

FORMULA ONE, BRIBERY AND THE SERIOUS FRAUD OFFICE

6 Oct 2017 Azizur Rahman.

Formula 1's racy image seems to have spilled off the track, as the sport finds itself at the centre of enquiries regarding possible corruption.

The high-profile sport has attracted the attention of both the Serious Fraud Office (SFO) and MP's; both of whom are interested in a major deal that was agreed by motor racing's power brokers.

Attention is focused on the 2013 Concorde Implementation Agreement, the contract which outlined the sport's governing principles and power structure. It was signed by the sport's governing body, the Fédération Internationale de l'Automobile (FIA) and the Formula One Group. At the time, Formula One Group was controlled by private equity firm CVC but was then sold to investment firm Liberty Media for £6.2 billion.

Formula One Group paid the FIA £3.9m (\$5m) in recognition of it signing the Concorde Implementation Agreement. The deal also gave the FIA a 1% stake in the Formula One Group for the tiny price of £360,000. The FIA's approval was needed for Liberty's takeover of Formula One Group: which it gave and made a £62m profit by then selling its stake.

Agreement

Everyone involved has denied any hint of bribery regarding the agreement.

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The FIA has stated that: "The Concorde Implementation Agreement entered into by the commercial rights holder (CRH) of Formula 1 and the FIA in 2013 introduced a new governance structure for Formula 1 and redefined certain conditions applicable to their relationship, in particular to ensure that the FIA be properly remunerated for its regulatory role.

"Within this agreement, a lump sum payment of \$5m was made to the FIA as part of the global consideration received in connection with the renegotiation of the terms of the agreements between the commercial rights holder and the FIA, and of the Concorde Agreement, at that time.

"Following its approval, the Concorde Implementation Agreement came into force and this sum was paid to the FIA and properly accounted for. No individual received any payment out of this sum. Any allegation to the contrary would be defamatory."

It added: "There is no conflict of interest on the part of the FIA with regard to its approval of the change of control of the CRH which has been approved... taking into consideration exclusively the terms of the existing agreements between the CRH and the FIA and the best interests of the Championship."

Concerns

However, MP Damian Collins, chairman of the government's Culture, Media and Sport Select Committee, had concerns about the deal. He alerted the SFO to the deal.

In a reply to the MP, the SFO Director David Green states:

"The SFO's Intelligence Unit is following this issue very closely and reviewing materials pursuant to allegations of bribery and corruption

"I can assure you that the SFO will conduct a thorough examination of the facts in order to determine whether or not there are suspected offences that on reasonable grounds involve serious or complex fraud."

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Mr Collins has said that the main issue is “whether the FIA discharged its duties responsibly” and has expressed concern about why F1 would need to make a payment to its governing body and regulator as part of the Concorde.

It seems almost inconceivable that an organisation as high profile and powerful as F1 would find itself subject to business crime allegations. But alarmingly, this is not the first time in recent years that the sport has been the subject of bribery allegations.

Three years ago, the then head of F1, Bernie Ecclestone, was set to go on trial in a German court, accused of bribing a banker with \$44M to ensure the sale of a stake in F1 to a private equity firm went ahead. That case came to what seemed – to British observers, at least – a bizarre end when Ecclestone, who always denied the allegations, settled it in an arrangement that involved a £60M payment.

Sport and every other type of business is now subject to far more stringent scrutiny than ever before. And while it would be a mistake to think that elite sport is immune to bribery prosecution, it would be an equally big error of judgement for any company with a lower profile than F1 – which is just about all of them – to think any of its corrupt activities will never come to the SFO’s attention.

Bribery Act

The Bribery Act 2010 sets high standards for all companies and anyone acting on their behalf. It covers the activities of anyone and everyone representing any company and its punishments include unlimited fines and, for individuals, up to ten years’ imprisonment.

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The Act, which came into effect in 2011, makes a company liable for the corrupt actions of any staff, agents or third parties acting for it, either in the UK or abroad. The bribery does not even have to be carried out in the UK. The person committing it simply has to have a close connection to the UK. Being a British citizen, national, subject or resident or working on behalf of a company that does at least some business in the UK is adequate for the purposes of the Act. If such a person pays, receives or requests a bribe, either directly or indirectly, to perform a relevant function improperly anywhere in the world then there are grounds for a Bribery Act prosecution. There is also an offence of using a bribe to influence a foreign official to gain a business advantage.

Any company facing investigation for breaching the Bribery Act does have a valid defence if they can show that it had carried out all adequate procedures to prevent anyone representing it acting illegally. But if that is not the case, a prosecution of the company is likely. And if that offence was committed with the consent or “turning of a blind eye” of a senior officer of the company then that person can have criminal proceedings brought against them.

Scope

The scope of the Act, therefore, makes it impossible to ignore. Companies of all types and sizes must take steps to make sure they have done everything to prevent them being prosecuted for bribery. This means each company assessing all aspects of its work to examine where the potential for bribery exists.

Workplace procedures must then be introduced to “design out” that potential. Staff have to be given advice and, if necessary, training on both the dangers and tell-tale signs of bribery. Whistle blowing procedures also have to be introduced to ensure that staff or anyone else with a connection to the company can raise concerns of wrongdoing.

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When the damage that can be prevented by such actions is considered, such procedures have to be seen as worthwhile. If companies are wary of what they should do, there is no shortage of specialist legal advice available – however high or low-profile your business is.



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