

Corporate liability reform

What we seek

1. Legislation on a failure to prevent economic crime offence to ensure that fraud, money laundering and false accounting committed on behalf, or in the name, of large corporates can be prosecuted.
2. An independent review of the application of the identification principle to corporate offending for all serious crime, including substantive economic crime.

The benefits of new legislation will ...

- Incentivise good corporate culture, governance and behaviour and prevent economic crime.
- Make it easier for companies of all sizes to be prosecuted for corporate misconduct (not just small ones) and in so doing create a more level playing field.
- Complement existing 'tried and tested' failure to prevent laws for bribery and tax evasion.

We believe that the burden on business should not be too costly or onerous. Companies should already have adequate procedures in place to comply with existing Bribery Act provisions which are proportionate to their size. Furthermore, the basis for creating a new offence already exists.¹

Why it is needed

- **Large companies and financial institutions face little risk of prosecution for economic crime (including fraud and money laundering) under the current regime.** The judgement for the dismissal of charges against Barclays in the Qatar case, recently made public, confirms the extremely narrow circumstances in which a corporate can be prosecuted for fraud. Regulatory fines on their own do not appear to provide sufficient deterrence to corporate economic crime. By way of example, the FCA's 2015 fine of Barclays for poor handling of financial crime risks was its sixth financial misconduct fine in as many years by the FCA.
- **Integrity of public procurement contracts are at risk where large contractors cannot be prosecuted for fraud.** The Deferred Prosecution Agreement (DPA) with Serco subsidiary, Serco Geografix Ltd, showed that a parent company responsible for devising and benefiting from a fraud on a government ministry could not itself be subject to a DPA or a prosecution, because no 'directing mind' could be identified.
- **Greater alignment with US corporate liability standards is essential as the UK moves towards a stronger trading relationship with the US.** US companies that win public contracts in the UK should be held to similar levels of accountability as they would at home.

¹ Lord Garnier QC's proposed amendment to the Criminal Finances Act 2017 setting out a 'failure to prevent an economic crime offence' could be used as the basis for creating the new offence with some tweaks. See https://publications.parliament.uk/pa/bills/cbill/2016-2017/0097/amend/criminal_rm_rep_1212.1-7.html