

## Major changes to corporate criminal liability in the UK: what might these mean for key sectors ?

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It has never been easier for UK prosecutors to prosecute corporate organisations for the actions of their senior managers. With further reforms now progressing through Parliament, the scope of corporate criminal liability is set to expand even more substantially, making it increasingly important for organisations to anticipate and manage the heightened risks arising from individual conduct.

### The current state of the law

The law on corporate criminal liability is shifting in favour of prosecutors. With effect from 26 December 2023, section 196 of the Economic Crime and Corporate Transparency Act 2023 ("**ECCTA**") dispensed with the need for them to use the "identification principle" – i.e. to identify the "directing mind and will" of a corporate organisation – in order to pursue criminal proceedings against it for certain economic offences (including bribery, fraud, theft, money laundering, market manipulation and financial sanctions related offences). Instead, in order for the corporate organisation to be criminally liable in respect of conduct after that date, it now suffices for prosecutors to show that any of these range of economic offences were committed by a "senior manager". This definition is wider than that used for the purposes of UK financial services legislation. It encompasses a person who *"plays a significant role in the making of decisions about how the whole or a substantial part of the activities of the [corporate organisation] are to be managed or organised, or the actual managing or organising of the whole or a substantial part of those activities"*. Where individuals falling within this definition, acting *"in the actual or apparent scope of their authority"* commit any of the economic offences, so does the corporate organisation.

That legislation has not yet been used in any publicised cases (although the Serious Fraud Office in particular has clearly indicated that it is actively looking for opportunities to do so, and the boundaries of the broad definitions of "senior manager" or *"actual or apparent scope of their authority"* have not yet been tested.

### Further changes on the horizon

Steps to expand its scope to all offences are at an advanced stage.

The Crime and Policing Bill ("**the Bill**"), which would introduce these changes, cleared the latest stage of the parliamentary process in the House of Lords last week. As we noted in our [RIFC Insights blog post](#) when the Bill entered Parliament in March 2025, if its proposals in relation to corporate criminal liability are enacted, corporate prosecutions would become a more realistic option for enforcement authorities in many scenarios where individuals engage in criminal conduct.

The Bill will now be considered by the House of Commons. There is broad political consensus in relation to its sections relating to corporate criminal liability. It appears likely that these will pass without significant amendment.

### What might these changes mean in practice?

The table below illustrates some hypothetical scenarios in various key sectors which could potentially lead to criminal liability for companies should the legislation pass in its current form. The offences included are indicative examples. In reality, prosecutors will be able to choose from a wide array of potentially applicable offences based on the factual circumstances of alleged misconduct.

The new provisions will require corporate organisations in all sectors to think carefully about the types of situations in which individuals could commit criminal offences in the course of their duties and how to manage risk by minimising the opportunities for offending conduct to occur.

One point to watch as the Bill progresses is whether the UK Government decides to make consequential changes to other legislation enabling corporate organisations to enter into deferred prosecution agreements ("**DPAs**") in the UK. As currently drafted, the legislation providing for DPAs (the Crime and Courts Act 2013), only allows them to be entered into in respect of certain economic offences. The Bill does not currently include any clauses making this important change, without which prosecutors would have a binary choice between prosecuting or taking no action against corporate organisations for this wider range of offences. Prosecutors have not yet publicly called for this change to be made, but a two tier system under which they are able to enter into negotiated settlements in respect of some types of offences but not others would be inconsistent with some elements of existing guidance and their stated intention to encourage early engagement and a "genuinely proactive approach" from corporate organisations which identify potential criminal wrongdoing.

### Further changes to corporate criminal liability in the UK: Example scenarios and offences

Sector	Underlying offence(s) <sup>1</sup>	Scenarios	Who would be (and not be) a "senior manager"?
<b>All sectors – non co-operation with investigations</b>	Failure to respond to requirements to produce documents or provide information/providing	An individual providing information to the SFO under section 2 or 2A	Junior employee providing factual information on technical aspects of a particular process would not

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<sup>1</sup> These are examples of offences which, under the law as it currently stands (section 196, ECCTA) do not give rise to potential corporate criminal liability if committed by a "senior manager" but which would give rise to potential corporate criminal liability if clause 196 of the Bill passes in its current form.

	misleading information – e.g. section 2(13) and 2(14) Criminal Justice Act 1987 (" <b>CJA 1987</b> ")	CJA 1987 gives an incomplete or misleading answer during interview.  A company nominates an individual to attend for interview under section 2(2) to provide information about price negotiations or reporting under contracts with which the investigation is concerned.	fall within definition of "senior manager".  Senior individuals within finance and operations functions (e.g. Financial Controller, Country Manager, Factory Manager) also likely to be covered – may be regarded as having responsibility for managing or organising a substantial part of the company's activities.
<b>Banks – Criminal market abuse</b>	Insider dealing – section 52 Criminal Justice Act 1993	A senior trader within an investment bank sells a substantial number of shares based on inside information received from a member of his/her team who has been wall crossed.	Desk head likely to be covered but whether more junior traders below that level will be covered will be fact sensitive – will depend upon the managerial and decision making responsibilities they have.  Whether individuals are "Senior Managers" for the purposes of the Senior Managers and Certification Regime (" <b>SMCR</b> ") may provide a guide, but would not be determinative.
<b>Consumer goods and retail – Supply chain offences</b>	Modern Slavery Act/other supply chain offences – encouraging or assisting the commission of offences under section 1 Modern Slavery Act/section 1 Foreign Prison Made Goods Act 1897  Trade mark/counterfeit offences – section 92 Trade Marks Act 1994	A buyer within a fashion retailer purchases goods intended to be sold which he/she knows are counterfeit goods infringing various rights holders' trade marks and/or which have been made using forced labour.	Buyer(s) responsible for purchasing particular type of goods – e.g. Head Buyer for menswear, womenswear etc – likely to be covered, but more junior members of team placing orders etc less likely to fall within scope.
<b>Energy and resources – Criminal conduct by individuals involved in energy trading</b>	Market manipulation offences under Regulation 4 of the Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015	A senior trader within an energy company commits "spoofing" by placing non-genuine orders in the natural gas markets, to secure natural gas at an artificial price.	Desk head likely to be covered but whether more junior traders below that level will be covered will be fact sensitive – will depend upon the managerial and decision-making responsibilities they have.
<b>Entertainment and sports – Serious</b>	Screening of sport/films without a commercial licence –	A senior executive within a hospitality	Corporate liability would arise from decisions made at group or regional level to

<b>licensing breaches</b>	Section 297 Copyright, Designs and Patents Act 1988	group decides to show live sport in pubs using a domestic subscription rather than purchasing a commercial licence	dishonestly receive programmes using domestic subscriptions without obtaining the requisite commercial licence. Would require some degree of coordination and organisation – e.g. an event where members of the public are charged an entry fee to watch a World Cup match in pubs.  Individual publicans or restaurant/hotel managers unlikely to fall within the definition of "senior manager".
<b>Financial services – Aggressive sales practices</b>	Counselling or procuring the commission of the offence of Harassment – section 2 Protection from Harassment Act 1997	A senior executive within a lender implements an initiative involving designing and sending multiple AI generated high pressure telephone and email communications to aggressively market high interest loans to customers with low credit scores causing those customers alarm or distress.	Whether individuals are "Senior Managers" for the purposes of SMCR may provide a guide to whether they are "senior managers" for the purposes of the Crime and Policing Bill, but would not be determinative.
<b>Healthcare and life sciences – Unnecessary procedures</b>	Conspiracy to commit assault – sections 18/20/47 Offences Against the Person Act 1861	A senior executive within a private healthcare provider conspires with a consultant to recommend unnecessary invasive medical procedures in order to secure fees from privately paying patients or from insurers.  Could also be charged as failure to prevent fraud/corporate fraud under section 196 of ECCTA  Depending on the context, analogous offences could	Medical professionals (including the consultant recommending the unnecessary treatment) would not fall within the definition of "senior managers".

		be committed by senior executives within veterinary surgery groups or life sciences companies in respect of veterinary procedures on animals or procedures conducted during laboratory testing. Such conduct could engage, for example, section 4 of the Animal Welfare Act 2006.	
<b>Industrials – Inaccuracies in pollution records</b>	Falsifying records required pursuant to an environmental permit condition – Regulation 38 of the Environmental Permitting (England and Wales) Regulations 2016	A senior manager within a food manufacturing business instructs junior employees to falsify records provided to the Environment Agency regarding discharges by the business into local waterways, where this reporting is required under the terms of an environmental permit granted to the business.	Junior employees would not fall within the definition of "senior managers" however, depending on size and corporate structure, "senior manager" could extend to middle management – e.g. Head of Operations.
<b>Insurance – Information sharing as part of claims handling processes</b>	Unauthorised disclosure of personal data – section 170 of the Data Protection Act 2018	A senior executive within a motor insurer sets up outsourcing arrangements relating to the handling of non-fault claims involving disclosure of the personal data of motor insurance claimants to a third-party claims management company but the contract between the insurer and the claims management company does	Junior employees (e.g. claims processors) would not be considered "senior managers". Depending on size and corporate structure, "senior manager" could extend to middle management – e.g. Head of Claims.

		not contain appropriate safeguards in relation to processing of personal data.	
<b>Real estate – Selection of inappropriate construction materials leading to injury</b>	Various offences under the Health and Safety at Work etc Act 1974	Executive within landlord or property management company authorises work or changes to scope of work within commercial retail premises (e.g. procurement of cheaper alternative flooring with insufficient grip) which lead to a member of the public falling and sustaining serious injury.	Depending on size and corporate structure, "senior manager" could extend to middle management – e.g. Regional Director.
<b>Transport and logistics – involvement in organised crime</b>	Encouraging or assisting illegal importation of drugs/immigration offences – section 50 Customs and Excise Management Act 1979/section 25 Immigration Act 1971	An individual manager within a manufacturing or logistics company conspires with an organised crime group to import drugs or humans within legitimate loads of ingredients, products or packaging	Depending on size and corporate structure, "senior manager" could extend to middle management – e.g. Country or Location Managers.
<b>Transport and logistics – responses to technical offences</b>	Road traffic offences – section 172 Road Traffic Act 1988 /Perverting the course of justice – common law	An individual manager responsible for logistics within a company institutes a policy of failing to respond to/providing false or misleading information in response to Notices of Intended Prosecution issued in respect of road traffic offences.	



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