



Helping you see the risks

UK Fraud and Corruption Enforcement review – Annual review 2020



Welcome to Eversheds Sutherland's Fraud and Corruption Enforcement Annual Review which highlights some of the top developments from the past year relating to criminal investigations and enforcement actions tackling fraud, bribery and corruption offences in the UK.

2020 saw some interesting developments in the fraud and corruption space including an increase in prosecutions, issued guidance from the SFO pertaining to DPAs and renewed interest in the introduction of a new failure to prevent economic crime offence.

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Development of UK Deferred Prosecution Agreements

2020 proved to be a busy and interesting year for Deferred Prosecution Agreements (“**DPAs**”) in the UK with three new DPAs approved and one which came to an end.

The year started with the approval of the largest ever DPA on 31 January 2020 which was between the SFO and Airbus. The three year DPA was approved by Dame Victoria Sharp and relating to alleged bribery offences committed across Sri Lanka, Malaysia, Indonesia, Taiwan and Ghana between 2011 and 2015. Airbus agreed to pay a financial penalty of €991 million and to appoint 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.

The SFO have agreed nine DPAs in the seven years since their introduction in February 2014. Only three of the DPAs have been in relation to fraud offences, the other six arose from bribery investigations.

Three of the DPAs have since expired and fourth will expire in October 2021.

The SFO have received a combined total of almost £1.6 billion in financial penalties from the nine DPAs.



Serious Fraud Office published two new Operational Handbook chapters

The SFO’s Operational Handbook is internal guidance produced by the SFO to guide their investigation and prosecution teams through relevant areas of criminal law, practice and procedures. Whilst the Handbook is designed for internal use, it is published on their website for transparency and is a valuable resource for any corporate crime practitioners.

On 17 January 2020 the SFO published a new chapter on “Evaluating a Compliance Programme”, which outlines the issues which SFO prosecutors should consider when assessing whether a company’s anti-bribery and compliance programme may be sufficient to allow the company to rely upon the defence of ‘adequate procedure’ in response to a prosecution for failing to prevent bribery under section 7 of the UK Bribery Act 2010. The Chapter makes it clear that the SFO’s fundamental expectation is all compliance programmes must founded upon the Ministry of Justice’s Six Principles.

Later in the year, the SFO published a detailed chapter devoted to DPAs on 23 October 2020. The chapter outlined the factors which the SFO must consider when deciding whether a case may be suitable for a DPA, as well as the process which will be followed once a corporate defendant has been invited into DPA negotiations.

The detailed guidance emphasises that self-reporting and co-operation are key factors. It also provides useful clarification that the self-report should be made “within a reasonable time of wrongdoing coming to light”, which will alleviate some of the pressure felt by companies in the past to make a quick report before it was even clear that criminal offences had been committed.



Fraud is the most prevalent UK crime

A [report issued by the Royal United Services Institute](#) in January 2021 estimates that fraud costs the UK up to £190 billion a year, with the private sector suffering the greatest losses. The issue is now considered a national security threat. The RUSI report labels fraud an 'epidemic' and calls for the UK's intelligence agencies to play a bigger part in tackling the issue.

Lisa Osofsky, the Director of the SFO, has repeatedly called upon criminal justice partners around the world to work in an agile and collaborative way by sharing information and working together in tackling sophisticated criminals. It will be interesting to see how the government respond to RUSI's findings and whether a drive for change will be high up on the agenda for 2021.



Coronavirus Fraud

Since the early days of the Covid-19 pandemic, fraudsters have been taking advantage of the many associated changes which have been made to the UK's healthcare, financial services, tax and benefits systems.

In January 2021, [three men were arrested](#) in connection with one of the largest coronavirus-related frauds to be targeted by the National Crime Agency to date. The investigation concerns a fraudulent coronavirus bounce-back loan scheme which had allegedly made bogus claims of £6 million. This figure would account for more than 13% of bounce-back loans approved by the government as of mid-December 2020.



Convictions in two of the SFO's Unaoil related investigations

In July 2016 the SFO announced that it had opened a bribery investigation into a Monaco based consultancy company, Unaoil. Shortly after followed a spate of announcements by the SFO of related investigations into companies who had alleged worked with Unaoil.

In May 2020, the SFO announced that it had closed the investigation into ABB Ltd on the basis that the evidence available did not meet the test for prosecution.

In July 2020, a jury in London found two former Unaoil managers guilty of corruption in regard to paying bribes of over USD \$500,000 to Iraqi public officials to secure a contracts worth USD\$55m in Iraq for SBM Offshore and Leighton Offshore. They were sentenced to five years' and three years' imprisonment, respectively. Unaoil's Iraq partner had already pleaded guilty for the same offences and, in October 2020, was sentenced to more than three years in prison.

In relation to a further related investigation in January 2021, the former Global Head of Sales of an energy company pleaded guilty to three counts of bribery relating to corrupt payments made to agents between 2012 and 2018 to influence the award of \$3.3 billion-worth of contracts in the United Arab Emirates. This followed guilty pleas in February 2019 from the same individual to an initial 11 counts of bribery relating to contracts awarded to in Iraq and Saudi Arabia with a total value of more than \$4.2 billion. The individual is due to be sentenced in February 2021.



Unexplained Wealth Orders mature

The [report of Parliament's Intelligence and Security Committee into Russia](#) was made public on 21 July 2020. In a section titled "Tackling crime", the Security Minister was quoted as acknowledging that Unexplained Wealth Orders ("UWOs") are acting as a deterrent to the UK being used as a place to keep illicit funds and are likely to be used more in future.

However, the NCA, which is responsible for investigating suspicious financial transactions and applying for UWOs, gave evidence that resourcing issues are having an impact on their effectiveness. "We are, bluntly, concerned about the impact on our budget, because these are wealthy people with access to the best lawyers and the case that we have had a finding on ... has been through every bit of court in the land, and I've got a very good legal team based within the National Crime Agency but they had a lot of resource dedicated out of my relatively small resource envelope on that work", the NCA's Director General was quoted as saying.

On 24 August 2020, the NCA secured a UWO against properties and assets owned by Leeds businessman, Mansoor "Manni" Mahmood Hussain, with a combined value of £9.8m. The NCA claimed that Mr Hussain has links to a murderer jailed for 26 years, an armed robber and a convicted fraudster who acted as his accountant, used threats of violence and blackmail to buy his properties which were funded by his criminal associates. Despite submitting 127 lever arch folders and a 76-page statement to explain where his money came from for the properties, Mr Hussain failed to sufficiently prove that the properties were not illicitly financed.

UWOs were first introduced in January 2018. The August 2020 UWO was ground-breaking as it was the first obtained solely on the basis of an individual's alleged involvement in serious organised crime.





Serious Fraud Office discontinues high profile investigations

On 16 June 2020 the SFO closed a high profile corruption investigation into allegations concerning corruption in Sudan and the UK currency and security printer De La Rue plc, and in January 2021 the SFO announced that it was ending its long-running corruption investigation into British American Tobacco Plc.

The SFO confirmed that both investigations had been closed on the basis that the available evidence did not meet the test for prosecution.

The prosecution test as set out by the Code for Crown Prosecutors has two limbs: the evidential test and the public interest test. The SFO statements did not confirm in either case, whether the case failed the evidential or public interest test or both.



Corruption index updated

Transparency International has updated its highly-respected Corruption Perceptions Index ("CPI"). The new index will be the organisation's 26th update. The CPI is widely regarded as the key index of country risk for bribery and corruption, and informs many organisations' bribery risk assessment exercises.

According to Transparency International, the updated CPI "highlights the impact of corruption on government responses to COVID-19, comparing countries' performance in the index to their investment in health care and the extent to which democratic norms and institutions have been weakened during the pandemic".



Five Fast Facts from 2020

- As at October 2020, 33 opportunities for investigations into Corporate Criminal Offences have been rejected by HMRC since September 2017, and 18 live opportunities are currently under review.
- In 2019/2020 the SFO secured over £13m in financial orders made against criminals convicted in SFO cases.
- £28.9 million is the amount paid to the SFO in prosecution costs through the DPAs settled prior to October 2020.
- The SFO confirmed that the unsuccessful prosecution of the three Barclay's executives cost £12.2m in total.
- As at September 2020, HMRC were looking into 27,000 "high risk" cases of furlough fraud where they believed that a serious error had been made in the amount an employer had claimed.



Things to look for in 2021

- The Law Commission's review into reform of corporate criminal liability in the UK is due to be published in late 2021 and could see the potential introduction of a failure to prevent economic crime offence.
- Following the 2020 Memoranda of Understanding between the SFO and with the Competition and Markets Authority (CMA) and Financial Services Compensation Scheme (FSCS) it will be interesting to see if this results in increasing cooperation between these agencies.
- In February we expect to see the Supreme Court's judgement following the appeal hearing in October 2020, in which US engineering company KBR Inc challenged the 2018 High Court ruling that the SFO's power under Section 2 of the Criminal Justice Act 1987, to require an individual under investigation to produce documents relevant to an investigation, extends to foreign companies with a 'sufficient connection' to the UK.



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