Corporate Criminal Liability

Submission to the Law Commission of England and Wales.

August 2021.

UK Anti-Corruption Coalition

Introduction and summary

The UK Anti-Corruption Coalition (UKACC) brings together eighteen of the UK's leading anti-corruption organisations who work to tackle corruption in the UK and the UK's role in facilitating corruption elsewhere.[1]

The UK is too often a destination of choice for corrupt and criminal actors looking to spend and stash their ill-gotten gains, aided by professional enablers who face too few consequences for their own criminality. Outdated corporate criminal liability laws are one of the issues that facilitate such a situation. These concerns, and our practical experience and expertise in tackling corruption, inform our submission.

Key recommendations:

- Attributing criminal liability to non-natural persons should be governed by the principles of (1) certainty and clarity, (2) fairness and equality before the law, and (3) credible deterrence for wrongdoing.
- The identification principle is not a satisfactory attribution model for corporate criminal liability. England and Wales' current model makes it nearly impossible to prosecute large, complex companies, poorly reflects the contemporary reality of such companies, and is increasingly out of step with international best practice.
- A form of vicarious liability is the most appropriate model for attributing criminal liability given the present reality of complex corporate structures. This model would help address the lack of successful prosecutions in England and Wales. In line with the Bribery Act, there should be a defence of appropriate procedures, but this must not be too broad and procedures must be more than a 'tick-box exercise'.
- Alongside reform to the identification principle, we strongly support the introduction of a failure to prevent money laundering offence, plus fraud and false accounting. This would draw on the successful implementation of these offences for bribery and tax evasion, ensuring consistency and avoiding the perception that certain economic crimes are tackled less seriously.
- We believe that these reforms would spur more robust governance procedures and lead, in turn, to more ethical and responsible business conduct. On the other hand, inaction will lead to ongoing damage; money laundering alone is estimated to cost the UK economy £100 billion per year.
- Civil penalties should not replace corporate criminal liability in England and Wales, for both reasons of principle and practicality. Criminal prosecution is still an important deterrent against wrongdoing and there is a trend towards criminal approaches where civil penalties have previously been used, such as in Germany. Moreover, the UK's fragmented and ineffective anti-money laundering regulatory system would in no way serve as an appropriate or sufficient accountability mechanism for corporate wrongdoing.

[1] For more information, please visit www.ukanticorruptioncoalition.org.

- The sentencing of non-natural persons should be (1) consistent, (2) facilitate the rehabilitation and/or reform of the corporate body, (3) ensure that compensation can be made to victims and that this compensation reflects the complexity of, and extent of harm caused by, corporate crime, and (4) ensures the publication of convictions and allows for accurate statistics on corporate prosecutions to be kept.
- We support more effective senior executive accountability, which can act as an important deterrent and build public confidence regarding appropriate consequences for economic crime. We note different options for achieving this such as an individual failure to prevent offence or an amendment to the Company Directors Disqualification Act 1986.

Responses to Questions:

1) What principles should govern the attribution of criminal liability to non-natural persons?

The principles for governing the attribution of criminal liability to non-natural persons should include:

- Certainty and clarity: The rules should be applied and interpreted consistently by prosecutors, courts, and corporates themselves. Good guidance is also essential to help companies ensure they are compliant with requirements.
- Fairness and equality before the law: All corporate bodies should be held to the same standard of conduct; the size and/or complexity of their structures should not dictate the likelihood of prosecution. In-keeping with this principle, extraterritoriality is key to capture the reality of global corporate activity.
- Credible deterrence: It is important that businesses see that there are consequences for wrongdoing, as this should help incentivise better corporate culture.

These principles are mutually reinforcing: certainty and clarity helps ensure fairness and equality before the law, and knowing that they are at equal risk of prosecution should act as a stronger deterrent for large corporates who have previously avoided being held to account for economic crimes.

2) Does the identification principle provide a satisfactory basis for attributing criminal responsibility to non-natural persons? If not, is there merit in providing a broader basis for corporate criminal liability?

We do not believe that the identification principle provides a satisfactory basis for attributing criminal responsibility to non-natural persons. While such an approach may have had merit in the past, it is no longer fit for purpose. And a broader basis for corporate criminal liability should be developed following the Law Commission's review. This is also clearly a widely held view, with 75.9% of respondents to the Ministry of Justice's Call for Evidence on corporate criminal liability reform arguing that the identification doctrine inhibits holding companies to account.[2]

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[2] Susan Hawley (November 2020), 'The UK's corporate crime rules – why urgent change is needed', *Spotlight on Corruption*.

There are three key reasons why reform of the identification principle is essential: it makes it nearly impossible to prosecute large, complex companies; it poorly reflects the contemporary reality of such companies, and; it is increasingly out of step with international best practice. Each of these reasons is outlined in more detail below.

The identification principle makes it nearly impossible to prosecute large, complex companies.

The Law Commission's consultation paper outlines that the challenge for the law is to "strike the balance" between holding companies to account for wrongdoing and imposing unreasonable burdens or unjustifiable legal liabilities. Yet evidence from key cases suggests that the law, as it stands, is failing to meet this objective:

- LIBOR/EURIBOR: Despite prosecuted individuals arguing that their actions were condoned and encouraged by employers, the Serious Fraud Office (SFO) has not charged any of the organisations involved in the LIBOR/EURIBOR affair. The Attorney General identified this case as one where the identification doctrine inhibited prosecution[3], while Sir David Green, the former Director of the SFO stated in 2016 that:

  "Tom Hayes [former UBS and Citigroup trader] was prosecuted in this country for his role in LIBOR manipulation. The operation of the identification principle meant that we could not touch the bank for which he worked whilst manipulating LIBOR. That bank was held to account for Hayes' conduct in a New York courtroom, where vicarious liability made the prosecution a much simpler matter."[4]

- Barclays: In February 2020, a fraud case arising from the 2008 Financial Crisis against Barclays Bank was dismissed, with the judge ruling that even the Chief Executive could not be held to be the directing mind and will of the business as he was answerable to the board. The ruling argued that only individuals with the power to act upon their own discretion, and independently of any higher authority within the company. This reasserted liability on stricter grounds than had previously been assumed, including by the Law Commission in their 2010 report.

The outcome of the trial led Sir David Green to argue that the acquittals would "turbo-charge arguments in favour of reform of the law on corporate criminal liability", with the SFO's current director, Lisa Osofsky, criticising the law as "a standard from the 1800s... that is not at all reflective of today's world."[5]

These decisions do little to reassure the public that large corporations can be held to account for misconduct. A 2018 poll, held on the ten-year anniversary of the collapse of Lehman Brothers, found that 72% of those surveyed believed that banks should have faced more severe penalties for their role in the financial crisis and 63% are worried that banks may cause another financial crisis.[6] Reform is urgently needed if public trust is to be restored in the financial sector and the criminal justice system's ability to hold it to account.

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[3] The Rt Hon Jeremy Wright QC MP (5 September 2016), 'Attorney General Jeremy Wright speech to the Cambridge Symposium on Economic Crime', *Attorney General's Office*.
[4] Sir David Green CB QC (5 September 2016), 'Cambridge Symposium 2016', *Serious Fraud Office*.
[5] Caroline Binham and Jane Croft (9 March 2020), 'Barclays: the legal fight over a company's 'controlling mind'', *Financial Times*.
[6] Simon Youel, 'Polling: 10 Years After the Financial Crisis, the British Public Still Don't Trust Banks', *Positive Money*.

The identification principle poorly reflects the contemporary reality of large, complex companies

The SFO's Director, Lisa Osofsky, has argued that the identification principle means "I can go after Main Street, but I can't go after Wall Street."[7] This problem has also been recognised by the UK Government itself. In the consultation document for the introduction of a failure to prevent tax evasion offence from 2016, the Government outlines that the current system of attributing criminal liability to a corporation means that:

> In large multinational organisations decision making is often decentralized and may be taken at a lower level than that of the Board of Directors, with the effect that the corporation can be shielded from criminal liability. This also makes it harder to hold such organisations to account compared to a smaller organisation where decision making is centralised.[8]

This inequity between the likelihood of prosecution for small and large companies has led to widespread criticism. Allens Arthur Robinson, in a paper for the UN Special Representative on Human Rights and Business, noted that the identification principle "is notorious for failing to secure convictions in relation to large corporations, even in high profile and allegedly incontrovertible cases."[9] As quoted in the Law Commission's discussion paper, James Gobert described this as a "theory of corporate liability which works best in cases where it is needed least and works least in cases where it is needed most."[10]

Arguments regarding the potential societal and economic consequences of wrongdoing by large companies should also lead us to consider the severity of different offences, particularly in the wake of the Barclays case. As noted by the Law Commission, the Barclays judgement marked a restating of a restrictive position under *Tesco v Nattrass* rather than the legal trajectory that they perceived developing after *Meridian*. While the Barclays trial dealt with charges of conspiracy to commit fraud during one of the most serious financial crises of the past century, *Tesco v Nattrass* dealt with a consumer complaint about being overcharged for washing powder. These offences can hardly be considered a comparable level of harm.

England and Wales' approach is out of step with international trends and best practice.

The Law Commission should also take into consideration prevailing trends in other jurisdictions and ensure that England and Wales keeps pace with best practice, as this is has relevance for the UK's reputation for the rule of law in a post-Brexit world. There is a clear trend toward stronger corporate criminal liability, with reforms recommended by the Law Commissions of Ireland and Australia and the EU's 6th Anti-Money Laundering Directive specifying the standard required for criminal liability for wrongdoing.[11]

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[7] Lisa Osofsky (18 December 2018), *Oral evidence: Serious Fraud Office, HC 1653*, Justice Committee.
[8] HM Revenue and Customs (17 April 2016), *Tackling tax evasion: legislation and guidance for a corporate offence of failure to prevent the criminal facilitation of tax evasion*.
[9] Allen Arthurs Robinson (February 2008), *'Corporate Culture' as a Basis for the Criminal Liability of Corporations*. Prepared for the use of the United Nations Special Representative of the Secretary General for Business and Human Rights.
[10] James Gobert, "Corporate Criminal Liability: four models of fault" (1994) 14 *Legal Studies*, cited in *Corporate Criminal Liability: A Discussion Paper* (9 June 2021), Law Commission of England and Wales.
[11] Susan Hawley (November 2020), 'The UK's corporate crime rules – why urgent change is needed', *Spotlight on Corruption*.

3) **In Canada and Australia, statute modifies the common law identification principle so that where an offence requires a particular fault element, the fault of a member of senior management can be attributed to the company. Is there merit in this approach?**

Our response to question 2 outlined the difficulties in securing prosecutions under the current regime in England and Wales, and the need to better 'strike the balance' between corporate accountability and legal burdens. Yet Canada and Australia have also experienced problems in securing successful prosecutions, with the Australian Law Reform Commission now advocating for changes to its own regime.[12] Given this, we do not believe that either the Canadian or Australian models would address our concerns regarding a lack of accountability for corporates who engage in or enable economic crime. We urge the Law Commission to consider the real-life outcomes of different attribution models in its conclusions, as well as their legal merit on paper.

4) **In Australia, Commonwealth statute modifies the common law identification principle so that where an offence requires a particular fault element, this can be attributed to the company where there is a corporate culture that directed, encouraged, tolerated or led to non-compliance with the relevant law. Is there merit in this approach?**

We reiterate our response to question 3 that the Law Commission should not adopt an approach which has failed to deliver successful prosecutions, given the need to redress the current imbalance in which large corporations have not been held to account. The Law Commission should also note that the Australian Law Reform Commission has recommended the removal of the ability to prove corporate fault on the basis of an absence of a culture of compliance.[13]

This is not to say that corporate culture is unimportant. Indeed, a genuine ethical corporate culture can act as a critical bulwark against corporate crime. Where wrongdoing or criminal proceedings have taken place, this should encourage a business to take steps to address problems with its culture. Instead our concern is that a fault element based on corporate culture would fail to deliver the clarity and certainty needed, and outlined as a key principle in our response to question 1, due to its amorphous nature.

5) **In the United States, through the principle of *respondeat superior*, companies can generally be held criminally liable for any criminal activities of an employee, representative or agent acting in the scope of their employment or agency. Is there merit in adopting such a principle in the criminal law of England and Wales? If so, in what circumstances would it be appropriate to hold a company responsible for its employee's conduct?**

We support the introduction of a form of vicarious liability to the criminal law of England and Wales, as we believe that this is the most appropriate method for attributing corporate liability to substantive offending for serious corporate crime in the current day and age.

The appropriateness of methods of attribution for the reality of large, complex companies is an

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[12] Australian Law Reform Commission (April 2020), *Summary Report: Corporate Criminal Responsibility*, ALRC Report 136.
[13] Samuel Walpole (8 March 2021), 'The Attribution Game – Corporate Fault and Attribution of Criminal Responsibility', *Oxford Business Law Blog*.

issue we raised in our response to Question 2. In relation to this issue, it is worth noting that some have argued that the early development of more complex corporate hierarchies in the US may have led to the earlier use of this less restrictive attribution model.[14] This can explain, in part at least, why the US has one of the strongest records on corporate prosecutions in the world. While we are not arguing that prosecutions should be encouraged for the sake of prosecution, we do believe that the lack of successful prosecutions in England and Wales is a serious problem that must be addressed.

Beyond the US, the Netherlands also has a strong record on corporate prosecutions and similarly uses a vicarious liability principle of attribution. In the Netherlands, factors relevant to attribution include, but are not limited to, when:

- i) The conduct constituting the offence falls within the scope of the corporate entity;
- ii) The corporate entity benefitted from the offence;
- iii) The offence was committed by an employee of, or a person working on behalf of, the corporate entity; and
- iv) The corporate entity could have prevented the conduct but did not do so and "accepted" it. Not taking reasonable care to prevent such conduct can also constitute "acceptance of the conduct.[15]

The Australian Law Reform Commission has also recommended that the Australian Government adopt a form of vicarious liability where an employee or agent acting with "actual or apparent authority" commits the criminality.[16]

Our preferred method of attribution would be adopting a form of vicarious liability in line with the Dutch model and incorporating recommendations by the Australian Law Reform Commission. We also note recommendations by the Irish Law Reform Commission, who have also recommended a stronger form of corporate criminal liability, but wish to highlight that their recommended formulation risks a lack of clarity and may allow for loopholes where employees or agents act without a specific policy-related function.

6) If the basis of corporate criminal liability were extended to cover the actions of senior managers or other employees, should corporate bodies have a defence if they have shown due diligence or had measures in place to prevent unlawful behaviour?

Yes, this approach has proved successful in the Bribery Act. However, the defence must not be too broad. For statutory offending, it is arguable that companies should have to show what proactive steps it took to prevent the offending. Moreover, the quality of due diligence or other measures must be closely interrogated during criminal proceedings – a 'tick-box' approach to corporate governance should not suffice as a defence.[17] This should also not provide a defence in cases where there is evidence of systematic behaviour or repeat offending.

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[14] Celia K. Wells (December 2014), "Corporate criminal liability: a ten year review", Crim LR., cited in Law Reform Commission of Ireland (2018), *Regulatory Powers and Corporate Offences Volume 2*.

[15] Clifford Chance (April 2016), *Corporate Criminal Liability*.

[16] Australian Law Reform Commission (April 2020), *Summary Report: Corporate Criminal Responsibility*, ALRC Report 136.

[17] Transparency International UK have developed principles and guidance for anti-corruption corporate transparency in their reports *Make it Count* (May 2021) and *Open Business* (March 2020).

The Ministry of Justice's accompanying guidance for the Bribery Act includes six principles for the prevention of bribery: proportionate procedures; top-level commitment; risk assessment; due diligence; communication (including training); and monitoring and review. These could be adapted for offences regarding the failure to prevent money laundering, fraud, and false accounting.[18] For an offence of failure to prevent money laundering, adequate procedures should complement the Proceeds of Crime Act 2002 and Money Laundering Regulations 2017.

Any guidance should be mindful of the need to provide examples and suggested procedures which are appropriate for SMEs as well as large corporations, as recommended by the Committee.[19] This would help ease any administrative burden created by a new offence for smaller businesses, as it is important that reforms do not replicate the current dynamic whereby large corporations can more easily evade prosecution.

7) What would be the economic and other consequences be for companies of extending the identification doctrine to cover the conduct along the lines discussed in questions (3) to (5)?

We believe that there are significant economic and societal benefits to be gained by stronger rules on corporate criminal liability. Stronger rules on corporate criminal liability will almost certainly lead to the adoption of more robust and comprehensive governance procedures. While harder to measure, it may also spur a re-evaluation within businesses of the risks associated with certain behaviours or clients. This is important, as we need to raise the costs of enabling or committing economic crime if we are to successfully deter it.

Nonetheless, while stopping these crimes being committed should be the ultimate goal, giving prosecutors the tools they need to hold corporations to account will also lead to less taxpayer money being spent on failed prosecutions or investigations. A by-product of reform, although not the purpose of it, may also be increased fine revenue in cases of corporate wrongdoing.

Conversely, the Law Commission should consider the consequences of *not* implementing reforms. The National Crime Agency estimates that money laundering costs the UK more than £100 billion per annum, resulting in a loss of confidence in the UK economy that is far harder to quantify.[20] Yet British authorities are yet to bring a successful corporate criminal prosecution against a UK bank for money laundering. Getting to grips with the UK's money laundering problem entails more than just corporate liability reform, but our current approach is simply not commensurate with the scale of the challenge we face.

Moreover, inaction poses challenges for the UK's reputation as a global leader in anti-corruption. Transparency International's *Exporting Corruption* (2020) report designated the UK as only one of four countries that actively enforce against foreign bribery amongst 47 leading exporting states.[21] However, the UK is at significant risk of losing this status, in part because of "inadequancies in its legal framework" which "inhibit the successful prosecution of large multinationals for substantive

[18] Ministry of Justice (2010), *The Bribery Act 2010: Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing*.
[19] House of Lords (March 2019), *The Bribery Act 2010: post-legislative scrutiny*, Select Committee on the Bribery Act 2010.
[20] National Crime Agency (17 May 2019), 'National Economic Crime Centre leads push to identify money laundering activity'.
[21] Transparency International (2020), *Exporting Corruption: Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention*.

bribery offences”.[22] These lessons from the Bribery Act highlight why it is essential that there is both reform to the identification principle and the introduction of a failure to prevent offence.

8) Should there be “failure to prevent” offences akin to those covering bribery and facilitation of tax evasion in respect of fraud and other economic crimes? If so, which offences should be covered and what defences should be available to companies?

Yes, we strongly support the introduction of a failure to prevent offence for certain serious crimes. In particular, there should be a failure to prevent money laundering offence, but we also support the creation of failure to prevent offences for fraud and false accounting.

The introduction of a failure to prevent offence for these crimes would ensure greater consistency in our approach to tackling corruption and economic crime. By not introducing failure to prevent offences for money laundering and fraud, the Government risks creating the perception that it does not take these offences as seriously as bribery or tax evasion, for which it introduced failure to prevent offences in 2010 and 2017. This would be a mistake, given the prevalence and seriousness of these crimes in the UK and their impact on our economy, national security, and global reputation:

- Global reputation: A total of 3,282 British companies were named in Suspicious Activity Reports (SARs) leaked in the FinCEN Files, the highest number of any in the world.[23] The leak also revealed that the US Treasury considers the UK a ‘high-risk jurisdiction’ for money laundering.[24]
- National security: A 2018 Foreign Affairs Committee report stated that “assets stored and laundered in London both directly and indirectly support President Putin’s campaign to subvert the international rules-based system, undermine our allies, and erode the mutually-reinforcing international networks that support UK foreign policy.”[25] Similarly, the Intelligence and Security Committee described in its Russia Report how “illicit finance could be recycled through what has been referred to as the London ‘laundromat’”.[26]
- Economy: As noted in Question 7, the National Crime Agency estimates that money laundering costs the UK economy £100 billion per year. The 2017 Annual Fraud Indicator estimates fraud losses to the UK at around £190 billion per year, with the private sector losing £140 billion of this figure.[27]

Economic crimes are complex offences and, though no silver bullet, reforms to England and Wales’ corporate criminal liability laws are an essential piece of the puzzle for tackling them.

A failure to prevent offence should be introduced alongside reforms of the identification doctrine if it is to have maximum impact. As noted in our response to Question 7, the UK is still experiencing problems in its enforcement of the Bribery Act, which has a failure to prevent

[22] Ibid.
[23] Rachel Davies Teka (24 September 2020), ‘What the FinCEN Files tell us about the UK’s role as an enabler of corruption and money laundering – and what needs to change’, *Transparency International UK*.
[24] BBC News (21 September 2020), ‘FinCEN Files: All you need to know about the documents leak’.
[25] House of Commons (6 September 2018), *Moscow’s Gold: Russian Corruption in the UK: Government response to the Committee’s Eighth Report*, HC 1488, Foreign Affairs Committee.
[26] House of Commons (21 July 2020), *Russia Report*, HC 632, Intelligence and Security Committee.
[27] National Crime Agency, *Fraud*. Accessed on 27 August 2021.

offence component, and that these could be at least partially resolved through implementing a different model of attribution.

There are two key reasons why a failure to prevent offence alone will be insufficient to tackle the problem of corporate wrongdoing. Firstly, failure to prevent offences are regarded as lesser offences by the courts and thus incur lower fine levels than substantive offending. This increases the risk that fines will be calculated as the 'cost of doing business' by large companies, and may unfairly penalise smaller companies who can be held to account for both offences. Secondly, failure to prevent offences do not result in mandatory exclusion from public procurement, unlike a conviction for a substantial offence. This increases the likelihood of smaller companies being excluded from the opportunity to win public contracts, while larger offenders may continue to do so.

In the interests of consistency, similar defences should be introduced as those that exist for the Bribery Act.

9) What would be the economic and other consequences for companies of introducing new "failure to prevent" offences along the lines discussed in question (8)?

In line with our answers to Question 7 and 8, we believe that there are significant economic and societal benefits to be gained from a more effective criminal regime for holding corporations to account for economic crime, and serious risks associated with inaction.
There is also practical evidence from the Bribery Act, which includes a 'failure to prevent' offence. Post-legislative scrutiny of the Act carried out by a Parliamentary Select Committee concluded that:

> the new offence of corporate failure to prevent bribery is regarded as particularly effective, enabling those in a position to influence a company's manner of conducting business to ensure that it is ethical, and to take steps to remedy matters where it is not.[28]

The Committee also recommend that any guidance makes clear that all businesses conduct a risk assessment, that all but the smallest are likely to need procedures tailored to their particular needs, and that staff will need to be trained to understand and follow these procedures.[29]

Rather than being seen as an unwanted or unnecessary burden, many companies have commended the Bribery Act and testified to its efficacy. For example, FTI Consulting noted that the Act had a "tangible effect" and led to many companies thinking "long and hard about compliance", while Deloitte noted that "organisations have embraced the requirement to conduct a bribery and corruption risk assessment."[30]

Concerns about the impact of such offences on SMEs may also be overstated. A Government study, conducted five years after the passing of the Bribery Act, found that 89% of SMEs were aware of the Act and did not feel that it had impacted their ability or plans to export and 90%

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[28] House of Lords (March 2019), *The Bribery Act 2010: post-legislative scrutiny*, Select Committee on the Bribery Act 2010.
[29] Ibid.
[30] Transparency International UK, *Collated Written Evidence Volume (BRI0003)*, Select Committee on the Bribery Act 2010.

reported that they had no specific concerns or problems.[31]

Given positive reflections on the introduction of a failure to prevent offence in the Bribery Act from businesses, we do not believe there would be negative economic consequences from introducing such an offence for money laundering, as well as fraud and false accounting.

10) In some contexts or jurisdictions, regulators have the power to impose civil penalties on corporations and prosecutors may have the power to impose administrative penalties as an alternative to commencing a criminal case against an organisation. Is there merit in extending the powers of authorities in England and Wales to impose civil penalties, and in what circumstances might this be appropriate?

Civil penalties should not replace corporate criminal liability in England and Wales. We believe that the stigma of criminal prosecution is a crucial deterrent against corporate misconduct, particularly in the case of substantive offences and to a lesser extent in failure to prevent offences.

The Australian Law Reform Commission have noted that, "there is concern that the paucity of corporate criminal prosecutions, and regulators' frequent reliance on civil penalty provisions, have led to a mindset that the penalties imposed are little more than a cost of doing business."[32] This is why effective criminal prosecution is an important element of ensuring accountability for wrongdoing. It is also worth noting that in Germany, a jurisdiction where there has traditionally been no 'formal' corporate criminal liability, legislation has now been proposed which would introduce a category of corporate crimes, as noted in the Law Commission's discussion paper. This shows a clear shift away from a model which relies solely on civil methods of liability for corporate wrongdoing.

In its assessment of the merits of this approach, the Law Commission should also consider how well the UK's system for civil regulatory penalties currently works. In the case of money laundering, we know that the UK's system is dysfunctional; there are multiple supervisory bodies overseeing money laundering compliance in regulated sectors, leading to a fragmented and ineffective system. Research from Transparency International UK has identified that these bodies have too often failed to identify risks, are hampered by conflicts of interest, and have an inconsistent, untransparent, and ineffective approach to enforcement.[33] In its current state, it would in no way serve as an appropriate or sufficient accountability mechanism for corporate wrongdoing.

There is, however, a place for the increased use of civil penalties where criminal prosecutions cannot be pursued due to the standard of evidence available or where it would not be in the public interest, and we are hopeful that the UK's regulatory and supervisory system will be reformed in light of current Government consultation. Regardless, civil penalties would not be appropriate in cases where wrongdoing is egregious, sustained, causes significant harm, forms a system of conduct, or is repeated.

[31] HM Government (2015), *Insight into awareness an impact of the Bribery Act 2010 among small and medium sized enterprises (SMEs)*.
[32] Australian Law Reform Commission (April 2020), *Summary Report: Corporate Criminal Responsibility*, ALRC Report 136.
[33] Transparency International UK (October 2019), *At Your Service: Investigating how UK businesses and institutions help corrupt individuals and regimes launder their money and reputations*.

11) What principles should govern the sentencing of non-natural persons?

The sentencing of non-natural persons should be (1) consistent, (2) facilitate the rehabilitation and/or reform of the corporate body, (3) ensure that compensation can be made to victims and that this compensation reflects the complexity of, and extent of harm caused by, corporate crime, and (4) ensures the publication of convictions and allows for accurate statistics on corporate prosecutions to be kept.

12) What principles should govern the individual criminal liability of directors for the actions of corporate bodies? Are statutory "consent or connivance" or "consent, connivance or neglect" provisions necessary or is the general law of accessory liability sufficient to enable prosecutions to be brought against directors where they bear some responsibility for a corporate body's criminal conduct?

We support more effective senior executive accountability, as this can act as an important deterrent and build public confidence regarding appropriate consequences for economic crime. At present, the current level of liability for directors falls short of what is needed to fulfil these objectives.

An option for to delivering this is the creation of an individual failure to prevent offence for directors, which the Law Commission noted in its Consultation Paper could be appropriate "in circumstances where the commission of an offence by a corporate body was attributable to the neglect of one or more directors."[34] Another option would be amending the disqualification procedure under the Company Directors Disqualification Act 1986 so that disqualification could be an option for prosecutors where there is sufficient evidence of unfitness or misconduct but no criminal prosecution. From our perspective, what is most important is that prosecutors have the tools they need to ensure individual accountability in cases of egregious or sustained wrongdoing.

13) Do respondents have any other suggestions for measures which might ensure the law deals adequately with offences committed in the context of corporate organisations?

No comment.

[34] Law Commission of England and Wales (9 June 2021), *Corporate Criminal Liability: A Discussion Paper*.

The UK Anti-Corruption Coalition brings together the UK's leading anti-corruption organisations who, through their work, witness the devastating impact of corruption on society.

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