

BETWEEN

THE QUEEN

V

WALTER HANKS

OPINION

Introduction

1. I am asked to advise the Crown Prosecution Service (CPS) Specialist Fraud Division on the most appropriate bribery charges to pursue against Walter Hanks, who is under investigation for allegedly bribing a foreign official to secure his support for the UK's bid to host the 2023 Wizzball World Cup.

2. The CPS seeks advice on the evidence that supports bribery charges, what further evidence ought to be sought, the merits of entering into a Deferred Prosecution Agreement (DPA) with the British Wizzball Association, how Mr Hanks can be prevented from spending any further money and if the authorities could seize any cash carried by Mr Hanks on his arrival back into the UK after a trip abroad.

3. Finally, I am asked to advise on further considerations related to the investigation as it currently stands, and the next steps required.

Summary of Advice

4. The most appropriate charges to pursue against Mr Hanks are for the offence of bribing a foreign public official (FPO), under section 6(1) of the Bribery Act 2010 (BA 2010) and for the offence of being bribed under s.2(5) BA 2010.

5. There is strong circumstantial evidence that supports both charges, but there are important gaps that need to be filled. Further evidence is required of who paid Mr Hanks the GBP6,000 from Tajikistan, and of Mr Hanks' direct contacts with Mr Oqil or his staff that will support the dual intention requirement of the s.6 charge.

6. Given the acute public interests at stake in this case, the CPS should not enter into a DPA with the British Wizzball Association because any such an agreement will necessarily be made public. When it does, the UK stands to lose its 2023 Wizzball Cup hosting rights and by failing to prosecute such a serious case of bribery, the UK will also be seen as having failed to live up to its international commitments.

7. Mr Hanks can be prevented from spending more money through a restraint order of up to GBP16,000. The CPS should apply for such an order immediately, and there is a good prospect for the application succeeding. Mr Hanks can be stopped and searched on his return to Heathrow by Customs officials who may seize between GBP1,000 and GBP16,000 of cash, should he be found carrying any such amounts.

Summary of Facts

8. Mr Hanks is Chief Executive Officer of the British Wizzball Association Limited (BWA), incorporated since 2014. BWA has an International Development Panel whose aim is to enhance socio-economic development and good relations with foreign nations through promotion of the sport of Wizzball, a kind of lacrosse played with three balls.

9. In October 2019, the Minister of Sport for Tajikistan, Damian Oqil, contacted BWA's Director of International Development, Marie White, to ask if BWA would consider building a state-of-the-art Wizzball facility in the Sughd region of Tajikistan.

10. Having visited the proposed site in Tajikistan the following month, Ms White and the rest of BWA's International Development Panel decided to allocate GBP60,000 to the project from funding for the financial year commencing April 2020. The money was to be paid to Tajikistan's Ministry of Sport on 6 April 2020.

11. On 13th January 2020, Ms White received an email from Mr Hanks asking her to transfer the GBP60,000 directly into Mr Oqil's personal bank account before 1400 GMT that day. Mr Hanks said Mr Oqil had requested the transfer early and directly to him because an election had been called in Tajikistan and therefore the Wizzball project might not go ahead if a new government were elected. Furthermore, all government bank accounts had been frozen in the run up to the election. Ms White made the transfer to the account of 'Oqil, D' at Access Bank Tajikistan at 1350 GMT, as requested by Mr Hanks, using money remaining in BWA's 2019 budget.

12. At 1410 GMT on 13th January 2020 the online record of the live vote for hosting rights for the 2023 Worldwide Wizzball Cup Tournament showed that Damian Oqil, representing Tajikistan, had voted in favour of Great Britain. The BWA represents Great Britain as a member nation of the Worldwide Organisation for Wizzball (WOW), whose members vote on which member nation should host the Cup Tournament every four years. Tajikistan is also a member nation of WOW. The rights to host the 2023 Cup Tournament were being competed for between the USA and Great Britain.

13. Having helped Great Britain win the Cup Tournament vote, employees of BWA had been promised bonuses at the end of the month. Ms White received an additional GBP5,000, while Mr Hanks received GBP10,000. Mr Hanks' bank statement also shows a payment of GBP6,000 from Tajikistan referenced, 'Thanks', received on 14th January 2020. That money was transferred to Mr Hanks' Saver account on the same day, while the GBP10,000 bonus was transferred to his Saver account on 31st January.

14. On 3rd March, Ms White received an email from Mr Hanks telling her that Mr Oqil's party had been re-elected and he had been re-appointed as Minister of Sport, but due to his increased workload Mr Oqil would not be providing monthly updates on the Wizzball project in Tajikistan. Ms White wrote back to Mr Hanks pointing out that such updates are a requirement of their Standard Operating Procedures, without which sponsors would quickly lose confidence in BWA's ability to account for its spending. Mr Hanks wrote back simply: 'Leave it alone.'

15. On 5th May 2020, having received no updates on the project, Ms White travelled to the intended site of the Wizzball facility in Tajikistan unannounced, but found that there was a block of flats being built on the land, not a Wizzball facility.

16. On her return to work in the UK on 11th May 2020, Ms White contacted the police to report possible misuse of BWA's funds.

17. Also on 11th May, Mr Hanks withdrew GBP10,000 from his Saver account, the maximum permitted amount, and took a British Airways flight to Barbados. He is due to return to the UK on 29th May.

Choice of Bribery Charges

18. It is my advice that the most appropriate charges to bring against Mr Hanks are: first, the offence of bribing an FPO under s.6(1) BA 2010; and, second, the offence of being bribed, under s.2(5) BA 2010. These are the two charges that best reflect the seriousness and extent of the offending and best enable the case to be presented in a clear and simple way, as required under the Code for Crown Prosecutors.

19. For the sake of completeness I will address each potential offence committed by Mr Hanks and by BWA under the BA 2010 as they relate to the CPS' prosecution of Mr Hanks and to the merits of entering into a DPA with DWA. I am instructed to focus charging advice solely on bribery offences, so I shall not consider potential fraud or money laundering offences.

20. The BA 2010 came into force on 1 July 2011 and so applies to the alleged offences in this case, which took place between October 2019 and continue up to the present day. BWA is incorporated in the UK, and so the jurisdiction of the BA 2010 applies to it.

21. Under s.3(2) BA 2010, the Act applies to activities if they include, 'any function of a public nature', 'any activity connected with a business' and 'any activity performed by or on behalf of a body of persons (whether corporate or unincorporated).' Under s.3(3) BA 2010, the Act applies if either the person performing the function is 'expected to perform it in good faith' or 'impartially' or is 'in a position of trust'.

22. BWA was incorporated in 2014 and is a member of WOW, which Ms White says has a Code of Conduct that 'anyone acting in relation to WOW matters is performing a public function and that they must act with honesty and integrity.' As CEO of BWA, Mr Hanks was clearly acting 'in a position of trust' and in a role that sponsors of BWA would expect to be performed 'in good faith'. The tests under section 3 of the Act are therefore clearly met, and the Act will apply to the activities in question.

23. Section 4(1) of the BA 2010 states that a bribe relates to the improper performance of a relevant function, which constitutes a 'breach of a relevant expectation'. The test for 'relevant expectation' is set out in s.5(1) BA 2010 as 'what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned.' The Act specifically excludes 'any local custom or practice' from the test of 'relevant expectation', except in cases where the written law of the country requires the particular local practice.

Bribery, under s.1 BA 2010

24. Mr Hanks could face a charge of bribery under s.1 BA 2010. The offence is made out where a person 'gives a financial or other advantage to another person' and either intends that advantage to 'induce a person to perform improperly a relevant function or activity' or to 'reward a person' for doing such. A relevant function need have no connection with the UK, as per s.3(6) BA 2010. Section 1(5) BA 2010 states

that for the offence of bribing another person, 'it does not matter whether the advantage is offered, promised or given' by the person, 'or through a third party'.

25. On the current evidence, there are reasonable grounds for suspecting Mr Hanks had promised to pay Mr Oqil GBP60,000 to induce him to use his position as Tajikistan's representative to WOW to vote in favour of Great Britain's bid to host the 2023 Wizzball Cup Tournament. The email on 13th January 2020 from Mr Hanks to Ms White instructing her to pay the GBP60,000 three months ahead of schedule, and directly into Mr Oqil's personal bank account, appears directly tied to the WOW hosting rights vote, also on the 13th January. Mr Hanks says the payment must be done before 1400 GMT that day. On the evidence, the WOW vote must have commenced around 1400 GMT as Mr Oqil's vote in favour of Great Britain is recorded at 1410 GMT.

26. Mr Hanks' email of 13th January also says he had just received an email from Mr Oqil asking for the GBP60,000. This is strong evidence that it is Mr Hanks' relationship with Mr Oqil, rather than any other BWA staff member, which is the driving force behind BWA making the alleged bribe. This supports a s.1 or s.6 charge. However, case papers contain no emails directly between Mr Hanks and Mr Oqil, and this is a weakness in the prosecution's case as it currently stands. The CPS should seek to obtain all emails between Mr Hanks and officials in Tajikistan, indeed all emails between Mr Hanks and any other officials from nations that have received BWA funds and subsequently voted in favour of Great Britain's hosting bid.

27. Even if no evidence can be adduced of Mr Hanks actually promising Mr Oqil the financial advantage of GBP60,000, the fact that it was Ms White and not Mr Hanks who made the payment to Mr Oqil is no barrier to establishing liability against Mr Hanks for a s.1 or s.6 offence. His email to Ms White clearly directs her, as a third party, to make the payment to Mr Oqil because he wishes it to be done, and for the reasons he sets out. Those reasons – an upcoming election, frozen official accounts – appear highly questionable in retrospect, but were at the time 'compelling' enough for Ms White to authorise the payment.

28. Finally, the s.1 offence requires the relevant function being performed by Mr Oqil to have been performed 'improperly', which means in breach of a relevant expectation, the test being 'what a reasonable person in the United Kingdom would expect', and excluding any local custom or practice not written out in law. There is no evidence that Tajikistan law requires the Minister of Sport to be paid directly in order to secure his vote at international forums. A reasonable person in the UK would expect the GBP60,000 to have been used to build a Wizzball facility, as Mr Oqil agreed it would be, not, as appears, to have been taken as personal payment by Mr Oqil in exchange for his vote. On current evidence, then, Mr Oqil's relevant function has been performed improperly for the purposes of establishing against Mr Hanks the offence of bribing another person contrary to s.1 BA 2010.

Being bribed, under s.2(5) BA 2010

29. Mr Hanks could be charged under section 2 of the BA 2010 which sets out four scenarios, 'Cases 3-6', in which an individual is guilty of the offence of being bribed by another person. Case 3 deals with payment received *before* improper performance of the individual's relevant function. Cases 4 and 5 deal with payments agreed to be received in exchange for improper performance. Case 6 deals with improper performance *in anticipation* of payment, and is therefore, on current evidence, the most appropriate charge.

30. Section 2(5) BA 2010 makes it an offence for a relevant function or activity to be performed improperly either by the individual or by a third party acting at the individual's 'request', 'assent or acquiescence' where that individual acts 'in anticipation of or in consequences of [...] agreeing to receive or accepting a financial or other advantage'. Section 2(8) makes clear that it does not matter if the third party knows or believes the performance of the function to be improper.

31. The payment of GBP6,000 from Tajikistan into his personal account on 14th January 2020 provides strong circumstantial evidence to support a charge that Mr Hanks performed his relevant function as CEO of BWA improperly in anticipation of receiving a financial advantage. As detailed above, on 13th January, Mr Hanks instructed Ms White to transfer GBP60,000 to Mr Oqil's personal account, in highly questionable circumstances. That day, Mr Oqil voted for Great Britain's bid to host the 2023 Wizzball Cup. The next day, Mr Hanks received GBP6,000 into his personal account paid from Tajikistan, referenced, 'Thanks', suggesting it was made in exchange for some service provided by Mr Hanks. The amount was exactly 10% of the sum Mr Hanks ordered transferred to Mr Oqil the day before, supporting an inference that it was a commission payment. Mr Hanks then transferred the GBP6,000 on the same day into his Saver account, the account from which he withdrew GBP10,000 on the day he flew to Barbados.

32. However, there are several important gaps in the evidence which the prosecution must endeavor to fill in order to strengthen this charge against Mr White. Firstly, efforts should be made to establish details of the GBP6,000 payment made from Tajikistan. Was it made from a bank account, and if so, can details of that account be found? Was it made as a cash transfer from Western Union, or another such service, and if so what was the name of the sender? There is currently no evidence of the direct communications between Mr Hanks and Mr Oqil. In order to prove the element of acting 'in anticipation' of a financial advantage, more evidence of an agreement being reached between Mr Hanks and Mr Oqil is desirable.

Bribery of foreign public officials, under s.6(1) BA 2010

33. Section 6 of the BA 2010 creates a separate offence of bribing an FPO with the intention to influence him in his capacity as an FPO and with the intention thereby to 'obtain or retain business, or an advantage in the conduct of business'.

34. This is the offence that best reflects the seriousness and extent of the offending, and as parliament clearly intended to establish a stand-alone bribery offence when an FPO is involved it would be contrary to the spirit of the BA 2010 not to utilise the charge in this case.

35. An FPO under s.6(5) includes 'an individual who holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom'. Mr Oqil was Minister of Sport for Tajikistan when he first made contact with BWA in October 2019 and there is no evidence that he was not continuing in that position at the time the payment of GBP60,000 was made to him on 13th January 2020. Mr Oqil was therefore an FPO for the purposes of s.6(5).

36. The bribe occurs for the purposes of the s.6 offence if an individual 'directly or through a third party' 'offers, promises or gives any financial or other advantage' to the FPO or another person at the FPO's request, and the FPO is 'neither permitted nor required by the written law applicable' to be influenced by such an advantage in

their capacity as an FPO. Section 6(7)(c) states that the written law applicable to an FPO is that contained in 'any written constitution, or provision made by or under legislation, applicable to the country or territory concerned' or any published judicial decision so applicable.

37. The payment to Mr Oqil as an FPO was made in circumstances that point strongly towards it being in exchange for his vote, as a member of WOW, in support of Great Britain's hosting bid. Mr Oqil was exercising his function at WOW as a public official of Tajikistan, and WOW's Code of Conduct notes that anyone acting in relation to WOW is performing a public function. It is highly unlikely that there is a law or judicial decision in Tajikistan that permits public officials to receive payments from foreign donors in exchange for exercising their public functions. As such, there is strong circumstantial evidence to support the actus reus of the offence, being that the payment to Mr Oqil influenced him in his capacity as an FPO.

38. There is a dual intent requirement for the offence: the intent to influence the FPO in his capacity as an FPO (s.6(1)); and the intent, thereby, to obtain or retain business or an advantage in the conduct of business (s.6(2)).

39. The securing of the 2023 Wizzball Cup for the UK would certainly amount to 'an advantage in the conduct of business' for the purposes of s.6(2), as it not only led to a direct bonus payment of GBP10,000 to Mr Hanks but almost certainly contributed to a rise in profile for BWA, where he is CEO, and which is reliant on sponsorship deals with major sporting clothes companies. Those deals could have been expected to increase in the wake of the 2023 vote. There is little defence to the argument that Mr Hanks must have known these business advantages would flow to BWA in the wake of Great Britain securing the WOW vote.

40. The difficulty for the prosecution, on the current evidence, is proving that Mr Hanks actually intended to influence Mr Oqil in his capacity as an FPO. There is currently no direct evidence that Mr Hanks knew that paying Mr Oqil would secure his WOW vote in favour of the UK. His terse email to Ms White on 3rd March 2020 – 'Marie, Leave it alone' - certainly supports an argument Mr Hanks was covering something up. But his defence can argue that Mr Hanks sincerely believed Mr Oqil's argument that payment to his personal account was necessary in the circumstances, and that the overlap between the time of the payment and the WOW vote was simply a coincidence. Aware of how questionable such a payment, made in good faith, might look in retrospect, Mr Hanks was simply hoping to bury the issue in order to protect BWA's corporate image.

41. Those arguments may be stretching credulity somewhat, but the burden of proof lies with the prosecution, who must make the jury 'sure' to the criminal standard that Mr Hanks intended to bribe Mr Oqil in his capacity as an FPO. In order to raise the prospects of a successful conviction against Mr Hanks for the s.6 offence, therefore, prosecution should seek to obtain further evidence of any meetings and communications between Mr Hanks and Mr Oqil, or anyone representing Mr Oqil, over the past year, as well as any communications by Mr Hanks with other parties in which he discussed the project in Tajikistan.

42. Importantly, unlike the s.1 offence, the s.6 offence requires no proof that the bribe was made with the intention to reward or induce 'improper performance' on the part of the FPO. Ministry of Justice Guidance explains that this is because 'the exact nature of the function of persons regarded as foreign public officials is often very difficult to ascertain with any accuracy, and the securing of evidence will often be

reliant on the co-operation of the state any such officials serve.’ Therefore, for the purposes of establishing intent for the s.6 offence, it is not necessary that Mr Hanks intended Mr Oqil to perform his relevant function improperly, only that Mr Hanks intended to influence Mr Oqil in his capacity as an FPO in a way Mr Oqil was not required to be influenced by any written law or judicial decision. Indeed, it is not necessary to prove that Mr Hanks knew Mr Oqil would vote for Great Britain, only that he intended to influence him in some way as an FPO. This difference in the s.1 and s.6 offences serves to widen the net of evidence the prosecution can rely on, and is a further advantage to choosing the s.6 offence over the s.1 offence.

43. Finally, it must be checked that there is indeed no law or judicial decision in Tajikistan permitting Mr Oqil to receive personal payment for public duties. This would of course be highly unlikely, as it would essentially be a law condoning corruption. But Mr Hanks’ defence is likely to look for any loopholes, and so prosecution should close them off.

Failure of commercial organisations to prevent bribery, under s.7 BA 2010

44. If Mr Hanks is charged with a s.6 bribery offence, then it is open to the prosecution to also charge BWA with the offence of failing to prevent bribery, under s.7 BA 2010. Section 7(3)(a) makes clear that Mr Hanks need not be prosecuted in order to bring a s.7 charge against BWA, only that he ‘would be guilty of an offence under section 1 or 6’. As I am instructed to advise the CPS on the merits of entering into a DPA with the BWA, and as those merits turn firstly on whether there is a realistic prospect of conviction of the organisation, I shall briefly outline the grounds for bringing the s.7 charge.

45. The s.7 charge applies to a ‘relevant commercial organisation’ and this includes, under s.7(5)(b) ‘a body which is incorporated under the law of any part of the United Kingdom’. BWA was incorporated in the UK as BWA Ltd in 2014. Therefore, the s.7 charge may apply to it.

46. The s.7 charge applies if a s.1 or s.6 bribery offence is committed by a person associated with the organisation. Section 8(1) states that a person is an ‘associated person’ if he ‘performs services for or on behalf of’ the organisation. Mr Hanks was CEO of BWA at the time of the alleged s.6 offence, so he was certainly an ‘associated person’ for the purposes of s.8.

47. Section 7(2) states that it is a defence to the charge for the organisation to prove that it ‘had in place adequate procedures designed to prevent persons associated with’ it ‘from undertaking such conduct’. As a defence, the standard of proof is the lower civil standard, on the balance of probabilities. Ministry of Justice guidance says adequate procedures should be proportionate to the bribery risks the organisation faces, should have top-level commitment, should be undertaken after a risk assessment, should be communicated throughout the organisation, and should be regularly monitored and reviewed.

48. On the case papers so far, there is no direct evidence of what anti-bribery procedures BWA may have had in place. There is certainly some evidence that supports an argument that BWA’s anti-bribery procedures were inadequate, and in my opinion BWA have a weak defence under s.7(2). In 2019, Transparency International ranked Tajikistan 153rd on its Corruption Perceptions Index. By sponsoring a project in Tajikistan, BWA was therefore putting itself at considerable risk of bribery. Despite this, the organisation decided to allocate GBP60,000 to the

project, to be paid in a single instalment, rather than in several smaller amounts. The requirements for monthly project updates from Mr Oqil was referred to as BWA's Standard Operating Procedure, but having paid all the money upfront, the organisation left itself without leverage to press for compliance. All that was required for Ms White to release the full amount to the personal account of Mr Oqil three months ahead of schedule and poached from a different budget was a single email from Mr Hanks. Finally, by offering staff such large bonuses if Great Britain won the 2023 hosting rights, BWA may have increased the risk of bribery. Ms White refers to her expectation, on the day of the WOW vote, that Mr Hanks would be 'busy with last minute arm-twisting in favour of the Great Britain bid.'

49. Finally, it is my opinion that the second limb of the evidential test set out in the CPS Code of Practice for DPAs is met in regards to charging BWA with a s.7 offence under the BA 2010. There is 'some admissible evidence' that BWA have committed the offence, and 'reasonable grounds for believing that a continued investigation would provide further admissible evidence'.

50. Thus, the CPS *could* enter into DPA negotiations with BWA. But it is my opinion that, on the merits, the CPS should not do so, but should charge and seek to prosecute BWA with a s.7 offence, for the reasons set out below.

Entering a DPA with BWA

51. I am instructed that BWA's Legal Director has sought to enter into a DPA with the CPS, expressing concern about BWA's reputation and its future sponsorship deals, and promising to do 'whatever it took' to secure such a DPA. I am, accordingly, asked to advise on the merits of the CPS entering into a DPA with BWA.

52. A DPA is a discretionary tool established under section 17 of the Crime and Courts Act 2013 (CCA 2013) available to the Director of Public Prosecutions (DPP) in cases that include those where the prosecutor is considering prosecuting a corporation for offences under sections 1, 2, 6, and 7 of the BA 2010. It is therefore available to the CPS should s.7 charges be brought against BWA.

53. As argued above, a s.7 charge could be brought against BWA and therefore a DPA becomes a possible disposal of the alleged criminal conduct. But before exercising its discretion to offer to enter into negotiations with BWA, the CPS must first be satisfied that the public interest would likely be met by a DPA.

54. The CPS Code of Practice for DPAs states at paragraph 2.6 that, 'A prosecution will usually take place unless there are public interest factors against prosecution which clearly outweigh those tending in favour of prosecution.'

55. Public interest factors that support a prosecution of BWA include the following. The offence is serious. GBP60,000 is a large amount of money, and appears to have been entirely misspent. Mr Hanks' culpability appears to be high, and as CEO he wields enormous influence over BWA. The bribe was aimed not just at securing Mr Hanks a personal monetary bonus, but also at undermining the integrity of a global sporting event into which the UK has undoubtedly invested large amounts of money and political capital. Mr Hanks was not only gambling with BWA's future, but with the UK's international standing. It is likely that BWA receives some direct or indirect support from the UK taxpayer. The bribe also harms the public in Tajikistan, by fuelling the culture of bribery and impunity in public life in one of the world's most corrupt nations.

56. Public interest factors that support deferring prosecution include the following. There is no evidence that BWA has any history of similar conduct. Ms White reported the wrongdoing within what is probably a reasonable time frame. Unless further evidence emerges, the bribe can be considered an isolated incident by a rogue director. BWA appear ready to cooperate fully with the prosecution. Finally, the conviction of the organisation is likely to have a drastic impact on it, with sponsors pulling their funding and BWA facing suspension or eviction from WOW. The collateral effects on the public from a successful prosecution could certainly be disproportionate to the offending by BWA: if the UK is found to have secured the rights to the 2023 Wizzball Cup through paying a bribe then it is highly likely the vote will be taken again and the UK may be prohibited from entering a bid. Even if the UK is permitted to enter a bid, other WOW members are far less likely to vote for the UK knowing it cheated the first time around. The UK, therefore, is likely not to host the 2023 Cup and the public will lose the tournament's economic boost and fans of UK Wizzball will see their team's standing on the world stage much diminished.

57. In applying the public interest factors when considering whether to enter into a DPA, paragraph 2.6 of the Code of Practice for DPAs makes clear the prosecutor undertakes 'a balancing exercise', and 'which factors are considered relevant and what weight is given to each are matters for the individual prosecutor.' Decisions are made 'on an individual case by case basis'. It also states that 'one public interest factor alone may outweigh a number of other factors which tend in the opposite direction'. It is my opinion that such is the case here, for the following reason.

58. Paragraph 11.2 of the Code of Practice for DPAs says that once the DPA has been approved by the court, the prosecuting authority must publish the contents of the DPA on its website, unless prevented from doing so by a court order. The court will likely be very reluctant to make such an order, given the implication of a cover up of a matter of public concern. Therefore, by entering into a DPA the fact that BWA faced charges of bribing the Tajikistan Minister of Sport on the day he voted for Great Britain to host the Wizzball Cup will more likely than not become public knowledge. The collateral impact on BWA and the British public, as set out above, would very likely occur *just as if* a prosecution had taken place. But instead of being seen as abiding by its commitment to combat international bribe taking, the failure to prosecute such an egregious case of bribery would likely mean the UK suffering a damaging long term decline in its international standing, particularly its international commitment to combatting bribery. The DPA would thus lead to the worst of both worlds: all the collateral damage of the bribery offence becoming public, plus criticism for a failure to prosecute.

59. It is for that reason that, in my opinion and on current evidence, the CPS should not enter into a DPA with BWA, but instead proceed with further investigation and possible prosecution.

60. Should evidence emerge that reduces the culpability of Mr Hanks to a degree that his actions no longer meet the dual intent requirement for the s.6 offence, and the criminal investigation against BWA is no longer considered appropriate, then paragraph 1.7 of the Code on DPAs says the prosecutor should consider whether a Civil Recovery Order is appropriate.

Preventing Mr Hanks spending further money

61. Although the case is at a very preliminary stage, it is my opinion that a restraint order against Mr Hanks should be obtained under section 40 of the Proceeds of Crime Act 2002 (POCA 2002) and that there are strong grounds for succeeding in that application. A restraint order will prohibit Mr Hanks from spending up to GBP16,000 that the court considers to be the proceeds of crime.

62. The application for a restraint order should be made under s.40(2) POCA 2002, because the CPS has launched a criminal investigation in England and Wales with regard to an offence, and there are reasonable grounds to suspect that the alleged offender has benefitted from his criminal conduct. The test of 'reasonable grounds to suspect' is a lower threshold than other conditions under s.40 POCA 2002, and is the same as the threshold for arrest.

63. As outlined above, it is my opinion that Mr Hanks should be charged with s.2 and s.6 offences under the BA 2010. Under the s.2 offence, there is evidence Mr Hanks received GBP6,000 as a 'kickback' from the bribe he instructed to be paid to Mr Oqil. Under the s.6 offence, there is evidence that Mr Hanks secured his GBP10,000 BWA bonus as 'an advantage in the conduct of business' due to the bribing of Mr Oqil as an FPO. There is a good prospect of convincing the court these sums represent Mr Hanks' benefit from criminal conduct. It is my opinion that the court would not consider Mr Hanks' regular salary paid by BWA over the period in question as deriving from his criminal conduct.

64. A restraint order is a preventive measure imposed in support of any confiscation order that may be made at a future point if Mr Hanks is convicted. The purpose of a confiscation order is to recover a sum of money not exceeding the value of property obtained by the defendant from criminal conduct. Thus, for the purposes of the case on current evidence, the CPS should apply for a restraint order for the sum of GBP16,000 against Mr Hanks. If Mr Hanks is found not to have sufficient UK-based assets available to satisfy the restraint order, the CPS can apply for a repatriation order under s.41(7) POCA 2002, given that it is likely Mr Hanks has deposited some or all of the GBP10,000 in a bank account in Barbados.

65. In addition to the statutory test under POCA 2002, the court must be satisfied that there is a risk that assets will be dissipated should a restraint order not be granted (*Re B* [2008] EWCA Crim 1374). There are strong grounds for arguing that such a risk exists. Mr Hanks opened his Saver account on 8th January, 2020, just a few days before receiving his GBP6,000 'kickback', which was transferred into that account on the day it was paid. Similarly, his BWA bonus was paid into his Saver account on the day it was received. It was from this Saver account that Mr Hanks withdrew the maximum daily amount of GBP10,000 in cash on the day he flew to Barbados, an established tax haven. Mr Hanks is known to fly to Barbados around five times a year. As CEO of an international development organisation, he deals with a wide range of powerful people in jurisdictions with minimal financial regulation. As such he is likely to be well versed in transferring money out of the UK. Taken together, there is a real risk Mr Hanks has already, and will continue to, dissipate his assets in the absence of a restraint order.

Seizing cash from Mr Hanks at Heathrow

66. Part 5, Chapter 3, s.294 POCA 2002 authorises an officer of Revenue and Customs to seize any cash if he has 'reasonable grounds for suspecting that it is

recoverable property'. Recoverable property is that obtained through unlawful conduct (s.304(1) POCA 2002) There is a minimum amount of GBP1,000 (SI 2006/1699).

67. As set out above, there are strong grounds for making a successful restraint order against Mr Hanks for the sum of GBP16,000. Therefore, any amount between GBP1,000 and GBP16,000 may lawfully be seized by Customs officers should Mr Hanks be found carrying cash when he passes through Customs at Heathrow Airport on his return to the UK.

68. The CPS is thus advised to instruct Customs at Heathrow to search Mr Hanks on his return to the UK, scheduled for Friday 29th May, and to seize any cash amount between GBP1,000 and GBP16,000. The procedure is governed by the Code of Practice for Recovery of Cash Search Powers. The officer should caution Mr Hanks when questioning him about the origins of the cash, as he is being investigated for a criminal offence.

69. The CPS is also advised to consider whether to arrest Mr Hanks on his return to Heathrow, given that his search by Customs officers and the restraint order will likely alert Mr Hanks to the CPS' investigation against him. This risks a further dissipation of assets and/or destruction of material which could be valuable to the investigation.

70. Should any cash be seized, it may be detained for up to 48 hours under s.295 POCA 2002 providing reasonable grounds for suspicion it is recoverable property continue, which they are highly likely to. The time period does not include weekends.

71. Following that time period, the continued detention of the cash requires an order from a magistrate. The CPS is therefore advised to make an application on Monday 1st June to the designated officer of the relevant local justice area. I attach the completed Form A from the Magistrates' Court (Detention and Forfeiture of Cash) Rules 2002. Under s.295(1) POCA 2002, the magistrate may extend the period of detention for a maximum of six months, beginning with the date of the order. Mr Hanks will be notified of the hearing date for the extension order, and I would be happy to represent the CPS at that hearing should the need arise.

72. Forfeiture proceedings under s.298(2) POCA 2002 provides the magistrates' court with the power to forfeit the cash detained or any part of it on an application by the CPS if the court is satisfied, on the balance of probabilities, that it is recoverable property. When its investigation into Mr Hanks is more complete, the CPS should consider exercising this option over any cash seized and retained from Mr Hanks. It is important to note that where forfeiture proceedings are pursued in parallel with a criminal prosecution, the forfeited cash can no longer be covered by a restraint order nor be taken into account when calculating a confiscation order.

Next Steps

73. The CPS should take the following next steps in order to progress its investigation into Mr Hanks and BWA:

a) An application should be made to the Crown Court before Mr Hanks' scheduled return to the UK on 29th May for a restraint order. Part 33.51 of the Criminal Procedure Rules 2015 sets out the procedure. The application must be made by an accredited financial investigator, in writing, and supported by a witness statement which sets out the grounds for the application, full details of the realisable property

and the person holding that property, and the proposed terms of the order. As the application is almost certainly to be made 'without notice' to Mr Hanks, it must also set out reasonable grounds for believing that giving notice would cause the dissipation of the realisable property. The duty of candour will apply, requiring a consideration of what Mr Hanks' case would be, were he to be present at the hearing. As a civil proceeding, hearsay evidence of whatever degree may be adduced in support of the application. The order may be made subject to exceptions, such as for reasonable living expenses.

b) Revenue and Customs should be instructed to search Mr Hanks for cash on his arrival at Heathrow and to seize the amounts specified above, and the application to the relevant local justice area magistrates' court should be made on 1st June.

c) The search at Heathrow and the restraint order will alert Mr Hanks to the investigation against him and thus risk further dissipation of assets and/or destruction of material that would be valuable to the investigation. Therefore, as well as considering whether to arrest Mr Hanks, the CPS should apply, at the same time as the restraint order, for a production order under s.345 POCA 2002, requiring Mr Hanks to hand over to the CPS his computers, phones, and any other material CPS investigators have reasonable grounds for believing are 'likely to be of substantial value' to the investigation. If Mr Hanks does not comply with the production order then the CPS can apply for a search and seizure order under s.352.

d) The items listed above are likely to reveal more evidence of links between Mr Hanks and officials in Tajikistan. The CPS is reminded of the challenges, on current evidence, of proving the dual intent requirement for the s.6 offence. There is only circumstantial evidence linking the payment of the GBP60,000 to Mr Oqil and his vote in favour of Great Britain's hosting bid. While it is not a requirement of the s.6 offence that Mr Oqil's vote be tied directly to his receipt of the money, there must have been an intention on the part of Mr Hanks to influence Mr Oqil in his capacity as an FPO and thereby to obtain an advantage for himself in the conduct of business. The acts evidenced in the paper strongly support the s.6 charge, but more evidence is required to establish the necessary mental element. More details of the payment of GBP6,000 made from Tajikistan to Mr Hanks will also be important.

e) Finally, given the serious public interests at stake in this case, as detailed above, the CPS is not advised to enter into a DPA with BWA but instead to seek the consent of the DPP to prosecute Mr Hanks on s.2 and s.6 charges, and on a separate indictment to prosecute a s.7 charge against BWA as soon as investigators have had a reasonable opportunity to collect further evidence.

If I can be of any further assistance please do not hesitate to contact me in Chambers.

A. Barrister, BPTC student
City Law School, London

15th May, 2020