



Helping you see the risks

Quarterly UK Fraud and Corruption Enforcement Update

July 2021



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



Corporate criminal liability: Reform on the horizon?

On 9 June 2021, the Law Commission published a comprehensive [discussion paper](#) on whether the law relating to corporate criminal liability should be reformed. The paper raises a number of key questions regarding the criminal liability of corporations for economic crime as well as the individual liability of directors and senior managers for offences committed by corporations.

Of particular interest, the paper seeks views as to whether a “failure to prevent” offence should be introduced and the scope of existing economic crime offences to which it should apply. It further queries what consequences for corporations are envisaged should such an offence be introduced.

A failure to prevent offence was introduced in December 2020 as a late amendment to the Financial Services Bill, and was debated during the Bill’s Third Reading in the House of Commons on 13 January 2021. The amendment was ultimately not accepted on the basis that it would pre-empt the outcome of the ongoing review by the Law Commission.

Responses to the discussion paper are sought by 31 August 2021 with the Law Commission’s report to follow later in the year.



SFO concludes 10th Deferred Prosecution Agreement

On 1 July 2021, the SFO marked the tenth anniversary of the Bribery Act coming into force with its tenth deferred prosecution agreement (“DPA”).

Amec Foster Wheeler Energy Limited (“AFWEL”) has agreed to pay a total of £103 million over the next three years under a co-ordinated global settlement also involving the US Department of Justice and Securities and Exchange Commission and the Brazilian Ministério Público Federal (“MPF”), Comptroller General’s Office (“CGU”) and Solicitor General (“AGU”). The DPA relates to the use by a legacy business (Foster Wheeler AG) of third party agents in Brazil, India, Malaysia, Nigeria and Saudi Arabia between 1996 and 2014.

The penalty imposed was reduced to reflect factors including extensive cooperation provided and the fact that the current owners of AFWEL (which provided an undertaking to cover the financial elements of the DPA) is “twice removed” from the conduct covered by the DPA. Approving the DPA, Lord Justice Edis underlined the message consistently conveyed by judges approving all DPAs to date that the prospects of a negotiated settlement are significantly enhanced by proactively bringing matters to the attention of the SFO. Recognising steps already taken by the companies which acquired the business unit within which bribery occurred to identify and remediate anti-bribery and corruption compliance issues, the DPA now concluded with AFWEL does not require the appointment of an external independent monitor. Instead, it prescribes regular reporting to the SFO and other authorities on compliance related issues.

Perhaps recognising the difficulties the SFO has experienced in a number of prosecutions against individuals after DPAs have been concluded, the judgment accompanying the DPA contains very clear reminders that proceedings against individuals may follow (and states that charging decisions will be taken within three months). It is careful to emphasise that the fact of a DPA with AFWEL is not determinative of the guilt of any of those individuals. Before deciding the application in respect of this DPA, the Court heard submissions on behalf of some affected individuals.



SFO: Annual Business Plan 2021/2022

The SFO published its annual [business plan](#) on 13 May 2021 setting out how it will deliver on its mission to fight complex economic crime, deliver justice for victims and protect the UK's reputation as a safe place to do business. Introducing the business plan the Director of the SFO, Lisa Osofsky, indicated that it had been developed with an eye to the SFO's next multi-year strategic plan.

Action is to be taken in four priority areas namely operations, people, stakeholders, and technology. This includes:

- Putting victims and the public interest at the heart of planning and delivery of casework, including through first-class support to witnesses;
- Encouraging good corporate compliance, and continuing to deploy Deferred Prosecution Agreements where these can help to deliver justice for victims quickly and effectively, whilst mandating improvements to avoid future fraud, bribery or corruption;
- Ensuring that the SFO's work with domestic and international law enforcement partners continues to support strong operational outcomes and UK influence, including by re-establishing face to face contacts and collaboration when COVID-19 restrictions are lifted as appropriate; and
- Improving the capabilities, timeliness and responsiveness of the SFO's Digital forensics and e-discovery services.

It is of interest that the action points are broadly similar to those set out in the economic crime [strategy plan](#) published by the Crown Prosecution Service ('CPS') earlier this year. It is likely that a greater level of cross-agency co-operation can be expected whilst combatting economic crime remains high on the government's agenda.



SFO: Not just about fighting crime but defending the UK's reputation

The SFO has been the subject of much criticism over recent years given its relatively low conviction rate. Many legal professionals have queried the agency's purpose. On 30 June 2021, Lisa Osofsky provided comment to the Times which seeks to address the challenges faced by the agency whilst confidently advancing its agenda.

Ms Osofsky highlights that the SFO's investigations are significantly complex and sophisticated. As a result of the technological era we now live in, the agency is required to interrogate far more evidence than ever before. Ms Osofsky suggests that the agency remains fearless and innovative as it tackles such complex cases going on to state that it is not just about fighting crime but defending the UK's reputation for openness, economy and being a beacon for the rule of law.

The SFO will only bring a case where there is strong evidence however, it is ultimately for a jury to decide upon whether a defendant is guilty. Ms Osofsky continues to highlight the agency's successes including the launch of an investigation into the Gupta Family Alliance for suspected fraud and money laundering as well as the conviction of GPT, an Airbus subsidiary, for corruption. She acknowledges the difficulties relating to individuals, suggesting that leaders can distance themselves from the actions of their company by heavily delegating decision-making, lack of record keeping and spreading out responsibility across different corporate entities.

Acknowledging that the SFO are unable to put companies behind bars, Ms Osofsky outlines the concept of DPAs. She states that these are not get out of jail free cards or backroom deals. They are transparent under the watchful eye of a senior judge. Ms Osofsky suggests that companies learn lessons from DPAs and compliance and behaviour improves. Since being introduced in the UK until 2020, DPAs have contributed over £1.3 billion to the Treasury.

Ms Osofsky takes view that there is a lot worth defending in the UK. Under her leadership, the SFO's purpose of being protects the UK's democratic values and helps to shape a world in which open societies and economies can flourish.



HMRC launches almost 13,000 investigations into COVID support scheme fraud

A recent response to a freedom of information request found that as of March 2021 HMRC had opened 12,828 investigations into potential fraud and other non-compliance with the rules relating to the UK government's COVID support schemes. Of these investigations, 7,384 relate to the use of the government's furlough scheme whilst 5,020 relate to the employed income support scheme. A further 424 relate to the "eat out to help out" scheme. HMRC has not confirmed the total number of live prosecutions relating to the schemes but has indicated that five individuals have now been arrested in respect of the COVID job retention scheme and three individuals in respect of the "eat out to help out" scheme.

The reported spike in HMRC investigations is unsurprising and follows the UK government's announcement that £100 million will be invested in a taxpayer protection task to crack down on COVID-19 fraudsters who have exploited government support schemes. Whilst it is clear that such criminal activity is being taken seriously, it remains questionable whether the latest investment shall be sufficient in tackling the sheer volume of investigations currently reported noting that they are typically complex and long running.



The FCA flexes its muscles by bringing fraud charges against individuals

In a rare move, the FCA announced on 22 April 2021 that it has charged two individuals with conspiracy to commit fraud by false representation following its investigation into a £3.8 million mortgage fraud. One of the individuals faces further charges of carrying on regulated activities without authorisation.

The fraud allegation concerns a series of mortgage applications made between January 2015 and March 2018. If a conclusion was reached that a client had insufficient income to justify the mortgage they required, that client would be charged a fee which would then be paid to the accountant to create the false employment status documentation to support mortgage applications for those clients.

The unauthorised business charges relate to advice provided and arrangements made regarding a series of regulated mortgage contracts. The individual is an unauthorised and prohibited person and as such could not provide the regulated financial services.





The Pensions Regulator: Case Update

Two individuals are due to stand trial before the Southwark Crown Court in June 2022 in respect of an alleged £13.7 million pension fraud. A further individual pleaded guilty to the offence at first instance.

The case is brought by the Pensions Regulator ('TPR') following an announcement regarding its use of powers to investigate and punish those who put savers' money at risk. It is the first example of the TPR working together with the police to secure the extradition of an individual to face criminal proceedings in the UK.



SFO secures a conviction against GPT Special Project Management Ltd

GPT Special Project Management Ltd ('GPT') was charged with corruption in relation to contracts awarded for work undertaken for the Saudi Arabian National Guard. GPT pleaded guilty to the offence on 28 April 2021 with Mr Justice Bryan proceeding to sentence the company to pay a fine of £7,521,920 and costs of £2,200,000. A confiscation order in the sum of £20,603,000 was also made.

The proceedings remain on-going in respect of three individuals who had also been charged with the offence. The former managing director of GPT faces a separate charge of misconduct in public office.





Five fast facts

1

The SFO's labs examine company servers with capacity for 80 terabytes of data — enough to house every UK webpage published in a year. In one case, the SFO saw a phone with 300,000 WhatsApp messages.

2

Approximately £1.7 billion has been paid in financial penalties as a result of 10 DPAs.

3

The SFO is the only UK prosecution agency to have used DPAs as a prosecutorial tool. To date, 10 DPAs have been agreed, 7 of which relate to bribery offences.

4

The SFO collected £6.9 million as a result of Proceeds of Crime orders in the financial year ended March 2021.

5

£19 was the cost of the cheapest VPN connection offered by DoubleVPN, a service used by cyber criminals worldwide to mask their location and identities online. The service was taken down following an international investigation involving the National Crime Agency, the first of its kind.



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