

Anti-corruption lessons for MedTech companies following first conviction for failing to prevent bribery

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Life science and MedTech companies of all sizes should review their anti-corruption procedures following the outcome of the first contested case under section 7 of the Bribery Act 2010 (the "Act"). After a two-day trial at Southwark Crown Court, Skansen Interiors Limited ("Skansen") was found guilty of failing to prevent bribery.

Skansen, an interior design company, was convicted under the Act after a jury found that the company did not have adequate procedures in place to prevent bribery.

As Skansen had self-reported the relevant circumstances, the case is an important reminder that self-reporting is not a guarantee that prosecution will be avoided.

The background

In *R v Skansen Interiors Limited*, it was alleged that senior Skansen executives had bribed a real estate project manager during a tender process so that Skansen would be awarded valuable refurbishment contracts. A new CEO at Skansen investigated their activities, the executives were dismissed and the company self-reported the matter.

The Crown Prosecution Service ("CPS") brought charges against the company and senior executives. The jury found Skansen guilty of failing to prevent bribery. As the company was dormant and had no assets, the court imposed an absolute discharge.

Self-reporting and adequate procedures

The Serious Fraud Office ("SFO") encourages self-reporting and this matter first came to the attention of the authorities following the company duly self-reporting what had occurred and the action they had taken. Although this case was brought by the CPS and not the SFO, it emphasises that while self-reporting will be a relevant consideration when deciding whether or not a case is prosecuted, it does not ensure that prosecution will not follow.

Section 7 of the Act creates an offence of failing to prevent bribery by persons associated with an organisation. This offence can only be committed by a commercial organisation, as defined in the Act. Section 7 also provides a defence for companies facing prosecution provided that the company in question can show that it had adequate procedures in place, designed to prevent bribery. Skansen sought to rely on this section 7 defence during the trial. However, this was not accepted and the jury returned a guilty verdict.

The case has reiterated the requirement for companies to ensure that they have in place "adequate procedures" as required under section 7 of the Act. It has confirmed that relying solely on other procedures e.g. accounting rules or other general policies, will not meet the requirements of the section 7 defence. Skansen had in place the type of general procedures that would be expected from a trading company, such as financial and accounting controls, but failed to have in place a specific anti-corruption policy at the time of the relevant offences. The case also illustrates the need for companies to ensure employees expressly confirm their acceptance of anti-corruption policies.

Being a small organisation also does not absolve a company from having a specific anti-corruption policy and relevant procedures in place. Skansen employed approximately 30 individuals, operating from the one area but no matter what the size of the company, specific procedures are required to be put into place in order to comply with the Act.

Lessons for MedTech and Life Sciences companies

MedTech and pharmaceutical companies seek to ensure compliance with self-regulated industry standards, such as the ABHI Code of Ethical Business Practice and the ABPI Code of Practice for the Pharmaceutical Industry, (respectively the "Codes") to assist them with their compliance with the UK anti-corruption regime. While compliance with the Codes does not guarantee compliance with UK anti-corruption legislation, it is a helpful place to start and will assist in showing that a company had adequate procedures in place, in accordance with the guidance issued by the [Ministry of Justice: Bribery Act 2010 Guidance: Adequate Procedures](#) (the "MoJ Guidance"). Notwithstanding the above, companies who comply with one of the Codes must still have robust anti-corruption policies and procedures in place in addition.

It is important to note that neither the MoJ Guidance nor the Skansen case explicitly state what "adequate procedures" means. However, the MoJ Guidance does provide a steer as to what such procedures should involve. The MoJ Guidance states that procedures should be "clear, practical, accessible, effectively implemented and enforced." The Guidance further confirms that "procedures" means "bribery prevention policies and the procedures which implement them."

Companies must also ensure that a senior member of the company is responsible for ensuring compliance with the Act. Ultimately, policies and procedures will vary between companies and are dependent on the nature and complexity of a company's business.

What should MedTech and pharmaceutical companies be doing?

- Be clear on the requirements of the Bribery Act.
- If no specific anti-corruption policy is in place, this should be done as soon as possible, regardless of the size of the company.
- Check compliance with the relevant industry standard. Non-member companies often still follow the relevant code.
- Ensure your anti-corruption policies are clear, have been implemented, communicated and are enforced, with training in place.
- International companies should review their policies and procedures to ensure they fully meet the UK regime, as compliance with other EU or US anti-corruption regimes does not guarantee compliance with the Act.

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