

Compensating the overseas victims of corruption

A roundtable organised by Spotlight on Corruption, kindly hosted by Serle Court

Friday 15 November 2024

This Chatham House-style roundtable brings together civil servants, law enforcement officials, legal experts and civil society stakeholders to explore potential reforms to the UK's framework for compensating the overseas victims of corruption.

The background briefing sets out the current framework for compensation, highlights key lessons learned from recent corruption cases, identifies the main challenges to the award of compensation, and outlines potential vehicles for reform. This is intended to spark discussion at the roundtable that is solution-oriented, drawing on the expertise and experience of participants to identify promising reforms that will help achieve a step change in compensation for the overseas victims of corruption.

Questions for discussion

Challenge I – Defining, quantifying and evidencing the harm of corruption

- a) Is the current approach to awarding compensation only in “clear and simple” cases a satisfactory approach to determining compensation given the inherent complexity of corruption and bribery schemes? If not, on what basis should compensation be granted?
- b) Can we move beyond an approach that limits compensation to direct financial loss, and if so, how would the broader, and often indirect, harms of corruption be quantified and evidenced?
- c) Are there ways to recognise the harms caused by corruption which would allow for swifter and wider redress? For example, should a portion of corporate fines be paid as compensation?

Challenge II – Defining and identifying the victims of corruption

- d) Who should be recognised as a victim of corruption or have standing to seek compensation (particularly where a foreign government – or serving members of it – have been implicated in a bribery scheme), and what are the main challenges that investigating and prosecuting authorities face when seeking to identify and compensate overseas victims of corruption?
- e) How can overseas victims be better represented and heard in corruption cases investigated in the UK? Are any reforms needed to expand standing or ensure evidence about the impact of corruption is considered by prosecutors and the courts?

Challenge III – Combatting ‘re-corruption’

- f) What safeguards should be in place to ensure compensation is disbursed in a transparent and accountable way to benefit victims?
- g) What approach should be taken in cases of grand corruption, where a foreign government could be considered both complicit in and a victim of corruption?

Potential vehicles for reform

- h) Is legislation needed to ensure compensation can be awarded to overseas victims in complex corruption cases, or would changes to the Sentencing Guidelines or UK policy (such as the Compensation Principles) be sufficient to achieve this result?
- i) How can defendant corporations be incentivised to pay compensation?
- j) What would the impact of proposed reforms be on law enforcement, including on the timelines and resourcing of investigations?

Introduction

1. The previous government made a range of statements committing to better support for victims of corruption. This included a commitment under the last Anti-Corruption Strategy 2017-2022 to work to achieve “*a consensus that overseas victims should benefit from the positive outcome of bribery and corruption cases.*”¹ In 2018, general principles for compensation were published which “*aim to ensure overseas victims of bribery, corruption and economic crime, are able to benefit from asset recovery proceedings and compensation orders made in England and Wales.*”²
2. More recently, and in response to a proposed legislative amendment to the Victims and Prisoners Bill in early 2024 by Lord Garnier KC, the government reaffirmed its commitment “*to identifying potential victims and utilising suitable means to return money and/or compensate victims in line with international provisions,*” and suggested that a new Anti-Corruption Strategy would be looking at what steps could be taken to address the harms to victims.³
3. Despite these commitments, compensation orders for the harms of overseas corruption committed by UK firms and individuals have remained few and far between. Since 2014, of the fifteen companies investigated by the Serious Fraud Office (“SFO”) for international corruption and bribery, only four cases saw money returned to countries affected by the harm.⁴ Of the £1.9 billion worth of financial penalties resulting from SFO enforcement actions, only £16.3 million – or less than 1% – was returned to the countries harmed by the corrupt activity.
4. Recent cases have highlighted the dangers to the UK’s international reputation when HM Treasury reaps the rewards of foreign bribery penalties rather than ensuring those harmed by the bribery receive compensation.⁵ These include the reported refusal of the Indonesian government to provide assistance for an ongoing bribery probe by the SFO after it did not receive any share of the record fine against aerospace giant, Airbus;⁶ and the attempted intervention by the Federal Government of Nigeria after the SFO’s refusal to seek a compensation order against mining and commodities giant Glencore.⁷
5. This background briefing outlines the current state of play on victim compensation in international corruption cases ahead of the roundtable on 15 November 2024. It is intended to help foster debate and build consensus around promising proposals for reform to ensure overseas victims of corruption are better represented and compensated in UK cases.

The Legal Framework

6. As a State Party to the United Nations Convention Against Corruption (“UNCAC”), the UK is required to ensure that:
 - a. “views and concerns of victims [are] presented and considered at appropriate stages of criminal proceedings” (Article 32(5)).
 - b. those who have suffered damage as a result of an act of corruption are able to take legal action to get compensation (Article 35).
 - c. “such measures as may be necessary” are taken to allow courts to order those who have committed corruption offences pay compensation or damages to a “State Party” harmed by the offence (Article 53(b)).
 - d. in returning confiscated property, “priority consideration” is given to the requesting State Party, the prior legitimate owners, or the victims of the crime (Article 57(3)(c)).
7. The UK’s obligations under the UNCAC are loosely reflected in UK legislation, particularly the 2020 Sentencing Act (alternatively known as the “Sentencing Code” or “SC”) and the 2002 Proceeds of Crime Act (“POCA”). This framework maintains that:

- a. The criminal courts are obliged to follow any sentencing guidelines which are relevant to the offender’s case, except where the court is satisfied that it would be contrary to the interests of justice to do so (SC, s 59(1)).
 - b. Any compensation amount awarded must be one that the court considers appropriate, “having regard to any evidence and any representations that are made by or on behalf of the prosecution” (SC, s 135(2)).⁸
 - c. In the event that the offender has insufficient means to pay both an appropriate fine and appropriate compensation, or to satisfy a confiscation order, the courts are required to give “preference” (SC, s 135(4)) or “priority” (POCA, s13(3A)) to compensation. There is no statutory limit to the amount of compensation payable by an adult offender.⁹
 - d. The court must give reasons if it does not make a compensation order (SC, s 55).
8. It is also worth noting a recent amendment to POCA (introduced through the Economic Crime and Corporate Transparency Act 2023) now enables “victims and other owners” who claim ownership of funds subject to freezing and forfeiture proceedings can apply for their release.¹⁰
 9. While these statutory provisions may meet UNCAC obligations on their face, current case law means that in practice the bar for securing compensation for overseas victims of corruption is impossibly high. Compensation can only be given in cases which are “*clear and simple*”¹¹ or “*simple [and] straightforward*,”¹² and where victims can be readily identified and losses easily measured.¹³ Given that international corruption cases are rarely if ever clear and simple, this case law in effect precludes compensation in overseas corruption cases.
 10. Relatedly, the statutory regime for deferred prosecution agreements (“DPA”) provides that such agreements “*may*” impose requirements that individuals or corporations must pay compensation to victims of an alleged offence.¹⁴ The DPA Code of Practice emphasises that it is “*particularly desirable that measures be included [in the DPA] that achieve redress for victims, such as the payment of compensation*”.¹⁵ However, again in practice, the courts overseeing DPAs have generally chosen to follow the case law that compensation should only be granted in “*clear and simple*” cases and declined to order any in foreign bribery cases.
 11. An additional complicating factor for compensation is that while on the face of it the courts may have regard to “any evidence and representations that are made by or on behalf of the offender or the prosecution”¹⁶ – in practice, and as recent case law confirms, victims of corruption are reliant on their evidence or representations being put forward on their behalf by the prosecutor.

The policy framework

12. In 2018, UK law enforcement adopted the “General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases” (“General Principles”).¹⁷ Developed following the 2016 London Anti-Corruption Summit, the UK committed to working with nine other countries on principles for compensation payments and financial settlements to be made “safely, fairly, and in a transparent manner to the countries affected.”¹⁸
13. The UK has also taken a proactive role in developing principles for how stolen assets should be returned to origin countries in line with the 2017 Global Forum on Asset Recovery (“GFAR”). In 2022, the UK announced its “Framework for transparent and accountable asset return”,¹⁹ becoming the first country in the world to publish its policy for returning the proceeds of crime. Whilst having no formal bearing on compensation efforts – by design, the principles do not apply when compensation is ordered by a court, either in sentencing or through a DPA – the 2022 Framework nonetheless hints at the UK’s capability to ensure compensation is disbursed in a transparent and accountable way.

Lessons learned

14. The practical reality of compensation in overseas corruption cases is that victims struggle to get recognition in courts, and amounts returned to countries affected by multinational bribery schemes have been disparagingly low. The following lessons have been drawn from recent cases which Spotlight on Corruption has followed:

Standing rules in criminal courts undermine compensation efforts

15. The Glencore prosecution highlights the hoops victims of corruption must pass through to achieve redress.²⁰ On the basis that the amount of compensable loss “could not be readily and easily ascertained”, the SFO declined to make an application for a compensation order, despite the “significant offending” perpetrated by the commodities giant. In turn, the Federal Republic of Nigeria (“FRN”), one of the countries where the offending had occurred, made a novel application to the Crown Court seeking clarification on whether FRN did possess standing to intervene as a non-party claiming status as a victim entitled to compensation.
16. This application sought to clarify whether state governments could make representations for compensation directly to the court, and without the need for the application to be brought by a prosecutor. FRN argued that the difficulty the SFO faced in quantifying compensable loss had been “over-stated”,²¹ and that it was in the interests of justice that victims of corruption in Nigeria should receive the financial benefit resulting from a prosecution, rather than the UK’s Consolidated Fund. The application was rejected: Fraser J held that the statute obliging the court to have regard to representations made by “the prosecution” expressly excluded third parties such as sovereign states from making representations on compensation.²² He based his judgement on the “sensible policy considerations” Parliament had made, which included the potential risk of “deluging the criminal justice system” by increasing the pool of potential applicants for compensation.
17. The immediate consequence of the judgement was that, in light of the court’s lack of support,²³ the FRN was effectively pushed into entering a settlement with Glencore in Nigeria for \$50 million; the deal has been criticised by civil society experts across the globe for its apparent disregard for transparency and accountability principles.²⁴

There is a lack of consistency and clarity about how compensation is calculated

18. In 2016, Alstom Power Ltd entered a guilty plea as a result of an investigation into bribery by the SFO, which resulted in it paying £11 million - well over half of the total £18 million financial penalty ordered - in compensation to the Lithuanian government. This was despite the bribe paid being €5 million.
19. However, this groundbreaking precedent has not been followed in subsequent foreign bribery enforcement outcomes.²⁵ For instance, in the first DPA in 2018 between the SFO and Standard Bank for bribery in Tanzania, compensation was limited to \$6 million (£4.7 million) plus interest, reflecting the loss to the Tanzanian government arising from an intermediary’s fee that was incorporated in the overall contract price. The DPA thus calculated loss solely as the amount of the bribes paid in relation to a contract.
20. The 2021 DPA between the SFO and Amec Foster Wheeler (“AFW”) also demonstrates the limitations of an approach to compensation that is confined to direct financial loss. The agreement imposed a financial penalty of over £103 million on the engineering conglomerate for systemic bribery offences. The harm caused by AFW’s conduct was estimated to be £50 million which covered the loss caused by AFW’s bribes to evade tax and their profits on the corrupt contracts. By limiting compensation to only the loss suffered by Nigeria as a result of tax evasion, the DPA only required £210,610 to be set

aside as “suitable recompense” to the Nigerian people for only one of the 10 counts of corruption and bribery.²⁶

21. In other DPAs, particularly where there is egregious global bribery across different jurisdictions, such as Rolls Royce, courts have failed to order compensation at all because noting that “factual complexity” rendered “impossible” the SFO’s task of quantifying loss caused by the bribery.

Compensation can and has been given even where there is no court order

22. In 2016, Smith and Ouzman Ltd had financial penalties of £2.2 million imposed on it, following a prosecution for bribery in Kenya. Although the court refused to order compensation, the SFO, in tandem with the Foreign Office, resolved of its own volition to pay £395,000 (i.e. the amount paid in bribes) in compensation which was used to purchase ambulances in Kenya and support an infrastructure project in Mauritania, two states which had been victim to corrupt practices at Smith and Ouzman Ltd.²⁷ While this type of outcome has not been replicated in subsequent cases, it shows that compensation can be paid from confiscation money where there is political will to do so. Similarly in the case of bribery by BAE Systems in Tanzania, the company made an ‘ex gratia’ payment at the request of the SFO of £30 million to be invested in education projects in Tanzania, because the Court had no power to order such a payment.²⁸ Although this payment was controversial as its disbursement was left to BAE Systems itself,²⁹ it shows again that prosecutors can find ways where there is a will to ensure compensation is returned to an affected country.

Compensation fosters international cooperation against corruption and ensures corrupt bribe takers are more likely to face accountability

23. The record-breaking €3.6 billion global fine imposed on Airbus by the UK, the United States and France for bribery has resulted in controversy with the Indonesian government threatening to sue the SFO for denying it a share of the bribery settlement.³⁰ The Indonesian government has argued that it provided crucial evidence that helped lead to the enforcement action against Airbus. Meanwhile, it has also refused to assist a current investigation by the SFO into corruption by Bombardier as a result of the controversy.³¹ This shows how the failure to ensure compensation for countries affected by bribery schemes run by global multinationals headquartered in countries like the UK can harm bilateral relations between law enforcement agencies and expose the UK to charges of hypocrisy.³²
24. By contrast, during the DPA between the SFO and Standard Bank, the SFO kept the Tanzanian Preventing and Combating Corruption Bureau (PCCB)³³ informed about its investigation and shared intelligence that led to several prosecutions in Tanzania.

The challenges of securing compensation for overseas victims of corruption

Challenge I – Defining, quantifying and evidencing the harm of corruption

25. Although criminal courts are obliged to consider the question of compensation at sentencing, the bar for achieving compensation orders is high, in no small part due to the inevitable difficulty involved in identifying and quantifying the loss suffered by victims.³⁴ The current legal framework for compensation is heavily fixated on direct financial loss as a measure for calculating compensation. Yet bribery schemes are inherently complex, and quantifying loss can be time-consuming and resource-intensive, particularly for over-stretched and under-resourced law enforcement bodies. Operationally, law enforcement agencies are understandably geared more towards successfully prosecuting offenders. The result is that the more complex and egregious the offending, the more difficult it is to calculate loss and thus, ironically, the less likely it is that compensation will be paid.
26. While a narrow approach is taken to quantifying compensable loss caused by corruption, the courts, via the Sentencing Guidelines, are entitled to take a wider approach when considering the harms of

corruption, albeit for the purpose of determining custodial sentences and fines – the latter of which are paid into the Treasury’s Consolidated Fund. In cases involving individual offenders, these “harms” include the imposition, by offenders, of serious detrimental effects on individuals and the environment, or the serious undermining of the proper functioning of local or national government or public services.³⁵ From this broader understanding of “harm” flows an acknowledgement that the potential victims of corruption are not limited to foreign governments or competitor companies, and that the potential impacts of corruption are not purely monetary. Rather, this definition is underpinned by a recognition that corruption undermines non-financial, collective interests.

27. In considering reforms to ensure compensation can be awarded in all cases, including complex corruption cases, serious consideration should be given to whether the “harm” figure calculated for purposes of determining custodial sentences and corporate fines could serve as a guide for determining the proportion that should be paid as compensation. For example, statutory reforms or changes to the Sentencing Guidelines could stipulate that the court should order that a certain percentage of a corporate fine be paid as compensation. It would also be possible for the UK government to commit to paying a “cut” of the corporate fine as compensation, rather than the full fine being kept by HM Treasury.

Challenge II – Defining and identifying the victims of corruption

28. The 2018 Compensation Principles recognise that the victims of corruption “*may include affected states, organisations and individuals*”. Similarly, the courts have acknowledged in passing that the real victims of bribery and corruption are the people of the country who suffer harm as a result of the offending.³⁶ Yet too often formal, judicial recognition has only been given to very narrow categories of victim, such as foreign governments or economic competitors.
29. Despite the requirement in the UNCAC for State Parties to enable victims to have their views presented and considered at appropriate stages of criminal proceedings,³⁷ there are few examples of this occurring in overseas corruption cases in the UK. Indeed, as *FRN v SFO and Glencore* makes clear, the standing of any representatives of victims is heavily restricted, leaving prosecuting agencies like the SFO as the only available conduit between victims and the courts.³⁸

Challenge III – Combatting ‘re-corruption’

30. Foreign bribery schemes involve, even require, the willing participation of public officials. Yet in 2018, the Organisation for Economic Co-operation and Development (“OECD”) found that the prosecution of “demand-side” bribery – that is, bribery committed by public officials – occurred in only one out of every five “supply-side” cases, suggesting that in 80% of such cases, public officials implicated in corruption schemes could escape judicial reprimand, and can even re-enter the political arena with impunity.³⁹ In cases where high-level public officials are implicated in such offences and the government or local enforcement authorities have failed to ensure they are held to account, it is important that the UK prosecutor or sentencing court remains vigilant to the potential for compensation to be lost through corruption. To ensure funds are used to benefit victims rather than being improperly diverted, compensation could be disbursed in line with the UK’s Framework on Transparent and Accountable Asset Return (which reflect the Global Forum on Asset Recovery Principles), adapted as appropriate for the different context of compensation.

Potential vehicles for change

Legislative reform

31. The current case law on compensation places a very real constraint on achieving proper redress for the harm caused by overseas corruption. Ensuring that compensation is properly considered and can

be awarded in all cases – including complex corruption cases – through statutory reform is one option that should be seriously considered.

32. Any legislative reform would need to set out the general approach to be taken to calculating compensation, supplemented by more detailed Sentencing Guidelines. In particular, this should move beyond a model that confines compensation to direct financial loss and instead embrace a broader definition of harm that accommodates the social, economic, environmental, and political damage caused by corruption and bribery.
33. Any attempts at legislative reform must also seek to better amplify the voices of victims of corruption, in accordance with the UK’s obligations under Article 32(5) of the UNCAC. Foreign states and impacted communities, or civil society groups representing the public interest, should be allowed to make representations and present evidence of harm including through victim and community impact statements and providing evidence of the scale of harm caused.⁴⁰ Prosecutors should also consider requesting evidence from regional experts and non-governmental stakeholders about the harms caused by the corruption.⁴¹
34. Inspiration for the feasibility and success rate of statutory reform can be drawn from the emerging trend of innovations within other jurisdictions, in fulfilment of their UNCAC obligations. Notable examples include the Canadian statutory “remediation agreements” regime, which require the “best efforts”⁴² of the offender to identify potential victims and widened the definition of “victim” to include those who had “suffered physical or emotional harm, property damage or economic loss”, including persons outside of Canada.⁴³ France, Costa Rica and Brazil have similarly, and statutorily, expanded the definition of “harm” to incorporate non-pecuniary ‘moral’ (France) or ‘social (Costa Rica and Brazil)’ damages.⁴⁴

Changes to the Sentencing Guidelines

35. A revision to the Sentencing Guidelines for corruption and bribery has been proposed by Lord Garnier KC and Sam Tate (RPC), a revision which seeks to incentivise offending corporations to pay compensation voluntarily, rather than await a court order.⁴⁵ Under such a regime, offending companies would be encouraged, or required, to engage with the relevant state, drawing up an agreement for how compensation can be paid in an UNCAC-compliant manner. The incentive for the offender would be the prospect of a discounted fine – on condition of their voluntary attempts to compensate – as part of the financial penalty that they would still owe to the UK Treasury; where they refuse to make redress, the defendant may incur added fines. There is also an obvious benefit to victims, namely the circumventing of aforementioned issues surrounding quantification of loss.
36. Sentencing reform also presents an excellent opportunity to address a major discrepancy in the existing Sentencing Guidelines: while the current framework measures corporate offending with reference to the “gross profit” gained by a company,⁴⁶ an individual defendant is made potentially liable for a broader range of losses, including “serious actual or intended financial gain” to the offender, “serious detrimental effect on individuals”, and “serious undermining of the proper function of local or national government, business or public services.”⁴⁷ It is anomalous that individual offenders are subject to a more punishing approach to harm than corporate offenders who generally have deeper pockets and broader shoulders.

Policy reform

37. The 2018 General Principles represent a solid foundation for achieving redress, but need to be reviewed in light of the very small amount of compensation so far returned to affected countries. In particular, they should be reviewed with a view to ensuring they can more effectively be embedded in prosecutorial strategies.

38. More broadly, it is anticipated that, if and when the new Government publishes its Anti-Corruption Strategy, the updated framework will retain, if not expand upon, the previous Strategy's commitment to achieving "*a consensus that overseas victims should benefit from the positive outcome of bribery and corruption cases.*" Serious consideration could be given to making a policy commitment that the UK government will voluntarily repurpose a significant portion of the fines in corporate corruption cases to be paid as compensation where this has not been ordered by a court at sentencing or as part of a DPA.

Annex 1 – UK Overseas Bribery and Corruption Cases since 2014 (Criminal)

Case	Year	Decision	Financial penalties (£ millions)				
			Fines	Disgorgement (Confiscation)	Legal Costs	Compensation	Total
Smith and Ouzman	2014	Guilty conviction	1.32	0.88	0.03	0.40	2.63
Standard Bank	2015	DPA	10.95	5.48	0.33	4.70	21.46
Sarclad Ltd	2016	DPA	0.35	6.20	-	-	6.55
Sweett Group plc	2016	Guilty plea	1.40	0.85	0.10	-	2.35
Alstom Power Ltd	2016	Guilty plea	6.38	-	0.70	10.96	18.04
Rolls Royce plc	2017	DPA	239.08	258.17	13.00	-	510.25
Güralp Systems Ltd	2019	DPA	-	2.07	-	-	2.07
F.H. Bertling Ltd	2019	Guilty plea	0.85	-	-	-	0.85
Alstom Network UK Ltd	2019	Guilty conviction	15.00	-	1.40	-	16.4
Airbus SE	2020	DPA	338.00	498.00	5.94	-	841.94
Airline Services Ltd	2020	DPA	1.24	0.99	0.75	-	2.98
Amec Foster Wheeler Energy Ltd	2021	DPA	49.34	50.36	3.37	0.21	103.28
Petrofac Ltd	2021	Guilty plea	47.20	22.84	7.00	-	77.04
GPT Special Project Management Ltd	2021	Guilty plea	7.52	20.60	2.20	-	30.32
Glencore Energy (UK) Ltd	2022	Guilty plea	182.94	93.48	4.55	-	280.97
Total	-	-	901.57	959.92	39.37	16.27	1,917.13

Annex 2 – Compensation Outcomes

Case	Year	Compensation (£)	Compensation as proportion of total penalty (%)	Notes
Smith and Ouzman	2014	395,000	15.2	The SFO resolved, of its own volition, to pay this amount (i.e. the bribe amount) for the purchase of ambulances in Kenya and for an infrastructure project in Mauritania, the host states of the corruption. ^{xlvi} This type of outcome has not been replicated in subsequent cases.
Standard Bank	2015	4,700,000	21.9	This amount was paid directly to the Government of Tanzania
Alstom Power Ltd	2016	10,963,000	60.8	This amount was paid directly to the Government of Lithuania
Amec Foster Wheeler Energy Ltd	2021	210,610	0.2	Compensation was initially to be held by the SFO, and that amount was to be “deployed for the benefit of the citizens of Nigeria in a manner that is accountable and transparent.”

Endnotes

- ¹ HM Government (11 December 2017), [UK Anti-Corruption Strategy](#), para. 6.10,
- ² Serious Fraud Office and others (1 June 2018), [General Principles to compensate overseas victims \(including affected States\) in bribery, corruption and economic crime cases](#).
- ³ Lord Garnier KC (30 April 2024), [Amendment 101A](#).
- ⁴ Refer to Annex 1, below.
- ⁵ Dr Sue Hawley (7 December 2023), [Treasury coffers are reaping the rewards of foreign bribery fines](#).
- ⁶ See for example the following articles: Peggy Hollinger and Sylvia Pfeifer (26 September 2023), [Indonesia vows to sue UK over Airbus corruption probe settlement](#); Kate Beioley, Sylvia Pfeifer, and Peggy Hollinger (26 February 2023), [Indonesia presses UK over corruption probe into Bombardier](#).
- ⁷ [Federal Republic of Nigeria v SFO, Glencore](#) [2022] EWCR 2, [11].
- ⁸ The Sentencing Council has encouraged that the courts “should not have regard to the availability of other sources [of compensation] such as civil litigation or the Criminal Injuries Compensation Scheme.” Sentencing Council (accessed 5 November 2024), [Introduction to Compensation](#).
- ⁹ Contrast with s 139 of the Sentencing Code.
- ¹⁰ [Section 303Z17A of POCA](#).
- ¹¹ *R v Michael Brian Kneeshaw* (1974) 58 Cr App R 439
- ¹² *R v Kenneth Donovan* (1981) 3 Cr App R (S) 192
- ¹³ Such was the case in the penalties imposed against [Standard Bank](#) (2015), where compensation was ordered, and [Rolls Royce](#) (2017), where compensation was not.
- ¹⁴ See para 5(3) of [Schedule 17 to the Crime and Courts Act 2013](#).
- ¹⁵ Serious Fraud Office and Crown Prosecution Service (11 February 2014), [Deferred Prosecution Agreements Code of Practice](#).
- ¹⁶ [Section 135\(2\), Sentencing Act 2020](#).
- ¹⁷ Serious Fraud Office and others (1 June 2018), [General Principles to compensate overseas victims \(including affected States\) in bribery, corruption and economic crime cases](#).
- ¹⁸ UK Government (21 June 2016), [Anti-Corruption Summit: London 2016 Communiqué](#), para 21.
- ¹⁹ Home Office (13 January 2022), [Framework for transparent and accountable asset return](#).
- ²⁰ [Federal Republic of Nigeria v SFO, Glencore](#) [2022] EWCR 2.
- ²¹ *Ibid.*, [11]. FRN proposed an “obvious” quantum for compensation based either on the amounts of the bribes themselves, which were identifiable, or alternatively the profits made by Glencore which would form the “harm” calculation required for sentencing.
- ²² *Ibid.*, [14]-[15].
- ²³ At [29] Fraser J acknowledges that third parties nonetheless have rights to seek recompense in civil proceedings, and implies that civil proceedings are preferable, given their suitability for investigating questions of causation, contested evidence, and expert opinion. However, this conclusion appears *prima facie* at odds with the Sentencing Council’s position on denying compensation orders in favour of civil proceedings; cf. note 8 above.
- ²⁴ Alice Johnson (5 June 2024), [NGOs call on Nigeria to explain \\$50 million Glencore settlement](#).
- ²⁵ It is worth noting that the sentence and penalty was unchallenged by the defendant, which had recently been acquired by American firm General Electric; it is likely that the new owners were keen to ‘settle’ and draw a line under the corruption investigation, as they had done in American proceedings.
- ²⁶ See para 7 of the [DPA](#). This amount related to Count 2, namely the payment of bribes to Nigerian officials to settle allegations of tax evasion against Foster Wheeler (Nigeria) Ltd. According to the SFO, this amount served as recompense of the original tax claim made by the local Inland Revenue.
- ²⁷ Herbling David (22 December 2020), [Kenya receives Sh43m seized from UK firm at centre of ‘Chickengate’ scam](#).
- ²⁸ House of Commons International Development Committee (30 November 2011), [Financial Crime and Development Report, vol 1](#).
- ²⁹ Ben Taylor (20 March 2012), [BAE Payment to Tanzania undermines justice and accountability](#).
- ³⁰ Kate Beioley, Sylvia Pfeifer, and Peggy Hollinger (26 February 2023), [Indonesia presses UK over corruption probe into Bombardier](#).

- ³¹ Peggy Hollinger and Sylvia Pfeifer (26 September 2023), [Indonesia vows to sue UK over Airbus corruption probe settlement](#).
- ³² Lord Garnier KC (7 February 2024), [Amendment 112](#).
- ³³ *SFO v Standard Bank plc* [2015] (Case No. U20150854)
- ³⁴ Cf. *SFO v Rolls Royce plc* [2017] 1 WLUK 189, [83].
- ³⁵ Sentencing Council (1 October 2014), [Bribery](#).
- ³⁶ In the Smith and Ouzman case, the court took notice of the fact that corruption is harmful, to the extent that they saw no value in considering evidence from an NGO coalition or experts on the matter. See also para 21 of [Director of the Serious Fraud Office v Amec Foster Wheeler \[2021\]](#) Case No. T20210867 per Edis LJ.
- ³⁷ Article 32, UNCAC.
- ³⁸ Third parties, such as states or civil society groups, are expressly denied standing in the criminal courts for compensation proceedings; cf. *Federal Republic of Nigeria v SFO, Glencore* [2022] EWCR 2, [14]—[15].
- ³⁹ OECD (2018), [Foreign Bribery Enforcement: What Happens to the Public Officials on the Receiving End?](#)
- ⁴⁰ Comparatively, in France, legislation was passed in 2013 (*LOI n° 2013-1117 du 6 décembre 2013*) giving NGOs the right to represent victims as civil parties in corruption cases; as a case in point, Transparency International France achieved standing for French victims of corruption in the *Bien Mal Acquis* case. Chile similarly provides standing for NGOs.
- ⁴¹ For example, the Federal Republic of Nigeria urged the Southwark Crown Court to take the account of the DOJ's court filing with information of the bribery charges against Glencore; [Federal Republic of Nigeria v SFO, Glencore](#), [12].
- ⁴² § 715.34(1)(g) of the Canadian Federal Criminal Code.
- ⁴³ § 715.3(1) of the Canadian Federal Criminal Code.
- ⁴⁴ See generally Richard Messick 'Recovery of damages for corruption: Strengthening the implementation of UNCAC's victim compensation articles' (September 2021 draft, shared with permission of author); Juanita Olaya Garcia 'Dealing with the consequences: Repairing the social damage caused by corruption' (2016) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475453; Naomi Roht-Arriaza 'Empowering Victims of Grand Corruption: An Emerging Trend?' (2022) 37 *Connecticut Journal of International Law* at 41-44;
- ⁴⁵ Lord Garnier KC and Sam Tate (7 September 2023), [UK must act to compensate foreign states in fight against corruption](#).
- ⁴⁶ Sentencing Council (1 October 2014), [Corporate offenders: Fraud, Bribery, and Money Laundering](#).
- ⁴⁷ Sentencing Council (1 October 2014), [Bribery](#).
- ^{xlviii} <https://www.businessdailyafrica.com/economy/3946232-3828834-5keucw/index.html>