

Compensating the overseas victims of corruption

Summary report of a roundtable discussion organised by Spotlight on Corruption and kindly hosted by Serle Court on Friday 15th November 2024

Introduction

On 15 November 2024, Spotlight convened a multi-stakeholder roundtable on the UK’s framework for compensating the overseas victims of corruption. The Chatham House-style discussion brought together civil servants, law enforcement officials, legal experts and civil society stakeholders to explore potential reforms to ensure victims of foreign bribery are better represented and compensated in UK cases.

This solution-oriented roundtable drew on the expertise and experience of participants to identify promising reforms that could help achieve a step change in compensation for the overseas victims of corruption.

This summary report provides an overview of the discussions from the roundtable, highlighting the key themes, sticking points and promising ideas to take forward in considering potential reforms to the UK’s framework for compensating the victims of corruption.

Disappointing lack of progress

There was wide acknowledgment among participants that the current compensation framework in the UK is failing to adequately recognise the overseas victims of foreign bribery or deliver meaningful compensation for the broad harms caused by corruption.

By way of introduction, it was noted that a previous roundtable on this topic hosted by Corruption Watch and RAID in 2018 was marked with a sense of optimism – prompted by the newly adopted “Compensation Principles”¹ and the £11 million compensation order made following the successful prosecution by the Serious Fraud Office (SFO) of Alstom Power Ltd.²

In contrast, participants at the 2024 roundtable observed the lack of progress made over the last six years. Concern was raised that the UK has actually moved backwards in its compensation efforts, suggesting the conversation has become stuck as key stakeholders insist the responsibility for effecting change lies elsewhere.

The SFO’s investigation into allegations of corruption involving ENRC was offered by one participant as a “*particularly disappointing*” example of the compensation framework failing to deliver. Despite extensive effort from civil society groups which included the identification of over 33,000 potential victims, the gathering of considerable documentation as well as constructive engagement with the SFO, no one was given formal recognition as having status as a victim in relation to the proceedings.

¹ Serious Fraud Office and others (1 June 2018), [General Principles to compensate overseas victims \(including affected States\) in bribery, corruption and economic crime cases](#).

² Serious Fraud Office case information, [Alstom Network UK Ltd & Alstom Power Ltd](#)

Current constraints on awarding compensation

While noting that the present state of play is unsatisfactory, there was remarkable consensus among participants about the barriers that currently prevent the award of compensation in many foreign bribery cases.

A number of these obstacles were outlined in a background briefing prepared by Spotlight on Corruption and shared with participants in advance of the roundtable.³ These challenges include limitations on legal standing for victims and other third parties in criminal proceedings, and inconsistencies in the approach taken to calculating compensation.

Various contributions at the roundtable highlighted the well-established but “*unhelpful*” case law which confines the award of compensation to straightforward cases. This is reflected in Deferred Prosecution Agreement judgments like *Rolls Royce*, which confirmed that compensation orders will only be made in “*clear and simple*” cases that lacked “*factual complexity*” and did not feature an abundance of intermediaries.⁴

Participants acknowledged that as a result, law enforcement agencies often find themselves in the “*unenviable position*” where, the more complex the case, or the more egregious and pervasive the corruption involved, the more likely it is that judges would say that they are not in a position to calculate compensation. Given we are “*stuck*” with this settled position in case law which applies more generally in criminal proceedings, any particular reforms aimed at achieving compensation in complex corruption cases would need to address this constraint.

In addition to the constraints of established case law, a number of participants identified practical challenges which limit the scope for UK prosecutors and the Crown Courts to engage with complex questions around compensation in corruption cases.

Questions were posed about the suitability of criminal court proceedings for deciding what compensation should be awarded and to whom. It was suggested that the criminal courts were “*not the right forum*” for resolving some of the complex and often contested issues that might arise in relation to compensation. Criminal courts are generally less familiar with complex evidential questions of causation and financial loss than civil courts, even if judges presiding in corruption and financial crime cases may be more specialist in this regard.

It was also observed that the nature and dynamic of criminal proceedings may not be conducive to constructive engagement on key issues such as who should benefit from compensation. Generally only state parties can nominally benefit from compensation awards, and even then, only through an order being sought by the prosecutor. This excludes the voices and interests of those who might be most harmed by corruption, while posing particular challenges in cases of grand corruption where the ruling elite have been implicated in the offending. It was suggested that it would not be desirable for prosecutors to be drawn into disputes with ‘victim states’, or expected to mediate or negotiate issues with external stakeholders in these circumstances.

³ Spotlight on Corruption background briefing (15 November 2024), “[Compensating the overseas victims of corruption](#)”.

⁴ *SFO v Rolls Royce plc* [2017] 1 WLUK 189, [83].

Throughout the discussion, various case examples were offered to illustrate these difficulties and their consequences. One participant pointed to the Democratic Republic of Congo’s settlement with Glencore as a warning that the shortcomings of the current framework are leading to compensation being resolved through untransparent settlements between highly corrupt regimes and corporate defendants in a way that risks perpetuating rather than repairing corruption.⁵

It was also noted that the challenge of securing victim compensation in complex corruption cases is not a problem experienced by the UK alone, with reference being made to the difficulties faced by the US Department of Justice in identifying victims of Glencore’s corruption.

Compensation is a policy choice requiring creative ambition

While the current legal framework for compensation has constrained the government’s stated aim that “*overseas victims should benefit from the positive outcome of bribery and corruption cases*”,⁶ it was agreed that ensuring reparations for the broader harms of corruption is ultimately a policy choice.

Participants drew attention to the disconnect between the government’s stated commitments to victims of corruption and the practical reality of victim compensation. One participant highlighted that compensation efforts too easily “*get lost behind big words*”, and that policy commitments often fail to outline *how* compensation goals will be achieved. Any reforms will therefore need to be driven by strong political will that makes delivering on compensation a priority.

It was also emphasised that greater ambition and innovation are required to develop solutions that will deliver meaningful reparations for the harms caused by corruption. This was underlined by one participant, who characterised compensation as “*more of an art than a science*”, alluding to the creativity that is needed to forge new models for compensating victims and incentivising corporate defendants to repair the impacts of their corruption.

Possibilities and priorities for reform

The primary aim of the 2024 roundtable was to spark creative, solution-oriented discussion that would help identify promising reforms that could achieve a step change in compensation for overseas victims of corruption. Thanks to the diverse expertise of our panel, a variety of insights and suggestions were offered, which can be grouped into four themes: (1) recognising the broader harms of corruption; (2) incentivising corporate defendants to identify and repair harms; (3) diversifying the routes to victim representation and compensation; and (4) coordinating and safeguarding the disbursement of compensation.

(1) Recognising the broader harms of corruption

At the heart of the problem with the UK’s current framework is that only the direct financial losses

⁵ See generally Resource Matters, Spotlight on Corruption and ANEEJ (12 December 2023), [The harms of Glencore’s corruption in the DRC and Nigeria](#); Global Investigations Reviews (5 June 2024), [NGOs call on Nigeria to explain \\$50 million Glencore settlement](#).

⁶ Cf. the Government’s stated aim of ensuring that “overseas victims should benefit from the positive outcome of bribery and corruption cases.” HM Government (11 December 2017), [UK Anti-Corruption Strategy](#), para. 6.10.

suffered by victims in “*straightforward*”⁷ cases are recognised and compensated. As one participant powerfully observed, this fails to grasp the real-life, non-financial impacts of corruption and risks marginalising the voices of those most affected by these broader harms. Corruption impoverishes communities and exacerbates inequality, it undermines the rule of law and sustainable development, and it breeds social instability and violence. In many cases of foreign bribery involving UK companies, those who bear the brunt of these harms are some of the poorest communities in the Global South.

In light of this understanding, participants explored various possibilities for widening the definition of “harm” for purposes of awarding compensation. It was pointed out that other areas of the law have already embraced more flexible and inclusive approaches to compensation that are not based on pure financial loss. For example, distinct approaches have been developed to recognise and provide compensation in a range of contexts from physical and mental health injuries to sexual offence-related injuries and even the effects of war crimes.

Particular attention was drawn to the interplay between corruption and human rights, with the suggestion that the human rights harms caused by corruption provide a useful lens for assessing compensation. Given the alternative models that have been developed in other areas of the law, there is nothing in principle preventing the broader harms of corruption from being recognised and compensated.

Turning to the question of how these broader harms could be quantified, it was suggested that the so-called “harm figure” (generally being the gross profits resulting from the bribery) could serve as a reference point for calculating compensation. Given the harm figure is already the subject of careful assessment for purposes of determining the fine to be imposed for corporate offending, this method has the benefit of providing a simple and efficient yet principled basis for awarding compensation.

Finally, a key insight emerging from the roundtable was that the method and process for determining the amount of compensation to be paid (such as reliance on the “harm figure” in criminal sentencing) could be separated out from questions about how and for whose benefit compensation should be disbursed.

(2) Incentivising corporate defendants to identify and repair harms

A recurring topic in the roundtable conversations was the question of how companies who have engaged in foreign bribery and corruption could be incentivised – or compelled – to repair the harms caused by their offending.

It was recognised that companies are well-placed to identify and help gather evidence of the harms caused by their corruption. This is especially important in light of the capacity constraints on law enforcement agencies tasked with investigating and prosecuting complex international corruption cases. One participant also pointed out that companies have a responsibility under the UN Guiding

⁷ *R v Kenneth Donovan* (1981) 3 Cr App R (S) 192.

Principles on Business and Human Rights to provide for or cooperate in the remediation of adverse human rights impacts they have caused or contributed to.⁸

The proposal advanced by Lord Garnier KC and Sam Tate was debated as a model that incentivises companies to take the initiative in paying compensation voluntarily on the basis this would not increase the overall financial penalty imposed at sentencing.⁹ On this model, companies would be encouraged to pay early, voluntary compensation to “victim states” equal to either the harm figure or the value of the bribes (whichever is higher in the circumstances). Through appropriate changes to the Sentencing Guidelines for bribery, this voluntary compensation could then be deducted from the financial penalties imposed at sentencing and potentially even lead to a further discount on the fine. Conversely, if a company has failed to pay compensation voluntarily, the fine may be increased by a similar amount.

While participants expressed support for stronger incentives to encourage companies to proactively and voluntarily engage with the issue of compensation, certain risks were identified and refinements suggested to strengthen this proposed model. This included concerns about corporate defendants negotiating compensation with foreign governments whose high-level officials may be implicated in the offending, and payments being made to countries with high risks of re-corruption without safeguards in place to ensure transparency or accountability. Questions were also raised about the role that prosecutors might be expected to play in this process, and the expectation that an agreement for payment of voluntary compensation – reached outside the criminal process – would be ‘rubber-stamped’ by the sentencing court. It was also suggested that voluntary compensation would more appropriately be put forward as a mitigating factor at sentencing rather than payments being deducted from the financial penalty according to a ‘dollar for dollar’ crediting system.

This exploration of ways to incentivise voluntary compensation also prompted the observation that there may be scope for more creative thinking about the use of “sticks” as well as “carrots”. Reference was made to the threat of debarment from public procurement as an effective deterrent, and it was suggested that financial sanctions might also offer a powerful tool to influence corporate behaviour and signal the UK’s commitment to ensuring the harms of corruption are compensated.

(3) Diversifying the routes to victim representation and compensation

In discussing the current approach to awarding compensation at criminal sentencing and exploring alternative approaches, the issue of how best to sequence compensation within the criminal enforcement process arose as a point of discussion.

It was noted that the payment of voluntary compensation in advance of sentencing would bring both challenges and opportunities. On the one hand, reorienting the timeframe for compensation could potentially open up new avenues for those affected by corruption to have their views heard in discussions about voluntary compensation which could subsequently be represented at criminal sentencing. Incentivising companies to take the initiative in identifying the harms caused by their

⁸ [UN Guiding Principles on Business and Human Rights](#), Principle 22: “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”

⁹ Lord Garnier KC and Sam Tate (7 September 2023), [UK must act to compensate foreign states in fight against corruption](#).

corruption also fills a gap that arises from the resource constraints which make it difficult for UK law enforcement bodies to gather evidence for purposes of both prosecution and compensation.

On the other hand, it was recognised that victims may face difficulties obtaining relevant evidence while criminal proceedings remain ongoing. In particular, defendant companies may be reluctant to make disclosures that could expose them to further liability – not only in the criminal process but also through civil claims.

Given the payment of compensation following conviction remains the most logical ordering, it was suggested that there may be merit in developing a kind of “follow-on” regime for claiming compensation. Drawing inspiration from the follow-on procedure in competition law, this would allow a civil claim for damages to be brought for conduct covered by the criminal conviction. It could offer an efficient route to compensation for harms beyond the direct financial loss caused by corruption without this burden falling on prosecutors.

The force of this proposal lay in the understanding that civil law was better suited to questions of causation and loss, and also possessed the procedural tools that could accommodate a diverse range of applicants.

Civil law routes may therefore help diversify the pool of potential claimants with standing to pursue compensation through the courts, which is particularly important in cases of grand corruption where the involvement of high-ranking officials complicates any notion of a “victim state”. One participant recommended that states should be confined to compensation for direct financial loss in such cases, while others should have standing to pursue reparations for indirect and consequential harms including the broader human rights harms caused by corruption. It was suggested there may be scope for differentiating various entities within the government in cases of grand corruption to avoid the dilemma of the “victim state”, but there was some scepticism about the viability of such separation in cases where corruption has been so pervasive.

The derivative claims system in company law offers a promising model for how the victims of corruption could be empowered to bring a representative action for damages that have affected large communities or even whole populations. Such a legislative scheme would provide a route to compensation in situations where the state has not taken steps to seek compensation.

Finally, the routes to compensation could also be broadened by amending Part V of the Proceeds of Crime Act 2002 to provide standing for victims (or non-governmental organisations representing them) to seek compensation for losses resulting from corruption.

(4) Coordinating and safeguarding the disbursement of compensation

Another key theme emerging from discussion of different models for awarding compensation concerned mechanisms to coordinate the interests of victims and safeguard the disbursement of funds to ensure they are used to benefit the victims of corruption.

The lack of oversight in the disbursement of court-ordered compensation was identified as a weakness of the current regime, particularly in grand corruption cases where there is a risk that funds awarded to the foreign state may be used to benefit those implicated in the offending. This was contrasted with the UK’s Framework for Transparent and Account Asset Return which sets out

safeguards for stolen assets to be returned and used for a clearly identified purpose. It was suggested that reforms to the compensation framework should set out clear principles that “mirror” those governing asset return, including transparency, accountability and civil society participation.

One participant pointed to lessons that can be learned from the experiences of other countries in asset return processes, observing that the most successful returns have generally earmarked funds for specific goals or projects. Reference was also made to the “cascade model” of restitution adopted by the French government in which efforts are made to reach agreement with the foreign government about the asset return process, but in the event of non-cooperation the French authorities may decide unilaterally how the assets will be returned and the purpose to which they will be put.

Given the undesirability of involving law enforcement agencies and the court in decisions of how compensation should be used, participants were keen to consider alternative mechanisms for managing this process. A number of participants expressed support for the role of a victims’ coordinator¹⁰ who could help coordinate the views of victims, facilitate meaningful engagement with relevant stakeholders, and oversee the disbursement of compensation for the agreed purpose. The victims coordinator would be a specialist, independent body who sits outside law enforcement and whose role is therefore distinct from any victims unit. Under this proposal, law enforcement agencies could assign cases to the victims coordinator to pursue compensation as part of a separate, but complementary, process to their criminal investigations.

In a similar vein, one participant drew attention to the International Criminal Court’s use of mobile offices across jurisdictions, allowing the ICC to engage directly with victims and conduct more comprehensive investigations into the impacts of international crime.

Finally, the idea was advanced of establishing a centralised compensation fund, which would be credited with the financial penalties brought in through prosecutions. A similar arrangement already exists in relation to some other areas of the law, such as a fund for victims of violent crimes.¹¹ If established, the victims coordinator could potentially draw on this centralised fund to disburse compensation.¹²

Conclusion

Achieving a step change in compensation for the overseas victims of corruption needs a clear policy commitment to recognise and repair the broader harms of corruption. This commitment needs to be backed by strong political will and accompanied by a practical roadmap for how reforms will be operationalised.

¹⁰ Alternative titles referenced in discussion included Compensation Champion or Ombudsperson. The role is distinct from the Victims’ Care Unit which is a common feature of UK law enforcement.

¹¹ The Criminal Injuries Compensation Authority (CICA) is a government-funded agency that compensates victims of violent crime in England, Scotland and Wales. The CICA administers the Criminal Injuries Compensation Scheme, which aims to acknowledge the harm caused to victims and provide a gesture of public sympathy.

¹² Spotlight on Corruption has proposed the idea of financial penalties and recovered assets being reinvested through an Economic Crime Fighting Fund following compensation to victims: See Spotlight on Corruption, (4 November 2024), [“Forging a virtuous circle: reinvesting fines and recovered assets to turbocharge the fight against economic crime”](#).

Given the various ways in which corruption investigations may be resolved – including Deferred Prosecution Agreements, corporate pleas and convictions, and civil settlements – it is likely that a multi-faceted approach to reforms may be most effective. This may include:

- Changes to the **sentencing guidelines** for foreign bribery to introduce a simple, efficient yet principled method for calculating compensation that moves beyond direct financial loss and reflects a recognition of the broader harms of corruption;
- The introduction of **legislative reforms** to diversify the routes for claiming compensation, such as a follow-on procedure and/or a representative action;
- The development of a **clear policy framework** for compensation which sets out fundamental principles of transparency, accountability and civil society participation; and
- The establishment of **new mechanisms** to help coordinate and represent the interests of victims, and administer the disbursement of compensation.

We are grateful to Serle Court for generously hosting the roundtable, and to all our participants for their invaluable contributions.