

Corporate criminal liability in the UK: the introduction of deferred prosecution agreements, proposals for further change, and the consequences for officers and senior managers

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"If the public interest requires more corporate prosecutions then such a change is high on my wish list." So said David Green, the Director of the Serious Fraud Office (SFO), on 2 September 2013 in a speech to the Cambridge International Symposium on Economic Crime. As if to reinforce this intent came the news just days later that the SFO had charged Olympus and its UK subsidiary, Gyrus Group Ltd, with making a statement to an auditor which was misleading, false or deceptive, contrary to section 501 of the Companies Act 2006. How greater corporate accountability can be achieved in the area of economic crime has been high on the Government's agenda (and therefore on the agendas of its prosecuting authorities), for some time. Since his appointment in April 2012, Mr Green has been talking tougher than his predecessor, Richard Alderman, about what companies can expect if they are caught breaking the law. The difficulty for him and other prosecutors is that the law in relation to corporate criminal liability is stacked against the prosecutor in the UK, particularly when it comes to serious economic crimes like fraud and corruption. The Olympus case and a small handful of other cases apart, few companies have been prosecuted for economic crimes.

Change is on its way, however, with the introduction in 2014 of deferred prosecution agreements (DPAs), which are seen by the Government as a crucial weapon that has been missing from the prosecution's armoury. With this change, and perhaps partly in consequence, has come the suggestion, from Mr Green among others, that the whole basis on which a company can be prosecuted needs to be changed, along with discussion about what a workable alternative might be. This article will now consider:

- The introduction of DPAs and the offences that they will cover.
- Procedure for DPAs in the UK.
- The impact of DPAs on establishing corporate criminal liability in the UK.
- A survey of the current law of corporate criminal liability in the UK.
- Proposals for reform.

The introduction of deferred prosecution agreements in the UK

Deferred prosecution agreements have existed and have been used successfully by law enforcement agencies in the US for a number of years. In essence they are a method of disposal that allows a company to reach an agreement with a prosecutor that generally entails financial and other sanctions but falls short of a criminal conviction. For the company the principal advantage is perceived to be the avoidance

of a conviction, which can impact on the company's reputation and ability to win future work. For both parties the agreements provide considerable cost savings over a lengthy investigation and prosecution; indeed for the prosecutor and the state the financial sanction within the agreement has become a way of generating significant revenue. The British government has been talking for some time about introducing a similar scheme in the UK and has recently passed the primary legislation required to enable this.

Schedule 17 of the Crime and Courts Act 2013 allows the Crown Prosecution Service (CPS) and the Serious Fraud Office (SFO) to enter into DPAs. Although not yet in force, it is envisaged that these provisions will be implemented in February 2014.

Although the UK version of the scheme will differ in many respects from the US, there is a major similarity: DPAs will allow the prosecutors to enforce sanctions against organisations without bringing a case to trial. The prosecution can approach a corporate organisation that is under suspicion and enter into negotiations with it which would, if successful, allow the corporate body to avoid conviction while being subject to sanctions such as financial penalties and a period of monitoring by an approved third party for a defined time period. If negotiations are not successful, or an agreement is reached but then broken, a prosecution could follow.

In part DPAs are being introduced in the UK to deal with problems prosecutors historically have faced in bringing successful cases against companies involved in economic or financial crime. The lack of resources in the hands of prosecuting authorities to pursue complex investigations is one frequently cited cause. Another difficulty is that the prosecution will often face insuperable problems in proving criminal liability on the part of the organisation, in particular in those cases for which a mental element is required, such as fraud.

While DPAs do not make it any easier to establish corporate criminal liability, it is hoped that they may nonetheless be successful, particularly if, as in the US, they generate a cultural shift towards openness and self-reporting. Few companies wish to face a criminal prosecution, given the expense and damage to reputation involved. In many jurisdictions, particularly in Europe, a criminal conviction will prevent a company from entering into tenders for public sector contracts. It is anticipated that the prosecuting authorities in the UK will seek to capitalise on an organisation's wish to avoid prosecution at all costs by using the availability of DPAs to encourage self-reporting. This much is clear from the Draft Code of Practice on DPAs, currently in consultation, which was issued jointly by the Director of Public Prosecutions and the Director of the SFO, and which places much emphasis on early and

complete self-reporting as a factor which will be taken into account in deciding whether a DPA (as opposed to a prosecution) will be in the public interest.

DPA's are limited in scope. They do not apply to all offences and will not apply to individuals. DPAs will only apply to commercial organisations under investigation for economic crimes. These are currently limited to conspiracy to defraud, cheating the public revenue, and 37 further statutory offences (see box, *Statutory offences for which the DPA will be available*).

Procedure for DPAs in the UK

The prosecuting authorities propose that DPAs will be reached by passing through the following four stages.

Awareness of a potential DPA

The authorities envisage that awareness of a potential DPA comes about either through:

- Self-reporting.
- A whistleblower within the organisation.
- An investigation carried out by the prosecutor.

It is at this stage that the prosecution must apply the evidential and public interest tests set out in the Code of Practice (see above, *The introduction of deferred prosecuting agreements in the UK*).

Invitation by prosecution to enter into DPA negotiations

The prosecution sends the organisation a formal letter, inviting it to enter into negotiations, but with no guarantee that a DPA will result. If the organisation agrees, the prosecution sends a further terms and conditions letter, setting out undertakings as to confidentiality and disclosure.

Potential DPA agreed by prosecution and organisation

Negotiations commence about the terms of the DPA. These terms usually include the payment of a financial penalty (which will be agreed with reference to the sentencing guidelines, the draft of which is currently in the process of public consultation, for the relevant offences) and can include ongoing monitoring and reporting requirements. Alongside this, the parties will be required to produce an agreed statement of facts giving the full particulars relating to each alleged offence and details of any financial gain or loss. Importantly, this statement of facts can be used in subsequent criminal proceedings if the DPA breaks down.

Court approval

At a preliminary hearing at the Crown Court, the prosecution must apply for a ruling that:

- A DPA is likely to be in the interests of justice.
- The proposed terms of the DPA are:
 - fair;
 - reasonable; and
 - proportionate.

Following agreement on the DPA, the prosecution applies to the court for final approval. Before approving terms, proceedings are instituted by the prosecutor and automatically suspended. All hearings up to this point are held in private. If the application for approval of the

DPA is successful, the judge makes a public declaration in open court.

Once agreed, the DPA remains in place until the expiry of the term. If it is necessary to vary the terms of the agreement, the prosecutor can apply to the court to do so. The organisation does not have a right to apply for a variation, but can request that the prosecutor does so. If agreement cannot be reached as to any variation resulting in the organisation breaching the terms of the DPA, the court must then decide whether the DPA should be permitted to continue having regard to the circumstances of the breach. Any termination of the DPA will mean that the prosecution commenced at the start of the process is no longer suspended.

If the organisation has fully complied it will be free from prosecution at the expiry of the term. The charges will be formally withdrawn in court and the organisation cannot be prosecuted for the same offence again, unless it is found that inaccurate, misleading or incomplete information was provided to the prosecution when entering into the DPA. For an example of how a DPA could operate, see box, *Example of a deferred prosecution agreement*.

The impact of DPAs on establishing corporate criminal liability in the UK

Negotiating a DPA carries significant risks for commercial organisations. In particular, given the emphasis laid on self-reporting, an organisation will invariably be required to provide potentially incriminating information at an early stage without any guarantee that a prosecution will not take place. Even if a DPA is successfully negotiated, the draft guidance on sentencing proposes that the fine be set at the same level as if the company had been convicted. It follows that every organisation considering whether to self-report and enter negotiations over a DPA will want to assess the risk that it could actually be prosecuted in respect of whatever suspected wrongdoing it has discovered: if it will not be possible to bring a successful prosecution of an organisation because it is not possible to prove its criminal liability, there will be less incentive for companies to enter into a DPA. Of course some organisations will be anxious to agree a DPA even if there is some doubt whether the offence can be proved. It may wish to draw a line under the matter, or it may want to agree a DPA as part of a wider negotiation in which the prosecutor might agree not to proceed with other offences against the company.

Historically there have been very few successful prosecutions of companies in the UK for the types of economic crimes to which DPAs will apply. For example, since 2000 only four companies have been convicted following prosecution by the SFO (see box, *Corporate convictions for economic crimes brought by the SFO*). One of the reasons for the lack of corporate prosecutions is that many economic crimes require a mental element (such as an intention to commit an offence) and there is an inherent difficulty in establishing corporate criminal liability for such offences. To attribute a human state of mind, such as intention, to a company is conceptually difficult.

There are some economic crimes which carry strict liability and are therefore easier to prosecute. For offences like this DPAs may represent an attractive alternative to prosecution for organisations. Some commentators anticipate most activity in this area, at least initially. The contrary view is that because offences of strict liability are easier to prove prosecutors will feel less inclined to negotiate DPAs. Because of the lack of mental element, strict liability offences are generally perceived to involve less culpability and therefore attract less reproach. If DPAs are limited to such offences they will be considered to have succeeded only partially as they will have failed to address the more

STATUTORY OFFENCES FOR WHICH THE DPA WILL BE AVAILABLE

Legislation	Section	Offence
Common law		Conspiracy to defraud
		Cheating the public revenue
Theft Act 1968	1	Theft
	17	False accounting
	20	Suppression of documents
	24A	Dishonestly retaining a wrongful credit
Customs and Excise Management Act 1979	68	Offences in relation to exportation as prohibited or restricted goods
	167	Untrue declarations
	170	Fraudulent evasion of duties
Forgery and Counterfeiting Act 1981	1	Forgery
	2	Copying a false instrument
	3	Using a false instrument
	4	Using a copy of a false instrument
	5	Offences relating to money orders, share certificates, passports
Companies Act 1985	450	Destroying, mutilating company documents
Value Added Tax Act 1994	72	Fraudulent evasion of VAT
Financial Services and Market Act 2000	23	Contravention of restrictions on financial promotion
	25	Contravention of prohibition of carrying on regulated activity unless authorised or exempt
	85	Prohibition of dealing in transferable securities without approved prospectus
	346	Provision of false or misleading statements to auditor or actuary
	397	Misleading statements and practices
	398	Misleading the FCA
Proceeds of Crime Act 2002	327	Concealing criminal property
	328	Arrangements facilitating acquisition of criminal property
	329	Acquisition, use and possession of criminal property
	330	Failing to disclose knowledge or suspicion of money laundering
	333A	Tipping off
Companies Act 2006	658	General rule against limited company acquiring its own shares
	680	Prohibited financial assistance
	993	Fraudulent trading
Fraud Act 2006	1	Fraud
	6	Possession of articles for use in fraud
	7	Making or supplying articles for use in fraud
	11	Obtaining services dishonestly
Bribery Act	1	Bribing another person
	2	Being bribed
	6	Bribery of foreign public officials
	7	Failure of commercial organisations to prevent bribery
Money Laundering Regulations 2007	regulation 45	Failing to comply with the money laundering regulations

EXAMPLE OF A DEFERRED PROSECUTION AGREEMENT

A British owned mining company (company A) acquires a British owned subsidiary (company B) in 2010 with mineral rights and mining operations in a West African country. Due diligence during the acquisition process reveals nothing of concern. In 2012, in the course of a routine audit of the West African business, certain accounting anomalies are discovered. Further exploration identifies the likelihood that corrupt payments have been made. An internal investigation involving external lawyers is commenced.

A suspect member of the accounts team and an operations manager are suspended. An initial report to the main board indicates that there is strong evidence that payments have been made in the West African country to public officials responsible for the granting of certain permits necessary for the operation of the business there. It appears that these payments have been longstanding and started prior to company A's acquisition of Company B though have continued until the recent discovery. Company A makes the decision to self-report to the SFO, which agrees with the company that it should continue its investigation and complete its full report. Upon completion the report is submitted to the SFO.

The SFO considers the case and applies the DPA Code of Practice. It determines that (as against Company A) the case is suitable to be dealt with by way of a DPA. While concluding that the evidential test is met for a charge of failing to prevent bribery (section 7, Bribery Act), it considers that the public interest does not require a prosecution. It formally invites Company A to enter negotiations for a DPA. At some point after the negotiations have begun but before they have been concluded, the SFO makes an application to the court setting out the facts of the case and the proposed terms. Those terms are:

The prosecution to be deferred for three years upon the payment by the company of GB£10 million pounds (which comprises elements of penalty and prosecution costs).

The instigation of an enhanced anti-corruption programme within the period of the term requiring the submission of annual reports to the SFO.

Company A co-operating in any ongoing investigation into the offending behaviour.

Following court approval that a DPA in these terms is likely to be appropriate, these negotiations are successfully concluded and final agreement is reached. As part of these negotiations, a statement is agreed setting out the nature and extent of the offending. The parties return to court and at a private hearing a judge endorses the agreement finding that the DPA is in the interests of justice and the terms of the DPA are fair, reasonable and proportionate. There is then a public hearing at which the Judge makes a declaration that it approves the DPA, and gives the reasons for doing so. The prosecutor then publishes the DPA. Company A makes payment of the agreed sum. The period of the agreement elapses without further incident and therefore no further action is required.

significant corporate economic crimes such as fraud, corruption and money laundering. There is therefore a growing recognition that there may need to also be a change in the law on corporate criminal liability with proposals for reform coming from both David Green, and the Labour party within the last few months (*see below, Proposals for reform to the law of corporate criminal liability*).

The current law of corporate criminal liability in the UK Overview

It is a well-established principle that a corporation is recognised as a distinct legal entity and is considered a legal person separate to those working within the corporation. A company may or may not therefore be liable if offences are committed by individuals purporting to act in its name. Determining whether a company is guilty of an offence depends on the construction of the offence and the route by which, for any given offence, corporate criminal liability can be determined. In recent years two important pieces of legislation have sought to overcome the historical difficulty in establishing corporate criminal liability by creating specific corporate offences:

- Corporate manslaughter (*Corporate Manslaughter and Corporate Homicide Act 2007*).
- Failure to prevent bribery (*Bribery Act 2010*).

For most other offences, including all of those to which DPAs will apply, there are two legal principles by which a company can be prosecuted for criminal offences:

- Vicarious liability, which applies principally to offences where there is no requirement to prove any mental element.
- Non-vicarious liability, which can apply under the "identification principle" to offences that include a mental element (such as intent, dishonesty or knowledge) within their definition.

These concepts are discussed at greater length below.

Vicarious liability. Companies can be held criminally liable for the unlawful acts of their employees and agents under the principle of vicarious liability. When the offence is one of strict liability, no mental element is required and nothing further needs to be proven beyond the existence of the facts amounting to the contravention. A number of statutes set out what are essentially strict liability offences, but the use of this principle as a basis for corporate prosecutions is most commonly found in quasi-regulatory areas of criminal law such as health and safety and environmental law. A small number of the offences to which DPAs will apply are offences of this kind.

The offence of failing to prevent bribery created under section 7 of the Bribery Act 2007 is such an offence. Though it is not strictly an offence created through vicarious liability, as it can only be committed by the

CORPORATE CONVICTIONS FOR ECONOMIC CRIMES (ALL BROUGHT BY THE SFO)

Company	Date	Offence / Behaviour	Outcome
Severn Trent Water	July 2008	Providing false leakage data to Ofwat	GB£2 million fine and GB£220,000 costs
Mabey and Johnson	September 2009	Corruption and breach of UN sanctions	GB£3.5 million fine, GB£1.1 million confiscation order, GB£1.4 million reparations, GB£350,000 costs, GB£250,000 cost of monitor to confirm efficacy of company's compliance programme
Innospec Ltd	March 2010	Corruption	Sterling equivalent to US\$12.7 million fine
BAE Systems	December 2010	Keeping inadequate records	Fined GB£500,000 and GB£225,000 costs; further agreement for BAE to pay GB£29.5 million to Tanzania

failure of the corporate entity itself, it operates on the same basis. The company commits an offence if a person associated with the company bribes another person intending to:

- Obtain or retain business for the company.
- Obtain or retain an advantage in the conduct of business for the company.

This is unless it can be proved that adequate procedures were in place to prevent such conduct. One proposal for reform is that this "failure to prevent" basis for corporate criminal liability should be applied to a wider range of economic crimes (*see below, Proposals for reform to the law of corporate criminal liability*).

The identification principle. The identification principle establishes that only the acts and state of mind of those who represent the directing mind and will of the company can be imputed to the company itself. This principle must be satisfied to prove the mental element of any offence against a company. Historically it has proven a hurdle that has often prevented companies from being held liable for the acts of individuals who work within them.

The 1915 case of *Lennard v Asiatic Petroleum [1915] AC 705* held that to establish corporate criminal liability the mental element of an offence must be attributed to "the directing mind and will of the corporation". This means that those individuals who are at the highest echelons of the management of a company must be themselves criminally responsible to establish the guilt of the company itself. The case of *Tesco Supermarkets Ltd v Natrass [1972] AC 153* considered the identification principle further and endorsed the case of *Lennard* and specifically the notion of the "directing mind and will". The case defined the directing mind and will of a company as extending to the "board of directors, the managing director and perhaps other superior officers of the company who carry out functions of management and speak and act as the company".

The *Tesco* case is still considered to represent the current state of the law in relation to corporate criminal offending for those offences that require a mental element though it has been criticised for creating a principle that is both artificial and inflexible. The Privy Council case of *Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500* attempted to adopt a different approach to the issue and avoided the rigid application of the identification principle. It was suggested that normal principles of interpretation should be applied to the statute that created the offence to ascertain whose act or knowledge

or state of mind was intended to count as being that of the company. More recent cases (such as *R v Regis Paper Co Ltd [2012] 1 Cr. App.R. 14*), however, have restated the stricter application of the identification principle as established in the *Tesco* case. Because of the limited circumstances in which the identification principle can be satisfied, especially when larger companies are involved, corporate prosecutions for offences involving a mental element are likely to remain rare unless and until there is a change to the basis on which corporate criminal liability is established.

The position of individual employees when companies commit offences

If a company is held to have committed an offence it will almost invariably mean that individuals associated with that company have also committed an offence: a company cannot commit an offence except through the actions of its human agents. These offences may be committed under normal criminal principles of primary or secondary liability. In addition, there are special provisions which apply to directors or senior managers of corporations, which create criminal liability for those whose consent, connivance or neglect is attributable to the criminal offending of the company.

The particular legislation under which the prosecution has been brought will determine which positions within a company are at risk of prosecution, though typically it will apply to directors and other senior officers and managers. There are over 400 statutes covering a range of economic and other activity that create offences that allow for individuals to be prosecuted because they have participated in the offending through consent, connivance or neglect. Many of the offences to which DPAs apply carry this form of liability. Where a person is convicted on this basis they are convicted of the offence of which it is said the company was guilty. To that extent it might properly be described as a form of parasitic criminal liability.

The meaning of both consent and connivance is similar although there is a subtle difference. Both require knowledge of the facts constituting the offence, though not necessarily that those facts constitute an offence. Offending by consent is possible where the individual is not aware that the facts amount to criminal conduct whereas connivance implies a requirement of at least wilful blindness to criminal conduct.

Neglect does not require specific knowledge if it can be shown that the circumstances were such that the individual should have been prompted to make an enquiry. This will turn on the facts of the case. Factors will include how remote from the activity of the company the officer was.

CORPORATE CRIMINAL LIABILITY IN SELECTED JURISDICTIONS

Argentina
The Economic Crimes Law of Argentina imposes criminal liability on legal entities. Where any offence occurs on behalf of, with the intervention of, or to benefit a legal entity, penalties are imposed on the legal entity.
Australia
Companies can be held criminally liable if they are found to have a criminal corporate culture. If the physical element of an offence is committed by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate. If intention, knowledge or recklessness is an element in the offence, that must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence. A corporate culture is defined as an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities takes place. Due diligence defence is available.
Germany
There is no corporate criminal liability in Germany as the German system punishes individual corporate officers. Germany extends its criminal law to individual corporate directors and agents and relies on administrative and civil law remedies to regulate and punish the company itself. The German administrative system is technically overseen by criminal courts and the penalties imposed can be quasi-criminal in nature. Fines are a typical punishment and can extend into millions of euros. Companies can also face procedures such as asset forfeiture.
Italy
Corporations can be prosecuted for criminal offences committed by their managers or employees in the interest or for the benefit of the corporation. This is categorised as administrative by the law, but is assessed by a criminal judge under the rules of criminal procedure, in proceedings that are usually joined with ones relating to the responsibility of the managers or employees.
The Netherlands
A company, as a legal person, can be prosecuted for any criminal offence. Whether the criminal actions of an individual can be attributed to a company depends on whether the company had control over the criminal activity and accepted it.
South Africa
A corporate body can commit crimes involving intent, negligence and strict liability. Generally, a corporation can be liable for any criminal act or omission committed by, on the instructions of, or with the express or implied permission of its director or servant in the exercise of his powers, the performance of his duties or in furthering or endeavouring to further the interests of the corporate body. No particular intent is required for the act or omission on the part of the individual.
United States
A company can be liable if one of its agents commits a criminal act within the scope of his or her employment and for the benefit of the corporation. A corporation can be held liable for an agent no matter what his place in the corporate hierarchy and regardless of the efforts in place on the part of corporate managers to deter his conduct.

Of very great significance to this basis of personal criminal liability in the context of DPAs is the fact that no conviction of the company is necessary to found the prosecution of one of its officers. All that is required is that the commission of the offence by the company is proven to the necessary standard, including the disproving of any corporate defence that may apply. It is entirely conceivable, therefore, that situations will arise where the company is able to negotiate a DPA, but that a prosecution nonetheless takes place of officers whose consent, connivance or neglect is said to be attributable to the company's offending. Since part of the negotiation of a DPA involves drafting an agreed statement of facts giving the full particulars relating to each alleged offence, it is likely to include the role played by particular individuals. There may well be a conflict between the interests of the company and its senior officers. Lawyers advising the company will have to approach this issue carefully.

Since the great majority of corporate convictions have to date been for strict liability offences, it follows that most convictions of individuals under consent, connivance and neglect provisions have also been for strict liability offences. If plans to reform the law in relation to corporate criminal liability are pursued with the effect of increasing the number of corporate prosecutions for other kinds of offences (in

particular, economic crimes which currently require proof of a mental element) it is possible that this will result in a corresponding increase in consent, connivance and neglect convictions of senior officers. The effect that this may have on the willingness of individuals to serve in senior corporate roles and the effect on business in the UK generally is an issue that does not appear to have so far been given any consideration by those proposing the changes.

Corporate criminal liability in other jurisdictions

To compare the current law of corporate criminal liability in the UK with other selected jurisdictions, see box, *Corporate criminal liability in selected jurisdictions*.

Proposals for reform to the law of corporate criminal liability Proposals of the SFO

It is against this backdrop that the current Director of the SFO, David Green, recently proposed that the "failing to prevent" offence found in section 7 of the Bribery Act could be applied to other offences. He suggests that a company that failed to prevent other crimes of fraud or dishonesty by its employees or agents would be guilty of an offence. As with the Bribery Act offence he proposes a statutory adequate procedures defence.

It is easy to see the attraction of this approach. These would be, in effect, strict liability offences. The burden of proving the defence, once the offending by the employee or agent had been established, would fall on the corporate defendant. The problem is that such offences would not truly reflect the underlying criminality, but would merely criminalise the negligence of the company in failing to prevent it: any conviction would not be for the offence but for the failure to prevent the offence. This is unlikely to satisfy the current public appetite for companies to be properly punished for their offending. So far there has been no public support for these proposals from the Government, far less any sign of any attempt to start the legislative process that would be necessary to bring about such a change in the law.

Proposals of the Labour party

The Labour party has suggested an alternative proposal, which would be a more comprehensive redevelopment of the law surrounding corporate criminal liability, requiring an Economic Crime Bill (see Labour's *Policy Review: Tackling Serious Fraud and White Collar Crime*). Labour suggests that the directing mind doctrine needs to be adapted to be more in line with the US model of *respondeat superior* (let the master answer). A corporation can be held criminally liable for the illegal acts of its directors, officers, employees and agents if it is established that the corporate agent's actions were within the scope of his duties and intended, at least in part, to benefit the corporation.

This would be a very significant expansion of the concept of corporate criminal responsibility but is necessary, according to the Labour Party, if companies are to engage meaningfully with prosecutors over DPAs. Because the application of such an approach would make it easier to achieve convictions for substantive corporate offences (rather than merely creating "failing to prevent" type offences as proposed by Mr Green) including offences of dishonesty, companies would be anxious to do everything to avoid such convictions, knowing that the damage caused by such a conviction could be enormous. These seem thoughtful and interesting proposals that might bring about a significant change to corporate culture. Like Mr Green's proposals, however, they remain merely ideas for discussion.

Conclusion

Rarely has there been a time when corporate economic crime has been more under the spotlight. As is often the case, there is a gulf between the public appetite for greater corporate accountability and what the state of the law currently allows.

DPAs will have a significant impact on the policing of corporate crime in the UK. How significant and whether any particular type of corporate offending will become the focus for these agreements remains to be seen.

Whether the next few years will bring a change to the law of corporate criminal liability also remains to be seen. The history of other legislative change suggests that any progress from concept to statute book will be protracted. Hopefully somewhere along that journey careful consideration will be given to the impact such changes could have on those individuals whose personal criminal liability is intrinsically linked to that of the companies for whom they serve as officers.

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Recent work

- Advising an organisation in relation to Operation Elvedon, the investigation into inappropriate payments to police by newspapers.
- Advising individuals in relation to the Libor rate rigging investigation.
- Representing individuals and companies in relation to a number of health and safety and environmental investigations.
- Representing Colonel Kumar Lama, a Colonel in the Nepalese army on charges of torture, following his arrest in the UK.

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- The Law Society.
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- Representing businessman charged with high value fraud across several jurisdictions.
- Resisting extradition request made for a Ukrainian banker.
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