UK CPS AND SFO ISSUE UPDATED CORPORATE PROSECUTION GUIDANCE: WHAT CORPORATES NEED TO KNOW

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UK Policy and Regulatory Alert

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The Crown Prosecution Service (CPS) and the Serious Fraud Office (SFO) have jointly updated their Corporate Prosecutions Guidance (the Guidance), providing clarification on their expectations for organisations in relation to economic crime, fraud and corporate liability. This update comes at a critical time in the United Kingdom following recent changes enabling companies to be held criminally liable for the actions of their 'senior managers' and the introduction of the new “failure to prevent fraud” offence which will come into force on 1 September 2025. This new offence creates corporate criminal liability for specified large organisations which fail to prevent the commission of certain fraud and false accounting offences by their employees and other associated persons.

The convergence of this Guidance and a new statutory offence significantly raises the stakes for compliance teams and senior management. However, there remain serious questions about whether the Guidance is realistic, workable or even fair in practice.

KEY POINTS FROM THE GUIDANCE

Liability Framework

The failure to prevent offence, targets large organisations (e.g., those with >250 employees, turnover >£36 million or a balance sheet total of >£18 million). Unless these organisations had “reasonable” fraud prevention procedures in place, they will be automatically criminally liable irrespective of whether they intended or were aware of the commission of the specified underlying criminal conduct. Despite the new Guidance, it remains unclear as to how the CPS, SFO and Courts will seek to interpret what “reasonable measures” encompass, which may create a compliance guessing game. What is clear is that they will rely heavily on the UK Government guidance and the six principles organisations are expected to follow.

The Guidance issued specifically incorporates the recent changes to the identification doctrine enacted by the Economic Crime and Corporate Transparency Act 2023 (ECCTA). The Guidance reiterates that Prosecutors no longer need to establish that an individual was the “directing mind and will” of the company in order to hold the corporate criminally liable for their actions, but rather the broader provisions now make it easier to prosecute companies for actions of certain persons irrespective of whether any individual holds a formal board position. It would be sufficient to show that the individual was a “senior manager” acting within their actual or apparent scope of their authority.

Factors in Prosecutorial Decision

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The CPS and SFO will consider a whole range of factors when considering what, if any, prosecution to bring, including, but not limited to:

- The nature and seriousness of the alleged offence
- Effectiveness of compliance systems and internal controls
- Organisational culture and governance
- Level of cooperation with authorities

It is evident that simply having policies in place is not enough. The relevant authorities will evaluate if these policies are actually embedded in daily operations. This includes reviewing and assessing the culture and tone from senior members of the organisation, as much as any formal training and controls in place.

COMPLIANCE TAKEAWAYS

Organisations should consider the following:

- Compliance frameworks: ensure policies, procedures and monitoring systems are up-to-date and effective;
- Enhance governance oversight: boards and senior management should actively oversee compliance programs;
- Document preventive measures: keep clear records of training, risk assessments, and internal controls to demonstrate a proactive approach;
- Prepare for enforcement: establish protocols for how to approach with CPS/SFO investigations, including any voluntary disclosures if breaches occur.

CONCLUSION

With the “failure to prevent fraud” offence coming into force imminently, combined with this updated Guidance, companies must ensure that prevention measures, systems, governance and documentation are fully aligned with UK prosecutorial expectations. This reinforces the importance of embedding compliance and ethical conduct into every level of an organisation.

If you have any questions on this guidance or want further advice on developing your compliance frameworks, please do not hesitate to contact the authors listed above.

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