

Unclassified

English - Or. English

4 July 2023

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

Phase 4 evaluation of the United Kingdom: Additional written follow-up report

13-14 June 2023

This report was submitted by the United Kingdom for the June 2023 plenary meeting of the Working Group on Bribery in International Business Transactions. It does not reflect the views or opinions of the Working Group on Bribery.

For further information, please contact:

France Chain, +33 1 45 24 78 36, france.chain@oecd.org

Balázs Garamvölgyi, +33 1 45 24 82 06, balazs.garamvolgyi@oecd.org

JT03522969

PHASE 4 EVALUATION OF THE UNITED KINGDOM: ADDITIONAL WRITTEN FOLLOW-UP REPORT

Instructions

This document seeks to obtain information on the progress that the United Kingdom has made implementing certain key outstanding recommendations of its Phase 4 evaluation report. In June 2021, the Working Group invited “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)”.¹ The template below recalls these recommendations.

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 [...].

Name of country:	UNITED KINGDOM
Date of approval of Phase 4 evaluation report:²	15 March 2017
Date of approval of Phase 4 two-year written follow-up:³	6 March 2019
Date of approval of Year 4 written follow-up (update to the two-year report):⁴	9 October 2021
Date of information:	15 May 2023, completed on 8 June 2023

¹ See <https://www.oecd.org/daf/anti-bribery/United-Kingdom-Phase-4-Addendum-to-the-follow-up-report.pdf>.

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

³ <https://www.oecd.org/daf/anti-bribery/United-Kingdom-phase-4-follow-up-report-ENG.pdf>

⁴ <https://www.oecd.org/daf/anti-bribery/United-Kingdom-Phase-4-Addendum-to-the-follow-up-report.pdf>

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:

As set out in previous submissions, the UK's view is that Article 5 is satisfied in respect of the UK and the UK has taken all necessary steps to ensure that it is clearly binding.

To summarise the position, the UK has a dualist constitution. As a matter of law, treaty obligations are not specifically enforceable in domestic law unless they are incorporated in domestic legislation. This is a common feature of the constitutions of many states, including other OECD Member States. His Majesty's Government – and where they have the constitutional competence to do so, the Devolved Administrations of Scotland, Northern Ireland, and Wales – legislate in domestic law to provide for the enforcement of certain treaty provisions of international law, where it is considered appropriate to do so. It is not a feature of the UK's constitutional system automatically to legislate in domestic law for all treaty provisions which are binding upon the UK; there is, of course, a discretion to judge whether further domestic legislation or implementation is necessary.

The UK is committed to complying with its international obligations. A note from UK and Scottish Law Officers has been provided to the lead examiners confirming how duties under the [UK Ministerial](#) and [Scottish Ministerial](#) Codes fulfil this recommendation.

Investigators and prosecutors in the UK carry out their functions subject to various specific rules and policies. Those rules and policies allow professional discretion, bearing in mind finite resources, expertise, the facts of any specific case, and the wider public interest. There is no suggestion that their rules or policies allow for the investigation or prosecution of the bribery of a foreign official to be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved. The position of the UK's independent investigations and prosecutorial authorities is that they are bound by Article 5 of the Convention.

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:

As set out in previous submissions, 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 process 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. In 2021, the UK explained that the Head of Delegation to the OECD Working Group on Bribery would be responsible for consulting with officials in the Attorney General's Office (AGO) 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. Feedback on indicated that the UK should provide assurance that the AGO would be involved in this discussion.

A letter from the Director of the AGO to the Head of the UK's Delegation to the OECD Working Group on Bribery been provided to the lead examiners confirming this.

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(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:**

In previous submissions, we have highlighted that the Director of the SFO role is a civil servant and is therefore subject to safeguards that apply in relation to the appointment and dismissal of civil servants.

To provide further detail some of these safeguards: the appointment process for the Director of the SFO is subject to civil service appointment rules. Section 10 of the [Constitutional Reform and Governance Act 2010](#) (“the 2010 Act”) requires the selection of people for appointment to the civil service to be “*on merit on the basis of fair and open competition*”. Section 11 of the 2010 Act requires the independent [Civil Service Commission](#) to publish recruitment principles that explain and interpret this requirement. The current iteration of these principles are set out in the [Civil Service Commission Recruitment Principles 2018](#) (“the Recruitment Principles”).

The Recruitment Principles set out what is meant by appointment on “merit” and on the basis of “fair and open competition”. “Merit” requires “*the appointment of the best available person judged against the published criteria for the role*”. “Fair” means that “*selection processes must be objective, impartial and applied consistently*”. And “open competition” requires that “*appointment opportunities must be advertised publicly ... potential candidates must be given reasonable access to information about the role ... [and] anyone who wishes must be allowed to apply*”. The Recruitment Principles detail the steps that must be followed in meeting the legal requirements of the 2010 Act. They also set out the limited role ministers can have in civil service appointments, noting that they may not be a member of a selection panel or add or remove candidates from a competition. For the most senior civil servant appointments (which includes the Director of the Serious Fraud Office), the selection panel must be chaired by a Civil Service Commissioner. The panel must “*ensure that candidates are impartially assessed against the published selection criteria*” for the role and “*must take the final decision on which candidate or candidates are the most meritorious*”.

The [Ministerial Code](#) affirms the standards of conduct expected of minister and how they should discharge their duties. Section 5.1 of the Code provides that “*Ministers must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code and the requirements of the Constitutional Reform and Governance Act 2010*”.

The recruitment of a new SFO Director commenced on 24 March 2023 and, as set out in the published recruitment materials for the role, is being conducted in accordance with the 2010 Act and Recruitment Principles. This includes a Civil Service Commissioner chairing the selection panel.

With regards to dismissal, the Director of the SFO is subject to terms and conditions of service common to all members of the senior civil service and which are set in line with the framework of instructions set out within the [Civil Service management code: November 2016](#) issued under 2010 Act. While the constitutional position of the Crown, and the prerogative power to dismiss at will, means civil servants

can technically be dismissed at will, to our knowledge this does not happen in practice. It is inconceivable that the Director could be dismissed due to a disagreement about whether to investigate or prosecute an individual case. That would be contrary to the published [Framework Agreement between the Law Officers and Director of the Serious Fraud Office](#) which, amongst other things, provides that “*the Director exercises independence in individual casework decisions (both investigation and prosecution) in accordance with this agreement*” and that “*the Law Officers are responsible for safeguarding the independence of the SFO in taking individual investigation and prosecution decisions, in accordance with this agreement*”. There are also safeguards related to public accountability protecting against the undue dismissal of the SFO Director in that the Attorney General would be required to explain the decision publicly and to Parliament. We would also reiterate that none of the Directors of the SFO have ever been dismissed, whether because of a disagreement about the investigation or prosecution of an allegation of bribery or otherwise.

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 WGB evaluations, while UK Government is responsible for the external affairs and defence (among other areas) of the Overseas Territories (OTs), they are self-governing jurisdictions, responsible for their own domestic affairs. They are not part of the UK, although together the UK, OTs, and Crown Dependencies (CDs) form one undivided realm. Nonetheless, the UK continues to encourage those OTs that have not yet had the Convention extended to them to do so, and to meet its high standards. Recent activity is set out below:

Anguilla	The Director for Overseas Territories and Polar Regions in the Foreign, Commonwealth, and Development Office sent a letter to the Attorney General of Anguilla in May 2023, ahead of the JMC, encouraging Anguilla to have the Convention extended to them and offering dialogue and support over its extension.
Bermuda	The UK facilitated a letter from the then Chair of the WGB to the Government of Bermuda encouraging the extension of the Anti-Bribery Convention in July 2021.
Turks and Caicos Islands (TCI)	The Director for Overseas Territories and Polar Regions in the Foreign, Commonwealth, and Development Office sent a letter to the Attorney General of TCI in May 2023, ahead of the JMC, encouraging TCI to have the Convention extended to them and offering dialogue and support over its extension.

It is important to recognise that OTs all face common, and sometimes severe, resourcing challenges when having international treaties extended to them. Smaller OTs, such as Anguilla and TCI, only have a small team of lawyers and relevant officials covering the extension of treaties, and several other responsibilities, across a wide range of policies.

The UK requests that the WGB take into account the unique pressures, often exacerbated by natural disasters, faced by these small, Caribbean and Atlantic jurisdictions. The Foreign, Commonwealth, and Development Office is available to provide further guidance on the unique context of the OTs.

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 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:

The UK has worked in collaboration with the OTs and CDs on a number of topics related to the enforcement of foreign bribery and related offences.

1. International Anti-Corruption Coordination Centre

The UK is a member of the International Anti-Corruption Coordination Centre (IACCC), alongside Australia, New Zealand, Canada, the United States and Singapore. The IACCC is aimed at combatting grand corruption, including the bribery of public officials.

The IACCC includes an Associate Membership Scheme, which allows law enforcement agencies from smaller financial centres to rapidly exchange intelligence with the IACCC to assist with the development of the intelligence picture on grand corruption cases. Associate Members from the CDs and OTs include authorities from the Cayman Islands, Gibraltar, Turks and Caicos Islands, Jersey, Isle of Man, Bermuda, and Guernsey. The UK will continue to work with OTs, CDs, and others through the IACCC Associate Membership scheme to speed up the progress of grand corruption investigations and facilitate the return of assets stolen through bribery and corruption to affected states.

2. AML Forum

The commitment of the UK and OTs to combat foreign bribery was underlined at the Joint Ministerial Council⁵, held in London with Premiers and Chief Ministers from the OTs, following the Coronation. The JMC's [communique](#) makes reference to cooperation on countering foreign bribery and other illicit finance threats through technical forums.

The UK has integrated foreign bribery and related offences into its joint work with the CDs and OTs. As part of the programme of events following the recent Joint Ministerial Council (JMC), a workshop was held focused on detecting international bribery and corruption, including foreign bribery, through AML systems. The session was focused on sharing best practice and lessons learnt and included participants and speakers from law enforcement and FIUs in the OTs, CDs, and UK. We intend to continue engagement on these topics in future forums with the OTs and CDs.

3. Serious and Organised Crime Illicit Finance Advisers

The Working Group's Phase 4 Evaluation Report of the UK recognises that given their status as international financial centres, the OTs and CDs may be at particular risk of being used to facilitate foreign bribery or launder the proceeds of foreign bribery (p. 9, 25-26).

The UK has a dedicated global network of illicit finance experts based in international financial centres and high-risk source countries. The network works to identify linkages and mitigate vulnerabilities across the global economic system that is used to launder funds from corruption, including foreign bribery.

In 2022 the UK embedded a dedicated official in Miami to encourage collaboration across UK and OT law enforcement agencies, Governors' Offices, and policy officials on addressing illicit finance vulnerabilities including laundering funds from bribery and corruption. This role significantly expands on the Miami based prosecutor noted as a positive step in the UK's Phase 4 Evaluation. The UK also expanded the role of an existing illicit finance adviser based in Europe to cover the CDs, with a similar aim of coordinating collaborative work across policy and law enforcement.

⁵ The annual Overseas Territories Joint Ministerial Council (JMC) brings together political leaders from the Overseas Territories and UK Ministers. The JMC is the principal forum for reviewing and implementing the shared strategy for promoting the security and good governance of the Territories and their sustainable economic and social development.

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:

As noted in the UK's Phase 4 Evaluation, the "CDs and OTs are not part of the UK and are wholly responsible for executing MLA and extradition requests within their own jurisdictions". The UK is therefore able to work in collaboration with counterparts in the OTs and CDs on matters concerning international cooperation requests but is unable to direct or compel action.

1. Review of international cooperation arrangements

The UK Central Authority with support from the Foreign Commonwealth and Development Office, Ministry of Justice and Joint Anti-Corruption Unit have worked with the CDs and OTs with international financial centres to review their institutional frameworks for responding to international cooperation requests.

The assessment was based on open-source information, including evaluations from FATF regional bodies, responses to a questionnaire filled out by officials in the CDs and OTs and consultation with UK authorities. A summary of the report's findings has been shared with the lead examiners and its results will inform further work between the UK, the CDs and OTs on international cooperation.

2. Exchange of notes

The UK's Phase 4 Evaluation states that several CDs and OTs are international financial centres and could play a role in facilitating foreign bribery (p.73). Beneficial ownership information is critically important in cases of economic crime, including foreign bribery, where those involved seek to conceal their identity and involvement in a criminal act. The importance of beneficial ownership information in the enforcement of foreign bribery was noted in the UK's Phase 4 Evaluation (p.10).

The UK's response to follow-up 16a from the UK's two-year follow-up report (p.45), references the Exchange of Notes (EoN) process. As part of this six OTs, the CDs and the UK agreed to provide law enforcement agencies with beneficial ownership information on request for 'corporate and legal entities' incorporated in their jurisdictions.

Section 9 of the Criminal Finances Act 2017 amended the Proceeds of Crime Act 2002 to require a Statutory Review of the effectiveness of the EoN arrangements which was published 27 June 2019. Subsequent internal reviews took place in 2021 and 2022 and the UK government will continue to review the performance of the EoN arrangements.

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: