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ENGLAND AND WALES

VICTIMS OF CORRUPTION: DAMAGE REPARATION AND LEGAL STANDING

INTERNATIONAL DATABASE 2022

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VICTIMS OF CORRUPTION WORKING GROUP

CIVIL SOCIETY UNCAC Coalition

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Year 2022

Scope

There are a number of different aspects of the legal framework in England and Wales which may be engaged in answering these questions. Consequently, we have not sought to cover every possible offence or type of proceedings that could be relevant, but to answer the specific questions asked offering explanations and notable case examples.

This report covers the position in respect of the laws of England and Wales. Please interpret any references to the UK as being made in that context. We are not Scottish qualified lawyers, but we understand that different statutory tests for standing in Scottish law may apply as well as different common law approaches. In that regard, the Human Rights Consortium Scotland's briefing paper 'Standing in Scots Public Law Litigation' (June 2020) may provide a helpful starting point.

1. Legal Standing

1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

(A) Overview

Whether a civil society organisation ("**CSO**") or citizen will have standing in a corruption related case and what their role in such a case would be depends on the type of offence involved, the nature of the proceedings being brought and whether the citizen and/or the CSO is directly affected by the relevant events.

In England and Wales, proceedings are generally either criminal or civil in nature. Judicial review proceedings (through which applicants with sufficient standing may challenge certain decisions or actions taken by governmental or public bodies) may be classed as constitutional or administrative (as well as civil). Proceedings may also be brought by regulators against those whose activities fall within their perimeter or remit. Such proceedings can be civil or criminal in nature.

Conduct amounting to corruption and bribery can trigger a number of criminal offences which would typically be prosecuted by criminal investigation and enforcement agencies in the UK, including the Serious Fraud Office ("**SFO**"), the National Crime Agency (the "**NCA**") and the Crown Prosecution Service (the "**CPS**"). They may also deploy civil law remedies when seeking to recover the proceeds of such conduct in addition to the powers of the criminal courts to award compensation to victims As noted above, proceedings may also be brought in appropriate circumstances by relevant regulatory authorities including the Financial Conduct Authority (the "**FCA**"), the Financial Reporting Council (the "**FRC**") and the Solicitors Regulation Authority (the "**SRA**"). Corruption and bribery and related conduct may also form a basis for civil claims, including for fraud and bribery.

(B) Criminal proceedings

In the UK, criminal prosecutions are almost exclusively brought by a relevant enforcement agency, rather than individuals or CSOs. This is due to a mix of: (i) a recognition of the historic and constitutional role of the state in investigating and enforcing breaches of the criminal law; (ii) the need for specialist expertise and access to statutory powers of investigation to successfully bring such cases, particularly where complex; and (iii) the financial and resource implications of conducting an investigation and bringing a prosecution.

Criminal enforcement authorities prosecute cases in the name of the Crown (i.e. the state) and not on behalf of the victims of any alleged criminal offending. All cases brought must meet the 'full code test'. There are two elements to this test: prosecutors must be satisfied that (i) there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge and (ii) bringing the prosecution is in the public interest. The impact of the alleged offending on any identifiable victims is a factor which will have a bearing on whether this test (and in particular the second limb) has been met.

There are a number of authorities that investigate and enforce corruption and related offences and regulatory breaches in the UK, including: (i) the police; (ii) the CPS; (iii) the NCA; (iv) the SFO; (v) the FCA; (vi) the Prudential Regulation Authority ("**PRA**"); and (vii) Scotland's Crown Office (please see paragraph 1.3 on the position

in Scotland) and the Procurator Fiscal Service (Crown Office), though this list is not exhaustive.[1] Agencies generally take a collaborative approach to combating and preventing corruption in the UK and are able to share certain information with each other.

Individuals and/or CSOs may also be able to bring a private criminal prosecution for corruption and bribery offences. Such actions have grown in popularity in recent years, though they remain far less common than UK enforcement authority prosecutions. We discuss private prosecutions further below.

There are a number of potential outcomes to a successful criminal prosecution (including private prosecutions). These include:

- fines (usually including financial penalties and orders for costs and/or compensation to the harmed parties, where these have been awarded);
- custodial penalties (for individuals);
- confiscation orders; and
- Deferred Prosecution Agreements for corporate defendants ("**DPAs**") (as referred to in more detail below).

The law in England and Wales does not have one single statute pertaining to anti-corruption. Instead, the legal framework is made up of a number of statutes relating to offences synonymous with corruption. These include: [2]

A. The Bribery Act 2010

   This covers both public and private sector bribery, which may take the form of securing commercial opportunities or other advantages through corruption, corrupt hiring practices, bribes masked as commissions, bribes disguised as charitable donations, small bribes and facilitation payments, excessive hospitality as bribery, direct cash payments as bribes and electoral bribery.

[1] See UNODC Country review report of the United Kingdom of Great Britain and Northern Ireland (publishing.service.gov.uk); sections 1 and 2.
[2] Transparency International UK, "Corruption Laws"; and The Law Reviews - The Anti-Bribery and Anti-Corruption Review: UK - England and Wales for more information.

B. The Prevention of Corruption Acts 1906 and 1916

(1) These are historic pieces of legislation which made it an offence (formerly classified as a misdemeanour), subject to imprisonment for up to 7 years, for a person to obtain or give "*any gift or consideration*" as an inducement or reward for doing any act, or showing favour or disfavour to any person, in relation to his "*principal's*" affairs (i.e. the person that they are acting on behalf of) or to knowingly falsify receipts, accounts or other documents with the intent to deceive the principal.

(2) They were repealed in their entirety in July 2011 by the Bribery Act 2010, but can and do form the basis for prosecutions brought in relation to conduct which pre-dates the coming into force of that Act.

C. The Public Bodies Corrupt Practices Act 1889

(1) This is a historic piece of legislation which made the active or passive bribery of a member, officer or servant of a public body a criminal offence.

(2) It was repealed in its entirety in July 2011 by the Bribery Act 2010 but, as above, conduct which pre-dates the coming into force of that Act may be prosecuted as offences under the Public Bodies Corrupt Practices Act 1889.

D. Misconduct in public office (common law offence)

(1) This offence is confined to those who are public office holders and carries a maximum sentence of life imprisonment. It is committed when:

(a) a public officer (acting as such);

(b) wilfully neglects to perform their duty and/or wilfully misconducts themselves;

(c) to such a degree as to amount to an abuse of the public's trust in the office-holder; and

(d) without reasonable excuse or justification.

E. Bribery (common law offence)

The common law offence of bribery is rarely charged as there is significant overlap with the statutory offences set out above. It entails "*the receiving or offering [of] any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity*".[3] Therefore, one of the parties involved must be the holder of a public office. However, to note, the offence will be committed whether or not the intended bribe was actually given. A 'public officer' is an officer who discharges any duty which is in the public interest, more clearly so if he is paid out of a fund provided by the public.

F. Proceeds of Crime Act 2002

The Proceeds of Crime Act covers the confiscation or civil recovery of the proceeds of crime including corruption and contains the principal money laundering offences in the UK.

G. Fraud Act 2006

H. The Fraud Act creates three categories of fraud: (i) fraud by false representation, (ii) fraud by failing to disclose information, and (iii) fraud by abuse of position.

H. Theft Act 1968

Section 1 of the Theft Act may arguably apply to embezzlement (there is no UK legislation that creates a specific offence for embezzlement) as it states that a person is guilty of the offence of theft if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

I. Political Parties, Elections and Referendums Act 2000

[3] J. W. Cecil Turner, Russell on Crime (12th ed, Stevens & Sons Ltd., 1964), 364.

There are 112 offences relating to political donations established in the Political Parties, Elections and Referendums Act.

J. Constitutional Reform and Governance Act 2010

(1) Ensures that appointments to the civil service are based on merit, not cronyism and nepotism.
(2) The Equality Act 2010 also prevents the discrimination of protected groups in a variety of situations, including at work. This may form the basis of a legal challenge in alleged cases of nepotism or cronyism, however there are no examples to provide evidence of this.

K. Public Contracts Regulations 2015

(1) This covers the regulation of procurement and purchase of contracts for goods, works and services by public sector bodies and certain utility bodies.
(2) The regulations further lay out statutory principles of procurement, procedure and rules surrounding publication and transparency.
(3) Chapter 6 sets out the remedies available where the regulations have been contravened, such as a declaration of ineffectiveness (where a contract has been entered into (regulation 98)); or setting aside the action concerned (where a contract has not been entered into (regulation 97)).
(4) The regulations also make provision for the debarment (exclusion) of commercial parties from tenders for public contracts where they have been convicted of corruption and related offences (regulation 57).

(C) Private prosecutions

Individuals and organisations can also bring a private criminal prosecution.[4] A private prosecution is a criminal prosecution started by a private individual or entity which is not acting on behalf of the Crown, the police, CPS or any other

[4] Further information about, and guidance on good practice in, private prosecutions is available through the Private Prosecutors' Association.

state investigating or prosecuting authority. Private prosecutors are not strictly required to apply the 'full code test' before commencing a prosecution but in practice many do, given the risk that cases which do not meet that threshold will be referred to the Director of Public Prosecutions ("**DPP**") / CPS and dismissed (as explained further below).

Any person (including an individual or a corporate) has the right to bring a private prosecution under section 6(1) of the Prosecution of Offences Act (POA) 1985. It is common for private prosecutions to be brought by individuals or entities who are alleged victims of criminal offences. There are also a number of organisations that frequently prosecute cases before the courts as private bodies, such as the RSPCA. Private prosecutions may also be brought by other third parties, including CSOs. In many cases in practice, the private prosecution will be prepared and/or conducted by a firm or company that is external to the private prosecutor, such as a law, accountancy or private investigative firm.

Private prosecutions can be quicker than public prosecutions and may be brought where public prosecution authorities lack resources, expertise or have decided not to pursue a case for other reasons. One particular benefit is that private prosecutions can offer opportunities to counter any corruption in enforcement authority decisions not to prosecute certain cases. For instance, Lord Diplock in the case of *Gouriet v Union of Post Office Workers*[5] stated that private prosecutions are "*a useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders against the criminal law*" [498].

The largest successful private prosecution to date is the case of *R v Somaia*[6] which concerned nine offences of obtaining money transfer by deception with a value of US $19.7 million. The prosecution was brought by an individual victim of the fraud, Mr Mirchandani. In return for short term loan payments, Mr Somaia had promised Mr Mirchandani various business opportunities and stakes in his companies, which he fraudulently claimed were worth up to $500 million. In 2016, Mr Somaia was ordered to pay over £38 million in compensation and confiscation

[5] Gouriet v Union of Post Office Workers [1977] UKHL 5.
[6] Mirchandani, R (on the prosecution by) v Somaia [2017] EWCA Crim 741.

and was sentenced to eight years' imprisonment. He was described by the judge as a "*formidable and serial fraudsman on a truly Olympian scale*".[7]

As alluded to above, it should be noted that the DPP / the CPS has the power under s6(2) of the Prosecution of Offences Act 1985 to take over any private prosecution at any stage, and, having done so, may choose to continue or dismiss the prosecution. An application taken over by the DPP will be dismissed where the requirements of the 'full code test' are not met. They may learn about a private prosecution in a number of ways, but most commonly through a referral by the defendant, prosecutor or court.

There are also some limitations as to which offences may be prosecuted privately. The consent of the Attorney General or the DPP is a prerequisite to bringing a private prosecution for certain types of offending, including prosecutions under the Bribery Act 2010. If an offence requires the DPP's consent to prosecute and such consent is given, the CPS (applying its current guidance) will take over and conduct the prosecution. This means that a private prosecution will not in practice offer a route to prosecuting Bribery Act offences for a victim or a CSO. However, other corruption related offences may be prosecuted using this route.

Other key points to note include that private prosecutors are subject to the same Minister of Justice obligations as public prosecuting authorities, but have fewer powers. This can make it more difficult for private prosecutors to access relevant evidence (including witness evidence), particularly where the evidence is located overseas. There are also plans to change the rules which govern the recovery of costs in private prosecution cases to limit the amount recoverable from central funds (i.e. the State) by private prosecutors. This may deter some parties from bringing such actions.

There is currently no register of private prosecutions maintained in England and Wales (though the Government has indicated that one ought to be established) and so we cannot identify how many private prosecutions relating to corruption offences have been brought.

[7] See The Guardian - Tycoon Ketan Somaia guilty of $19.5m swindle - 13 June 2014 and The Mirror - Truly Olympian Fraudster ordered to pay back £38.6m - 12 Jan 2016 for further commentary on the case.

(D) Civil proceedings

In broad terms, civil proceedings can be brought by individuals or entities (which would include CSO's) who have suffered a breach of a contractual right or damage whilst under a duty of care owed to them by another and, in either case, have suffered loss as a result. Civil claims serve a different purpose to criminal proceedings, their primary aim being to seek recovery of, or compensation for, losses. They are not intended by the courts to be punitive in nature. Consistent with that, damages are the principal remedy sought in civil proceedings. Other remedies include rescission of contract, injunctions and orders for specific performance and recovery of assets.

In those circumstances, individual citizens and CSOs may have legal standing to bring a civil action against a party in respect of alleged corruption and bribery. Civil claims may be brought on a number of different bases and articulated in different ways. For the purposes of this report, we have focused on claims which may be brought for bribery or fraud.

Bribery is recognised as a civil wrong in common law (as well as a criminal offence under the Bribery Act 2010, as noted above), covering payments made to agents without their principals' knowledge or consent.[8] Under English law, an agent is a person who is recognised at law as having the power to create or alter legal rights, duties or relationships of another person, the principal. The main elements required for a civil offence of bribery are that there must be an agency relationship, a material benefit (which does not necessarily need to be monetary and could include benefits such as a job offer)[9] which is obtained by the agent in secret (being without the knowledge of the principal) and that the giver of the benefit knew that the payee was acting as an agent. The classification of a benefit as a bribe is important because, whilst in these circumstances other civil actions may be available, various principles regarding the influence the bribe has over the

[8] Ross River Ltd v Cambridge City FC [2008] 1 All ER 1004, Briggs J at paragraph 203 (judgment not available on BAILII), see also Petrotrade Inc v Smith [2000] 1 Lloyd's Rep 486 (judgment not available on BAILII).

[9] Amalgamated Industries Ltd v Johnson & Firth Brown Ltd (Unreported) 3 April 1981, (Chancery Division).

agent, the briber's motive and loss / wrongdoing will apply once a payment has been classified as a bribe, which potentially assist a claimant.[10]

A claim for civil fraud will generally involve an allegation of the making of a false statement or suppressing / withholding of the truth, where there is a duty to disclose to truth. There is no single cause of action for civil fraud and heads of claim alleged may include the tort of deceit, fraudulent misrepresentation, breaches of fiduciary duties, knowing receipt, dishonest assistance, conspiracy / unlawful means conspiracy, unjust enrichment and breach of contract based on fraud or other offences. Civil fraud is only actionable as one or more specific claims, proven to the civil standard 'on the balance of probabilities'. What must be made out in each case is dictated by nature of the claim, the relevant facts and the parties alleged to have been involved. Dishonesty is not always a prerequisite but is often pleaded.

(E) Judicial review proceedings

Judicial review proceedings allow 'interested parties' to act as a check on public authority decision making. It is important to note that such actions do not provide a basis for challenging the merits of a specific decision by a public authority, but whether such a decision was correctly made and implemented according to the applicable law. Consistent with that, judicial review does not provide a route to an appeal against a decision and the courts do not substitute their own decision for that of the decision-maker. They can however direct that the decision be made again (if possible) in the correct manner.

Judicial review proceedings are commenced by filing a claim form which sets out the matter the claimant wants the court to decide and the remedy sought. The claim must be submitted promptly and (generally) within three months of the grounds giving rise to the claim (*Greenpeace No. 2*).[11] The court's permission is required for a claim for judicial review to proceed and the applicant must have 'standing' to bring proceedings. The current test for standing is set out in section

[10] Shipway v Broadwood [1899] 1 QB 369 (judgment not available on BAILII); Otkritie International Investment Management Ltd v Urumov [2014] EWHC 191 (Comm), at 68(ii); Anangel Atlas Compania Naviera v IHI [1990] 1 Lloyd's Rep 167, at page 170) (judgment not available on BAILII); Parker v McKenna (1874) 10 Ch App 96 (judgment not available on BAILII).
[11] Greenpeace Ltd v HM Inspectorate of Pollution No. 2 [1994] 1 WLR 570.

31(1) of the Senior Courts Act 1981. The court may only grant permission for an application for judicial review if they consider "*that the claimant has a sufficient interest in the matter to which the application relates.*"

Individuals who are victims of a specific and identifiable decision of a public body would very likely have the clearest grounds on which to consider standing as they would have an individual and direct 'interest' in the matter at hand. Individuals who are not directly affected by alleged corruption may still be able to bring a claim however, if they are deemed to have raised an issue of public importance that would not otherwise be raised may have sufficient standing, as occurred when William Rees-Mogg brought a private claim against the implementation of the Maastricht Treaty which, whilst unsuccessful on the merits, was given standing (*R v Ex Parte Lord Rees Mogg*).[12]

This 'sufficient interest' requirement has been extended to a broad test, including both (i) the notion of "*associational standing*",[13] which has allowed a civil society organisation to issue a claim, in effect, on behalf of local members who were effected by an issue[14] and (ii) the concept that standing can be generated purely by considerations of public interest.[15] In the latter case, a civil society organisation successfully challenged a government decision regarding an overseas development scheme, where it was noted that said civil society organisation may be the only group who would realistically be able to bring a claim "*vindicating the rule of law*".

Claimants in judicial review proceedings have historically included both campaigning organisations (such as Corner House Research and the Campaign Against Arms Trade)[16] and individuals, with the Supreme Court noting that "*it will be necessary for a person to demonstrate some particular interest in order to demonstrate that he is not a mere busybody... [b]ut there may also be cases in which any individual, simply as a citizen, will have sufficient interest to bring a*

[12] R. v Secretary of State for Foreign and Commonwealth Affairs ex p. Rees-Mogg [1993] EWHC Admin 4.
[13] Greenpeace Ltd v HM Inspectorate of Pollution No. 2 [1994] 1 WLR 570.
[14] R v Fairoaks Airport Ltd, ex parte Roads [1999] COD 168 (judgemnt not available on BAILII).
[15] R v Secretary of State for Foreign Affairs ex p. The World Development Movement Ltd [1994] EWHC Admin 1.
[16] Corner House Research & Ors, R (On The Application of) v The Serious Fraud Office [2008] UKHL 60.

public authority's violation of the law to the attention of the court."[17] This is, however, a complex area of law and many applications (by CSOs and others) are refused permission.[18] Where such applications do proceed, a range of outcomes may follow due to the need for the court to balance often competing interests.

1.2 Type of Cases

We refer to those matters set out the section above.

1.3 Legal basis under which citizens have legal standing

We refer to those matters set out in section 1.1.

1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

In relation to corruption cases in the UK, third party interventions are most commonly seen within the context of judicial review. Outside of judicial review proceedings (and usually not relevant to corruption cases), interveners might also play a role in family proceedings or in financial remedy proceedings where a third party's rights may be affected.

It is possible to make an intervention in UK civil (i.e. non-judicial review) proceedings in respect of appeals. For appeals to the Supreme Court, '*any person and in particular any official body or non-governmental organisation seeking to make submissions in the public interest*' can apply to the court for permission to intervene in the appeal (or make written submissions to the court in support of an application for permission to appeal and request that the court takes them into account (SC Rules 26 and 15)).

A relevant example of an intervention in non-judicial review proceedings in the UK came in *Belhaj and Another v Jack Straw and Others (2017)*.[19] Here, the appellants sought judgment indicating that their substantive claim (against various UK government officials, alleging their complicity in torture and arbitrary

[17] Walton v The Scottish Ministers (Scotland) (Rev 1) [2012] UKSC 44.
[18] For cases lodged in 2012, this was only 1 in 6, Ministry of Justice - Judicial Review Proposals for further reform - September 2013.
[19] Belhaj & Anor v Straw & Ors [2017] UKSC 3.

detention in foreign countries) was not precluded by state immunity. JUSTICE, the International Commission of Jurists, Amnesty International and REDRESS all intervened jointly in the case[20]. These organisations submitted that dismissing the claims would effectively grant impunity to UK officials to facilitate torture. The Supreme Court found unanimously in favour of the appellants, allowing the substantive trial against the UK government officials to progress.

In the context of judicial review, the court has the general power to allow 'any person' to file evidence or appear as an 'intervener'. Interveners are not directly affected by a claim, but they may have an interest in the potential ramification of the case or the wider public interest with which it is concerned.

An intervenor under judicial review may include:

(A) non-governmental organisations and charities;

(B) government departments that have responsibility for, or an interest in, the area of law litigated. The Equality and Human Rights Commission ("**EHRC**") for instance has specific powers to intervene in litigation it sees as raising important human rights or equality issues; and

(C) private interest interventions made by trade associations and similar bodies that represent the commercial interests of companies who may be impacted by a claim.

As a matter of general principle, when deciding whether to permit an intervention the court will consider what, if anything, the intervener can add to the hearing; it has been emphasised that it is not the role of an intervener to merely repeat points made by the existing parties.[21] The court will also consider the benefits of such an intervention against the inconvenience, delay and expense which the intervention could cause to the existing parties.

If the court concludes that a prospective intervener can usefully assist the court in determining the claim, permission to intervene will usually be granted. Expertise which a CSO may add as an intervenor could include information about the broader factual and/or policy background or expertise in comparative approaches

[20] See Belhaj and Others v. Jack Straw & Others - JUSTICE
[21] Northern Ireland Human Rights Commission, In Re [2002] UKHL 25.

to the issue in question. Industry bodies (such as certain international bodies within the airline industry) have been found to have sufficient expertise.[22]

There is limited case law on when it will be appropriate for the court to exercise its discretion to allow an intervention by CSOs in judicial review proceedings, but one example worth considering is HM Treasury v Ahmed,[23] a case heard by the Supreme Court concerning the legality of a sanctions regime in which a CSO, JUSTICE, was granted permission to intervene.

A third party could also be joined to civil proceedings as a party pursuant to CPR 19.2(2)[24] to enable the court to resolve the matters in dispute. The court has the power to add other entities or individuals as a new party to civil proceedings to either resolve all, otherwise separate matters in dispute, or if it is 'desirable' to add the new party to proceedings. There is limited guidance on the meaning of 'desirable', but unless a CSO was directly affected by the conduct which is the subject of the claim i.e. suffered damage as a result, it is difficult to envisage a scenario where it would have any basis for being joined as a party or would want to (principally, because of potential own costs consequences), and/or where that would be necessary to resolve a matter in dispute.

Outside of limited applications regarding ensuring the transparency of proceedings, being added to proceedings as either an intervenor or a new party is not usually available in relation to criminal proceedings.

There are complex rules around expert evidence in civil cases in England and Wales.[25] Broadly, parties can apply to rely on independent expert evidence in criminal and civil proceedings. Expert evidence is admissible to furnish the court with information which is likely to be outside the experience and the knowledge of a judge or jury. Expert evidence is admissible in judicial review cases, but it is very rarely required (as explained, in judicial review cases the court's role is to assess the lawfulness of a decision on the evidence available to the decision

[22] R. (on the application of Air Transport Association of America Inc) v Secretary of State for Energy and Climate Change [2010] EWHC 1554 (Admin) (judgment not available on BAILII).
[23] HM Treasury v Ahmed & Ors [2010] UKSC 2. Also see Justice.org - To Assist the Court: Third Party interventions in the public interest, page 4.
[24] CPR, Part 19.2 – Parties and Group Litigation.
[25] CPR, Practice Direction 35 – Experts and Assessors.

maker, not to make a ruling as to the merits of said decision). We might typically see expert evidence in a case relating to corruption or fraud to be provided by forensic accountants rather than by a CSO. It is also unlikely that a CSO could be considered sufficiently independent to act as an expert witness.

1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens.

As set out above, in the UK enforcement agencies prosecute criminal offences in the name of the state and not on behalf of individual victims. The principal role of individuals in criminal corruption cases, including individuals who may be victims, is to act as witnesses. This can be on a voluntary or compelled basis.

We are aware of one example where a UK enforcement authority, the SFO, intervened in Greek criminal proceedings on behalf of a UK citizen who had been convicted of conspiracy to corrupt in the UK (and so was a defendant rather than a victim) and was the subject of a Non-Prosecution Agreement granted by the US authorities. In this case, the defendant was indicted by a Greek investigating judge who sought to try him on counts of fraud and money laundering based on the same facts as his UK conviction and based largely on material provided by the SFO to the Greek authorities through the mutual legal assistance regime, following his previous conviction in the UK.[26] After the SFO's Associate General Counsel appeared before the Greek court as a witness in his support, the defendant was acquitted of fraud and money laundering.

1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens

We are not aware of an instance where a foreign State or non-State institution has intervened on the behalf of the citizens of another country in corruption cases pursued in the UK.

[26] N.b. this matter was procedurally unusual as there were complexities over the principle that an individual should not be convicted twice for the same crime. This is beyond the scope of this report.

There are a number of cases where foreign states have brought claims against international commercial entities in the English courts, where those courts have jurisdiction a result of either the governing law of any underlying contractual terms or in relation to any duties or obligations owed by the international entity operating in the UK. For example:

A. a claim related to the 'tuna bonds' scandal was brought by Mozambique against Credit Suisse, three of its former bankers, and shipbuilder Privinvest over allegedly corrupt loans designed to help the country's fishing industry;[27] and
B. a claim by Nigeria against JP Morgan regarding allegations that JP Morgan failed to fulfil a specific civil law duty owed by banks to their clients (called the 'Quincecare Duty').[28] Here, three transfers were made by JP Morgan on the instruction of persons authorised to give those instructions under the terms governing the operation of a depository account. It subsequently transpired that those instructions were made fraudulently, and the payments were made to a shell company controlled by a corrupt former oil minister and used to make other illegitimate payments.

2. Cases

2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists or citizens.

There have been a number of corruption related cases (and in particular judicial review proceedings) brought by CSOs. The most well-known example is the case of *R (Corner House Research) v Director of the Serious Fraud Office*,[29] which concerned a judicial review application made by Corner House Research (an NGO involved in the Campaign Against Arms Trade coalition) in respect of the SFO Director's decision to halt an investigation into allegations of bribery connected to arms contracts with Saudi Arabia. The investigation was closed following a threat allegedly made by a representative of the Saudi Government to the Prime

[27] Spotlightcorruption - Mozambique and the "Tuna Bond" Scandal.
[28] JP Morgan Chase Bank NA v The Federal Republic of Nigeria [2019] EWCA Civ 1641.
[29] Corner House Research & Campaign Against Arms Trade, R (on the application of) v Director of the Serious Fraud Office & Anor [2008] EWHC 714.

Minister's Chief of Staff relating to future contractual arrangements which would have damaged the security of the UK if implemented. The Administrative Court initially declared that the decision to drop the investigation violated the rule of law. However, the Administrative Court's decision was reversed on appeal. The House of Lords concluded that the Director was entitled to decide that the public interest in pursuing an important investigation into alleged bribery was outweighed by wider public considerations of national security and diplomatic interests.

The Good Law Project, a non-profit organisation, has brought several applications for judicial review related to alleged corruption in government decision making. One recent case concerned the £4.8 billion 'Levelling Up Fund', which The Good Law Project alleged was a scheme to unlawfully send taxpayer cash to areas considered to be of "*political benefit to the Conservative party*", such as local communities in marginal seats potentially sympathetic to the Conservatives.[30] Permission to make a judicial review application against the Secretary of State for Housing, Communities and Local Government, the Chancellor of the Exchequer and the Secretary of State for Transport was granted by the High Court in August 2021.[31] The application was subsequently withdrawn in January 2022 after disclosure of certain documents was received from the Government. In *Good Law Project v The Secretary of State for Health and Social Care*, the High Court ruled in May 2021 that the Government's practice of awarding lucrative personal protective equipment contracts via a 'VIP lane' to those with political connections was illegal and in breach of EU principles of equal treatment and transparency.[32] Similarly, The Good Law Project is also launching judicial review proceedings regarding specific PPE contracts awarded during the pandemic, particularly the $50m payment made to Florida jeweller Michael Saiger to act as a 'middleman'.[33] All of The Good Law Project's cases relating to 'Upholding Democracy' are crowdfunded.[34]

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[30] The Independent - Boris Johnson facing corruption legal battle over £4.8bn levelling-up fund - 24 Aug 2021.
[31] Goodlawproject.org - Good news: We're going to Court - 23 Aug 2021.
[32] Good Law Project Ltd & Anor, R (On the Application Of) v The Secretary of State for Health and Social Care [2022] EWHC 46. For commentary see: The Guardian - Use of VIP lane to award covid PPE contracts unlawful, high court rules - 12 Jan 2022.
[33] Good Law Project - Saiger Case - Good Law Project.
[34] Good Law Project - Upholding democracy - Good Law Project.

In 2019, Marcus Ball, a self-titled social entrepreneur and founder of not for profit organisation *Stop Lying In Politics* applied for a summons to be issued commencing a private prosecution in respect of alleged misconduct in public office by Boris Johnson (the now UK Prime Minister who, at the time, was a Conservative Party leadership candidate and Member of Parliament).[35] The application focused on three offences of alleged misconduct in public office relating to Mr Johnson's claims that membership of the EU was costing the UK £350m per week when he allegedly knew that such comments were false or misleading. The application was granted initially by the Magistrates' Court and a summons for Mr Johnson to attend the Crown Court was issued.[36] The case was subsequently dismissed by the High Court, following a successful judicial review application by Mr Johnson, which found that the District Judge had acted unlawfully by issuing the summons.[37] Despite the outcome, this case is a useful example of how a private prosecution for alleged corruption could be brought against the state. Interestingly, the claim was crowdfunded – which could provide an interesting funding option for CSOs considering pursuing similar causes of action.[38]

Other organisations have brought private prosecutions in relation to other financial crime offences, such as fraud. For example, it is a tool used regularly by the anti-piracy lobby group, Federation Against Copyright Theft ("**FACT**").

There are also examples of legal action having been taken by CSOs against the UK Government regarding issues other than corruption which it may be helpful to consider. For example:

(A) Global Witness applied to the High Court in July 2010 for judicial review of the government's alleged failure to forward information on British companies and individuals trading in 'conflict minerals' from the Democratic Republic of Congo to the UN Sanctions Committee, as they

[35] Marcus J Ball Personal Website.
[36] The Guardian - Judge rejects court action against Boris Johnson over £350m Brexit claim - 14 August 2019.
[37] Johnson v Westminster Magistrates' Court [2019] EWHC 1709 (Admin).
[38] Crowdfunder.co.uk - Marcus Ball v's Boris Johnson - a Politics crowdfunding project in London by Radiator Productions Ltd.

should have done under UN Resolutions from 2008 and 2009. The High Court refused permission for judicial review on 27 October 2010.[39]

(B) The environmental law charity ClientEarth is in the process of suing the UK Government in respect of its alleged 'inadequate net zero strategy' and will argue that its failure to set out suitable policies to combat climate change is unlawful. ClientEarth argue that the absence of a suitable policy disproportionately impacts the human rights of younger generations, whose rights to life and to family and private life under the ECHR will suffer. Once the claim is filed, and the Government's defence is submitted, ClientEarth will need the court's permission to proceed to a full hearing of the case.

(C) The case of *HM Treasury v Ahmed*[40] concerned the legality of the Terrorism (UN Measures) Order 2006 and the Al-Qaida and Taliban (UN Measures) Order 2006. These orders were made by HM Treasury pursuant to s.1 of the United Nations Act 1946 (the "**UN Act 1946**") which authorises the making of such orders as are 'necessary or expedient' to give effect to UN Security Council Resolutions, in this case to suppress and prevent the financing and preparation of acts of terrorism. The Orders provided for the freezing of assets of designated individuals without time limit. They operated in effect to deprive such a designated person of all resources, essentially restricting freedom of movement and affecting third parties such as their families.

The appellants argued that the Orders were *ultra vires* because they went further than the UN Security Council Resolutions required and allowed the Treasury to unilaterally freeze an individual's assets based on 'reasonable suspicion' that they might be involved with terrorism or terrorist financing. They argued that this was a lower bar than when 'necessary' as stipulated under the UN Act, meaning that the Treasury had expanded the group over which it could exercise this control without Parliamentary input.

JUSTICE became the first NGO to intervene at the Supreme Court in support of the appellants' case. They submitted that, under the principle of legality, only Parliament could impose an asset freezing regime: "*because*

[39] The Financial Times - Global Witness to sue UK over Congo - 26 July 2010.
[40] HM Treasury v Ahmed & Ors [2010] UKSC 2.

such a regime interfered with fundamental rights, it was necessary that the controls imposed should be necessary, proportional and certain and attended with basic procedural safeguards under which the individual would secure a fair hearing and effective judicial protection. These were matters for Parliament, not the executive." They also submitted that "*the 1946 Act could not, on its true construction, authorise orders which interfered with fundamental rights.*"

The orders were found to go beyond the requirements imposed by the relevant UN Security Council Resolution and to provide no right to challenge actions taken before a court, therefore offending the principle of legality and violating Convention rights. Conferring unlimited discretion on an executive body as to how these resolutions were to be implemented was 'wholly unacceptable' and conflicted with the basic rules at the heart of democracy. The Supreme Court saw this as a clear example of an attempt to adversely affect the basic rights of the citizen without the clear authority of Parliament. The Supreme Court held that both orders should be quashed as *ultra vires* the UN Act 1946.

We are not aware of any corruption cases brought by journalists, though they may apply for access to documents or other information related to ongoing civil or criminal cases, for the purposes of reporting on those cases. There is specific provision for such applications in the civil and criminal procedural rules, and there is a considerable amount of case law which addresses the 'open justice' principle, on which those rules are based. These applications are outside of the scope of this note, but we can provide further information separately if relevant.

As noted above, the majority of prosecutions for alleged corruption are brought by the relevant UK enforcement authorities. We have published a corruption enforcement tracker which gives details of prominent corruption enforcement actions taken or being taken by those authorities since 2008 which you may find helpful, should you wish to consider the broader enforcement landscape in the UK. We have also published a DPA tracker covering all DPAs entered into between corporate defendants and the UK enforcement authorities. Many of these cases concern alleged corruption.

3. Collective Damage

3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (environmental damages, human rights, corruption, among others)

It is, in theory, possible for multiple claimants to obtain damages under English law. We discuss the ways in which class actions / collective proceedings can be advanced and limitations to these in response to the question below. 'Collective damages' as a concept does not exist under English law. 'Collective redress' could be obtained under the statutory regime for claims before the Competition Appeals Tribunal (the "**CAT**").

In addition to formal class actions / collective proceedings (further discussed below), a civil claim could be brought in the names of multiple claimants. In an unusual example involving thousands of claimants, over 48,000 former shareholders of Railtrack PLC brought a claim for compensation against the government for misfeasance in public office and claims under the Human Rights Act 1998 following the decision to put the company into administration. The claim was dismissed by the High Court.[41] The court also has the power to consolidate different proceedings and try multiple claims together under its general case management powers.[42]

It is also possible for shareholders to bring certain claims against listed companies they are invested in. Shareholders may bring claims for alleged untrue or misleading statements (or omissions) made to the market, contrary to either section 90 or section 90A FSMA. Section 90 claims relate to statements made in listing particulars or a Prospectus, whereas section 90A claims relate to statements made to the market in a broader range of announcements (including, for example, in annual or interim reports). Note these claims can only be brought by shareholders, who would be claiming for loss in value of their shares caused by

[41] The Guardian - Railtrack shareholders lose compensation fight - 14 October 2005.
[42] CPR, Part 3.1(2) - The Court's Case Management Powers.

the untrue or misleading statement(s) or omissions.[43] Section 90A claims in particular can be difficult claims to bring because shareholders must prove reliance on the statements/omissions.[44]

There are no particular restrictions on the subject matter of claim that can be brought as a class action / collective proceeding (except for competition law related proceedings before the CAT).

3.2 Procedures for advancing class-actions.

There are procedures available for advancing class actions or collective proceedings in England and Wales. However, they are not that common or easy to bring successfully compared to certain other countries such as the US or Australia where "opt-out" regimes are common.

There are three ways of advancing class actions in England and Wales, which are:

(1) Group litigation orders;

(2) Representative actions; and

(3) Collective actions on an opt-in or opt-out basis before the CAT (relevant for competition law claims only).

(A) Group Litigation Orders ("GLOs")

The most established way of bringing a collective action is by applying for a GLO. A GLO is essentially an order for claims to be managed together and is an order made by the court under CPR 19.11 to provide for the case management of claims which "*give rise to common or related issues of fact or law*".[45] A GLO is an 'opt-in' regime; claimants specifically opt to join proceedings by issuing their own claim form in respect of their individual claim and then claimants wishing to join proceedings seeking a GLO must apply to enter the group register. The court may

[43] For more background see: Simmons & Simmons Insights, Section 90A FSMA claims and Simmons & Simmons Insights, Section 90A FSMA claims: who can bring them?.
[44] Simmons & Simmons Insights, FSMA s90A: proving reliance; and Simmons & Simmons Insights, Section 90A FSMA claims: recent decisions.
[45] CPR, Part 19 - Parties and Group Litigation. GLO is defined in CPR 19.10. CPR 19.11 to 19.15 are relevant to GLOs and Practice Direction 19B provides the procedure for applying for a GLO.

refuse applications to join the register if it is not satisfied that the case can be conveniently managed as part of the GLO.

GLOs have been granted for claims relating to a variety of areas including: product liability; personal injury; tax; and insurance. The government publishes a list of GLOs, which includes most GLOs made since the regime was introduced in 2000.

Any remedy that may be available in standard civil proceedings can be sought by the claimants – it will be for the court to decide whether the remedies sought by the claimants can be appropriately litigated under a GLO. Damages must in principle be calculated on an individual basis for each claimant, since the GLO is a case management tool to manage the individual claims (but the claims are not aggregated or combined).

A GLO will not be permitted where the court considers it more appropriate for the claims to be consolidated or for there to be a 'representative action' (discussed below).

(B) Representative actions

Under CPR Rule 19.6, the court may direct that where more than one person has the "*same interest*" in a claim, that claim may be begun or continued by one or more of those persons as representatives of any other person who has that interest. Representative actions proceed on an 'opt-out' basis, where there is no need for all claimants to be joined as parties to the action or identified individually. However, representative actions have not been widely brought as the courts have narrowly interpreted "*same interest*" – it must be a common interest; common questions of facts or law would not be sufficient.

A key recent case brought as an opt-out representative action and heard in the Supreme Court is the case of *Lloyd v Google*.[46] This case relates to data protection law. Though not directly relevant to corruption offences, it is a key case in the UK's evolving class actions landscape. As the case was brought as an opt-out representative action, it was necessary for Mr Lloyd to establish that the class (four

[46] Lloyd v Google LLC [2021] UKSC 50. For our analysis, see: Simmons & Simmons Insights, 10 November 2021, Decision in Lloyd and Google and Simmons & Simmons Insights, 18 November 2021, Lloyd v Google: closing floodgates and opening doors?.

million individual iPhone users) shared the "*same interest*" in relation to the alleged breach, either in respect of the impact of the breach or in damages incurred. It was accepted that it would not be possible in practice to carry out the factual exercise of identifying who had suffered what particular levels of harm. Mr Lloyd sought to argue it was possible to identify an "*irreducible minimum of harm*" suffered by each individual as a mere result of having lost control over their data. The amount of damages recoverable by each person would be a matter for argument, but he advanced £750 per person. The Supreme Court rejected the claimants' attempt to use an opt-out representative action in this case on the basis that (i) a breach of the Data Protection Act 1998 (in force at the relevant time) was not actionable per se and, as such, it was necessary to establish individual damage or distress arising from the breach (mere loss of control of data not being enough), and (ii) given the need to establish the extent of individual damage or distress, it was not appropriate for a case where claimants had suffered differing levels of harm to be brought as an opt-out representative action. Lord Justice Leggatt commented there was a potentially permissible way of bringing a representative action for mass data breach litigation whereby the first stage would be to bring an opt-out representative action to establish breach (of data protection law) and, if successful, the second stage would be to bring a claim for individual redress (for instance using a GLO).

There is no formal restriction on the type of remedy that may be claimed, however the Supreme Court has held (in *Lloyd v Google*) that representative actions are not suitable for cases where individualised apportionment of damages is required.

(C) Collective actions for competition claims before the CAT

Section 47B of the Competition Act 1998, which came into force on 1 October 2015 following an amendment made by the Consumer Rights Act 2015, enables a class of consumers or businesses to bring a private action for losses suffered as a result of a UK competition law infringement.[47] Actions can be brought on either an "opt-in" or an "opt-out" basis before the CAT. The regime only covers

[47] The procedure is governed by The Competition Appeal Tribunal Rules 2015.

compensatory damages and injunctive relief, meaning that punitive/exemplary damages[48] are unavailable.[49]

Examples of collective proceedings relating to corruption:

We are not aware of many collective proceedings relating to corruption in England and Wales.

Following a US Department of Justice inquiry into the mining company Glencore in connection with corruption in the Democratic Republic of Congo, Venezuela and Nigeria, and Glencore confirming the SFO had launched a bribery investigation, some institutional investors were reportedly planning to bring a group action against the company relating to alleged misstatements made which caused a drop in share price.[50] Earlier this week (on 24 May 2022), Glencore announced it had reached a resolution with US, UK and Brazilian authorities in relation to the criminal investigations, agreeing to pay up to around $1.5 billion (around $1 billion to US authorities, $40 million to Brazilian authorities, and with the penalty to be paid to the SFO to be determined following a sentencing hearing scheduled in June 2022).[51] As also reported in Glencore's statement, Swiss and Dutch authorities' investigations are ongoing. It is not clear from publicly available information whether the potential shareholder collective action in the UK is proceeding or not.

Recently, 145 institutional investors have brought a claim against Standard Chartered Bank under section 90A FSMA. In 2019, Standard Chartered Bank was fined regarding poor money-laundering and anti-bribery controls and for breaching sanctions against countries including Iran.[52] In the recent action, investors claim the bank reported that it had ceased transactions with customers

[48] Punitive/exemplary damages are damages in excess of the claimant's loss, intended to punish the defendant rather than compensate the claimant. Punitive/exemplary damages are only available under English law in limited circumstances, such as (but not only) where the defendant's conduct is oppressive or unconstitutional and the money made from their wrongdoing will probably exceed the damages normally payable to the claimant.
[49] s.47A of the Competition Act 1998.
[50] City AM - Glencore threatened with class against lawsuit that could run into the billions - 5 December 2019.
[51] Glencore Reaches Coordinated Resolutions with US, UK and Brazilian Authorities; Glencore to pay $1bn settlement amid US bribery and market abuse allegations | Glencore | The Guardian
[52] The Guardian - Standard Chartered fined $1.1bn for money-laundering and sanctions breaches - 9 April 2019.

in Iran and had adequate bribery controls in place in Indonesia at times when these statements were untrue. Standard Chartered Bank has denied claims it misled investors.

Additionally, a news-worthy example of collective proceedings is the class action against Volkswagen.[53] More than 90,000 claimants were seeking compensation after buying cars from the Volkswagen Group which emitted more nitrogen dioxide (an air pollutant) than the company had claimed. The Volkswagen Group admitted in 2015 to manipulating 11 million vehicles worldwide to cheat in their emissions tests. The collective claim in the UK alleges Volkswagen installed "defeat devices" in their vehicles, enabling cars to run in one mode emitting a level of gasses above the permissible level, but then switch to another mode emitting a lower level when they were undergoing emissions tests. This follows a GLO made on 11 May 2018, with GLO issues including (among others) whether defendants knowingly or recklessly made false representations with the intention of deceiving claimants and which the claimants relied on suffering loss, and whether there was a breach of implied term of satisfactory quality in contracts relating to affected vehicles.[54] The first hearing was in December 2021, Volkswagen lost their bid to have the claim struck out[55], and the trial was set to go ahead in January 2023. However, just this week (on 25 May 2022), it has been reported a commercial settlement has been reached, with Volkswagen making no admissions in respect of liability, causation or loss, and agreeing to pay around £193 million in to the claimants plus a contribution towards their legal costs and fees.[56]

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[53] See commentary on the claim: The Guardian - Dieselgate: British car buyers' claim against VW reaches high court - 5 December 2021. See Volkswagen's statement: Volkswagen UK, Our Position. Link to judgment on preliminary issues: Crossley & Ors v Volkswagen Aktiengesellschaft & Ors [2019] EWHC 783 (QB). Link to subsequent judgment regarding applications: Crossley & Ors v Volkswagen Aktiengesellschaft & Ors [2021] EWHC 3444 (QB) (20 December 2021).
[54] HM Courts & Tribunal Service - GLO #105 - 11 May 2018.
[55] Evening Standard, VW loses bid to have Dieselgate lawsuit dismissed.
[56] VW settles £200m 'Dieselgate' claims | News | Law Gazette.

4. The Role of the victims of corruption

4.1 Definition of victims of corruption or common definition used by the courts in this country

The United Nations Convention against Corruption (the "**Convention**") does not seek to define victims of corruption but sets out guidelines for States to adhere to when adopting their individual approaches. The overriding description is that any approach taken should be as "*broad and inclusive*" as possible, whilst "*recognizing that individuals, entities and States can be considered victims of corruption*".[57] Many States, the UK included, seek to rely on existing definitions and provisions on victims of crime and compensation for damages enshrined in national law.

The Convention noted three common legislative approaches to defining victims of corruption, either:

(A) defining in criminal law who is a 'victim' of crime and what rights a victim is entitled to;

(B) whilst not explicitly referring to a 'victim', establishing the right of an 'injured'/'harmed'/'aggrieved' person to seek compensation; and

(C) providing the possibility to seek compensation through civil provisions or through tort law.

The approach that is taken by the UK in relation to defining victims of corruption follows that described in 5.3(B) above. There is also the possibility for victims to seek compensation through civil proceedings for harm caused by corruption.

However, whilst there is no commonly used definition for victims of corruption under English law, a Discussion Paper on Compensating Victims for the Harm of Overseas corruption published by Corruption Watch and RAID in 2018 (the "**Discussion Paper**") identified that *"[i]n general, UK courts only recognise states or competitors as victims in overseas corruption cases*" and that "*Judges have*

[57] unodc.org - Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation - working group - 4 Aug 2016.

also recognised on various occasions that the real victims are the people of a country".

4. 2 Cases that recognize the role of victims

(A) Criminal proceedings

In general, the role of a victim of proceedings for a corruption offence (where identifiable) would be as a witness for the enforcement agency prosecuting the offence. In a private prosecution the victim may also act as the prosecutor.

Where a criminal case concludes with a conviction or a guilty plea, the prosecutor can apply for an order requiring compensation to be paid by the offender to the victim for any personal injury, loss or damage caused by the offence. In order for a court to make a compensation order, the victim and the quantum must be either established by evidence or agreed with the offender. Specifically, the court will want to know the identity of the victim; that their loss results from the offence; and the quantum of their loss. If the court makes a compensation order in favour of a victim, the court does not have the power to order how that compensation will be spent.

Since December 2012, courts must consider making a compensation order where they can.[58] A compensation order must specify the amount to be paid under it, which must be the amount that the court considers appropriate, having regard to any evidence and any representations that are made by or on behalf of the offender or the prosecution. In determining (a) whether to make a compensation order against an offender, or (b) the amount to be paid under such an order, the court must have regard to the offender's means. Where a defendant has insufficient means to pay both compensation and a fine, the court must give preference to the compensation (though it may impose a fine as well).[59] The Definitive Guideline issued by the Sentencing Council on Fraud, Bribery and Money Laundering offences in relation to corporate offenders echoes this approach, and confirms that reasons should be given by the court if a compensation order is not made in any particular case.

[58] s. 63, Legal Aid, Sentencing and Punishment of Offenders Act 2012.
[59] s.135, Sentencing Act 2020.

Compensation is also integral to the DPA regime introduced in February 2014. A DPA is an agreement reached between a prosecutor and an organisation which could be prosecuted, under the supervision of a judge pursuant to which the prosecution is suspended for a defined period of time and then dismissed, provided that certain conditions are met by the offending organisation.[60] Compensation for the victims of the alleged offending is one of the requirements that can be imposed through the agreement. Indeed, the DPA Code of Practice stipulates that it is "*particularly desirable that measures should be included [in the terms of the DPA] that achieve redress for victims, such as payment of compensation.*"

The SFO, CPS and NCA have published General Principles for compensation (the "**General Principles**") which aim to help ensure that prosecutors more routinely apply for compensation orders in favour of victims. The principles commit the three agencies to:

1. consider compensation in all relevant cases;
2. use whatever legal means to achieve it;
3. work cross-government to identify victims, assess the case and obtain evidence for compensation, as well as identifying means by which compensation can be repaid in a transparent, accountable and fair manner (avoiding further corruption);
4. produce guidance on the implementation of the General Principles;
5. proactively engaging with law enforcement in affected states; and
6. publish information on concluded cases.[61]

Compensation orders have been made in a number of enforcement actions for overseas corruption, including cases resolved by DPAs, convictions in contested cases and guilty pleas, as well as orders made as part of civil recovery proceedings. We refer you to the very helpful Discussion Paper and the accompanying table of cases cited at paragraph 5.5 above, which summarises key examples up to 2018.

Since the publication of that Discussion Paper, the following further orders have been made:

[60] Serious Fraud Office - Deferred Prosecution Agreements.
[61] Serious Fraud Office - General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases.

1. *Ao Man Long, 2018* – £28.7 million was returned to the Macao Special Administrative Region following the conviction of Ao Man Long, former Secretary of Transport and Public Works, for corruption offences. All UK-based assets, part of the US$100 million hidden in offshore assets and over 100 bank accounts, were seized and their value returned.
2. *Alstom Power Ltd (Engineering) ("**Alstom**"), 2019* – along with John Venskus and Göran Wikström, Alstom pleaded guilty to bribing senior Lithuanian figures to win contracts relating to a power station refurbishment. Alstom was fined £6,375,000 and required to pay £700,000 in costs and £10,963,000 in compensation to the Lithuanian government.
3. *G4S Care and Justice Services (UK) Ltd ("**G4S**"), 2020* – The SFO conducted an investigation into electronic monitoring contracts. Three former executives were charged with seven offences of fraud against the Ministry of Justice in relation to these contracts. By entering into a DPA, G4S accepted responsibility for three offences of fraud and required G4S to pay a penalty of £38.5 million and the SFO's full costs of £5.9 million. No compensation order was made as compensation to the Ministry of Justice had already been paid as part of a prior civil settlement.
4. *Amec Foster Wheeler Energy Limited ("**Amec**"), 2021* – The SFO entered into a £103 million DPA with Amec relating to the use of corrupt agents in the oil and gas sector. Under the DPA, Amec is required to pay a penalty and costs totalling £103 million in the UK, which was part of a global US$177 million settlement with the UK, the US and Brazil. This included a compensation payment of £210,610 to the people of Nigeria as victims in this case.

Despite that the fact that a number of orders have been made, as recognised in the Discussion Paper, the complexity of overseas corruption cases can act as a significant barrier to victims receiving compensation. In particular, compensation is less likely to be obtained where:

(1) the bribery is widespread and global;

(2) the bribery is routed through intermediaries and payment to individuals is not established;

(3) there is no evidence of an inflated contract or substandard/unwanted product and direct loss cannot therefore be established;

(4) there has been no compensation request from an affected party or no contact established with authorities in an affected country; or

(5) it is not clear to whom the compensation should be paid (this is particularly an issue if bribes were paid to state-owned enterprises).

(B) Civil proceedings

As noted above, those who have suffered damage as a result of the actions of others may bring civil claims to recover those losses. The role of a victim in these proceedings is as a claimant, whose witness evidence would be crucial for the case.

Examples of cases where a victim has brought claims for losses allegedly caused by corruption include the case of *Al-Gaood v Innospec Ltd (2014)*,[62] where a Jordanian company claimed damages in the High Court from the defendant companies for alleged conspiracy to injure the claimant by engaging in corrupt practices – in particular the bribery of officials within the Iraqi Ministry of Oil – which the claimant alleged resulted in it not being selected to deliver contracts which it otherwise would have won. The claim was ultimately dismissed as the claimant was unable to demonstrate that it would have won the contracts in the absence of the defendant's corruption.

Alternatively, a company may be considered as a victim of its employee's bribery. In *UBS AG v Kommunale Wasserwerke Leipzig GmbH (2017)*,[63] an agent of UBS

[62] Jalal Bezee Mejel Al-Gaood & Partner & Anor v Innospec Ltd & Ors [2014] EWHC 3147 (Comm).
[63] UBS AG (London Branch) & Anor v Kommunale Wasserwerke Leipzig GmbH [2017] EWCA Civ 1567; for commentary see: Simmons and Simmons Insights - FML Timeline: UBS AG v Kommunale Wasserwerke Leipzig GmbH – 9 February 2018.

was also the financial advisor to KWL and paid a bribe to KWL's managing director resulting in the company acquiring complex derivative products from UBS. The judges at first instance and in the Court of Appeal granted recission of the contracts between UBS and KWL.

Similarly, in *Petrotrade Inc v Smith (Vicarious Liability) (2000)*,[64] the defendant port agents were vicariously liable for bribes paid by their employees to the Operational Manager of the claimant (who subsequently entered into a commercial agreement with the defendant company). The port agents were ordered to pay fraud damages and restitution to the claimant.

Ross River Ltd v Cambridge City Football Club Ltd (2007)[65] is another example of a judgment made in favour of a company whose employee received a bribe. Cambridge City FC sold their ground to the claimant property developers before entering into a subsequent overage agreement whereby the two parties would work together to develop the land and realise an increase in value. Prior to entry into the overage agreement, and during the negotiations in the lead up to it, the Chief Executive of the football club received a £10,000 payment from the claimants and did not properly disclose it to the club. The judge found that the football club could rescind the overage agreement and an appeal was rejected.

4. 3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense

Please see our answers to the above question.

4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases

In 2017, the UK Government published its five-year anti-corruption strategy, to provide "*a framework to guide government anti-corruption policies and actions*",

[64] Petrotrade Inc & Ors v Simth & Ors. [2000] C.L.C. 916.
[65] Ross River Ltd v Cambridge City Football Club [2007] EWHC 2115 (Ch).

supporting "*national security, prosperity and trust in institutions*".[66] In its first year, new principles were published governing compensation to overseas victims of corruption and other economic crime and these were applied to all relevant cases, to achieve a consensus that overseas victims should benefit from positive outcomes relating to bribery and corruption cases.[67] Please see paragraph 5.11 of this report above for further information on the principles.

A 'Year 2 Update' was published on 22 July 2020 detailing the progress made as against the five-year plan.[68] It does not address the implementation of the General Principles, though it does highlight the successful employment of various new anti-corruption measures (for example: Unexplained Wealth Orders, Account Freezing Orders and increased activity from the Office of Financial Sanctions Implementation). The report also acknowledged that several deadlines were missed as a result of Parliamentary gridlock (for example: a promised overhaul of the police complaints and discipline systems, a commitment for increased protection for whistle-blowers and a pledge to establish a public register of beneficial ownership of overseas legal entities).

In a 'Year 3 Update' published on 16 December 2021, the government concluded that, at this halfway stage, 52 out of 134 commitments made in the strategy had been completed, 68 were ongoing, seven were progressing with a risk of missing a deadline or a risk to delivery and seven were off track with deadlines expected to be missed.[69] Highlights included:

(A) securing the public commitment with all Crown Dependencies and Overseas Territories to implement publicly accessible registers of company beneficial ownership information;

(B) extending the remit of the National Fraud Initiative and helping local authorities to undertake bank account and active company checks;

(C) reforming the police complaints and disciplinary systems to make them more transparent, independent and proportionate;

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[66] HM Government - assets.publishing.service.gov.uk - UK Anti-Corruption Strategy 2017-2022 - Year 3 Update - 2020.

[67] Serious Fraud Office - General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases - Serious Fraud Office - Serious Fraud Office (sfo.gov.uk).

[68] Home Office - Anti-corruption strategy: year 2 update - 22 July 2020.

[69] Home Office - Anti-corruption strategy: year 3 update – 16 December 2021.

(D) securing endorsement from G20 countries for a Call to Action for countries to combat corruption in the COVID-19 response and recovery;
(E) publishing a review of procurement risks in local government; and
(F) publishing a Green Paper on procurement reform with proposals to strengthen transparency and integrity across government.

Again, no mention was made of the implementation of the General Principles.

The NGO Spotlight on Corruption states that it monitors how the relevant government agencies enforce the General Principles and explores opportunities for submitting Community Impact Statements in corruption cases. A Community Impact Statement is a document allowing a community to say how a crime has affected it when a case having a significant impact on a community that has damaged public confidence goes to court and an entity is found guilty.[70] However, the only example of a Community Impact Statement having been submitted in a corruption case of which we are aware is the case of *Smith and Ouzman Ltd*.[71] In that case, Smith and Ouzman Ltd was convicted in 2014 of paying bribes to secure contracts to print ballot papers in Kenya and Mauritania. A coalition of Kenyan NGOs, Kenyans for Peace and Truth and Justice, wrote a Community Impact Statement in the form of a letter to the SFO explaining the harm that had been caused by the company's conduct, including how bribing the new electoral commission of Kenya, that was formed following the civil unrest during the 2008 General Elections in Kenya which saw 1000 fatalities, undermined electoral integrity and exacerbated political uncertainty. The SFO agreed to make the letter available to the judge and referred directly to it as evidence of the harm caused by the offending when making submissions regarding sentencing. However, the judge hearing the case stated that he would be unable to use the contents of this letter in reaching his verdict. His reasoning for this was not confirmed.[72]

[70] spotlightcorruption.org - Compensating victims of corruption.
[71] Full judgment is not publicly available. Please find a SFO summary of the case here; Serious Fraud Office - Smith and Ouzman Ltd - 11 September 2014.
[72] No room at the witness stand - Kenyan groups raise the question of victims of corruption in the UK courts - Susan Hawley - 13 February 2015.

5. Available Information

5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions

The Freedom of Information Act 2000 ("**FOI Act**") (where applicable) encourages public authorities to proactively make as much information as possible available to the public, though there will necessarily be limits to balance, including:

(A) not publishing anything during an active investigation which may prejudice that investigation; and
(B) considering data protection rights of individuals involved.

The information published about enforcement action varies depending on which agency is pursuing the investigation or proceedings, the stage the matter has reached, whether public interest issues of a particularly sensitive nature are engaged and whether the case is likely to be of interest to the general public. We set out a general overview of the approach taken by the most relevant enforcement agencies with links to publications and news sources below.

(A) The SFO

The SFO explains its policy on making information about its cases public: 'SFO, Our cases', though noting the policy is guidance only and the SFO will apply it on a case by case basis in light of all relevant circumstances.[73] The SFO indicates it aims to publish as much information as it can without compromising law enforcement work, prejudicing rights to a fair trial, or causing unavoidable reputational damage to individuals or businesses under investigation, but that in practice the amount of information it can publish, particularly during the investigation stage, is limited.

Per its policy, the SFO will not normally confirm or deny interest in allegations made against either companies or individuals before the Director decides whether to open an investigation. Once the Director has formally opened a criminal investigation, the SFO may confirm it is investigating if:

[73] Serious Fraud Office - Publication scheme.

1. the company under investigation makes the information public (typically, where it is publicly listed and considers the fact the SFO is investigating to be market-sensitive information of which it must inform the market);
2. there are "*operational reasons*" for announcing the investigation (the SFO gives the example of calling for witnesses); or
3. there is some other "*substantial reason*" why the announcement of the investigation would be in the public interest.

Further, per its policy, if an investigation results in a decision to prosecute and a company or an individual is charged with an offence, the SFO announces the relevant name and charges.

Please find updates regarding current cases published here, and case archives here.[74]

(B) The CPS

We are not aware of any formal guidance as to what or when the CPS will publish information relating to cases it is prosecuting. That said, the CPS does publish regular news updates, typically focused on the outcomes of cases.[75] For instance, the conviction of a man for various offences contrary to the Proceeds of Crime Act[76] and the conviction of a couple for fraud by false representation relating to COVID-19 bounce back loans.[77]

Once a charging decision is made by the CPS, there will soon be a hearing at a Magistrates' court (at an initial hearing, the defendant will be asked to enter a plea and, should they plead not guilty or not enter a plea, the case will proceed with further hearings / a trial to be listed). Once the case is being heard in open court, in general the public is able to attend court as an observer. Journalists often will for high profile cases, and their reporting may cover various stages of the proceedings.

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[74] The SFO also publishes case updates here and news updates here.
[75] cps.gov.uk - CPS News Centre and met.police.uk - Victims' Right to Review Scheme.
[76] cps.gov.uk - Tito Ibn-Sheikh admits money laundering after being caught with bag full of bank cards, passports and ID cards - 11 Jan 2022.
[77] cps.gov.uk - Ex-councillor and wife convicted for trying to exploit Covid-19 bounce back loans - 17 Dec 2021.

(C) The Police

Individual police forces will publish updates on key matters they are working on, either to appeal for information from the public to assist with prosecuting them, or to report on key developments, including when charges are brought or when a conviction has been obtained. For London, see updates from the Metropolitan Police[78] and from the City of London Police[79] which may include corruption cases. For instance, a recent update from the City of London police confirms that a former executive at an Oxfordshire-based company has been sentenced for bribery and false accounting offences relating to the award of a £22 million IT outsourcing contract to a specific contractor with whom he had prior connections.[80]

(D) The NCA

The NCA publishes news updates relating to its activities, including in respect of financial crime and corruption enforcement.[81] See for example recent updates on the seizure of millions of pounds relating to a sophisticated money laundering scheme[82] and, separately, the seizure of gold bars from a money laundering network.[83]

(E) The FCA

The FCA publishes various information pursuant to the FOI Act and other statutory instruments.[84] The FCA's Enforcement Guide, Chapter 6 sets out the FCA's approach to publishing information about investigations and enforcement, and the regulator's relevant powers under FSMA 2000.

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[78] met.police.uk - News archive.
[79] cityoflondon.police.uk - News.
[80] cityoflondon.police.uk - Former executive officer jailed for 22 million IT contract plot - 1 Feb 2022.
[81] nationalcrimeagency.gov.uk - News.
[82] nationalcrimeagency.gov.uk - News - Laundered millions linked to Azeri politician forfeited - 31 Jan 2022.
[83] nationalcrimeagency.gov.uk - Gold bars seized from money laundering network - 27 Jan 2022.
[84] For an explanation of what the FCA must publish see: FCA, Publication scheme guide to information. For an explanation of FCA enforcement powers and links to publications see: FCA, Enforcement.

Unless enforcement/regulatory action is pursued (see below), the FCA does not normally comment on or make public whether it is investigating an issue, or publish details of information found or conclusions reached during its investigations (it is under a statutory duty not to disclose to any other person confidential information obtained during the discharge of its functions unless permitted under one of the statutory gateways).[85]

In terms of enforcement/regulatory action it may take or has taken against companies and individuals the FCA regulates, the FCA:

1. may publish warning notices when it proposes to investigate and having first consulted the person or firm to which the notice relates; [86]
2. may publish decision notices (setting out information about action the FCA has decided to take); [87] and
3. will publish final notices (which detail final decisions and any penalties imposed e.g. fines).

Publication means placing the notice on the FCA's website together with issuing a press release.

The FCA may, if appropriate, publish certain information in a warning notice. Warning notices are issued at a relatively early stage of the FCA's enforcement process, setting out disciplinary action the FCA proposes to take. At this stage, the party it is issued against has not had the chance to make representations to the FCA's Regulatory Decisions Committee (the "**RDC**") and so there are some safeguards, including that the notice must clearly set out it is "*not the final decision of the FCA*" and that the FCA cannot publish information if to do so would, in its opinion, be unfair to the person concerned, prejudicial to the

[85] The statutory gateways are under section 349 of FSMA 2000, which are essentially disclosing information made for the purpose of carrying out a public function or permitted to be disclosed by the Treasury. Broadly, the FCA may disclose information to another enforcement agency/regulator (such as the PRA) if it would assist that organisation in carrying out a public function; for the purposes of a criminal investigation or proceedings; and for certain civil proceedings.
[86] FCA, Publications search results.
[87] FCA, Publications search results.

interests of consumers, or detrimental to the stability of the UK's financial system.[88]

Other than in exceptional circumstances, the FCA must make certain information public once it issues a Decision Notice or a Final Notice. For a Decision Notice, this information will usually include the reasons for any decision taken by the FCA, whether there are any restrictions on the subject's access to the relevant materials on which the FCA has relied on, and will give an indication of any appeal rights. For a Final Notice, this information must set out the terms of any proposed statement and give details on its proposed publication. By way of example, see the recent Decision Notice dated 14 December 2021 in which the FCA imposes a civil fine on a retail bank in respect of breaches of the Money Laundering Regulations 2007.

Where the FCA pursues action through the civil courts, those cases will typically be heard in public (including any proceedings for an injunction or restitution order). As mentioned below, certain information like pleadings and judgments would typically be available via a docket search and the public, including journalists, would be able to attend court as an observer unless specific restrictions have been imposed in particularly sensitive matters.

Where the FCA pursues action through the criminal courts, the FCA will generally consider making a public announcement when suspects are arrested, when search warrants are executed and when charges are brought. However, the FCA must ensure any information it publishes does not prejudice any subsequent trial. A recent high profile case which was the first time the FCA has pursued criminal charges for money laundering failures resulted in a fine to a bank of £264.8 million, and we link to the FCA press release and public sentencing remarks for this case in the footnote.[89]

5.2 Feasible access to information on ongoing or concluded cases

[88] Simmons & Simmons Insights - FCA publicity around Warning Notices - 24 August 2017; see section 391(6) FSMA for the requirement to not publish any information meeting such criteria.
[89] FCA press release: FCA, NatWest fined £264.8 million for anti-money laundering failures. Sentencing remarks: R (The Financial Conduct Authority) v National Westminster Bank plc, [2021], Sentencing remarks of Mrs Justice Cockerill.

A docket search can be performed to obtain certain information on cases which are progressing through or which have concluded in open court, including pleadings, judgments and orders.[90] Judgments relating to reported cases (unless embargoed) are also generally publicly available and may be accessed freely.[91]

5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.

There are several avenues citizens or CSOs could pursue to gather information:

(A) National or international media outlets report on high profile investigations or trials. It is important to note, however, that nothing can be published which may prejudice an ongoing investigation or trial. Publishing anything which creates a substantial risk of serious prejudice or impediment to the course of justice in legal proceedings, irrespective of the intention behind the publication is a criminal offence pursuant to section 1 of the Contempt of Court Act 1981. This only applies to proceedings which are "active", and so once there is an acquittal, sentence or the case is otherwise discontinued, this will not apply.[92] There can be other reporting restrictions for journalists to consider depending on the case (for example, there are rules around not publishing the names of minors or victims of sexual offences). Specific reporting restrictions can also be applied for and granted depending in individual cases.[93]

(B) Industry press sources, such as Global Investigations Review ("**GIR**")[94] (which provides news and analysis relating to government agency and internal corporate investigations including anti-bribery and corruption, financial services misconduct, competition, fraud, money laundering,

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[90] Such as via a paid-for subscription service like Westlaw UK: Thomson Reuters, How to easily search and look up dockets.
[91] For instance, at Bailli.
[92] See a discussion here: CPS, Contempt of Court, Reporting Restrictions and Restrictions on Public Access to Hearings.
[93] For instance, see a discussion of reporting restriction orders under section 4(2) of the Contempt of Court Act 1981 which can be granted where there it is necessary to avoid a substantial risk of prejudice to the administration of justice in the proceedings in question or in any other pending or imminent proceedings: cps.gov.uk - Contempt of Court, Reporting Restrictions and Restrictions on Public Access to Hearings - 4 May 2022.
[94] Global Investigations Review (some content is accessible only on a paid-for subscription basis).

sanctions violations, tax avoidance and evasion), and M-Lex[95] (which provides regulatory risk news and analysis including relating to financial crime).

(C) A docket search could be used to track developments in cases which are presently progressing through the courts, as indicated above. Further, per the principle of open justice, in general, anyone can attend court cases as an observer (someone who sits in the public gallery to observe the trial). Journalists often attend high profile court cases in order to report on them. Where restrictions on public access and/or reporting are applied for in a specific case, a Judge must carefully balance the various interests and considerations (broadly, principles of open justice and the public interest vs. individuals' privacy or potential prejudicing of present or imminent proceedings) before deciding whether to grant such a restriction or not.[96] As indicated above, reported judgments in concluded cases (unless embargoed) will be available via a paid-for subscription service or publicly.[97] Not all cases are reported but, for cases heard in open court, a transcript of the judgment may be available through the relevant court.

(D) Tracking updates provided on websites and/or social media accounts of key non-governmental organisations in this area (though updates may not be only related to the UK), including:

(1) Spotlight on Corruption;[98]

(2) Global Witness;[99]

(3) Good Law Project;[100] and

(4) Transparency International.[101]

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[95] MLex Market Insight (most content is available only on a paid-for subscription basis).
[96] For example, see information at CPS, Contempt of Court, Reporting Restrictions and Restrictions on Public Access to Hearings.
[97] Judgments are publicly available at British and Irish Legal Information Institute (bailii.org) British and Irish Legal Information Institute (Bailii).
[98] See updates on cases here: Spotlight on Corruption, Cases.
[99] Global Witness, Investigations and advocacy for climate justice & civic freedoms.
[100] Good Law Project, News Archive. For example, Good Law Project, We're in Court tomorrow.
[101] Transparency.org - Home.

(E) Individuals and/or CSOs can also make specific requests for information from various enforcement agencies who must publish certain information or respond to such requests pursuant to the FOI Act. Note though there are limitations on the extent to which agencies or organisations to which the FOI Act applies must search for or gather information in order to respond to requests, to not overwhelm or burden them with costly and time-consuming searches and information gathering.[102]

6. Supplementary information

6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.

As explained above, criminal enforcement action in respect of alleged corruption is typically pursued by public enforcement authorities acting on behalf of the state rather than any particular victims. This is generally the most appropriate means for addressing alleged corruption, particularly given that such prosecutions can be very complex and resource intensive, and might require identification and consideration of numerous and wide-ranging document or witness evidence sources, expert evidence including forensic accounting, and liaison between multiple enforcement agencies nationally and in some cases internationally. As explained in paragraph 5.8 above, there is scope for victims of corruption to be provided with redress through the award of compensation orders, however there are challenges in practice which may serve to limit the numbers of orders made, particularly in cases involving corruption which is widespread and crosses borders, where any associated damage or loss may be difficult to identify, quantify and evidence.

The civil courts provide an important route for redress for victims and others who have suffered damage or loss as a result of corruption, where those individuals are identifiable and the losses suffered are quantifiable and can be evidenced. As such, the challenges identified in the context of compensation orders are likely

[102] ico.org.uk - What is the Freedom of Information Act?.

also to limit the circumstances in which successful claims for damages caused by corruption may be brought.

Though it does not serve as a route through which compensation for victims may be sought, it is clear that the judicial review process provides a critical route for CSO's in particular to hold the Government to account for its decision making, including decisions not to pursue investigations into alleged corruption as well as decisions which have allegedly been influenced by corruption.

Further, though not a route which has been pursued widely, it may be possible for CSOs, citizens or journalists to bring private prosecutions on behalf of victims or others in respect of some corruption related offences (though notably not for offences under the Bribery Act 2010). However, such actions can be costly to fund (though crowdfunding may provide a solution for high profile cases) and challenging to bring, particularly where relevant evidence is located overseas. Private prosecutors would also face the same challenges as public prosecutors when seeking compensation orders. They may therefore not offer a suitable route for victims of overseas corruption to seek financial redress, if that is the principal aim.

6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.

N/A