

# Crime Prevention and Security Management

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Colin King · Nicholas Lord

# Negotiated Justice and Corporate Crime

The Legitimacy of Civil Recovery Orders and  
Deferred Prosecution Agreements

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## SERIES EDITOR'S INTRODUCTION

In this book, Colin King and Nicholas Lord (from the disciplines of law and criminology respectively) address one of the fundamental, yet largely unresolved issues of modern justice, namely how to hold criminal organisations to account. The context is one where the criminal justice process plays only a small part—and a very small one at that—in controlling their illegal behaviour and this is characterised by a distinct lack of appetite to prosecute.

Their scholarly accessible style will attract academics and practitioners to their work. Readers will engage with enlightening discussions on concepts of legitimacy and transparency (for example) as they relate to corporate crime. Running through their texts is a commitment to analysing how justice can be obtained, or rather how it is not currently achieved. They outline the limits of negotiated justice and discuss why incentivising offending organisations to plead guilty is not an unqualified good. For example, in the case of self-reporting, they argue it 'has enabled corporates to negotiate their way *out* of the criminal process and the perception is that they are buying their way out of prosecution?.

They primarily focus their analysis via an examination of civil recovery orders (CROs) and deferred prosecution agreements (DPAs). They use case studies and are exhaustive in their coverage, indeed they analyse all eleven CROs and all four DPAs that have been used to date which predominantly relate to offences of bribery and/or corruption. They examine the advantages and disadvantages of each approach. This includes, for example, a focus on the limited practical alternatives on the

one hand—not least given resource constraints—against the perception at least, and often the reality too on the other, that corporates are able to circumvent prosecution and pay to avoid justice by receiving a lesser penalty.

You will read about conflicts within the Asset Recovery Incentivisation Scheme (ARIS), and the different approaches to prosecution according to the perceptions of different leaders. And while the authors' central premise is that corporate crime *is* crime, and ought to be regarded as such, they concede that it rarely is. They point starkly to the inadequacy of corporate criminal liability laws in the UK and the limits of the doctrine of identification particularly for the big corporates which removes them from the gaze of punishment.

There are no magical solutions although the authors do outline what they feel will be the important factors to influence future developments. Most importantly perhaps, they remind us that it is vital for fairness that we hold wrongdoing to account and that in our search for alternatives to criminal prosecution, ones that work, we must not lose sight of a central point, that corporate crime is criminal and that the offender is a corporate rather than an individual does not make it any less so.

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