Prosecution Service (CPS), Department for International Development, Financial Conduct Authority (FCA), Foreign and Commonwealth Office, Home Office, HM Revenue & Customs (HMRC), Ministry of Defence Police, Regional Organised Crime Unit network, and the National Crime Agency (NCA). The new members of the threat group are Department for International Trade, Ministry of Defence, The Crown Office and Procurator Fiscal Service and UK Export Finance. Membership of the Group is periodically reviewed to determine which departments or agencies are appropriate to attend, based upon their potential for detecting overseas bribery and corruption.

The establishment of the National Economic Crime Centre (NECC) will also serve as a useful vehicle for mobilising and engaging agencies and departments with potential for detecting foreign bribery committed by UK companies operating abroad. The NECC, which is a new development since the Phase 4 Report, is a multi-agency team including the NCA, the FCA, HMRC, City of London Police, CPS, Home Office and the SFO. The NECC will coordinate and oversee the UK's response to economic crime, harnessing intelligence and capabilities from across the public and private sectors to tackle economic crime in the most effective way.

It will jointly identify and prioritise the most appropriate type of investigations, whether criminal, civil or regulatory to ensure maximum impact. It will seek to maximise new powers, for example Unexplained Wealth Orders and Account Freezing Orders, across all agencies to tackle the illicit finance that funds and enables all forms of serious and organised crime.

The NECC's initial capabilities started in October 2018 and will develop and evolve throughout 2019 and beyond. The expansion of the NECC is being achieved through a phased build and the launch plan reflects that both personnel and capabilities will increase over time. A new Director General post to lead the NECC is expected to be appointed in the first quarter of 2019

If no action has been taken to implement recommendation 3(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(b):

3. Regarding enhancing detection of foreign bribery through other sources, the Working Group recommends that the UK:

b) Ensure that existing sources of foreign bribery allegations (including in the media and the WGB matrix) are properly exploited in due time by the competent authorities [Convention Article 5;

2009 Recommendation V and Annex I D].

Action taken as of the date of the follow-up report to implement this recommendation:

The Tackling Foreign Bribery MoU was refreshed in May 2017 and the Clearing House operations enhanced (the Clearing House is described in paragraph 77 of the UK's Phase 4 Report). The role and remit of each agency are more clearly set out, as were the mechanisms for co-ordination, specifically maintenance of the Foreign Bribery Register and the requirement to 'promptly record all credible factual allegations of foreign bribery' and 'provide updates on recorded matters on a monthly basis'. The MoU also expressly provides for a quarterly review of new OECD Matrix allegations including to 'provide the UK OECD secretariat with updates or recommendations for deletions'.

A review of the UK footprint on the OECD Matrix of cases is completed on a quarterly basis, done jointly between NCA and SFO who liaise with international partners in order to ascertain whether the UK can assist in relation to potential or current cases. Information received on international investigations and prosecutions at the OECD Tour de table is recorded and cases reviewed accordingly as part of the quarterly cycle. All new allegations added to the UK matrix (plus existing cases that are under development) are reviewed by the Clearing House.

The SFO regularly reviews open source material and undertakes media scanning undertaken to detect potential instance of foreign bribery (the Rolls-Royce matter was uncovered in this manner having appeared in a blog).

The NECC will further enable proactive tasking of intelligence and provide a level of oversight to ensure foreign bribery allegations are dealt with in a timely and efficient manner.

If no action has been taken to implement recommendation 3(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4 (a):

4. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

a) Develop, and regularly review, the necessary mechanisms to ensure that all credible allegations of foreign bribery with a connection to the UK are promptly and fully assessed by competent law enforcement agencies [Convention Article 5; 2009 Recommendation XIII and Annex I D];

Action taken as of the date of the follow-up report to implement this recommendation:

Since Phase 4:

- the Tackling Foreign Bribery MoU was refreshed in May 2017 and the Clearing House operations enhanced. See Update 3b for more details on the refreshed MoU and the Clearing House; and
- the National Economic Crime Centre has been launched. See Update on 3a for more details on the NECC. The work of the NECC will supplement the work of the Clearing House and the individual law enforcement agencies who ensure that such allegations are promptly and fully assessed.

The UK has undertaken an in-depth review of cases on the OECD Matrix, leading to 19 deletions since Phase 4 as opposed to only 5 deletions in the year preceding the Phase 4 Review. Further, review of new allegations added to the Matrix is now a standing agenda item for the Clearing House. This demonstrates that these measures are contributing to prompt and full assessments of credible allegations of bribery.

If no action has been taken to implement recommendation 4(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

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Text of recommendation 4(b):

4. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

b) Where the UK does not take enforcement action on a foreign bribery case because another country is investigating or prosecuting the case, ensure the matter remains under review with a view to running a UK investigation or prosecution if necessary [Convention Article 4(3) and 2009 Recommendation XIII.

Action taken as of the date of the follow-up report to implement this recommendation:

At the conclusion of relevant investigations by overseas authorities the UK makes contact with those agencies to see whether a UK nexus was identified through the course of their investigation and revisit any decision not to investigate. This is done on a quarterly basis at the OECD *tour de table*.

In addition, incoming MLA requests are considered by the SFO Intelligence Unit in order to see whether an equivalent UK investigation could be initiated. Similarly, through the International Anti-Corruption Coordination Centre (IACCC) and the NCA International Liaison Officer Network, the NCA's International Corruption Unit (ICU) keeps up to date regarding foreign bribery investigations and will consider whether UK action is appropriate.

For example, the NCA ICU became aware of a prosecution of a UK national in a foreign state for bribery offences. The UK national had worked in a senior role in a company (which was not a UK company) which had negotiated a DPA-equivalent outcome due to foreign bribery it had undertaken. The authorities identified that the UK national could be shown to be personally culpable for bribery offences and achieved a successful prosecution. The authorities of that state did not pursue confiscation of the individual's assets as the prosecutors were content that the fine paid by the company under the DPA was sufficient redress. However, the ICU took the view that based on the facts of the case, several million pounds held by the individual in a UK bank account had the potential to be proceeds of crime, having been acquired as a direct result of the bribery concerned. The ICU therefore used new powers in the Criminal Finances Act 2017 to freeze those funds (Account Freezing Order) in order to carry out its own investigation into the potential for the funds to be proceeds of crime, with a view to forfeiting them. The investigation is ongoing (so no further detail can be supplied).

If no action has been taken to implement recommendation 4(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(c):

4. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

c) Review on a regular basis the SFO case acceptance policy to ensure that it achieves expected results, i.e. that the SFO follows up all the allegations that fall under its remit, in accordance with its capacities and resources [Convention Article 5; 2009 Recommendation XIII and Annex I D.

Action taken as of the date of the follow-up report to implement this recommendation:

The new Director of the SFO reviewed its case and acceptance policy in January 2019 following her appointment in September 2018. This policy is set out in the Director's Statement of Principle.

Under the Criminal Justice Act 1987 the Director may investigate any suspected offence which appears to her on reasonable grounds to involve serious or complex fraud (including bribery and corruption). In considering whether to authorise an investigation the Director will apply her Statement of Principle, that is she will take into account the actual or intended harm that may be caused to:

- the public;
- the reputation and integrity of the UK as an international financial centre; or
- the economy and prosperity of the UK; and

whether the complexity and nature of the suspected offence warrants the application of the SFO's specialist skills, powers and capabilities to investigate and prosecute.

The SFO's Executive Group is the principal decision-making body that will oversee the operational performance and delivery of the business against its stated objectives, including to investigate and, if appropriate, prosecute serious or complex fraud, bribery and corruption cases fairly and effectively. Through this governance mechanism the SFO reviews the Director's Statement of Principle and considers any changes required.

All referrals are assessed against the SFO Director's Statement of Principle ensuring that allegations falling under its remit are identified as such.

The NECC and the Bribery & Corruption Clearing House provide mechanisms for partners to bring suitable cases to the SFO's attention and to deconflict.

If no action has been taken to implement recommendation 4(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(a):

5. Regarding the interagency cooperation in foreign bribery cases, the Working Group recommends that the UK:

a) Maintain the SFO's role in criminal foreign bribery-related investigations and prosecutions as a priority [Convention Article 5; Phase 3 recommendation 7a.

Action taken as of the date of the follow-up report to implement this recommendation:

Since the Phase 4 Review, the position of the SFO in criminal investigations has been affirmed by:

- the appointment of a new Director appointed for a 5-year term²¹;
- the SFO continuing to open new foreign bribery investigations since publication of Phase 4 report, including the following investigations:
 - a criminal investigation into bribery, corruption and money laundering arising from the conduct of business by Chemring Group plc and its subsidiary, CTSL, including any officers, employees, agents and persons associated with them;
 - a criminal investigation into the activities of Amec Foster Wheeler PLC and any predecessor companies owning or controlling the Foster Wheeler business, together with the activities of any subsidiaries, company officers, employees, agents and any other person associated with any of these companies for suspected offences of bribery, corruption and related offences; and
 - criminal investigation in to suspected corruption in the conduct of business in Algeria by Ultra Electronic Holdings plc ("Ultra"), its subsidiaries, employees and associated persons following a self-report by Ultra;
- the refreshing of the Tackling Foreign Bribery MoU in May 2017 which re-affirms the role and remit of the relevant agencies and sets out the mechanisms by which the agencies will co-ordinate the UK's response to foreign bribery;
- the inclusion of the SFO as a stakeholder within the NECC reflecting its position as an independent and standalone agency. The NECC provides a co-ordination function and ensures that foreign bribery cases are identified and referred to the SFO where appropriate;

²¹ <https://www.gov.uk/government/news/new-head-of-the-serious-fraud-office-announced>

- the increase in core funding to recruit and retain skilled staff and experience while still having access to the Reserve ('blockbuster' funding) for the largest cases;²² and
- the SFO continuing to host a significant number of visits from international law enforcement agencies seeking to learn from the SFO's recognised expertise in investigating and prosecuting foreign bribery.

If no action has been taken to implement recommendation 5(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(b):

5. Regarding the interagency cooperation in foreign bribery cases, the Working Group recommends that the UK:

b) Ensure law enforcement authorities from England and Wales as well as those in Scotland are appropriately involved in mechanisms for sharing of information on foreign bribery cases, such as the MOU and/or the Clearing House [Convention Article 5].

Action taken as of the date of the follow-up report to implement this recommendation:

The UK has taken the following measures to improve communication between law enforcement authorities in England and Wales and Scotland:

- as a result of the Phase 4 Report, the Crown Office and Procurator Fiscal Service (Scotland) (COPFS) and Police Scotland were invited to attend Clearing House meetings. Represented by a senior prosecutor from the Serious Organised Crime Unit and senior representative from Police Scotland, they first attended meetings in April 2017 and have attended virtually every meeting since. Feedback from these organisations was that these meetings are useful both in terms of information sharing about investigations and also learning from the experience of colleagues across the UK agencies;
- the Tackling Foreign Bribery MoU was refreshed in May 2017 to include COPFS (covering Police Scotland) as participants. The MOU between COPFS and the SFO was refreshed in December 2018 to reflect current organisational structures and post-holders. COPFS and the SFO hold regular liaison meetings.
- the establishment of the NECC ensures an additional mechanism for sharing information across all levels of law enforcement and between different agencies (see Update to Recommendation 3a). Police Scotland have been involved in discussions around the NECC and a senior officer from Police Scotland's Economic Crime Unit is attending multi-force meetings at the NECC on a regular basis. Police Scotland have begun speaking to the NECC in connection with an ongoing investigation which crosses UK jurisdictions.

Text of recommendation 5(c):

5. Regarding the interagency cooperation in foreign bribery cases, the Working Group recommends that the UK:

c) Consider including other relevant agencies such as Her Majesty's Revenue and Customs and the UK financial intelligence unit in mechanisms for sharing of information on foreign bribery cases, such as the MOU and/or the Clearing House [Convention Articles 5 and 7 and 2009 Recommendation V and VIII].

Action taken as of the date of the follow-up report to implement this recommendation:

²² <https://www.sfo.gov.uk/2018/04/19/changes-to-sfo-funding-arrangements/>

HMRC joined the Clearing House in March 2017, is a signatory to the MoU and is now an active member of the NECC.

Membership of the clearing house allows HMRC access to intelligence on new and ongoing bribery and corruption matters across UK law enforcement agencies, giving HMRC an opportunity to collaborate and support work across UK law enforcement on bribery and corruption.

If no action has been taken to implement recommendation 5(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

HM Government does not believe that there is any value adding the UKFIU to either the Clearing House or the MoU. The UKFIU is a branch of the NCA, the NCA in its entirety is a member of the Clearing House and the MoU and can bring in individual functions as necessary.

The UKFIU oversees the SARs regime but, as all international corruption SARs are referred to either the SFO or the ICU for analysis and response, it is more appropriate they attend the Clearing House meetings, which they do. The ICU's intelligence function, the BCIU, also attends.

The UKFIU notes that in the last two years they have identified the following SARs relating to international corruption which have been passed to the BCIU:

- 2016/ 17 – 1,259
- 2017/ 18 – 1,851

Text of recommendation 5(d):

5. Regarding the interagency cooperation in foreign bribery cases, the Working Group recommends that the UK:

d) Ensure the FCA, where appropriate, considers the opportunity of conducting co-ordinated enforcement actions with the SFO, and the imposition of administrative sanctions for companies for failure to guard against bribery under the FSMA in foreign bribery cases [Convention Articles 3, 5 and 8].

Action taken as of the date of the follow-up report to implement this recommendation:

FCA and SFO collaboration

In line with this Recommendation, the FCA and SFO engage frequently and constructively on intelligence sharing and investigations and regularly consider whether a matter will be taken forward either by the SFO, the FCA or by both in a coordinated way. They do this through regular senior and working level meetings between the FCA and SFO discussing the referral of investigations, sharing of intelligence, deconfliction of investigation activity and discussions on active FCA and SFO investigations.

They are also both members of the Clearing House through which the FCA has made a number of referrals concerning possible bribery within the financial services sector and which have been taken forward by the NCA.

The NECC will be a new mechanism for FCA and SFO collaboration and referrals and both the FCA and SFO have both been involved since its inception and both are seconding members of staff to the NECC.

FCA and SFO Enforcement activity

Through its powers derived from the Financial Services and Markets Act (FSMA), the FCA can take action against firms who fail to implement appropriate anti-bribery systems and controls even when there is no crystallised evidence of bribery and/or corruption taken/taking place. For example, if firms have not factored corruption into their risk assessment, then the FCA can, and does, take action. The FCA takes a consistent and proactive stance in alerting firms to the risk of corruption and the need to identify, assess and mitigate it. It has extensive powers to impose sanctions including suspensions and restrictions, prohibitions, public censures and disgorgement. The FCA does not have the power to take

action under the Bribery Act for foreign bribery offences.

The FCA works to ensure that the financial services sector has robust systems and controls to identify, assess and mitigate against money laundering. There are synergies between anti-bribery and corruption and anti-money laundering and firms will have similar control environments to identify, assess and mitigate each risk.

In March 2018, the FCA published its *Approach to Enforcement*²³ which sets out a change in its overall approach to opening investigations earlier and more quickly where serious misconduct is suspected. This has resulted in an increase in the number of investigations it has carried out. At time of writing:

- the FCA has eight firms and two individuals under investigation for possible anti-bribery and corruption failings, the majority of which are foreign-bribery related. In some investigations, where relevant the FCA is co-ordinating with the SFO (and also working with other agencies on its investigations). At the time of the Phase 4 report the FCA only had two relevant investigations and a further one on which it was liaising with the NCA. There has therefore been a significant increase in the bribery work it is undertaking; and
- the FCA has over 60 investigations open into firms and individuals pertaining to anti-money laundering, of which a number have a bribery or corruption component.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(a):

6. Regarding resources for foreign bribery enforcement, the Working Group recommends that the UK:

a) Ensure the SFO's core budget is sufficient to allow the SFO to adequately and independently carry out its role [Convention Article 5].

Action taken as of the date of the follow-up report to implement this recommendation:

Prior to April 2018, blockbuster funding was provided for the full costs of specific cases where the budgeted annual cost exceeded 5% of the vote funding for the year. This funding was ring-fenced and could only be used to fund resource for a specific case. Under this previous funding model, the SFO has never declined an investigation due to lack of funding and HM Treasury has never refused an SFO application for funding and the new funding arrangements are designed to ensure that continues to be the case.

The funding arrangements for the SFO were reviewed in April when cost-neutral changes were made to the SFO's core budget to enable it to work flexibly and efficiently, with a significantly reduced call on the reserve.

Under these new funding arrangements agreed for 2018-19 onwards, SFO's core budget has been increased in a cost neutral exercise as follows:

- SFO's core funding has increased from £34.3m (planned for 2018/19) to £52.7m, with sums requested from the reserve reduced accordingly.
- New arrangements for "blockbuster" funding. Instead of applying for separate funding for the full cost of any case forecast to cost more than 5% of the core funding, blockbuster funding will cover spend in excess of £2.5m on any single case in a given year. Modelling this arrangement indicates there are likely to be few cases which will qualify for this (and the amount of blockbuster funding as a percentage of total budget will be markedly less).

²³ <https://www.fca.org.uk/publications/corporate-documents/our-approach-enforcement>

- Significantly for the SFO, the new arrangement eliminates the internal ring fences for resource allocation around blockbuster cases. The SFO will not need to manage two separate funding streams, will be able to focus on substantially reducing reliance on temporary personnel and will be able to reallocate staff between cases as the work requires.

This reduces SFO's reliance on blockbuster funding and in turn on temporary staff. Blockbuster funding still exists once the 5% threshold (for the increased core budget) is reached, however, funding is only applied to costs going forward from that point and is not ring fenced to specific cases providing added flexibility.

The blockbuster funding arrangement that the SFO has with the Treasury has previously allowed the SFO to undertake cases which are exceptionally demanding in terms of resource – such as LIBOR or Rolls-Royce.

HM Government believes that the SFO has sufficient funding to carry out its work.

If no action has been taken to implement recommendation 6a, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(b):

6. Regarding resources for foreign bribery enforcement, the Working Group recommends that the UK:

b) Provide the NCA ICU with specialised foreign bribery training and adequate resources to enable it to efficiently carry out foreign bribery investigations and to effectively support foreign bribery prosecutions conducted by the CPS [Convention Article 5].

Action taken as of the date of the follow-up report to implement this recommendation:

The NCA ICU has worked closely with the City of London Police Economic Crime Academy to design a bespoke 5-day training course for ICU investigators. The final version of this course was launched on 30 October 2017 draws on City Police and SFO experiences in investigating foreign bribery; the academy's depth of knowledge on the Bribery Act; and practical exercises to deliver an advanced understanding on how to deal with the mechanics of investigating foreign bribery. It is mandatory for all ICU staff to attend this course and to date over 50 officers have attended.

Since the Phase 4 Report, the NCA has started to refer casework to the CPS for a charging decision and has increased its support for foreign bribery prosecutions conducted by the CPS by working closely with it from an early stage in the investigation to ensure the charging file is as robust as CPS would want it to be. Otherwise, the independence of the CPS is well established in the UK being set in legislation.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(a):

7. Regarding the independence of investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

a) Ensure that Article 5 of the Convention is clearly binding on investigators, prosecutors (including

in Scotland), the Attorney General and the Lord Advocate at all stages of a foreign bribery investigation or prosecution [Convention, Article 5; Phase 3 recommendation 8(a)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

England and Wales

HM Government does not agree that further action is required in this area at this time. The independence of prosecutors is well established in the UK with the national prosecuting agency (the CPS, who prosecute NCA investigations among others) and SFO (who also investigate) both being set in legislation. Existing safeguards and guidance is in place relating to the conduct of all prosecutions, as set out below, ensure that decisions are independent and not subject to undue influence and therefore submit that no further measures are required at this time. There have been no breaches to date and this guidance continues to be kept under review (indeed, the Code for Crown Prosecutors was recently updated and published in October 2018).²⁴

The Attorney General is responsible for safeguarding the independence of prosecutors in taking prosecution decisions. This responsibility is set out in the Protocol²⁵ and has not been breached. Since Phase 3, this Protocol has been reviewed and updated in the form of Framework Agreements for the CPS and SFO, will be published shortly – the same principles will apply.

The Director of Public Prosecutions (DPP) is required by law to issue a Code for Crown Prosecutors, which is applied also by the Director of the SFO. The Code gives guidance on general principles to be applied in determining whether proceedings for an offence should be instituted or discontinued and which charges should be preferred.

The UK has not faced a breach of Article 5 since Phase 3 and therefore, current codes and guidance offer a sufficient safeguard against any such breach.

Scotland

The [Crown Office and Procurator Fiscal Service](#) (COPFS) is the sole prosecution service in Scotland. The Lord Advocate is the Ministerial Head of COPFS; his functions are specifically safeguarded by the Scotland Act 1998, which requires him to exercise his functions independently of any other person. All bribery cases reported to COPFS are referred to SOCU, a specialist national unit staffed by experienced prosecutors, investigators and forensic accountants. The Police Service of Scotland, the national police force, is subject to the direction of the Lord Advocate in the investigation of crime and, as such, prosecutors in Scotland oversee investigations and instruct any further enquiries that may be required. Once cases have been considered and investigated within SOCU, they are referred to Crown Counsel for instructions. Crown Counsel are senior prosecutors drawn from the private Bar and from within COPFS, who hold a commission from the Lord Advocate to exercise his functions in the context of the prosecution of crime. They provide another layer of scrutiny and independent assessment.

The Lord Advocate issues standing instructions in relation to prosecutorial decision-making for different types of offences, and these instructions are binding on all prosecutors in Scotland. The standing instructions issued by the Lord Advocate regarding bribery cases make specific reference to Article 5 and expressly state that prosecution decisions must take no account of considerations of national interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved.

²⁴ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/15197/Protocol_between_the_Attorney_General_and_the_Prosecuting_Departments.pdf

The standing instructions issued by the Lord Advocate are binding on all prosecutors. The standing instructions may be changed, but only by the Lord Advocate. Although this means that technically Article 5 is not legally binding on the Lord Advocate, in practice, the domestic law in Scotland ensures that the Lord Advocate does not permit extraneous or irrelevant considerations to influence prosecutorial decision-making. The functions of the Lord Advocate as head of the system of prosecution in Scotland are safeguarded by the Scotland Act 1998, which requires the Lord Advocate to exercise those functions independently of any other person. The statutory requirement reflects the constitutional principle of prosecutorial independence which is well-established in Scotland

The constitutional structures and practical arrangements in place in Scotland therefore ensure that there is a consistent, robust, independent and fair approach to the investigation and prosecution of foreign bribery cases, which takes no account of extraneous or political considerations.

Text of recommendation 7(b):

7. Regarding the independence of investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

b) Raise awareness among all relevant parts of the government of the duty to respect the principles in Article 5 of the Convention, so that they can assist investigators and prosecutors to act in accordance with that Article [Convention, Article 5; Phase 3 recommendation 8(b)].

Action taken as of the date of the follow-up report to implement this recommendation:

Although HM Government contends that there are adequate processes in place to ensure that the principles of Article 5 are respected (see the Update to Recommendation 7a) and the SFO, NCA and CPS are aware of no instances where political pressure has been placed on them in respect of the investigation and prosecution of suspected foreign bribery since Phase 4, it recognised the importance proactively re-enforcing the principles of Article 5.

To that end, written communication will be sent out to the relevant parts of HM Government to enhance their awareness of the UK's duty to respect the principles in Article 5.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(c):

7. Regarding the independence of investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

c) Ensure that the use of Shawcross exercises in foreign bribery cases is publicised and transparent, as the circumstances permit [Convention, Article 5].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

HM Government reiterates its position from the Phase 4 evaluation.

There is no single process by which the use of Shawcross exercises is made public. Shawcross exercises are only undertaken in a very few exceptional cases. Often these are cases involving highly sensitive issues of national security and international relations.

HM Government would not comment on whether a Shawcross exercise had taken place whilst an

investigation or prosecution remained live. Once an investigation or prosecution had concluded it will always consider whether the use of a Shawcross exercise could be made public on a case-by-case basis. Disclosing that a Shawcross exercise had taken place would enable the public to discover that the case was, in all likelihood, particularly sensitive and/or involved national security issues. In some cases, where these issues are not obvious, it may be damaging to make this disclosure.

Text of recommendation 7(d):

7. Regarding the independence of investigation and prosecution of foreign bribery, the Working Group recommends that the UK:

d) Ensure sufficient safeguards are in place regarding the appointment and dismissal of the SFO Director [Convention, Article 5].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The Director of the SFO is a civil servant and therefore subject to HR policies and procedures shared across government. It is the Crown acting through the Attorney General that has the general power to dismiss at will and it is not possible to change this constitutional position.

In practical terms however it is, virtually inconceivable that the Director could be dismissed due to a disagreement about an individual case as the roles and responsibilities of both are clearly defined and there are political safeguards against the dismissal of the DSFO in that the AG would be expected to explain the decision publically and to Parliament

Further safeguards exist as the Director, being a civil servant, enjoys the protections of the human resources policies and procedures shared across government.

It is worthy of note that none of the Directors of the SFO have ever been dismissed, because of a disagreement about the investigation or prosecution of an allegation of bribery or otherwise.

Text of recommendation 8(a):

8. Regarding the conclusion of foreign bribery cases, the Working Group recommends that:

a) UK law enforcement authorities, particularly in Scotland, exercise considerable caution in deciding whether to resolve foreign bribery cases through civil settlements to ensure cases result in effective, proportionate and dissuasive sanctions [Convention Articles 3, 5; Annex I D].

Action taken as of the date of the follow-up report to implement this recommendation:

Scotland

The civil settlement process in Scotland stems from the self-report process. This process was introduced in 2011 and encourages businesses that discover corruption within their own organisation to make a report to COPFS, in the hope that they may avoid prosecution and be referred to the Civil Recovery Unit (CRU) for civil settlement instead.

There are stringent conditions which businesses must comply with if they are to be considered for the self-report initiative. They must:

- conduct a thorough investigation and provide full disclosure to SOCU;
- include a formal admission that the conduct in question amounts to bribery; and
- provide information about what has been done to prevent a repetition of the conduct in the organisation.

The self-report process is not a 'soft option' for businesses; it is an onerous process which encourages

businesses to 'self-police' and places the onus on them to conduct a comprehensive investigation, whilst leaving all options open to COPFS in terms of prosecution. The process entails considerable risk for the business, as well as significant time and financial commitment (the report must be submitted via solicitors). A civil settlement will have a significant impact on the business both in terms of the financial repercussions and the ensuing publicity. The fact that businesses are required to put in place measures to ensure there is no recurrence of the unlawful conduct is viewed as an effective means of preventing corruption in the future.

There is no guarantee that making a self-report will allow a business to avoid prosecution. Each case is evaluated independently, on its own merits, and various factors are considered in assessing the public interest and deciding whether civil settlement is appropriate, including the nature and seriousness of the conduct, the seniority of those involved in the conduct, the anti-corruption systems in place at the time of the incident and the steps taken since.

Following a rigorous consideration of the self-report and the outcome of further enquiries instructed by SOCU, the matter will be referred to Crown Counsel for instructions. If it is decided that the matter should be considered for prosecution, SOCU will instruct a full investigation by law enforcement and the information provided by the business will be used for this purpose. Alternatively, if it is determined that it is appropriate to make a referral for possible civil settlement, the CRU will carry out an independent investigation, including forensic accountancy input, to verify the information provided by the business and assess the appropriate level of settlement. If it appears that the business is not providing full compliance and disclosure, the matter may still be referred back to SOCU for consideration of prosecution at that stage. This process demonstrates that decisions to pursue a civil settlement are not taken lightly but with extreme caution.

In the event that a civil settlement is reached with the business, individuals (directors and employees) may still be prosecuted independently. This has happened in one case to date, where the managing director was prosecuted separately following a settlement with the business. The settlement figure which is agreed upon will generally reflect the total value of the benefit which has been obtained by the business through the unlawful conduct. It is part of the agreement that the settlement will be public and COPFS will pro-actively issue a media release, unless there are pending criminal investigations or proceedings, in which case publicity may require to be deferred.

The self-report initiative must be reviewed and approved each year by the Lord Advocate. It was recently extended until June 2019, which is viewed as a measure of its effectiveness. A number of cases of corruption, which might not otherwise have come to light, have been robustly addressed through the scheme. Lengthy prosecutions have been avoided and significant sums, representing profit gained through corruption, have been recovered and re-invested into Scottish communities.

England & Wales

Enforcement authorities such as the NCA and SFO have powers to carry out civil recovery investigations using the same investigative orders used in confiscation investigations. Consideration is given to the use of civil recovery powers in any case where proceeds of crime have been identified but it is not feasible to secure a criminal conviction or other criminal sanction, or a conviction has been secured and no confiscation made.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(b):

8. Regarding the conclusion of foreign bribery cases, the Working Group recommends that:
- b) Scotland consider adopting a scheme comparable to the DPA scheme in the UK to overcome the weaknesses apparent in civil settlements and to achieve consistency across the UK with regard to the tools available to law enforcement authorities for the resolution of foreign bribery cases [Convention

Article 3, 5; Annex I D].

Action taken as of the date of the follow-up report to implement this recommendation:

Introduction of a system of 'deferred prosecution agreements' would require primary legislation. Within the UK, there is devolution of a considerable number of areas of law with Scots criminal law generally being the responsibility of the Scottish Parliament.

Scotland is a separate jurisdiction within the UK, with a distinct system of criminal law and criminal prosecution. Additionally, devolution in the UK has the consequence that legislative reforms can and are regularly taken forward in different ways across the nations of the UK respecting the local devolved priorities for action. Therefore, any suggestion that consistency across the UK is a necessary outcome of law reform is not necessarily a key factor to consider, though it is accepted it can be a relevant factor in any given context.

With this in mind, the Scottish Government continues to keep under review this area of legislation including noting the continuing and successful operation of the Crown Office's self-reporting scheme. There are no immediate plans to legislate to introduce a system of DPAs in Scotland, but this is kept under regular consideration as part of the legislative priorities of the Scottish Government and Scottish Parliament.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(c):

8. Regarding the conclusion of foreign bribery cases, the Working Group recommends that:

c) The UK ensure that court sentencing remarks and judgments in foreign bribery cases are routinely published and available [Convention Article 3, 5; 2009 Recommendation III.i].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Subject to court reporting restrictions, HMG Government is committed to transparency in justice matters and is considering whether more could be done to publish sentencing remarks in a range of judgments, including foreign bribery cases. However, such a change would require a number of significant reforms and new technologies.

Text of recommendation 8(d):

8. Regarding the conclusion of foreign bribery cases, the Working Group recommends that:

d) The UK ensure that legal persons are subject to confiscation and/or other financial sanctions, as appropriate, in foreign bribery cases [Convention Article 3; Annex I D].

Action taken as of the date of the follow-up report to implement this recommendation:

Seeking confiscation, compensation and other financial orders in connection to legal persons in foreign bribery cases is an integral part of SFO case strategy. An example of this can be seen in the successful prosecution of Alstom Power Ltd for conspiracy to corrupt in relation to a contract to upgrade the burners at the Lithuanian Power Plant which the SFO recently announced following the lifting of reporting restrictions.

Alstom Power Ltd was ordered to pay a total of £18,038,000 which included:

- A fine of £6,375,000
- Compensation to the Lithuanian government of £10,963,000
- Prosecution costs of £700,000

In addition, a key feature of DPAs, relating to financial sanctions, are the disgorgement of profits. As part of the DPA process compensation and costs may also be sought. The SFO has obtained three DPAs relating to foreign bribery, as follows:

DPA with Rolls Royce

Financial penalty: £239,082,645

Disgorgement of profit: £258,170,000

Costs: £13,000,000

Total payable: £510,252,645

DPA with 'XYZ' (reporting restrictions apply to the name of the other party to the DPA)

Financial penalties: £352,000

Disgorgement of profit: £6,201,085

Total payable: £6,553,085

DPA with Standard Bank

Financial penalties: £11,188,112

Disgorgement of profit: £5,593,888

Compensation: £4,692,000

Costs: £330,000

Total payable: £21,804,000

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(a):

9. Regarding sanctions through public procurement measures, the Working Group recommends that the UK:

a) Consider adopting a systematic approach to allow contracting authorities to easily access information on companies or individuals sanctioned for foreign bribery, including companies sanctioned through court orders, DPAs and other settlements [Convention, Article 3(4); 2009 Recommendation XI.i; Phase 3 recommendation 6(c)].

Action taken as of the date of the follow-up report to implement this recommendation:

HM Government has taken significant steps to strengthen its commercial capability, especially in procurement so that risks are managed effectively. Strong systems are in place to detect and tackle corruption, but the nature of this activity demands ongoing effort to maintain our capability in both central and local government.

The Public Contracts Regulations 2015 (PCRs) provide a systemic approach to assess whether bidders (UK and non-UK) hold certain criminal convictions which require them to be excluded from a procurement. The PCRs require contracting authorities to exclude bidders where they have been convicted of certain offences in UK national law (Regulation 57(1) (a)-(m)).

As per the commitment in the UK's Anti-Corruption Strategy, HM Government has undertaken a conviction check trial to test if/how company and individual conviction information can be accessed

directly by Government departments via the Police National Computer (PNC), in order to facilitate contracting authorities to make the assessments required by the PCRs. The trial results are being analysed and a preferred approach will be set out in 2019.

These measures do not cover DPAs or settlement agreements. Under a DPA a prosecutor charges a company with a criminal offence, but the indictment is suspended upon approval of the DPA by the court. It does not constitute a conviction, and the grounds for mandatory exclusion cannot be applied.

DPAs are offered as a deliberate alternative to prosecution designed to encourage good corporate behaviour without the collateral damage of a conviction. They enable a corporate body to make full reparation for criminal behaviour carried out on their behalf without the sanctions or reputational damage that could put them out of business and destroy the jobs and investments of innocent people.

The misdeeds of a bidder which had led to a DPA might be relevant to a contracting authority's consideration of a tender, for example whether a discretionary exclusion ground applies, including for example grave professional misconduct. This will depend on the particular circumstances and must be considered on a case by case basis.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(b):

9. Regarding sanctions through public procurement measures, the Working Group recommends that the UK:

b) Provide suitable training and guidance to contracting authorities on mandatory and discretionary exclusion of economic operators including with regard to companies convicted under section 7 of the Bribery Act. [Convention, Article 3(4); 2009 Recommendation XI.i; Phase 3 recommendation 6(c)].

Action taken as of the date of the follow-up report to implement this recommendation:

In January 2019, HM Government is due to publish²⁶ guidance on how to apply exclusions in procurement, to assist procurers in tackling corruption, managing conflicts of interest and whistleblowing.

The Public Contracts Regulations 2015 (PCRs) set out a definitive list of grounds for mandatory exclusion which, under the EU regime, cannot be added to nor can discretionary grounds be made mandatory. For convictions for sufficiently serious criminal offences (including convictions under Section 7 of the Bribery Act), not covered under the grounds for mandatory exclusion, contracting authorities should consider whether there are grounds for discretionary exclusion, for example grave professional misconduct. This will depend on the particular circumstances and must be considered by contracting authorities on a case by case basis. The self-cleaning rules will also apply. This position is outlined in the guidance.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10:

10. Regarding international cooperation, the Working Group recommends that the UK improve the tools available to measure MLA performance, to systematically gather information on the actual amount of time taken to execute incoming MLA requests in relation to foreign bribery and related offences [Convention Article 9(1)].

Action taken as of the date of the follow-up report to implement this recommendation:

To better measure the time taken to obtain evidence on cases, the UK Central Authority is making changes to its case management system to add a field to record when evidence is received. It will then be able to assess the time taken from receipt of the original request to the time when the evidence is received. This will apply to all cases received in the UKCA, not just those relating to foreign bribery and related offences. These changes are anticipated to be in place by Spring 2019.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

²⁶ We will provide a status update in February

Text of recommendation 11(a):

11. Regarding UK Crown Dependencies and Overseas Territories, the Working Group recommends that the UK:

a) Proactively engage with the Overseas Territories to accelerate and finalise the extension of the Convention to the Overseas Territories that have not yet ratified it [Convention, Article 1].

Action taken as of the date of the follow-up report to implement this recommendation:

As stated in previous OECD evaluations, HM Government is responsible for the overseas relations of Overseas Territories (OTs) (and Crown Dependencies (CDs)) but they are not part of the United Kingdom. The UK can encourage and assist them to put in place good quality legislation that would enable the extension of the Convention. The UK cannot plan on behalf of the territories or their Governments, they govern themselves.

However, the UK accepts the Recommendation and continues to work with the remaining OTs with the most significant financial service sectors, namely Bermuda, Turks and Caicos Islands, and Anguilla²⁷ on extending the Convention by offering technical assistance, advice and guidance to help OTs introduce the necessary legislation and have the Convention extended to them.

The status of the remaining OTs is as follows:

Bermuda	on the 23rd May 2016, the Attorney General of wrote to the Governor requesting an extension of the OECD Bribery Convention and UNCAC. In order for Bermuda to comply with global standards, it enacted the Bribery Act 2016 ("the Act"). The Act enshrines in domestic legislation the provisions contained in the OECD Bribery Convention and UNCAC. UNCAC was extended to Bermuda via the UK, on the 4th June 2018 and HM Government will discuss next steps for extending the OECD Convention
Turks and Caicos Islands	the Government of the TCI introduced legislation in relation to bribery and corruption, the Bribery Ordinance 2017 and sought to give effect to the Convention amongst other things. This legislation is not yet in force.
Anguilla	since the Joint Ministerial Council of OT premiers in December 2018 where the OECD Recommendations were considered in detail, the Government of Anguilla and the Governor's Office have written to HM Government to indicate they are keen to work with the UK to ratify the Convention during 2019. Initial discussions are due to commence by spring 2019 to agree next steps.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(b):

11. Regarding UK Crown Dependencies and Overseas Territories, the Working Group recommends

²⁷ HM Government considers that Montserrat is too small a territory with negligible overseas trade to warrant the time and resources necessary to expand the Convention. It will, however, keep this under active review if the financial profile of Montserrat changes in the future

that the UK:

b) Work in collaboration with the Crown Dependencies and Overseas Territories to enforce the Convention, including by ensuring appropriate resources, training, expertise and capacity to investigate and prosecute foreign bribery and related offences [Convention, Article 5 and Annex I D].

Action taken as of the date of the follow-up report to implement this recommendation:

HM Government does not consider this appropriate given the constitutional relationship between the CDs and OTs with the UK. Such matters are for consideration for each jurisdiction.

Nevertheless, HM Government is willing to assist the Crown Dependencies (CDs) and Overseas Territories (OTs) with their efforts to tackle threats arising from serious and organised crime, including their capacity to investigate and prosecute foreign bribery and related offences. To that end HM Government is aiming to build a solid evidence base in order to identify and focus on the most effective way to build capacity and increase resilience against all illicit finance, including the laundering of proceeds of bribery and corruption.

Since Phase 4, the UK has:

- Engaged with the CDs and the British Virgin Islands on the Review of the UK under the second cycle of the UN Convention Against Corruption process and also extended UNCAC to Bermuda. A representative of the Government of Guernsey will participate as an UNCAC reviewer of Iceland in 2019;
- Supported the relevant OTs as they prepare for reviews under the Financial Action Taskforce; and
- Engaged with the OTs on implementation of the Sanctions and Money Laundering Act requirements to establish an open register of beneficial ownership (see Update on Follow-up 16a).

In addition, one of the CDs has also recommended the introduction of annual meetings between the relevant stakeholders in the four jurisdictions to discuss risk issues in relation to bribery and corruption and links between them; these meetings will also consider other relevant matters such as responses to risk. HM Government will actively consider this proposal and will discuss with the other CDs.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(c):

11. Regarding UK Crown Dependencies and Overseas Territories, the Working Group recommends that the UK:

c) Regularly review, in collaboration with the Crown Dependencies and Overseas Territories, the status of enforcement of the foreign bribery and related offences, and promote any corrective measures or actions, where necessary [Convention, Article 5 and Annex I D].

Action taken as of the date of the follow-up report to implement this recommendation:

HM Government does not consider this review appropriate given the constitutional relationship between the CDs and OTs with the UK. Such reviews are a matter of consideration for each jurisdiction. However, it is willing to actively assist any efforts of the CDs and the OTs in this area.

Overseas Territories

Since the Phase 4 Report HM Government has actively engaged with the Overseas Territories (OTs) to discuss their efforts to implement the relevant Recommendations, such discussions include:

- a presentation by the Prime Minister’s Anti-Corruption Champion, John Penrose MP, to the Joint Ministerial Council (consisting of premiers of the Overseas Territories) to commission submissions from each OT on its existing implementation of the OECD Recommendations and to seek ideas for implementing remaining ones;
- discussions at the 2018 conference of the OTs Attorney General. For the 2019 conference in February, we are [planning]²⁸ to discuss a proposal from the Joint Anti-Corruption Unit to hold a workshop in 2019 to undertake the reviews and compilation of statistics of Recommendations 11c,e,f. This workshop would bring together relevant OT officials with HM Government officials from the Joint Anti-Corruption Unit, the Foreign & Commonwealth Office and others. The NECC has also indicated an interest in attending and assisting in the processes. The CDs will be invited to attend. HM Government is exploring the possibility of combining these workshops with those proposed in relation to beneficial ownership registers (see the Update on Follow-up 16a); and
- regular bilateral discussions between HM Government and the OTs and the CDs.

This update is also relevant for Recommendations 11e and 11f and Follow-up 11i

Crown Dependencies

In relation to the CDs, the CDs and HM Government do not consider that any corrective measures or actions are required at this moment, although this will be kept under review. There are close working relationships between the FIU, law enforcement and criminal justice authorities of the UK and the CDs at the policy and operational levels. These relationships include fora comprising all four jurisdictions and bilateral liaison. By way of example, the NCA and the CDs have regular joint partnership meetings, and these include reviews of bribery and corruption cases and risk. In addition, the CDs has regular meetings with the NCA and the IACCC to discuss specific cases. It is felt that these measures are working effectively to ensure effective enforcement.

In addition, the CDs and the British Virgin Islands took part in the 2nd cycle UNCAC review which focused on prevention, anti-money laundering measures and recovery.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(d):

11. Regarding UK Crown Dependencies and Overseas Territories, the Working Group recommends that the UK:

d) Extend, as a matter of priority, the jurisdiction of the Bribery Act to legal persons incorporated in the Crown Dependencies and Overseas Territories, or ensure in any other way that legal persons incorporated in the CDs and OTs can be held liable for foreign bribery [Convention, Article 4(2); Phase 2bis recommendation 3(b); and Phase 3 recommendation 9(b)].

Action taken as of the date of the follow-up report to implement this recommendation:

As stated in the Update to Recommendation 11a, HM Government is responsible for the overseas relations of OTs and CDs but they are not part of the United Kingdom. The UK can encourage and assist them to use the Bribery Act as a model for their legislation. The UK cannot plan on behalf of the territories or their Governments, the OTs and CDs govern themselves and there is no appetite at this time in HM Government to extend the Bribery Act itself to OTs and CDs.²⁹

In respect of legal persons, the appropriate approach would seem to be that the OTs and CDs should comply with the Convention through implementation of appropriate domestic anti-bribery legislation,

²⁸ Note to OECD: we can provide an update in February

²⁹ It should be noted that the House of Lords Select Committee on the Bribery Act is due to report on 31 March 2019 and HM Government will carefully consider its recommendations, including any it might have on the OTs and CDs

rather than by extension of the Bribery Act. Most have done so, with a number of them have modelled this legislation on the Bribery Act:

Overseas Territories

Anguilla	Anguilla has existing legislation covering bribery in specific circumstances but not yet extended this to foreign bribery. It is due to discuss this topic with HM Government with a view to building on the existing legislation as part of its discussions on extending the Convention in 2019 (see Update to Recommendation 11a).
Bermuda	The Bermuda's Bribery Act 2016 (Bribery Act) came into force on 1 September 2017, completely overhauling Bermuda's anti-bribery legislation by criminalising bribery and creating new offences of bribing a foreign public official or failing to prevent bribery by an associated person. This Act is modelled on the UK Bribery Act and extends liability to legal persons.
British Virgin Islands	Section 85 of the Criminal Code criminalises foreign bribery and this is extended to legal persons under general legal provisions. This is not modelled on the UK Bribery Act.
Cayman Islands	The Cayman Islands Anti-Corruption Law 2018 extends the criminal liability for foreign bribery to legal persons. This law incorporates similar provisions to the UK Bribery Act.
Gibraltar	Gibraltar has domestic legislation equivalent to the Bribery Act. Part 24 of the Crimes Act 2011 is essentially a copy- out (<i>mutatis mutandis</i>) of the Bribery Act.
Montserrat	The Penal Code (Amendment) Act 2014 came into force in August 2014 and amends the Penal Code (Cap 4.02) to create Foreign Bribery offences. These provisions extend to a number of entities including legal persons incorporated under the Laws of Montserrat and which carry on business whether in Montserrat or elsewhere, or any other body corporate which carries on a business or part of a business in Montserrat.
Turks and Caicos Islands	The Bribery Ordinance 2017 will extend criminal liability to legal persons in certain circumstances. This Ordinance is based upon the UK Bribery Act but is not yet in force.

Crown Dependencies

Isle of Man	The Isle of Man's Bribery Act 2013 is closely based on the UK's 2010 Act. Under section 18 (offences committed outside the Island) of the IOM Act a body corporate or partnership incorporated or formed under the laws of the Island can be prosecuted in the Island for foreign bribery.
Jersey	The Corruption (Jersey) Law 2006 predates the Bribery Act but extends criminal liability for the bribery of foreign officials to legal persons.
Guernsey	Guernsey has existing anti-corruption legislation (the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003) which applies criminal liability for the bribery of foreign officials to legal persons. This legislation pre-dates the Bribery Act. In addition, Guernsey has confirmed that it will legislate to introduce an explicit offence in 2019 in relation to holding legal persons strictly liable for foreign bribery. This new offence will be modelled on the corresponding strict liability offence in the Bribery Act.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such

measures or the reasons why no action will be taken:**Text of recommendation 11(e):**

11. Regarding UK Crown Dependencies and Overseas Territories, the Working Group recommends that the UK:

e) Review, in collaboration with the Crown Dependencies and Overseas Territories, their institutional framework and arrangements to respond to international cooperation requests [Convention Article 9 and 2009 Recommendation XIII].

Action taken as of the date of the follow-up report to implement this recommendation:

HM Government does not consider this review appropriate given the constitutional relationship between the CDs and OTs with the UK. Such reviews are a matter of consideration for each jurisdiction. However, it is willing to actively assist any efforts of the CDs and the OTs in this area.

Overseas Territories

See Update on Recommendation 11c which outlines the engagement HM Government has had with the OTs and the proposed workshop to discuss this review.

Crown Dependencies

Each of the CDs is actively engaged with international processes and committed to the implementation of an effective Convention-compliant regime. Linked with this, numerous international processes such as those of the FATF, MONEYVAL and UNCAC also focus on international cooperation. Hence, the CDs and international bodies routinely review institutional frameworks and arrangements to respond to international cooperation requests.

In any case, the UK is the most frequent contributor of international cooperation requests to the CDs and any issues in practice would be covered by bilateral liaison and/or the processes specified in the responses to recommendations 11b and 11c.

Further, the Isle of Man (IoM) Government does not consider that an additional detailed review of the Isle of Man is required, given that a full MONEYVAL independent assessment under the FATF 4th (MONEYVAL 5th) round was conducted in 2016 and the IoM was rated as Substantial for IO2 – International Cooperation.³⁰

The MONEYVAL mutual evaluation report (MER) included findings that the IOM:

- Provides constructive and in most cases timely MLA across a range of international cooperation requests.
- Excellent cooperation exists between the IoM and the UK, especially with regard to tax and customs matters. The UK regularly disseminates SARs reported in the UK to the IoM, which are then examined by competent authorities. Examples of effective cooperation have been presented to the evaluators both with regard to on-going criminal investigations and enforcement of targeted financial sanctions.

The MER noted that the IoM had a low number of outgoing MLA requests which was not commensurate with the IOM's risk profile and levels of intelligence generated locally – this has now been addressed and the IOM has significantly increased outgoing requests in order to assist in the pursuit of domestic ML and associated predicate offences which have a transnational element, or for the detection of potential funds or assets which are owned or controlled, directly or indirectly, by sanctioned persons or entities.

In addition to the Isle of Man, the Cayman Islands has been reviewed (with its report due in February 2019) and reviews of Bermuda and the British Virgin Islands will follow in 2019.

If no action has been taken to implement recommendation 1, please specify in the space below

³⁰ https://www.coe.int/en/web/moneyval/jurisdictions/isle_of_man

the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(f):

11. Regarding UK Crown Dependencies and Overseas Territories, the Working Group recommends that the UK:

f) Compile, in collaboration with the Crown Dependencies and Overseas Territories, relevant MLA statistics, with a view to identifying any obstacle or difficulty in delivering international assistance by such Territories in foreign bribery cases, and to possibly providing support for any necessary corrective measure [Convention Article 9(1)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

HM Government does not consider this appropriate given the constitutional relationship between the CDs and OTs with the UK. Such things are a matter of consideration for each jurisdiction. However, it is willing to actively assist any efforts of the CDs and the OTs in this area.

Overseas Territories

See Update on Recommendation 11c which outlines the engagement HM Government has had with the OTs and the proposed workshop to discuss this Recommendation.

Crown Dependencies

The UK is the most frequent contributor of MLA to the CDs and any issues in practice would be covered by bilateral liaison and/or the processes specified in the Updates to Recommendations 11b and 11c.

Guernsey compiles and assesses MLA statistics routinely to understand risk, including any potential vulnerabilities.

The IOM Government does not consider that there any significant obstacles to the IOM providing international assistance in foreign bribery, or other, cases.

Jersey compiles and assesses MLA statistics routinely to understand risk and vulnerabilities, such as understanding jurisdictions which present a particular risk to Jersey. Such MLA statistics are in particular being reviewed as part of the National Risk Assessment exercise currently being conducted within Jersey. In addition, steps are being taken to review individual requests for MLA, with a view to identifying further actions that could be taken domestically in relation to individual cases.

Text of recommendation 12(a):

12. Regarding liability of legal persons, the Working Group recommends that the UK:

a) Clarify in the Guidance to Commercial Organisations “reasonable and proportionate” hospitality and promotional expenditure, and to note that certain examples in the Guidance represent a high risk of bribery [Convention, Articles 1, 2 and 5; 2009 Recommendations VI and X.C.i.; Phase 3 recommendation 2(a)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1, please specify in the space below

the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

A House of Lords Select Committee is currently considering the Bribery Act and will report on 31 March 2019. HM Government will review these findings carefully when considering whether any changes to the Guidance are required.

As outlined by Kelly Tolhurst MP (the Parliamentary Under Secretary of State at BEIS) in her evidence to the Select Committee, business representatives have not raised the issue of the Bribery Act guidance during their regular meetings.

In addition to considering the Select Committee report, HM Government will keep the Guidance under review to ensure it remains appropriate, including as case law develops.

Text of recommendation 12(b):

12. Regarding liability of legal persons, the Working Group recommends that the UK:

b) Clarify in the Guidance the significance of indirect benefits for the purpose of determining liability under section 7 of the Bribery Act [Convention, Articles 2 and 5; Phase 3 recommendation 2(b)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

See Update to Recommendation on 12a on the House of Lords Select Committee.

Text of recommendation 13(a):

13. Regarding engagement with the private sector, the Working Group recommends that the UK:

a) Raise awareness of the Guidance to Commercial Organisations among SMEs that have overseas operations [2009 Recommendation X.C., and Annex II].

Action taken as of the date of the follow-up report to implement this recommendation:

The Guidance to Commercial Organisations is included in the Business Integrity Initiative described in the Update on Recommendation 13b.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(b):

13. Regarding engagement with the private sector, the Working Group recommends that the UK:

b) Facilitate the publishing and dissemination of more targeted information for SMEs on setting up anti-bribery compliance measures to effectively prevent and detect foreign bribery [2009 Recommendation X.C., and Annex II].

Action taken as of the date of the follow-up report to implement this recommendation:

In 2018, HM Government launched the *Business Integrity Initiative*, a new support service, to help UK companies, including SMEs, doing business around the world integrate analysis and management of integrity issues into their strategies for doing business.

A Business Integrity Hub has now been set up, signposting companies to anti-bribery and corruption and human rights support. The list of subscribers to the monthly Business Integrity newsletter has increased by 57 in the last three months of 2018, totalling 346.

From early 2019, businesses will be able to access the Hub's services through HM Government's web portal for businesses, www.great.gov.uk. This portal contains high-level integrity guidance³¹, and also contains:

- tailored guidance on compliance, prevention, and collective action for SMEs;
- links to the Transparency International's Global Anti-Bribery Guidance and the Anti-Corruption Toolkit for SMEs from the G20 and B20;
- information on UK legislation and how it relates to businesses operating abroad;
- a guidance pack and a quick start guide to the Bribery Act 2010 (this includes the Guidance to Commercial Organisations);
- information and links to guidance on anti-corruption legislation around the world, e.g. the Foreign Corrupt Practice Act (FCPA); and
- detailed information on Know Your Customer procedures which highlights the importance of identifying foreign bribery, conducting due diligence checks and supply chain mapping.

The Business Integrity Initiative is currently launching three country pilots of a more systematic approach across multiple departments of HM Government to provide business integrity support from UK diplomatic missions. These are taking place in Mexico, Kenya and Pakistan with the objective of enhancing provision of business integrity support to international companies looking to do business in these markets. The pilots are due to be operational this year.

The Business Integrity Initiative will be underpinned by an Expert Panel to a) hold government departments to account for the commitments and objectives of the Business Integrity Initiative, b) ensure the work of the Initiative is relevant to businesses, including helping gather feedback from the private sector, and c) ask companies to contribute in terms of time, co-funding and in-kind support. It is envisaged that the Expert Panel will be composed of representatives from the private sector, civil society organisations, academia, and HM Government Departments. This is to ensure a wide spread of those with an interest in business integrity have oversight of the Initiative and can advise government departments on the relevance of its activities to its target users.

In addition, there is a broader communication campaign on the 'case for doing business with integrity' which will target SMEs. This campaign will be launched in January 2019 and will build on research and messages developed by Business Fights Poverty, a business-led collaboration network focused on social impact. This campaign will be framed as a 'call to action', consisting of case studies and opinion articles by business leaders which will be disseminated through social media, business associations, and DFID/DIT/BEIS networks. The disseminated material will also include links to the Business Integrity Hub as part of the wider HM Government response detailed above.

The next element of the Initiative to be developed this year is a Challenge Fund to provide grants to existing, successful collective action initiatives with and for the private sector in developing countries, building on a recent stocktake of initiatives.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(a):

³¹ <https://www.great.gov.uk/advice/manage-legal-and-ethical-compliance/understand-business-risk-in-overseas-markets/>

14. Regarding tax-related measures, the Working Group recommends that the UK:

a) Ensure Her Majesty's Revenue and Customs (HMRC) engages in a more proactive approach in enforcing the non-tax deductibility of bribe payments against the defendants in past and future foreign bribery enforcement actions, including by systematically re-examining defendants' tax returns for the relevant years to verify whether bribes have been deducted [2009 Recommendation, VIII.i; 2009 Tax Recommendation; Phase 3 Recommendation 12(a)].

Action taken as of the date of the follow-up report to implement this recommendation:

All large businesses that have been subject to a prosecution/deferred prosecution by the SFO have been, or are in the process of being, reviewed by HMRC's Large Business directorate. In some cases to progress reviews, careful consideration has to be given to ensure that any action by HMRC does not disrupt any active criminal investigations. HMRC is working with the SFO on the best way to ensure it can identify and test cases within its individuals, small and medium customer bases.

Additional guidance is being written that will cover what can be discussed with a HMRC customer if it is under an active SFO investigation and how the assessing position of HMRC can be protected.

In addition, HMRC is working with the SFO on:

- how they might increase the flow of information in active cases (this is a very sensitive issue given the stage of some of these live investigations);
- a project to reverse engineer bribery cases to see if they identify particular indicators of a bribe that could be identified. The SFO has provided a detailed report on six cases, some working, some closed, to identify the indicators of bribery and corruption so that this can be used as part of HMRC's work on raising awareness, improving capability and compliance;
- future wording of Deferred Prosecution Agreements to include lines on the admissibility of payments found to be linked to bribery & corruption. It is proposed that SFO Heads of Division could in future work with HMRC on wording of each DPA as they arise; and
- a review of a number of closed bribery cases by Intelligence Analysts within SFO and Tax Professionals within HMRC, resulting in an Intelligence Assessment to help future tax compliance work. This work will be extended as they continue this closer working relationship, leading to development of a risk matrix for industries and jurisdictions.

Further, HMRC is:

- preparing updated guidance on actions to take following a conviction or deferred prosecution agreement for bribery. This will be reviewed and updated as cases are worked;
- undertaking as a compliance project within Large Businesses compliance, to help improve identification, referrals to SFO, and challenges on deductibility;
- working on a strategy to promote increased due diligence by UK business to prevent illegal payments, identifying sectors where bribery has occurred before and businesses operating in countries high on the corruption index; and
- considering the practical implications of undertaking HMRC civil enquiries in relation to some cases of suspected bribery that the SFO decides not to prosecute.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(b):

14. Regarding tax-related measures, the Working Group recommends that the UK:

b) Ensure that the mechanisms in place for HMRC to be routinely informed of foreign bribery

convictions are efficient and used in practice [2009 Recommendation, VIII.i; 2009 Tax Recommendations].

Action taken as of the date of the follow-up report to implement this recommendation:

Since the Phase 4 Report, HMRC has played an active part in the identification of foreign bribery and corruption and the safe dissemination of intelligence to key partners in the UK through:

- becoming a member of the Clearing House and the National Economic Crime Centre;
- its continued membership of the SFO Bribery & Corruption Threat Group, the Bribery, Corruption and Sanctions group led by the NCA; and
- its signatory to the MoU with other law enforcement partners in the UK;

These mechanisms allow HMRC to be routinely informed of foreign bribery cases.

Text of recommendation 14(c):

14. Regarding tax-related measures, the Working Group recommends that the UK:

c) Collect data on instances where HMRC re-examines tax returns of individuals and corporations sanctioned for foreign bribery [2009 Recommendation, VIII.i; 2009 Tax Recommendations].

Action taken as of the date of the follow-up report to implement this recommendation:

HMRC is making changes to its electronic compliance work management systems to include an extra category for recording enquiry work on bribery. The change will enable it to keep a record all of instances of identification of bribes and analyse across size of customer, sector, etc. Details of re-examined cases will be recorded here. In addition, HMRC is exploring options for a “bribery case register” to hold more detailed data in one place. These changes are expected to be live before 31 March 2019.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(d):

14. Regarding tax-related measures, the Working Group recommends that the UK:

d) Ensure HMRC conducts as a matter of priority a comprehensive review of its methods and capacity to detect and report foreign bribery, including to examine why HMRC has failed to detect proven cases of foreign bribery [2009 Recommendation, VIII.i; 2009 Tax Recommendation; Phase 3 Recommendation 12(a)].

Action taken as of the date of the follow-up report to implement this recommendation:

HMRC’s primary role is not to seek out cases of foreign bribery but to be proactively alert to the possibility of it occurring. This enables them to be able to report any suspicion of bribery or corruption to the relevant law enforcement agencies and also ensure no loss occurs to the Exchequer as a consequence. However, there are circumstances where instances of bribery and corruption may have occurred which would not easily be detectable by a tax enquiry by an officer of HMRC, for example where a UK business funds such bribery from an offshore or non-UK based subsidiaries.

HMRC is taking certain measures to improve its knowledge and understanding of foreign bribery so its officers might better identify suspicious behaviour. These measures include:

- refreshing the operational guidance for dealing with bribery tax risk enquiries, supported by additional awareness sessions for staff dealing with large businesses in 2019;

- reviewing the processes to report cases where a suspicion arises;
- undertaking a comprehensive review of HMRC's methods and capacity to identify possible bribery and corruption. The precursor to this is to classify indicators as part of the reverse engineering project described in the Update to Recommendation 14a;
- developing a risk matrix using available information and intelligence that identifies regions globally where the risk of corruption is high;
- working with the SFO to review business sectors where traditionally incidents of bribery have been higher than in other sectors. This will allow HMRC to better inform officers' understanding of business to identify possible cases of bribery;
- testing the use of data analytics to identify businesses within sectors and where they trade as well as contracts won from open source searches; and
- using sensitive intelligence available to HMRC to identify cases that have alleged bribery. Work on this is at an advanced stage.

In addition, while its focus will be centred around how HMRC can work with businesses on ways to help prevent incidents of bribery, HMRC will continue to work with SFO to identify and deal with the few cases that still arise.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(e):

14. Regarding tax-related measures, the Working Group recommends that the UK:

e) Provide regular training to tax inspectors on the detection of bribe payments disguised as legitimate allowable expenses [2009 Recommendation, VIII.i; 2009 Tax Recommendations].

Action taken as of the date of the follow-up report to implement this recommendation:

HMRC is developing a new learning package for HMRC compliance staff on the operational implications of dealing with the tax risks associated with bribery and corruption. This will be trialled in 2019.

HMRC's review of legacy and current cases has helped build its understanding of the complexities found in bribery cases. Together with the outcomes of the work on reverse engineering prosecuted cases with the SFO, this material is being used to prepare new guidance to help in detecting bribe payments disguised as legitimate allowable expenses.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(f):

14. Regarding tax-related measures, the Working Group recommends that the UK:

f) Ensure that there is an adequate framework in place which enables HMRC to provide information for use in foreign bribery investigations upon request, and report suspicions of foreign bribery to the SFO [2009 Recommendation, VIII.i; 2009 Tax Recommendation; Phase 3 Recommendation 12(c)].

Action taken as of the date of the follow-up report to implement this recommendation:

HMRC acts under strict legal guidelines which permit the lawful sharing of taxpayer information to the law enforcement agencies where proportionate, through a legal gateway framework. Awareness of the framework, both for requests from another agency, such as the SFO, and for making proactive disclosures, is being improved through developing new operational guidance, training and associated events dealing with fraud and the new corporate criminal offence.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(a):

15. Regarding export finance credit, the Working Group recommends that UKEF:

a) Undertake a comprehensive review of its policies to identify how they could be better applied in practice to enable detection of foreign bribery [Convention Article 3(4); 2009 Recommendation XI.i. and 2006 Export Credit Recommendation].

Although, like other export credit agencies (ECAs), UK Export Finance (UKEF) has no statutory criminal investigatory powers resulting in its role in the detection of bribery inevitably being limited, deterrence of bribery is a prime objective of UKEF's due diligence processes. This remit for UKEF has been agreed by HM Government Ministers in light of Public Consultations on the matter.

During 2018, UKEF instigated a major and comprehensive review of its financial crime compliance policies and procedures (including in relation to bribery) and commissioned independent external advisors to review and benchmark these policies and procedures against best commercial practice. The advisors are expected to provide detailed recommendations for improved processes and procedures in early 2019, which will be implemented shortly thereafter.

An experienced and highly qualified interim Head of Compliance has been appointed to enhance the Financial Crime Compliance function and to share expertise and help embed good practice across UKEF, prior to a permanent Head of Compliance taking up the role.

During 2019, UKEF intends to implement and operationalise recommendations from the external advisors. A dedicated team will be established to centralise due diligence on applicants for UKEF support. This team will be independent of UKEF's Business Group to ensure separation of the business origination function from that of the due diligence screening.

During the implementation phase, it is expected that relevant policies will be reviewed and updated as required to ensure their effectiveness at an operational level.

All staff will receive training on the new processes and procedures as well as refresher training on their obligations in relation to foreign bribery.

In addition, UKEF will continue to reinforce the compliance culture within UKEF, monitoring the effectiveness of the new processes and procedures as required.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(b):

15. Regarding export finance credit, the Working Group recommends that UKEF:

b) Where appropriate, take a firmer stance against exporters and applicants engaging in corrupt

behaviour, by making vigorous use of all its powers, including its audit powers, to carry out due diligence with a view to refusing, suspending or withdrawing support if applicable [Convention, Article 3(4); 2009 Recommendation XI.i; 2006 Export Credit Recommendation].

Action taken as of the date of the follow-up report to implement this recommendation:

UKEF closely and comprehensively follows the OECD *Recommendation on Bribery and Officially Supported Export Credits* 2006 and would not provide cover if UKEF due diligence concluded that bribery was involved in a transaction.

To a greater degree than most other OECD ECAs, UKEF requires detailed and comprehensive declarations from all applicants in the area of corrupt activity and requires applicants to take appropriate action against anyone who is found to have acted corruptly. Applicants must also report to UKEF details of corrupt or potentially corrupt activity should any later come to light.

Having received these self-declarations, UKEF conducts its own due diligence, making reasonable enquiries about a case and the parties to it. Based on a risk assessment of factors such as jurisdiction and / or the particular circumstances of any given case, UKEF's standard due diligence may be built upon by additional enquiry to provide it with reasonable assurance that a transaction is not tainted by bribery and corruption.

In April 2017, UKEF announced that 'Special Handling Arrangements' would no longer be available to applicants for UKEF support. The removal of these arrangements, under which an applicant for UKEF support could request that knowledge of an agent's identity be restricted to three members of UKEF staff, forms part of UKEF's commitment to high standards and good practice in matters relating to compliance and transparency. Applicants for UKEF support must, in all cases, provide details about the use, identity of, and payments to, overseas Agents. This goes beyond the practice of the majority of OECD Export Credit Agencies.

Due diligence is routinely undertaken on all Agents about which UKEF is notified. This can and does include obtaining local legal advice to ensure the terms of engagement comply with local laws/rules, as well as seeking advice and intelligence from staff in relevant UK Embassies and High Commissions abroad. Further, we also ask the Applicant about the work the Agent does, where they pay the Agent and how much (both as an amount and as a percentage of the contract value), and the experience the Agent has which makes them suitable for the role in question. Red flags on any of these points result in further scrutiny.

UKEF's due diligence is supplemented by the taking of contractual rights of financial recourse to the applicant or the cancellation of insurance cover, which can be exercised if they subsequently admit to, or are convicted of, corruption. However, where a guarantee is given to a bank (who was an innocent party), it would not be appropriate to withdraw the benefit of the UKEF guarantee from that bank.

UKEF has also implemented an extended due diligence framework, for use where UKEF is aware that a counterparty is subject to an ongoing investigation, to support senior decision-makers in considering whether to support a transaction in order to assure the Department on compliance issues.

Following the 2017 Deferred Prosecution Agreement between the SFO and Rolls-Royce, for transactions involving this company, UKEF will only consider support if it is subject to due diligence involving additional steps, beyond the normal process, that take account of the specific circumstances of each transaction, in line with the extended due diligence framework. If any Applicant raises concerns in this area, UKEF will take additional steps as it considers necessary until it is reasonably satisfied that it is not supporting transactions tainted by bribery and corruption.

In addition to pre-issue due diligence, UKEF also has inspection rights with financial institutions and the relevant UK exporters across all products, which are utilised through External Compliance Reviews.

UKEF's Compliance function has provided assurance that new financial institutions wishing to utilise UKEF's products are vetted against the current due diligence framework by inputting to the onboarding process.

Compliance has also offered opinion towards the ultimate decision-making for some of the more complex transactions requiring enhanced due diligence and have provided input at the early stages on

enquiries where concerns regarding parties and/or elements of a transaction have been raised.

Where appropriate, concerns have in several cases been referred to the SFO/NCA for further investigation. This included the public matter relating to Airbus' historic use of Agents. UKEF, in common with both the French and German Export Credit Agencies, received no applications from Airbus whilst the company provided assurances as to current compliance practices.

A range to indicate the number of referrals made by UKEF to law enforcement bodies is reported annually on UKEF's website.

To consolidate this process, UKEF is due to formally launch a streamlined internal process for raising concerns to law enforcement bodies. This will be accompanied by a series of awareness sessions for all staff.

UKEF will continue to exercise its powers in this area by requiring detailed and comprehensive declarations from applicants for its support and conducting its own due diligence to make reasonable enquiries about a case and the parties to it.

It is also expected that, as a result of the comprehensive review into UKEF's financial crime compliance policies and procedures (described in the response to Recommendation 15a), UKEF will implement a number of technological solutions to support the Department in undertaking due diligence on counterparties seeking support.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

16. The Working Group will follow up as case law and practice develop with regard to the following issues:

Text of issue for follow-up 16(a):

a) Implementation by the UK Crown Dependencies and Overseas Territories of beneficial ownership registers for companies, including the adequacy and accuracy of the beneficial ownership information kept on those registers, and automatic rights of access to the registries by UK law enforcement authorities [Convention Articles 5 and 7 and Annex I D].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Private central registers of company beneficial ownership or similarly effective systems are in place in all three Crown Dependencies (CDs) and in the Overseas Territories (OTs) with major financial centres, namely Anguilla, Bermuda, The British Virgin Islands, The Cayman Islands, Gibraltar and Turks and Caicos.

All CDs and OTs are now effectively sharing company beneficial ownership information with our law enforcement agencies under the "Exchange of Notes" arrangements which came into force in 2017. The arrangements commit the CDs and OTs to provide UK law enforcement agencies and tax authorities with information identifying the beneficial owners of corporate and legal entities incorporated in their respective jurisdictions within 24 hours, and one hour in urgent cases. We expect this to strengthen the UK's ability to tackle bribery and corruption, money laundering and tax evasion and other forms of serious and organised crime.

The UK government continues to work closely with the OTs and CDs to ensure that the new arrangements run smoothly and effectively. We will continue to monitor the implementation and effectiveness of the arrangements closely. We have undertaken the first six-monthly review of the arrangements, the results of which were published on 1 May 2018. This review found that the

arrangements were working well and that they had been used to successfully collect information from the CDs and OTs more than 70 times.

The Criminal Finances Act also introduced a Statutory Review of the effectiveness of the arrangements, with a report to be prepared before 1 July 2019 for publication and to be laid before Parliament. This provides assurance that careful Parliamentary scrutiny will be given to the questions of whether the arrangements are being implemented properly, working effectively and meeting the Government's law enforcement objectives.

Beyond the requirements of this Recommendation, HM Government will also take forward a legal requirement in section 51(2) of the Sanctions and Anti-Money Laundering Act passed in May 2018 under which the Secretary of State must prepare draft legislation requiring the British Overseas Territories to introduce public registers of beneficial ownership of companies. The Act requires HM Government to provide all reasonable assistance to enable the OTs to establish such registers, so we will work collaboratively to achieve this. Technical workshops will be introduced from spring 2019 to provide support to the territories. We aim to bring expertise from a range of departments and executive agencies, including Companies House, BEIS, DFID and the Home Office. The UK Government will invite the CDs to attend the technical workshops held for the OTs.

Text of issue for follow-up 16(b):

b) The manner in which the UK "Persons with Significant Control" register, and similar registers developed in the UK Crown Dependencies and Overseas Territories, are relied on in practice in cases of foreign bribery and related offences [Convention Articles 5 and 7 and Annex I D];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The UK "Persons with Significant Control" register and the similar registers public registers in the OTs and CDs are a useful source, but just one example of the many sources of intelligence used by the law enforcement agencies. However, for example of their usefulness, the NCA secured its first unexplained wealth order thanks in part to the information received from an overseas territory using the Exchange of Notes arrangement."

The Exchange of Notes agreement is described in more detail in the Update to Follow-up 16a. The law enforcement agencies have made multiple requests to the OTs and CDs via this mechanism which is indicative of its value to us especially in casework related to illicit finances asset denial linked to corrupt elites. This information has been used to enhance intelligence leads and investigations on illicit finance.

The Security and Economic Crime Minister, Ben Wallace MP, gave an update on the Exchange of Notes to Parliament in May 2018.³²

Text of issue for follow-up 16(c):

c) Whether natural persons are effectively prosecuted for foreign bribery by the SFO [Convention Articles 3, 5].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The SFO will always consider the investigation and prosecution of natural persons, in line with the Director of Public Prosecutions' code for crown prosecutors.

An example of this is the successful prosecution of individuals in connection to the recent investigation

³²<https://hansard.parliament.uk/commons/2018-05-01/debates/18050126000011/ExchangeOfNotesOnBeneficialOwnershipSix-MonthReview>

into UK company FH Bertling Ltd (see the Update to Recommendation 8a). In this case two suspects pleaded guilty and a further seven people were convicted for foreign bribery.

Trials are underway in further cases, but these are currently subject to reporting restrictions.

Text of issue for follow-up 16(d):

d) Whether Scotland makes public all relevant details about finalised foreign bribery cases, including information about the value of the bribe and advantage received, natural and legal persons involved, and the location and time of offending [Convention Article 3, 5; 2009 Recommendation III.i].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

COPFS adopts a pro-active approach to promote and raise awareness of successful outcomes in foreign bribery cases, whether these are resolved by way of prosecution or civil settlement. In a limited number of cases, publicity may require to be deferred to avoid prejudice to pending criminal investigations or prosecutions but, where that is not the case, COPFS provides detailed information by way of releases which are issued directly to the media and published on the COPFS website.

A review of the media releases to date reveals that the majority do contain the details referred to above, however the comments of the OECD review team have been noted and COPFS Media Relations department has been briefed accordingly, in order that we can ensure all relevant details are included in future releases.

COPFS releases are picked up and reported on by the UK and international media. An open source search reveals that the bribery cases that COPFS has dealt with to date have been widely covered in the media, and searches for the relevant businesses bring up articles about the corruption and the ensuing civil settlement relatively high in the list of search results.

COPFS is in the process of developing a dedicated page on its public website which will contain media releases for all concluded bribery cases (prosecutions and civil settlements), as well as other information relevant to bribery cases, such as COPFS guidance to businesses on the self-report initiative. This should enhance the accessibility of this information and assist in raising awareness amongst private businesses, public sector organisations and the general public. This webpage is due to be launched in spring 2019.

Text of issue for follow-up 16(e):

e) The use of DPAs in foreign bribery cases to evaluate in particular (i) the application of the public interest factor, and (ii) the effective, proportionate and dissuasive character of sanctions imposed in that context, notably the reductions granted in the absence of self-reporting [Convention Articles 3 and 4 and Annex I D].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

To note: due to the lifecycle of cases, there has not been a DPA for foreign bribery offences since the Phase 4 Report.

A DPA is a discretionary tool created by the Act to provide a way of responding to alleged criminal conduct. The prosecutor may invite a company to enter into negotiations to agree a DPA as an alternative to prosecution.

In order to enter a DPA the prosecutor must be satisfied that the public interest would be properly served by the prosecutor not prosecuting but instead entering into a DPA with a company in accordance with the criteria set out in the DPA Code of Practice. Under the Crime and Courts Act 2013 a DPA requires court approval; the court will assess that the DPA is in the interest of justice, and that the terms of the

DPA are fair, reasonable and proportionate. The court's active role in examining the agreement is evident from the published rulings, scrutinises very carefully every aspect of the application for approval.

The SFO will always consider each case on its merit, taking into account the facts of the case, the Public Interest and the willingness of the company to make full reparations. Reform, including the removal of senior managers who are either implicated in or who should have been aware of the criminality the court is considering, has been a key element in all of the judgments it has handed down.

Deferred Prosecution Agreements are pragmatic devices aimed first at incentivising openness leading to the uncovering of financial crimes and secondly at allowing companies to account to a court for those crimes in a way that does not also punish its innocent employees, suppliers and the local community in which it operates. That second rationale only comes into play if the company can show us and the court that it will not create new victims of crime. That's why, in the XYZ case, the fuller version of the judge's comment on openness was, "...it is important to send a clear message, reflecting a policy choice in bringing DPAs into the Law of England and Wales, that a company's shareholders, customers and employees (as well as those with whom it deals) are far better served by self-reporting and putting in place effective compliance structures. When it does so, that openness must be rewarded and be seen to be worthwhile."

In the Rolls Royce case the court approved a 50% discount even though it was not a case of self-reporting. In his judgment the Rt Hon. Sir Brian Leveson provided the following comment:

"In this case, Rolls-Royce has demonstrated extraordinary cooperation (as explained at [16] to [20] above). The co-operation is reflected in part by the willingness to enter a DPA but it also falls within the principle to which I have referred. Summarising, it includes voluntary disclosure of internal investigations, with limited waiver of privilege over internal investigation memoranda and certain defence aerospace and civil aerospace material (for count 11); providing un-reviewed digital material to the SFO and co-operating with independent counsel in the resolution of privilege claims; agreeing to the use of digital methods to identify privilege issues; co-operating with the SFO's requests in respect of the conduct of the internal investigation, to include timing of and recording of interviews and reporting of findings on a rolling basis; providing all financial data sought and fully co-operating with the assessments which had to be undertaken; not winding up companies of interest including RRESI.

Two further points ought to be made. At the request of the SFO, Rolls-Royce identified conduct which might be capable of resolution by a DPA prior to any invitation to enter into DPA negotiations being made. Thus, a potential route map through this exceptional case was assisted by the co-operation provided. Second, Rolls-Royce have not sought to generate any external influence over the investigation by the SFO; media enquiries and Whitehall engagement has been handled in a manner agreed with the SFO.

In order to take account of this extraordinary cooperation, I repeat the views which I expressed above and confirm that a further discount of 16.7% is justified taking the total discount of the penalty to 50%."

Text of issue for follow-up 16(f):

f) The assurance provided by the SFO to Rolls-Royce in the context of its DPA, to ensure that the company does not escape liability for any additional foreign bribery not covered by the DPA, and whether similar assurances are given in the context of future settlements [Convention Article 5; Annex I D].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The statement quoted in the Phase 4 Report which we understand is the "assurance" referenced in this Recommendation is, in fact, a quote from the Judgment of Sir Brian Leveson, President of the Queen's Bench Division. This statement is best read in the context of the follow-on paragraphs which when read as a whole explains that Rolls-Royce would not escape liability for future conduct or past conduct of

which the SFO has no direct or implicit knowledge:

“... it is appropriate to underline that para. 5 of the DPA provides that it does not cover conduct not disclosed by Rolls-Royce prior to the date on which the DPA comes into force. Having said that, I am informed that the SFO has reached a view and agreed to provide assurance to Rolls-Royce that, on approval of the DPA, it would not consider it to be in the interests of justice to investigate or prosecute it for additional conduct pre-dating the DPA and arising from the currently opened investigations into Airbus and Unaoil (which, in any event, is covered by the deferred prosecution agreement reached by Rolls-Royce in the United States). It is appropriate that I record this assurance.

The reason for this conclusion is that the conduct resolved by the DPA spans eight jurisdictions, three of Rolls-Royce’s business divisions and over 20 years of conduct. The geographic, commercial and chronological scope together with the quantum of proposed financial terms is such that the matters which are the subject of the DPA are sufficiently extensive to satisfy the public interest. The investigations into Unaoil and Airbus are insufficiently advanced so as to provide evidence that could yet be included in a DPA or prosecuted and substantial further investigation would be required before such an eventuality if it were reached at all. Even if it did it is unlikely that the inclusion of additional matters would materially contribute to any change to the proposed terms.

For the avoidance of all doubt, the SFO has not made any agreement that would provide cover for future conduct committed by Rolls-Royce, past conduct of which the SFO has no direct or implicit knowledge nor any cover for individuals.” (our emphasis).

No similar assurances akin to that referred to in the Judgment of Sir Brian Leveson have been given in relation to the two other DPAs (Standard Bank and XYZ Ltd) obtained by the SFO and relating to overseas corruption.

Within the DPA agreed with Rolls Royce it states (at paragraph 5):

Scope of Agreement

These terms do not provide any protection against prosecution for conduct not disclosed by Rolls-Royce prior to the date on which the Agreement comes into force and nor does it provide protection against prosecution for any future criminal conduct committed by Rolls-Royce. In addition, these terms do not provide any protection against prosecution of any present or former officer, director, employee or agent of Rolls-Royce.

The provision is replicated across other DPAs and will be considered for inclusion in future DPAs.

Text of issue for follow-up 16(g):

g) Whether confiscation continues to be effective in foreign bribery cases, in light of concerns raised regarding the UK’s capacity to freeze and confiscate the proceeds of crime more generally [Convention Article 3(3)].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The UK has one of the strongest legislative frameworks for the recovery of criminal assets in the world, using both civil and criminal powers, however since Phase 4, the UK has not concluded a confiscation case in relation to foreign bribery.

The UK’s Proceeds of Crime Act 2002 (POCA) covers both recovery of criminal assets following a conviction, and the powers to recover assets where there is no conviction. The Criminal Finances Act 2017 (CFA) builds on POCA and provides key powers to enable the UK to respond to money laundering, tax evasion, corruption, and the financing of terrorism. This legislation gives law enforcement agencies and private sector partners enhanced capabilities and greater powers to recover the proceeds of crime and tackle these threats, for example, Account Freezing Orders. The NCA ICU recently used this new tool to confiscate proceeds of crime derived from corruption

overseas.³³

The UK's Proceeds of Crime Act (POCA) covers both recovery of criminal assets following a conviction, and the powers to recover assets where there is no conviction. The Criminal Finances Act 2017 (CFA) builds on POCA and provides key powers to enable the UK to respond to money laundering, tax evasion, corruption, and the financing of terrorism. This legislation gives law enforcement agencies and private sector partners enhanced capabilities and greater powers to recover the proceeds of crime and tackle these threats.

In particular, the creation of Unexplained Wealth Orders (UWOs) under the CFA will provide law enforcement agencies with a vital new investigative tool. They are available where a person holds property of greater value than £50,000, the Court is satisfied there are reasonable grounds to suspect that the known sources of lawful income would be insufficient for a person to obtain the property and either (a) the person is suspected of involvement in serious crime (or someone connected to the person is suspected of involvement) or (b) the person is a "politically exposed person". A "politically exposed persons" is an individual who is or has been entrusted with a prominent public function by an international organisation or by a State other than the UK or an EEA state (or a family member, associate or connection of someone of that description). UWOs will require those people to explain the sources of their wealth, helping to facilitate the recovery of illicit wealth and stopping criminals using the UK as a safe haven for the proceeds of international corruption. UWOs can also be made in relation to non-EEA politically exposed persons, even where the link to serious crime is harder to evidence, given the increased risk that they may be involved in grand corruption.

The SFO has begun action to recover proceeds of alleged corrupt telecoms deals in Uzbekistan. In October 2018, it issued a claim for civil recovery in the High Court under Part 5 of the Proceeds of Crime Act 2002. The claim concerns a number of assets, including three UK properties, which the SFO alleges were obtained using the proceeds of corrupt deals in Uzbekistan. A property freezing order is in place in order to preserve the assets pending the issuing of a claim.

Text of issue for follow-up 16(h):

h) Implementation of the new features and arrangements concerning the "forum bar" to extradition [Convention Article 10].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The forum bar was enacted in UK law in 2013. As of December 2018, the UK courts have refused two extradition requests from non-EU countries on the basis of forum. Both requests were from the US and neither involved bribery offences. Forum has been raised as a challenge in a number of other requests; in those cases, the courts decided that it did not amount to a bar to extradition.

Text of issue for follow-up 16(i):

i) The ability of the Crown Dependencies and Overseas Territories to provide MLA to the UK and to other Parties to the Convention [Convention Article 9 and 2009 Recommendation XIII].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

HM Government does not consider this appropriate given the constitutional relationship between the CDs and OTs with the UK. Such things are a matter of consideration for each jurisdiction. However, it is willing to actively assist any efforts of the CDs and the OTs in this area.

³³ <https://www.theguardian.com/world/2019/feb/07/court-orders-son-moldova-former-pm-pay-466000>

Overseas Territories

See Update on Recommendation 11c which outlines the engagement HM Government has had with the OTs and the proposed workshop to discuss this Follow-up.

Crown Dependencies

See Update on Recommendation 11f on the status of MLA with the CDs.

Text of issue for follow-up 16(j):

j) Developments regarding Brexit to review its possible impact on the UK's foreign bribery enforcement, in particular in relation to international cooperation arrangements with EU countries [Convention Article 9 and 2009 Recommendation XIII].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

At the time of writing, the form and manner of the UK's departure from the EU is still being finalised.

Nevertheless, HM Government has considered the possible impact on its foreign bribery enforcement. The UK participates in many non-EU related anti-corruption initiatives and partnerships including UNCAC, OECD and GRECO. Given the global reality of corruption, non-EU organisations are arguably more influential in the area of anti-corruption. HM Government will continue to work closely with all our international partners through bilateral and other relationships to tackle trans-national cases and will continue to do so once the UK leaves the EU.

Championing the rules-based international order is a key part of the HM Government's vision for a "Global Britain" and in a post-Brexit world it is even more important that the UK, while seeking to increase exports and strengthen inward investment, should be seen as a safe place to do business and that UK companies conduct their business ethically and with good corporate governance.

Even without an agreed deal, the UK would still be able to tackle serious economic crime effectively, as we are flexible enough to adapt to a changing landscape but as the manner of the UK's exit from the EU is still subject to Parliamentary approval, the UK will be in a better position to update the OECD on the precise impact of our exit in the near future.

A further update may be possible by the plenary of this Update to the OECD Working Group.

Text of issue for follow-up 16(k):

k) The application in practice of the written law exception in Section 6 of the Bribery Act [Convention Articles 1, 2; Phase 3 recommendation 14(a)].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The CPS and SFO have had no instances where we have failed to prosecute because of the written exceptions. However, it should be noted that offences that may fall under section 6 of the Act could be dealt with under other offences, such as fraud by abuse of position.

Text of issue for follow-up 16(l):

l) The ongoing work looking at the UK's response to economic crime, to assess whether and how it may affect foreign bribery detection, investigation and prosecution.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide

relevant statistics as appropriate:

The UK's response to economic crime can be evidenced throughout the responses issued to many of the Recommendations issued after Phase 4. Outlined below are the milestones taken by the UK in its response to economic crime since the release of the Phase 4 report.

April 2017	The Criminal Finances Act is enacted. This gives law enforcement agencies and partners, further capabilities and powers to recover the proceeds of crime, tackle money laundering, tax evasion and corruption, and combat the financing of terrorism.
June 2017	The Exchanges of Notes between the UK and all Crown Dependencies and six Overseas Territories come into effect, under which beneficial ownership information will be shared within 24 hours, and one hour in urgent cases. See also Update to Follow-up 16a.
July 2017	The International Anti-Corruption Co-ordination Centre (IACCC), supported by six countries and Interpol, launched. The IACCC brings together specialist law enforcement officers from multiple agencies around the world to tackle allegations of grand corruption. This will co-ordinate law enforcement efforts to prosecute the corrupt and seize stolen assets
December 2017	The UK Anti-Corruption Strategy ³⁴ is published which sets out priorities for tackling corruption, establishing an ambitious, longer-term framework for tackling corruption to 2022. This Strategy covers 134 Commitments of HM Government over 6 priority areas and builds on many of the Phase 4 OECD Recommendations.
May 2018	The House of Lords announced the appointment of a Select Committee on the Bribery Act 2010 on 9 May 2018. The members of the committee were appointed on 17 May 2018. France Chain of the OECD Secretariat gave evidence to this Select Committee in October 2018. The committee is expected to report in spring 2019.
July 2018	The UK published draft legislations for a public register of beneficial owners of non-UK entities that own or buy UK property, or which participate in UK Government procurement.
October 2018	<p>The £45m Prosperity Fund Global Anti-Corruption Programme was approved. This four-year programme will work with partner governments to promote inclusive sustainable growth and increase global prosperity through tackling corruption and provides an important mechanism for delivering elements across the Anti-Corruption Strategy and beyond.</p> <p>The Prime Minister's Anti-Corruption Champion, John Penrose MP launched the UK's international beneficial ownership campaign. See also Update to Follow-up 16a.</p> <p>Site visit for Review of the UK under the UN Convention against Corruption second cycle. This focused on the UNCAC articles pertaining to prevention (including money laundering) and asset recovery. The final report will be published in spring 2019.</p>
November 2018	<p>The Serious and Organised Crime Strategy was launched. This announced an international illicit finance campaign and an investment of at least £48 million over the next 18 months for a package of capabilities to tackle economic crime and illicit finance.</p> <p>National Economic Crime Centre is formally launched. See Update on Recommendation 3a.</p>

³⁴ <https://www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022>

December 2018	<p>The Financial Action Task Force (FATF) assessed the UK and gave the UK its highest possible rating for measures including how the UK tackles terrorist financing, and its use of financial sanctions against terrorists.³⁵ It found that UK has the strongest controls of any country assessed to date. The report particularly praised the UK for its understanding of the illicit finance threats it faces. It also noted the UK's strong work with international partners to tackle illicit finance, its investigation and prosecution of money laundering, its asset recovery efforts and its global leadership in preventing the misuse of companies and trusts. This means out of the 60 countries assessed, the UK has one of the toughest anti-money laundering regimes in the world.</p>
	<p>The Year 1 Update to the Anti-Corruption Strategy was published.³⁶ This showed the significant progress the UK has made against its 134 Commitments.</p>
January 2019	<p>First meeting of the Economic Crime Strategic Board. The Board, chaired by the Home Secretary and Chancellor of the Exchequer, will set priorities, direct resources and scrutinise performance against the economic crime threat.</p>

PART III: ADDITIONAL ISSUES FOR INFORMATION

Foreign bribery and related enforcement actions since Phase 4

Action taken as of the date of the follow-up report:

The following updates are provided in terms of new or ongoing investigations.

SFO

Airbus – In August 2016, the SFO announced that it has opened a criminal investigation into allegations of fraud, bribery and corruption in the civil aviation business of Airbus Group in relation to irregularities concerning third party consultants.

Further details are confidential as this remains under investigation.

ENRC Ltd – In September 2014, the SFO announced that it is conducting a criminal investigation into ENRC Ltd (previously ENRC PLC). The investigation is focused on allegations of fraud, bribery and corruption around the acquisition of substantial mineral assets. The SFO has multiple investigations in relation to this matter.

Further details are confidential as this remains under investigation.

Glaxo Smith Kline (GSK) – In May 2014, the SFO announced that it is conducting a criminal investigation into the commercial practices of GSK and its subsidiaries.

Further details are confidential as this remains under investigation.

GPT Special Project Management – In August 2014, the SFO announced that it is conducting a criminal investigation into allegations concerning GPT and aspects of the conduct of its business in the Kingdom of Saudi Arabia.

Further details are confidential as this remains under investigation.

Rolls Royce – In September 2014, the SFO announced that it is conducting a criminal investigation into allegations of bribery and corruption at Rolls-Royce. The SFO has multiple investigations in relation to this matter, some of which were resolved in January 2017 by DPA between the SFO and the legal persons involved (as described in the report). Investigations into the natural persons involved are ongoing.

³⁵ <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>

³⁶ <https://www.gov.uk/government/publications/anti-corruption-strategy-year-1-update>

Following a four-year investigation, the SFO and Rolls-Royce entered into a Deferred Prosecution Agreement (DPA) which was approved by Sir Brian Leveson, President of the Queen's Bench Division on 17 January 2017. The DPA enables Rolls-Royce to account to a UK court for criminal conduct spanning three decades in seven jurisdictions and involving three business sectors. Full details are contained within the agreed Statement of Facts.

The DPA involves payments of £497,252,645 (comprising disgorgement of profits of £258,170,000 and a financial penalty of £239,082,645) plus interest. Rolls-Royce are also reimbursing the SFO's costs in full (c£13m).

The investigation into the conduct of individuals continues.

Unaoil – In July 2016, the SFO announced it is conducting a criminal investigation into the activities of Unaoil, its officers, its employees and its agents in connection with suspected offences of bribery, corruption and money laundering.

The Serious Fraud Office is conducting a criminal investigation into the activities of Unaoil, its officers, its employees and its agents in connection with suspected offences of bribery, corruption and money laundering.

The SFO has charged four individuals with conspiracy to make corrupt payments to secure the award of contracts in Iraq to Unaoil's client SBM Offshore

Basil Al Jarah, who was Unaoil's Iraq partner, has been charged with two offences of conspiracy to make corrupt payments, contrary to section (1) of the Criminal Law Act 1977 and contrary to section 1 of the Prevention of Corruption Act 1906.

Ziad Akle, who was Unaoil's territory manager for Iraq, has been charged with one offence of conspiracy to make corrupt payments, contrary to section (1) of the Criminal Law Act 1977 and contrary to section 1 of the Prevention of Corruption Act 1906.

Paul Bond has been charged with two offences of conspiracy to make corrupt payments, contrary to section (1) of the Criminal Law Act 1977 and contrary to section 1 of the Prevention of Corruption Act 1906.

Stephen Whiteley has been charged with one offence of conspiracy to make corrupt payments, contrary to section (1) of the Criminal Law Act 1977 and contrary to section 1 of the Prevention of Corruption Act 1906.

In June 2018, the SFO summonsed Unaoil Monaco SAM with two offences of Conspiracy to Give Corrupt Payments, contrary to section (1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906 in relation to this contract.

Ziad Akle, Basil Al Jarah, Paul Bond and Stephen Whiteley appeared before Southwark Crown Court on 25 July 2018.

In May 2018, the SFO brought additional charges against Basil Al Jarah and Ziad Akle relating to corrupt payments to secure the award of a contract worth US\$733 million to Leighton Contractors Singapore PTE Ltd for a project to build two oil pipelines in southern Iraq.

Basil Al Jarah was charged on 15 May 2018 with two offences of conspiracy to give corrupt payments, contrary to section (1) of the Criminal Law Act 1977.

Ziad Akle was charged on 16 May 2018 with one offence of conspiracy to give corrupt payments, contrary to section (1) of the Criminal Law Act 1977.

In June 2018, the SFO summonsed Unaoil Ltd with two offences of Conspiracy to Give Corrupt Payments, contrary to section (1) of the Criminal Law Act 1977 and section 1 of the Prevention of Corruption Act 1906 in relation to this contract.

The investigation is ongoing.

NCA/CPS

Money laundering case – the NCA is leading an investigation in relation to corruption in Nigeria. The case is primarily a money laundering case but foreign bribery is also being assessed in the

investigation. COLP/CPS

Further details are confidential as this remains under investigation.

Vessels case – In January 2015, the COLP commenced an investigation in relation to bribery of officials in Western Europe and West Africa in relation to the sale of naval vessels.

Further details are confidential as this remains under investigation.

Scottish authorities

Investigation into alleged bribery in the recruitment industry – Scottish authorities are investigating a recruitment company in relation to business dealings in the Middle East. Although the investigation is ongoing, the employees of the company have also been charged (see prosecutions below).

Ongoing prosecutions SFO

Alstom – The SFO has three separate prosecutions against Alstom group companies: Alstom Power, Alstom Network and a second prosecution against Alstom Network. The SFO has also charged 7 natural persons in connection with this case (Nicholas Reynolds, Johannes Venskus, Robert Hallett, Graham Hill, Jean-Daniel Laine, Michael Anderson and Terence Watson). The defendants have been charged under the pre-Bribery Act legislation. The SFO alleges that from 2000-2010 Alstom committed bribery in Hungary, India, Poland, Lithuania and Tunisia which led to the award of valuable contracts in the transport and power sectors in several countries.

In December 2018 the SFO obtained five convictions in SFO's Alstom investigation into bribery & corruption to secure €325 million of contracts.

The SFO began a criminal investigation into the suspected payment of bribes by companies within the Alstom group in the UK in 2009.

A total of 8 individuals and 2 corporates were charged with corruption offences under the Prevention of Corruption Act 1906 and offences of conspiracy to corrupt under the Criminal Law Act 1977. The charges related to:

- Corruption relating to trams and signalling equipment contracts in Tunisia, India and Poland
- Corruption relating to power station contracts in Lithuania
- Alleged corruption relating to a Budapest Metro rolling stock contract in Hungary

Of these, 3 individuals were convicted of these offences.

- In December 2018 Nicholas Reynolds was sentenced to 4 years and 6 months imprisonment and was also ordered to pay costs of £50,000. Reynolds was the former Global Sales Director for Alstom Power Ltd's Boiler Retrofits unit and he was convicted for his part in a conspiracy to bribe officials in Lithuania's Elektrenai power station and senior Lithuanian politicians in order to win two contracts worth €240 million.
- Following a guilty plea, John Venskus, the former Business Development Manager at Alstom Power Ltd, was sentenced to 3 years and 6 months imprisonment on 4 May 2018.
- Following a guilty plea, Göran Wikström, the former Regional Sales Director at Alstom Power Sweden AB, was sentenced to 2 years and 7 months imprisonment on 9 July 2018 and was also ordered to pay £40,000 in costs.

Two companies were also convicted;

Alstom Power Ltd was ordered to pay a total of £18,038,000 which included:

- A fine of £6,375,000
- Compensation to the Lithuanian government of £10,963,000
- Prosecution costs of £700,000

Alstom Network UK Ltd were found guilty of one count of conspiracy to corrupt on 10 April 2018 for making corrupt payments to win a tram and infrastructure contract in Tunisia. Alstom Network UK Ltd

is appealing the conviction.

□ FH Bertling – The SFO has charged FH Bertling and 7 natural persons (Peter Ferdinand, Marc Schweiger, Stephen Emler, Joerg Blumberg, Dirk Juergensen, Giuseppe Morreale, and Ralf Peterson) under the pre-Bribery Act legislation in connection with payments made to secure a freight forwarding contract in Angola in 2005.

The SFO's investigation began in September 2014, with charges announced against FH Bertling employees and others connected with the case in April and May 2017.

The investigation focused on allegations FH Bertling had paid bribes to secure a ConocoPhillips freight forwarding contract, eventually worth over £16m for an oil exploration project in the North Sea.

Prior to trial, Stephen Emler and Giuseppe Morreale pleaded guilty to charges of bribery over a North Sea oil shipping contract. Christopher Lane pleaded guilty to a related charge involving a different bribery scheme and Colin Bagwell was found guilty by the jury of that offence.

The investigation also revealed a separate side agreement, with further bribes agreed to be paid to ensure that inflated prices charged by FH Bertling for other freight services were waved through without complaint by ConocoPhillips's staff.

Colin Bagwell, Robert McNally, Georgina Ayres, Giuseppe Morreale, Stephen Emler and Peter Smith were all charged with conspiracy to make corrupt payments, contrary to section 1 of the Prevention of Corruption Act 1906, relating to misconduct between January 2010 and December 2013.

Giuseppe Morreale and Stephen Emler pleaded guilty to the charge prior to trial.

Colin Bagwell, Christopher Lane and Peter Smith were charged with a separate count of:

Conspiracy to make or accept corrupt payments, contrary to section 1 of the Prevention of Corruption Act 1906, relating to misconduct between January 2010 and December 2010.

Christopher Lane pleaded guilty to this offence prior to the start of the trial.

Georgina Ayres, Robert McNally, and Peter Smith were acquitted of the charges on 27 November 2018. Colin Bagwell was acquitted of the first charge and convicted on the second relating to his conspiracy with Christopher Lane.

Sentencing:

On Friday 11 January 2019 Stephen Emler, Giuseppe Morreale, Christopher Lane and Colin Bagwell were given the following sentences:

Stephen Emler was sentenced to 18 months' imprisonment to be suspended for 2 years and fined £15,000 in relation to the SFO's Angola investigation. He was sentenced to 12 months' imprisonment to be suspended for 2 years and to be served concurrently in relation to the Jasmine charge.

Giuseppe Morreale was sentenced to 2 years' imprisonment to be suspended for 2 years and fined £20,000 in relation to the SFO's Angola investigation. He was sentenced to 15 months' imprisonment to be suspended for 2 years and to be served concurrently in relation to the Jasmine charge.

Christopher Lane was sentenced to 6 months' imprisonment to be suspended for 2 years. A 28 days electronic curfew order was also imposed.

Colin Bagwell was sentenced to 9 months' imprisonment to be suspended for 2 years, and ordered to pay a £5,000 fine.

Griffiths Energy International (civil case) – The SFO's role in this case follows from a prosecution of a Canadian oil and petroleum company formerly known as Griffiths Energy International (GEI) by Canadian authorities in 2013. In the Canadian proceedings, the company pleaded guilty to corruption charges regarding payments made to promote its interests in developing two oil blocks in Chad. In 2014, the SFO took steps to freeze GBP 4 400 000 contained in a UK bank account which represented the proceeds of sale of shares in GEI, alleged to be the proceeds of corruption. The appellant challenged the SFO's freezing order and, on 23 January 2017, the Court of Appeal ruled in favour of the SFO. The SFO is pursuing the civil recovery order in this case.

On 22nd March 2018 the High Court granted the Serious Fraud Office a civil recovery order in respect of Ikram Mahamat Saleh, the wife of the former deputy chief of the Chadian embassy to the U.S who helped facilitate the oil deal

As part of a series of corrupt transactions involving the diplomatic staff at the Chadian Embassy in Washington DC Mrs. Saleh acquired a number of shares in Griffiths Energy (Chad) Ltd, a Canadian company, on her husband's behalf in order to promote Griffiths Energy's commercial interests in Chad. After a change in management the company self-reported their bribery and corruption of the Chadian diplomats to the relevant authorities. Griffiths Energy were prosecuted through the Canadian courts and pleaded guilty to the allegations faced. Griffiths Energy was subsequently taken over by a UK listed corporation, Glencore Xstrata, with the Griffiths Energy /Griffiths Energy (Chad) Ltd. shares being sold by a UK broker. The net proceeds from the sale were held in accounts within this jurisdiction providing the Serious Fraud Office with the locus to commence civil recovery proceedings.

Although a property freezing order was obtained in July 2014 for £4.4m the respondent failed to engage in the court proceedings forcing the SFO to seek summary judgment. Belatedly Mrs. Saleh engaged with the process and a trial was fixed to take place during March 2018. The matter was brought to a three-day trial at the High Court in March 2018 which granted the SFO's order to the value of £4.4m, the first time money has been returned overseas in a civil recovery case.

Subject to a potential appeal, the recovered money will be transferred to the Department for International Development who have identified humanitarian schemes through which the recovered funds can be channelled for the benefit of the people of Chad.

Sarclad – The SFO has charged 2 natural persons (Adrian Leek and Michael Sorby) under the pre-Bribery Act legislation in connection with payments made from 2004-2012 to officials in various overseas jurisdictions. The natural persons are awaiting trial.

The trial is due to take place at Southwark Crown Court on the 29 April 2019.

Scotland

Investigation into alleged bribery in the recruitment industry – Scottish authorities charged 2 natural persons, both directors of a recruitment company, under the Bribery Act, in connection with payments made to officials in the Middle East concerning taxation liability.

Following investigation, the decision was made to take no action in relation to this case, due to there being insufficient admissible evidence.

New investigations since Phase 4

SFO

Chemring Technology Solutions

Following a self-report made by Chemring Technology Solutions Limited ("CTSL") in January 2018 the SFO opened a criminal investigation into bribery, corruption and money laundering arising from the conduct of business by Chemring Group plc and its subsidiary, CTSL, including any officers, employees, agents and persons associated with them.

Rio Tinto group

The SFO is investigating suspected corruption in relation to the conduct of business in the Republic of Guinea by the Rio Tinto group, its employees and others associated with it.

Ultra Electronic Holdings

On 19 April 2018, the SFO opened a criminal investigation in to suspected corruption in the conduct of business in Algeria by Ultra Electronic Holdings plc ("Ultra"), its subsidiaries, employees and associated persons following a self-report by Ultra.

Scotland

Allegation of corruption in transport sector

COPFS has received an anonymous referral suggesting possible bribery in relation to a bus supply

contract in Malaysia in 2017/18 by an employee of a UK company with a Headquarters in Scotland. The allegation is subject to initial investigation by the Police Service of Scotland. Further details are confidential as this remains under investigation.

Investigation arising from Unaoil

The SFO and overseas law enforcement are investigating the activities of the company Unaoil for suspected bribery. In May 2017, COPFS was advised that a Scottish-incorporated subsidiary of a UK company had a 50% share in a joint venture company which had two agency contracts with Unaoil, relating to projects in Kazakhstan. Commission payments were made by to Unaoil from December 2010 until September 2015. The company has instructed Pinsent Masons solicitors and has conducted an internal investigation. The results of this investigation and primacy to investigate/prosecute are the subject of ongoing discussion between COPFS and the SFO.

Matrix updates

HM Government contends that the *tour de table* is the most appropriate forum to provide updates on the Matrix cases and notes that extensive updates were given at the October and December 2018 Working Group Meetings.

Efforts made to publicise and disseminate the UK Phase 4 report, for example, through public announcements, press events, sharing with relevant stakeholders, particularly those involved in the on-site visit [*Phase 4 Evaluation Procedures, para. 50*]

Action taken as of the date of the follow-up report:

The UK's Phase 4 report is referenced on several occasions both in the 2017-2022 Anti-Corruption Strategy and the Year 1 update, e.g. "*we are following up on the recommendations of the OECD Phase 4 evaluation on our implementation of the OECD Anti-Bribery Convention. We will report back to the Working Group on Bribery on progress in March 2019*" Page 28, Year 1 update.

With key stakeholders, there is regular engagement between UK officials and the business community before the Working Group on Bribery plenary sessions where key issues such as the Phase 4 report can be raised.

The UK also engages with civil society organisations on a regular basis on a broad range of topics, including policy issues which were raised by the OECD in Phase 4. We will hold a meeting with civil society organisations to specifically discuss the UK's update and any outstanding issues.