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Spotlight on Corruption submission to the International Trade Committee consultation on UK Export Finance.

Organisation overview:

1. Spotlight on Corruption is an anti-corruption charity that works to end corruption within the UK and wherever the UK has influence. We undertake detailed, evidence-based and impactful research on the implementation and enforcement of the UK's anti-corruption laws, looking for ways in which they can be improved. Our vision is for a society where strong, transparent, and accountable institutions ensure that corruption is not tolerated.
2. To this end our submission is directed toward identifying weaknesses in UKEF's approach to assessing applications for export credit support, and in particular the risks of supporting transactions tainted by bribery and corruption. In its latest report the OECD Working Group on Bribery has praised UKEF's proactive approach to implementing the recommendations of the anti-bribery convention but has also highlighted several areas where UKEF's performance could be improved.
3. As UKEF's role is expanded in the coming years,¹ including a threefold increase in direct lending to foreign governments in the March 2020 budget, and as its portfolio concentrates on countries and sectors with longstanding corruption risks, it is essential that UKEF has the highest anti-corruption standards. This will protect the UK's brand as a country that does business with integrity, and protect British business from exposure to bribery demands.
4. In July Spotlight on Corruption released a significant report² addressing these matters in detail and, in flagging concerns about the level of corruption risk UKEF is taking on particularly in recent projects in Sub-Saharan Africa. It is a feature of this recent support that it is being given to subsidiaries of foreign companies with little economic presence in the UK, and some of whom have dubious track-records on corruption. If a leading export credit agency such as UKEF was to be found supporting an increased number of corrupt transactions, this could seriously undermine the international fight against corruption as well as the UK's reputation for fair trade. We therefore made a series of recommendations about how UKEF could improve its transparency in handling corruption risk and anti-corruption procedures.

Summary of recommendations:

5. UKEF's revised anti-corruption policies should be published along with an annual overview of its anti-corruption work.
6. UKEF's remit for combatting corruption should be revised in line with the Bribery Act and the publication of the UK's Anti-Corruption Strategy to provide a specific mandate to prevent bribery.

¹ Permanent £5 billion boost to UKEF lending capacity. <https://www.gov.uk/government/news/permanent-5-billion-boost-to-ukef-lending-capacity>

² Weak link or first line of defence? Spotlight on Corruption report. <https://www.spotlightcorruption.org/new-report-weak-link-or-first-line-of-defence-the-role-of-uk-export-finance-in-fighting-corruption-in-a-post-coronavirus-and-post-brexit-trade-drive/>

7. Strengthen its anti-corruption procedures by: ensuring there are appropriate sanctions where anti-bribery warranties are breached; referring suspicious activity promptly to law enforcement bodies; denying support where companies do not have anti-corruption procedures in place and where they do not cooperate with law enforcement investigations fully; and making greater use of its audit powers.
8. Continue to promote best practice at the OECD for export credit agencies, including pushing for a robust review mechanism, and an intelligence sharing mechanism between ECAs on corrupt actors.

Q1 How suitable is UKEF's process for assessing applications for support?

UKEF's current anti-corruption policies are not obviously in the public domain.

9. In 2018 UKEF announced a "major and comprehensive review of its financial crime policies and procedures" as part of a commitment made under the UK's Anti-Corruption Strategy 2017-2022. To this end UKEF commissioned independent expert advice to benchmark its procedures against best commercial practice. UKEF has yet to publish the new procedures. Snippets of information about these procedures can be gleaned from other sources, such as updates on the UK's Anti-Corruption Strategy, minutes of the independent Export Guarantees Advisory Council and an annex in the OECD Working Group on Bribery's review of UK implementation of its recommendation on export credits. When Spotlight on Corruption asked for a copy, we were directed to submit a Freedom of Information request. The response to this request was a link to a 2015 consultation by UKEF on its anti-corruption procedures. The lack of public information about what UKEF's new financial crime policies and procedures are, following independent expert advice, means it is not possible to assess how effective these policies are.

UKEF's remit for fighting corruption hasn't been revised since 2004 despite the introduction of the Bribery Act 2010 and the publication of the UK's Anti-Corruption Strategy 2017-2022.

10. UKEF's remit for fighting corruption, which was agreed with government in 2004, is at present focused on deterrence. The remit establishes that UKEF is not an investigatory agency in the absence of statutory investigative powers but instead takes 'reasonable precautions' to avoid financial loss as a result of corruption. As a result, UKEF's official position is that it cannot guarantee that it will not support a corrupt transaction and is not required to conduct a pre-contract investigation as to the existence of bribery. This requires an urgent update, particularly in light of the introduction of the Bribery Act and its 'failure to prevent' bribery offence, and in respect of the role established for UKEF in the UK's Anti-Corruption Strategy 2017-2022 as leading international best practice. Given that commercial insurers operating in the UK are now criminally liable for failing to prevent bribery, UKEF at the very least should have a mandate to prevent bribery in its transactions.
11. It is notable that UKEF's remit contrasts with Canada's Export Credit Agency which states publically that "*under no circumstances will EDC, directly or indirectly, knowingly offer or give a bribe. Further, EDC will not support a transaction that involves the offer or giving of a bribe, and will exercise reasonable diligence and care not to support unknowingly such a transaction.*"³

UKEF does not always receive clients' code of conduct before extending support

³ See the EDC's Guide for Canadian Exporters <https://www.edc.ca/EN/About-Us/Corporate-Social-Responsibility/Documents/keeping-corruption-out.pdf> and the EDC's Anti-Corruption Policy Guidelines <https://www.edc.ca/EN/About-Us/Corporate-Social-Responsibility/Documents/anti-corruption-guidelines.pdf>

12. According to UKEF's annual briefing to the Export Credit Advisory Council on its anti-corruption procedures, only 70% of companies provide UKEF with their code of conduct. It is not clear what action UKEF takes with regard to the 30% that do not. It is questionable whether UKEF should be providing any support to companies that fail to provide them with a clearly implemented and effective code of conduct.

UKEF should ensure its clients have provided full beneficial ownership information at Companies House before confirming support.

13. Spotlight on Corruption has identified several instances in its latest report where UKEF has released information on transactions with UK companies with no UK declared beneficial owner or web presence. Supporting companies that fail to provide information on their ultimate beneficial owner is unacceptable for a public body and it is vital that the public is able to access information on the ultimate beneficiaries of UKEF support.

It is not clear what safeguards UKEF has in place where it supports companies facing active criminal investigation.

14. In recent years UKEF has extended significant support to companies facing criminal investigations in the UK and in other jurisdictions.⁴ UKEF should not give support to a company under investigation where it fails to cooperate proactively with law enforcement and has not initiated extensive internal reform including removing senior management responsible for wrongdoing.

UKEF is too slow to refer clients to law enforcement when it finds evidence of wrongdoing.

15. UKEF's referral to the SFO regarding incidences of bribery at Airbus came more than a year after it had first raised issues with the company around the use of an agent in an aircraft deal in Sri Lanka. It is somewhat inexplicable why UKEF waited for Airbus to complete an internal review of its use of agents before reporting anything to the SFO. Prompt reporting of suspicions by civil servants is essential to enable enforcement bodies to respond proactively to allegations of corruption. Furthermore, it is essential to ensure that UKEF does not impede or prejudice law enforcement investigations by seeking to handle corruption allegations between itself and its clients. UKEF claims to have developed more streamlined internal processes for reporting suspicious business conduct to law enforcement although there is nothing in the public domain about what these procedures consist of.

Q2 Engagement: what could UKEF learn from other successful export credit agencies around the world?

16. UKEF has been instrumental in pushing for revisions to raise standards multilaterally at the OECD Working Group on Bribery. To its credit, UKEF has implemented the majority of the Group's recommendations, or "*at the better end of OECD practice*,"⁵ but several recommendations remain which are yet to be implemented or have only been implemented partially:

The OECD has voiced concerns as to how robust UKEF's policies are in practice.

⁴ In recent years, several of UKEF's regular clients (Amec Foster Wheeler, SBM Offshore and Petrofac) have faced investigation by the UK's Serious Fraud Office for their involvement in a major oil industry bribery scandal involving the company Unaoil.

⁵ Implementing the OECD Bribery Convention. Phase 4 two year follow up: <https://www.oecd.org/corruption/United-Kingdom-phase-4-follow-up-report-ENG.pdf>

17. In its 2017 review of UKEF practices, the OECD Working Group on Bribery noted that while UKEF's anti-corruption policies appear good on paper, concerns remained over how effective they were in practice. The report highlights that UKEF has never itself detected instances of bribery nor has it turned down an application on grounds of bribery. While UKEF due diligence procedures look robust on paper, the fact that it still has yet to reject an application on grounds of bribery or corruption issues is an ongoing concern.

UKEF should make more vigorous use of its audit powers.

18. Information provided in Parliament in January 2020⁶ suggests UKEF has used its audit powers just three times in the past two years: once to inspect documents at Airbus with regard to its compliance procedures, and twice to inspect documents relating to banks. In 2015/2016 it used the powers to undertake four external compliance reviews of seven cases where UKEF support was being considered or had been provided. It is not clear whether such external compliance reviews are conducted on a regular basis and if not why not. UKEF's audit powers only pertain where an exporter has already received support, but they could be a powerful tool to ensure that exporters are making accurate disclosures and declarations.

UKEF should take a firm stance against exporters who engage in corrupt behaviour in breach of anti-corruption warranties made to the agency.

19. The OECD urges ECAs to take "appropriate action" including denial of payment, indemnification or refund of sums provided if any party is convicted or subject to equivalent measures such as a Deferred Prosecution Agreement for bribery offences. Currently, UKEF's position is that it can only take punitive action against companies where it has incurred financial losses and not when companies have repaid, or are in the process of repaying, UKEF support. Furthermore, it will not take such action where it would be to the detriment of an 'innocent' third party, such as a bank making a loan which UKEF has guaranteed. UKEF's legal position is that it may not impose a blanket refusal on applications from companies as this would expose it to judicial review. The result is that there is in effect no sanction that UKEF imposes if a company breaches its anti-corruption warranties. This seriously reduces their deterrent value and effect. It is essential that there are real consequences for breach of these warranties, including formal mechanisms for suspending applications from companies found to have breached anti-corruption warranties. In line with commercial practice, UKEF should give particular consideration to requiring companies that breach its warranties to pay higher premiums for any new support. This would act as a powerful incentive for a company to improve its procedures.

UKEF should publish an annual overview of its anti-corruption work

20. The work undertaken during 2019 on improving UKEF's procedures included the introduction of a new dedicated anti-corruption due diligence team that puts UKEF at the forefront of export

⁶ 168 UK Export Finance: Audit: Written question - 9748 asked by MP Tulip Siddiq: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-01-29/9748>

credit agencies in having appropriate management controls. An annual overview of the work of this team, including the number of cases referred or reported to it, should be put in the public domain. UKEF does provide an annual briefing of the operation of its anti-bribery and corruption procedures to its Export Guarantees Advisory Council (EGAC). In order to improve transparency about the operation of its procedures, UKEF should use the annual briefing as a basis to develop an annual report on its anti-bribery and corruption procedures, which should include more detailed information including the number of internal referrals or reports to the anti-corruption due diligence team. The OECD Working Group on Bribery also recommended that UKEF should publish information on its website about the number of referrals made to law enforcement authorities regarding suspicions of bribery in transactions. At present, UKEF does not proactively publish this information.

21. UKEF should continue to be at the forefront of export credit agency practice in fighting corruption, and push for improved standards globally. It could do this by using its considerable weight within the OECD's Working Party on Export Credits (ECG) to promote a robust and independent review mechanism for ECA anti-bribery procedures rather than the existing mechanism of self-assessment. The OECD's Working Group on Bribery is a good model in this regard. Additionally, UKEF could push for an intelligence sharing mechanism at the ECG so that ECAs are aware of corrupt actors identified in the course of due diligence undertaken at a national level.

Written evidence from Spotlight on Corruption (UEF0016)