

Our Ref: FOI2016-002

Date: January 2016

**Subject: Deferred Prosecution Agreements**

This request asked for the following information:

*In a Deferred Prosecution Agreement case where an individual, group of individuals, business or organisation has been the victim of fraud, theft or some other financial crime, and the convicted party is made pay a financial penalty, who gets this financial penalty? Is it the victim or some other entity, such as the Treasury, police, courts or another?*

*What are the official rulings for the awarding or distribution of these funds?*

Under a DPA, a prosecutor charges a company with a criminal offence and proceedings are automatically suspended. The company agrees to a number of conditions. If the conditions are not honoured, the prosecution may resume.

Section 5(3) of Schedule 17 of the Crime and Courts Act 2013 provides that the conditions a DPA may impose on a company (P) include, but are not limited to the following:

- (a) to pay to the prosecutor a financial penalty;
- (b) to compensate victims of the alleged offence;
- (c) to donate money to a charity or other third party;
- (d) to disgorge any profits made by P from the alleged offence;
- (e) to implement a compliance programme or make changes to an existing compliance programme relating to P's policies or to the training of P's employees or both;
- (f) to co-operate in any investigation related to the alleged offence;
- (g) to pay any reasonable costs of the prosecutor in relation to the alleged offence or the DPA.

Section 4 of that Act states that:

The amount of any financial penalty agreed between the prosecutor and P must be broadly comparable to the fine that a court would have imposed on P on conviction for the alleged offence following a guilty plea.

A DPA may be appropriate where the public interest is not best served by mounting a prosecution. Entering into the agreement will be a fully transparent public event and the process will be approved and supervised by a judge. When a DPA is approved by the Court, the prosecutor must publish information about the DPA.

This legislation is published online at:

<http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted>.

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### Further reading

The DPA Code of Practice was published by the Director of the Serious Fraud Office and the Director of Public Prosecutions in 2014. It provides information about the process leading up to the approval and declaration of a DPA in court. The Code of Practice can be found online at: <http://www.sfo.gov.uk/about-us/our-policies-and-publications/deferred-prosecution-agreements-code-of-practice-and-consultation-response.aspx>.

The relevant Criminal Procedure Rules, which set out the processes of the criminal courts, can be found online at: <https://www.gov.uk/government/publications/criminal-procedure-rules-about-deferred-prosecution-agreements>.

The Serious Fraud Office announced the UK's first DPA, with Standard Bank Plc, in November 2015. More information, including relevant court documents can be found at: <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/sfo-agrees-first-uk-dpa-with-standard-bank.aspx>. As part of the agreement, Standard Bank agreed to pay financial orders of US\$25.2 million, and to pay the Government of Tanzania a further US\$7 million in compensation. The bank also agreed to pay the SFO's reasonable costs of £330,000 in relation to the investigation and subsequent resolution of the DPA. The US\$25.2 million total financial penalty, which is payable to HM Treasury, consists of a US\$16.8 million financial penalty and a US\$8.4 million disgorgement of profits. The compensation due to the Government of Tanzania consists of US\$6 million, plus interest of US\$1,046,196.58.

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