



## Helping you see the risks

### Quarterly UK Fraud and Corruption Enforcement Update

April 2020



Welcome to the first edition of Eversheds Sutherland's quarterly Fraud and Corruption Enforcement update. Here we provide a quick overview of the recent key developments relating to criminal investigations and enforcement actions tackling fraud, bribery and corruption offences in the UK.



## UK's Serious Fraud Office publishes corporate compliance programme guidance

On 17 January 2020 the Serious Fraud Office ("SFO") published [internal guidance](#) to be used by SFO prosecutors when considering whether to prosecute a company for failing to prevent bribery under section 7 of the UK Bribery Act 2010. Whilst the guidance was designed to be used internally, it gives companies and their legal advisors some [insight](#) into the SFO's expectations of corporate anti-bribery and corruption compliance programmes. It is clear from the guidance that fundamentally the SFO expects that the foundation of the compliance programme should be the Ministry of Justice's [Six Principles](#).



## The SFO settles the most expensive deferred prosecution agreement yet with Airbus

On 31 January 2020, Dame Victoria Sharp approved the UK's seventh deferred prosecution agreement ("DPA"), between the SFO and Airbus. Airbus admitted various bribery offences committed across Sri Lanka, Malaysia, Indonesia, Taiwan and Ghana between 2011 and 2015. The terms of the three-year DPA include payment of a financial penalty of €983.97 million and €6.9 million in prosecution costs, along with the appointment of a monitor to review and report upon Airbus's ongoing compliance programme.

This DPA was part of a global settlement with the French and US authorities, for which Airbus agreed to pay a total financial penalty of €3.6 billion.



## UK director found guilty of failing to produce documents to the SFO

A director of a London-based company, Anna Machkevitch was convicted on 30 January 2020 of failing to comply with a "S.2 Notice" from the SFO without reasonable excuse.

Section 2 of the Criminal Justice Act 1987 provides the SFO with various powers, including the ability to issue a compulsory notice which requires a person to produce listed documents or categories of documents within a specified period of time. Failure to comply with such a notice can result in a fine and/or up to six months' imprisonment.

Ms Machkevitch was served with a notice in December 2018 for documents which spanned over a decade. Whilst Ms Machkevitch did produce a large volume of documents, the court found that she nonetheless failed to fully comply with the notice. Ms Machkevitch was ordered to pay a financial penalty of £981, and prosecution costs.

Prosecutions for failing to comply with S.2 notices are rare. The last prosecution was of an individual who was found guilty in 2016 of having destroyed two mobile phones he had been required to produce. He was sentenced to 12 months imprisonment.



## Barclays executives acquitted 7.5 years after an SFO investigation was launched

Three Barclays executives were acquitted on 28 February 2020, following a five-month trial in which they were accused of conspiring to commit fraud by misleading investors and the markets over capital raising arrangements. These had been agreed with Qatar Holding LLC and Challenger Universal Ltd in exchange for emergency funding at the height of the 2008 financial crisis in June and October 2008.

Charges against the corporate entities Barclays Plc and Barclays Bank plc arising from the same investigation had previously been dismissed by the Crown Court on 21 May 2018.





## NCA publishes the National Strategic Assessment and Annual Plan 2020

On 3 April 2020, the National Crime Agency (“NCA”) published both the [National Strategic Assessment](#) of Serious and Organised Crime in the UK and the NCA’s Annual Plan for 2020.

The Strategic Assessment identified logistics and legal/financial professional services as the private sectors most likely to be targeted for corruption by organised crime groups. The highest risk sectors for bribery of public officials are construction, extractives, aerospace and defence, and pharmaceuticals. Intermediaries continue to be key to facilitating and negotiating bribes. Construction and agriculture are two of the sectors in which labour exploitation most commonly occurs.

According to the NCA, cyber criminals are increasingly targeting businesses over individuals, and the most common method of cyber extortion is through ransomware attacks. The NCA warned that phishing scam emails remain the most common method of delivering malware, and increasingly through hyperlinks to infected sites rather than attachments. One company lost €60million in revenue from one ransomware attack.



## Tesco’s deferred prosecution agreement comes to an end

The three-year deferred prosecution agreement entered into by Tesco Stores Ltd and the SFO on 10 April 2017, has come to an end following the SFO’s confirmation to the court that the terms of the DPA had been completely fulfilled.

The terms had included payment of a £129m fine and £3m investigation costs, as well as the implementation of and reporting on an ongoing compliance programme of commercial income accounting controls and operating procedures.

Three senior directors of Tesco were prosecuted in connection with the facts upon which the DPA was settled. All three directors were acquitted in December 2018 and January 2019.



## Unexplained Wealth Orders discharged

Since 31 January 2018, when a law enforcement authority suspects that a person is involved with serious crime and their assets appear to be disproportionate to their known income, they can apply to the High Court for an Unexplained Wealth Order (“UWO”). This requires the respondent to explain the source of their wealth. Failure by the respondent to provide a full response will give rise to a presumption that the property is recoverable under the Proceeds of Crime Act 2002.

On 8 April 2020 the High Court dismissed two UWOs obtained by the NCA in May 2019 against three London homes in Hampstead, Highgate and Chelsea, owned by relatives of Kazakhstan’s former president Nursultan Nazarbayev. The High Court Judge dismissed the UWOs as she was not satisfied that the homes had been purchased with the proceeds of crime.

The NCA have stated that they intend to appeal the High Court decision.





## Five fast facts

- 1** The SFO confirmed that the unsuccessful prosecution of the three Barclay's executives cost £12.2m in total.
- 2** The average number of S.2 Notices issued each year by the SFO between 2001 and 2013 was 1159.
- 3** The NCA has obtained 15 UWOs relating to property worth an estimated £143 million.
- 4** The average length of an SFO investigation from case acceptance until conclusion was 4 years and 7 months during the period between 2009-2019.
- 5** According to the NCA's National Strategy Assessment for 2020, victim-reported losses for fraud have increased by 3.8% to £2.2 billion in the year ended March 2019.



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