Case No: U20190413

IN THE CROWN COURT AT SOUTHWARK
IN THE MATTER OF s.45 OF THE CRIME AND COURTS ACT 2013

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/07/2019

Before :

MR JUSTICE WILLIAM DAVIS

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Between :

SERIOUS FRAUD OFFICE	**Applicant**
- and -	
SERCO GEOGRAFIX LIMITED	**Respondent**

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- -

Michael Bowes QC and Michael Goodwin QC (instructed by **the SFO**) for the **Applicant**
Richard Lissack QC and Jennifer Carter-Manning (instructed by) for the **Respondent**

Hearing dates: 27 June, 4 July

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JUDGMENT

Mr Justice William Davis:

Introduction

1. Serco Geografix Limited ("SGL") is a private limited company and a wholly owned subsidiary of Serco Limited ("SL"). Its business has been the manufacture and supply of electronic monitoring equipment commonly known as tags. Such equipment is used to monitor those accused of criminal offences remanded on bail with a curfew condition, those convicted of criminal offences made subject to a sentence other than immediate custody to which a curfew requirement is attached and prisoners released early on a home detention curfew and/or prisoners released on licence whose licence involves monitoring of some kind. The use of the equipment plays a vital role in dealing with those involved in the criminal justice system whether as someone accused of an offence or as a convicted offender.
2. SGL's principal business was to service two contracts held by SL for the supply of electronic monitoring equipment to the UK Government. SGL's turnover in 2011 was £21.021 million. By 2013 it had reduced to £12.956 million. Since January 2018 it has been a dormant company with no expectation of future trading.
3. SL is also a private limited company. Via a holding company it is wholly owned by Serco Group PLC. SL is a substantial organisation. It employs around 22,000 people within the UK. In 2017 its turnover was more than £1.2 billion. About 90% of that turnover resulted from services supplied to the public sector in the UK. Serco Group PLC is a public company trading on the London Stock Exchange. It is part of the FTSE 250 index. This company operates worldwide and employs over 50,000 people. In 2018 it had a turnover in excess of £2.8 billion. SL's activity forms part of the financial infrastructure of Serco Group PLC. Thus, a very significant part of the operation of Serco Group PLC is its engagement with the public sector in the UK.
4. Towards the end of 2013 the Ministry of Justice ("MoJ") referred the provision of electronic monitoring services by SL to the Serious Fraud Office ("SFO"). The concern at that time was that SL had rendered invoices and been paid for monitoring services in respect of non-existent individuals. Investigation of those propositions revealed no evidence of any dishonest or fraudulent activity of this kind. However, in reviewing material thought to be relevant to these propositions, Serco Group PLC discovered e-mails which appeared to show that there had been manipulation of accounting between SGL and SL designed artificially to reduce the profit margins reported to the MoJ. For reasons which I shall explain fully hereafter, this gave rise to a potential fraud on the public purse. The SFO was informed of the position and commenced investigation of whether any such manipulation gave rise to any offences.
5. The SFO has concluded that the evidential stage test set out in paragraph 1.2.i.(b) of the DPA Code and the public interest test set out in paragraph 1.2.ii of the DPA Code are both satisfied in relation to three offences of fraud and two offences of false accounting. A proposed indictment has been drawn up charging those offences.
6. Count 1 alleges fraud, the particulars of the offence being as follows:

   > "Serco Geografix Limited ("the Company") together with others, on or about 11th day of August 2011, dishonestly and intending thereby to make a gain for itself or another, to cause loss to another or to expose another to a risk of loss, made representations which were and which it knew were or might be untrue or misleading, namely that the Financial Model submitted to the Ministry of Justice by Serco Limited pursuant to the contracts for the provision of electronic monitoring services ("the Services") entered into by the Secretary of State for the

Home Department and Serco Limited, reported costs actually and genuinely incurred in connection with the provision of the Services, in breach of section 2 of the Fraud Act 2006."

Counts 2 and 3 are in similar terms in relation to the Financial Models submitted in June 2012 and January 2013.

7. Count 4 charges false accounting in these terms:

"Serco Geografix Limited, together with others, between the 1st day of June 2011 and 31st day of May 2013, dishonestly and with a view to gain for itself or another or with intent to cause loss to another, falsified records or documents required for any accounting purpose, namely journal entries held within the Serco Geografix Limited and Serco Limited company SAP accounting systems, by making entries therein which were or may have been misleading, false or deceptive in a material particular, in that they purported to state that certain revenue had been actually and genuinely earned and certain costs had been actually and genuinely incurred, in relation to the provision of electronic monitoring services by Serco Geografix Limited to Serco Limited."

Count 5 charges false accounting in these terms:

"Serco Geografix Ltd ("the Company") together with others, on or before 19th day of June 2012 dishonestly and with a view to gain for itself or another or with intent to cause loss to another, falsified a record or document required for any accounting purpose, namely the Company Annual Report and Financial Statements for year end 31 December 2011, by making an entry therein which was or may have been misleading, false or deceptive in a material particular in that the reported profit and loss turnover figure included an additional £7.5m of purported revenue."

8. This is the fifth occasion on which a deferred prosecution agreement ("DPA") has been proposed. The concept has been explained fully in the judgments given between November 2015 and April 2017 by Sir Brian Leveson sitting as the President of the Queen's Bench Division in the four earlier instances of DPAs. Those judgments are published and available. I adopt the analysis of Sir Brian Leveson, in particular as set out in the judgment in *SFO v Standard Bank PLC (30 November 2015)* which was the first occasion on which the process was used. In those circumstances I do not need to give more than a summary explanation of the process.
9. Pursuant to Section 45 and Schedule 17 of the Crime and Courts Act 2013 ("the 2013 Act") a DPA is a mechanism whereby for specified offences a corporate body can enter an agreement on terms negotiated with a designated prosecutor. Such an agreement will avoid prosecution. The agreement requires the approval of the court. For approval to be given the agreement must be in the interests of justice and the terms of the agreement must be fair, reasonable and proportionate.
10. Approval of the court involves a two-stage process. First, an application must be made for a declaration pursuant to paragraph 7 of Schedule 17 of the 2013 Act that the proposed DPA is likely to be in the interests of justice and that its proposed terms are fair, reasonable and proportionate. In this case I conducted a hearing in private on 27 June 2019 at the conclusion of which I made a declaration in those terms in relation to the proposed DPA. I reserved my reasons for making the declaration in order for the SFO and SGL to make appropriate announcements of the position in advance of the public hearing of the application for a declaration under paragraph 8 of Schedule 17 of the 2013 Act. The SFO now makes that application i.e. invites me to declare that the DPA **is** in the interests of justice and that its terms are fair, reasonable and proportionate. There has been no change of circumstance since 27 June 2019 when I made the declaration under paragraph 7. Unsurprisingly, therefore, I do make the declaration as

applied for by the SFO. This judgment sets out the reasons for my provisional approval of the DPA in this case and for my final approval pursuant to paragraph 8 of Schedule 17 of the 2013 Act.

The facts

11. In November 2004 SL and the Secretary of State for the Home Department entered into two contracts for the provision of electronic monitoring services in the "London and Eastern area" and "West Midlands and Wales area". In 2007 the Ministry of Justice was created and took on various functions of the Home Office including electronic monitoring services. The contractual relationship with SL transferred from the Home Office to Ministry of Justice from that point. Thus, the relevant government department throughout the period of the proposed indictment was the Ministry of Justice. The contract meant that SL would provide, install and remove electronic monitoring devices in the areas covered by the contracts and would provide the monitoring intended by the use of the devices including enforcement action. The charges made by SL depended in part on the number of devices installed and in part on the number of enforcement actions, a separate charge being made for each individual device and for each enforcement action. Because the core costs of the computer system required for the working of each individual device remained more or less constant, SL's margin on each individual device was likely to increase as more devices were supplied.
12. The contracts were not subject to a profit cap nor did they include any automatic profit-sharing mechanism. However, as with any government contract, the Home Office and thereafter the Ministry of Justice had to ensure that the UK Government received "Value for Money" from whichever company was awarded the contracts. Bidders for the contracts were required to set out their proposed charging structure so as to allow the Home Office to evaluate the business value of the proposal. The preferred bidder, SL in the case of these contracts, then was required to submit a Best and Final Offer ("BAFO"). The purpose of this was to tie down the preferred bidder to the anticipated cost to the government of the contracts over the whole of their life.
13. Throughout the period of the contracts entered into by SL, SL forecast a profit margin of approximately 14%. That was a fundamental part of the BAFO provided by the company which applied at the time of the initial contracts and when they were extended in 2009 and 2010. Paragraph 7.8.4 of Schedule 7 of the contract in each case made provision for entitlement to abatement of the charges levied by SL, namely 50% of the value of "any unanticipated cost efficiencies" achieved by SL. This term was defined as efficiencies not identified by SL in its BAFO nor within the reasonable contemplation of either party as likely to be achieved in the normal course of fulfilling the contract. Paragraph 7.8.5 set out a scheme whereby SL every six months were to provide a Financial Model to the Home Office and thereafter the Ministry of Justice. This Financial Model was required to take account of "actual revenues and costs incurred". It was to be used by the parties "to support discussions relating to…Charges". Thus, the Financial Model was the mechanism whereby the Home Office and thereafter the Ministry of Justice could judge whether there was entitlement to abatement of charges. It was agreed in terms by SL that any information supplied to HM Government would be "to the best of (SL's) knowledge and belief true and accurate at the time of supply".

14. As early as 2006 it became apparent to SL that the profitability of the contracts was significantly greater than the 14% margin forecast in the BAFO. The number of individuals being monitored was higher than had been anticipated. As I have already noted, each individual did not add pro rata to the costs incurred by SL. In 2007 there was consideration within SL of the increased profitability and how it could translate into an entitlement on the part of the Ministry of Justice (by then the government department concerned) to an abatement of charges. The belief was that the abatement would amount to 50% of the difference between the profits forecast on the basis of a 14% margin and the true profit margin. At around the same time the Ministry of Justice engaged with SL inviting suggestions whereby the cost of delivering the contracts might be reduced. Internal communications within SL showed reluctance to offer any suggestions, in particular any offer to share profits above a certain margin. In late 2008 SL made preparations for discussions with the Ministry of Justice about extensions to the contracts. These included a slide presentation explaining the proposed offer in relation to the extensions. The internal version of this presentation identified that the true margin being achieved by SL was 24%. The presentation provided to the Ministry of Justice together with the response to further questions from that department referred to an anticipated margin of 14%.
15. Those dealing with the contracts at SL devised a way in which the reported profit margin could be reduced whilst at the same time keeping the overall profits within the company structure. Up to 2011 this was done by retrospectively re-charging costs incurred by other parts of Serco's business – principally though not exclusively SGL – to SL. Between April 2006 and January 2011 SL submitted seven Financial Models which reported at least £6.2 million of costs that had been retrospectively re-charged to SL by SGL. These costs had been incurred by SGL and re-charged to SL for the purpose of supressing the profitability SL reported to the MoJ. However, by the beginning of 2011 all of the expenses on the books of SGL had been exhausted. The scheme of moving costs around within the overall Serco business no longer could achieve the required reduction in profitability on the contracts.
16. Up to this point the conduct of SL and SGL was (to say the least of it) of doubtful legitimacy. In due course claims by the Ministry of Justice were settled on terms to which I shall return. It formed the backdrop to the criminal fraud. The conduct would be evidence admissible in any trial of the proposed counts pursuant to Section 101(1)(c) or Section 101(1)(d) of the Criminal Justice Act 2003. From the beginning of 2011 there is clear evidence of criminal fraud as reflected in the proposed indictment.
17. Although the investigation of the fraud has been protracted, it was relatively simple in its formation and execution. SGL had been the mechanism by which the re-charging exercise had been carried out. It was SGL that was to be the vehicle by which the fraud should be conducted. The scheme involved SGL charging SL £500,000 per month for costs which were complete fabrications. The fictitious costs were described as the costs of equipment, staff and overheads. As it was described in vernacular terms during the private hearing, SGL cooked their books to allow SL to retain the profit, 50% of which was believed otherwise would have been clawed back by the Ministry of Justice in the abatement exercise envisaged in Schedule 7 of the contracts.
18. SL was the beneficiary of the fraud. Thus, the scheme was devised by management within SL. However, no "directing mind" of SL currently can be shown to have been involved in the devising and the putting into effect of the fraud. So it is that SL is not a party to the DPA. On the other hand, the scheme required the knowledge and assistance of SGL since it was that company which was to render the fictitious charges to SL. The evidence demonstrates that individuals within SGL who can properly be

described as directing minds of the company were party to the scheme. In particular, they were aware of the terms of the contracts and the desire to avoid abatement of charges under the contracts. They discussed by e-mail how the fictitious charges should be described and suggested that "development" would not be a suitable description. They knew that SL reported cost figures to the Ministry of Justice which included £500,000 per month of costs which were fabricated. It follows that there is a clear case against SGL as a company.

19. Between 2011 and 2013 four Financial Models were prepared which included the bogus charges of £500,000 per month from SGL to SL. Three of these models were submitted to the Ministry of Justice. These are the models to which Counts 1 to 3 on the proposed indictment refer. The fourth model was prepared but, in the event, not submitted. The Financial Model submitted on 11 August 2011 (Count 1) included £3.093,699 in bogus charges from SGL to SL. That submitted on 6 June 2012 which covered 12 months (Count 2) included £5,900,000 in bogus charges. The Financial Model dated 18 January 2013 (Count 3) contained £3,000,000 in bogus charges. The inclusion of the bogus charges halved the monthly reported profit margin range from the true figures. This ensured that the Ministry of Justice was unaware of the profitability of the contracts to SL and that SL was able to retain the high profit margins accruing on the contracts.
20. Because SGL was charging SL £500,000 each month for non-existent services, false records had to be made within the internal and external accounts of SGL. The proposed counts of false accounting reflect this activity. SGL's internal accounts between 2011 and 2013 included the monthly charges of £500,000 (Count 4). The statutory accounts for the year ending December 2011 reflected the entries in the internal accounts and reported false revenue for SGL (Count 5). The monthly payments of £500,000 were made to SGL but returned to SL as a general dividend payment. By that means SL had the benefit of the fraud.
21. As set out at paragraph 4 of this judgment, Serco Group PLC notified the SFO of the material which demonstrated the existence of fraudulent conduct. In December 2013 SL and Serco Group PLC agreed to pay the Ministry of Justice various sums in settlement of claims by the Ministry, those sums including £20 million representing 50% of "profit over bid" from April 2005 to September 2012. A further sum of £1.35 million was paid in October 2015 in relation to the same element of the claims.

The interests of justice

22. The position of the SFO is that the public interest is best served by SGL entering into a DPA rather than SGL being prosecuted. It is acknowledged that this was a substantial fraud carried on over many months and that it reflects business practices apparently ingrained in the company. Also, it is recognised that the conduct reflected in the indictment has a serious impact on the integrity of the process whereby public functions are contracted out by HM Government to companies in the private sector. As I have already outlined SL obtains most of its revenues from this contracting out process.
23. The SFO argues that these significant factors are outweighed by the following:
    - The prompt and detailed reporting by Serco Group PLC and its subsidiary companies of the fraudulent conduct.
    - The substantial co-operation by Serco Group PLC and its subsidiary companies with the investigation by the SFO.
    - The lack of any history of similar conduct on the part of Serco Group PLC or its subsidiary companies.

- The age of the conduct and the remedial measures taken since the matter was reported to the SFO.
- The disproportionate consequences which might result from a criminal conviction of SGL.

I must deal with the issues of co-operation, remedial measures and proportionality in more detail.

24. The SFO requested that Serco Group PLC and its constituent parts should not engage in any internal inquiry by way of interviewing witnesses during the criminal investigation. There was and continues to be full compliance with that request. Rather, Serco Group PLC instructed an independent law firm to conduct a full document review and to provide the SFO with a detailed report of its findings. Unrestricted access was given to e-mail accounts of current and former employees. Some waiver of privilege was provided in respect of accounting material. Serco Group PLC were proactive in disclosing material which came to light and notified the SFO of any developments within the business which could have an impact on the criminal investigation. By any standard this was and continues to be very substantial co-operation.
25. Since 2013 Serco Group PLC has undergone a complete change of senior management. It has subjected itself to numerous forms of internal and external review and audit. It has set up a continuing corporate renewal programme designed to strengthen and improve the operating practices of all companies within the group structure. Serco Group PLC agreed to the settlement with the Ministry of Justice to which I have already referred. I am satisfied that these matters amount to significant remedial measures.
26. The issue of proportionality has troubled me. SGL engaged in quite deliberate fraud against the Ministry of Justice in relation to the provision of services vital to the criminal justice system. The SFO has argued that the public interest would not be served by SGL and/or SL being debarred from participating in any government procurement exercise in view of the remedial measures to which I have referred and because of the undertakings given by Serco Group PLC to which I shall refer hereafter. It is asserted that this would be disproportionate. This would be the consequence (if the relevant discretion were exercised) were there to be a conviction whereas it might not follow in the event of a DPA being approved.
27. If the effective consequence of approval of the proposed DPA were to be that SGL could continue to supply services to government departments whereas the company would not be able to do so in the event of a conviction, I doubt whether I would give approval. Public concern over the way in which public services are provided by private companies is real. For me to take a course which would amount to a favourable determination of the position of a private company vis-à-vis public procurement would involve me in a quasi-political decision. That is not the function of a judge in any context and certainly not in the context of the approval of a course which leads to a company not being prosecuted for serious fraud.
28. However, on analysis I am satisfied that my approval of this DPA will not be the determining factor in what is a political decision. Public procurement is subject to statutory regulation, namely by the Public Contracts Regulations 2015. The Regulations provide for mandatory or discretionary debarment in different situations. They also provide for what is known as self-cleaning by which a company can provide that it has taken appropriate remedial action sufficient to satisfy the contracting authority that it has demonstrated its reliability. Were there to be a criminal conviction it would be for HM Government to decide whether the evidence of the remedial action was sufficient and whether it would be appropriate to exercise the discretion available via the self-cleaning provisions.

29. The same exercise must follow in the event of approval of the DPA. The 2015 Regulations provide a contracting authority with the discretion to exclude pursuant to Regulation 57(8). One of the grounds for discretionary exclusion is where the economic operator (SGL) is guilty of grave professional misconduct which renders its integrity questionable. The facts giving rise to the DPA must amount to such misconduct. My approval of the DPA is simply a confirmation of those facts, the facts being admitted by SGL. Therefore, my approval will not be a determining factor in the exercise of discretion by HM Government.
30. In advance of the hearing I received evidence by way of a statement dated 20 June 2019 from Barry Hooper who is chief commercial officer at the Ministry of Justice. He referred to the Ministry of Justice awaiting advice from the Cabinet Office before reaching any appointment decisions in relation to Serco Group PLC or SL. On the morning of the hearing in private I was provided with a letter from HM Government Chief Commercial Officer, Gareth Rhys-Williams, addressed to the SFO and setting out the Cabinet Office view as to the continued involvement of Serco in contracts with HM Government. The conclusion reached was that the self-cleaning measures adopted have been such that "we see no current reason why Serco should not continue to be a key strategic supplier to HMG". Self-evidently I do not offer any view on the merits of that exercise of discretion. It is an administrative function properly within the purview of the Cabinet Office. There is nothing in the letter from Gareth Rhys-Williams to indicate that the discretion would be exercised differently were it to be post-conviction and within the statutory self-cleaning provisions. Thus, my approval of the DPA, although of relevance, is not the determining factor in terms of Serco PLC or its subsidiaries continuing to provide services to HM Government.
31. I also note that any conviction would be a conviction of SGL which is a dormant company. There is no current intention that it should resume trading. It is improbable that it would seek to engage in a procurement process irrespective of its status in terms of criminal conviction.
32. Taking all of these matters into account I am satisfied that the DPA is in the interests of justice.

The terms of the Deferred Prosecution Agreement

33. A copy of the agreement in the terms which I have approved is annexed to this judgment. The agreement includes Attachment A which is a significant part of the agreement in the context of the company named on the indictment being a subsidiary of a much larger enterprise. It is not necessary for me to rehearse in detail the contents of either document though I shall summarise the main points thereof.
34. The agreement will be effective for three years from the date of my declaration. This period is sufficient to allow the purposes of the agreement to be given full effect i.e. providing sufficient time to ensure that the compliance objectives can be met.
35. The terms of the DPA include the following:
    - Payment of a financial penalty of £19.2 million.
    - Payment of the SFO's reasonable costs.
    - Improvements to ethics and compliance policies and procedures.
    - Continuing co-operation with the SFO and other investigative agencies.

    I deal with these points in turn.
36. The contracts between SL and the Ministry of Justice were made on the basis of a projected profit margin of 14%. The loss to the Ministry of Justice due to the fraud was the figure which would have resulted from the application of 50% abatement of the

profits in excess of 14% over the period October 2010 to November 2013 i.e. the period covered by the proposed indictment. The total profit over and above the 14% margin figure during that period was approximately £25.6 million. 50% of that figure is £12.8 million. I am satisfied that this represents a reasonable estimate of the loss suffered by the Ministry of Justice as a result of the offences set out in the proposed indictment.

37. Because there has already been payment of £20 million to the Ministry of Justice as outlined in paragraph 20 above of which £13.1 million is properly apportioned to the period covered by the proposed indictment, it would not be proportionate for the DPA to provide for compensation nor for the DPA to impose a term requiring disgorgement of profits pursuant to paragraph 5(3) of Schedule 17. Thus, I approve the absence of any such provision in the DPA.
38. The financial penalty must be assessed by reference to the Sentencing Council guideline in relation to fraud. Culpability is high. There was sustained offending by a company in a position of trust in relation to the public which played a leading role in the fraudulent activity. The harm intended by SL and SGL was the same figure as that set out at paragraph 34 above i.e. £12.8 million. Given the high culpability involved, the starting point for the multiplier for harm is 300%. The aggravating factors – attempts made to conceal the fraudulent activity and substantial harm to the integrity of government procurement processes – are balanced by the mitigating factors – no convictions, significant co-operation and offending under previous management. Applying the multiplier of 300% to the sum of £12.8 million results in a financial penalty before any adjustment under the "step back" provisions of the guideline of £38.4 million. No adjustment is required under the "step back" provisions. This financial penalty is proportionate.
39. It is necessary and appropriate for the financial penalty to provide a discount equivalent to the discount for a plea of guilty. In all but one of the earlier instances of approval of DPAs the financial penalty has been discounted by 50% rather than one third as would be required by the Sentencing Council guideline on full discount for plea at the earliest opportunity. This has been because engagement in the DPA process saves so much time and money on investigation and prosecution which justifies a higher discount. Moreover, the discount has been extended in other cases to encourage corporate responsibility in terms of early reporting of criminal conduct by the company. Both factors apply in this case. For those reasons I approve a discount of 50% from the figure of £38.4 million. Thus, the financial penalty will be £19.2 million. The DPA agreement also includes payment of costs in the sum of £3,723.679.00. This is justified and proportionate.
40. This DPA is made with SGL because that is the corporate body in relation to which criminal liability prima facie attaches. It is a dormant company. Thus, it has no means by which to engage in any meaningful compliance programme. It also appears to have no assets or revenue stream which could satisfy the financial penalty or the costs of the SFO. Moreover, the fraud was only enabled by SGL. The beneficiary was SL but, for the reasons already given, there is currently no proper basis on which to attach criminal liability to that company.
41. In reality the real thrust of the agreement insofar as it relates to improvements in compliance and co-operation with the SFO and other investigative agencies is its extension via Attachment A to Serco Group PLC and to all of that company's subsidiaries. Attachment A sets out the undertakings by Serco Group PLC. After an undertaking by that company to assume responsibility for the payment of the financial penalty and the reasonable costs of the SFO, Serco Group PLC undertake as follows:

- To modify its compliance programme to ensure that it maintains an effective system of internal accounting controls and a rigorous compliance programme incorporating policies and procedures designed to prevent and to detect fraud and bribery, this undertaking to apply throughout its business including its various subsidiaries.
- To report annually in writing to the SFO during the currency of the DPA in relation to the progress of its compliance programme.
- During the currency of the DPA to co-operate fully with the SFO in any and all SFO pre-investigations, investigations and prosecutions and to co-operate with any other domestic or foreign law enforcement or regulatory agency in any investigations or prosecutions of any of its present or former officers, directors, employees, agents and consultants or any third party in any and all matters relating to the conduct which is the subject of the Indictment and described in the Statement of Facts.
- To report to the SFO if it learns of any evidence of serious and complex fraud committed by anyone connected with Serco Group or any of its affiliates.
- Not to transfer any substantial part of SGL's business operations without the written consent of the SFO.

These undertakings mirror the requirements imposed on SGL by the DPA. Since SGL is a dormant company, the obligations to which it is subject under the agreement are of limited value. Of genuine and substantial effect are the undertakings given by Serco Group PLC.

42. The obligations accepted by Serco Group PLC are a key component of the DPA. Without the undertakings given by the parent company it is very unlikely that the goals of a DPA could have been achieved in the circumstances of this case. This is the first occasion on which undertakings of the kind made by Serco Group PLC have been by a parent company in relation to a DPA entered into by one of its subsidiaries. It is an important development in the use of DPAs. The nature of modern corporate structures means that it may be problematic to show that a controlling mind of the parent company was involved in the criminality carried out by a subsidiary company even where the benefit of the criminality tended to accrue to the parent company. Yet it will be the parent company which necessarily must engage in any compliance programme and co-operate with law enforcement agencies. The approach taken by Serco Group PLC in this case strengthens the public interest in the approval of this DPA.

Postponement of reporting and publication

43. It is an essential part of the DPA process that final approval of the DPA is the subject of a public hearing. Open justice is essential so that the public can understand why the process has been determined to be appropriate. This is particularly important where the fraud was committed against the public purse. This judgment is published without redaction. The DPA and Attachment A are annexed to the judgment. The judgment sets out the facts giving rise to the fraud reflected in the draft indictment in sufficient detail for all those interested in the matter to understand what was done by SGL.
44. In setting out the facts I have drawn substantially on the Statement of Facts prepared by the SFO and admitted by SGL to be true. In the ordinary course that document would be published at the same time as the judgment setting out my reasons for the final approval of the DPA. However, paragraph 12 of Schedule 17 provides that the court may order that the publication of information by the prosecutor be postponed for

such period as the court considers necessary if it appears to the court that postponement is necessary for avoiding a substantial risk of prejudice to the administration of justice in any legal proceedings. In this case the SFO continues to give consideration to the charging of individuals with criminal offences arising out of the matters set out in this judgment. The Statement of Facts provides material by which individuals could be identified. Application has been made to postpone publication of that document. In my view there would be a substantial risk of prejudice to the administration of justice in relation to any proceedings hereafter should the Statement of Facts be published now. Whether that will still be the case in the event of such proceedings being commenced is not for me to judge. That will be for a court seized of those proceedings to consider. I have been told that a charging decision will be taken by 18 December 2019. Therefore, I shall order postponement of publication of the Statement of Facts until 18 December 2019 or further order.

45. For the same reason I shall order the postponement of any reporting tending to identify any individual referred to in the application for approval of the DPA. I make this order under Section 4(2) of the Contempt of Court Act 1981. Any identification of an individual at this stage may prejudice the administration of justice. Again, this order will be effective until 18 December 2019 or until further order.
46. I emphasise that this judgment can be reported and published in full. There is more than sufficient detail in the judgment to allow a proper appreciation of the corporate failings of SGL. In any event the orders for postponement are expressed in the alternative as being until further order. In the event that any interested party seeks to remove or vary the order, application can be made to me in writing on notice to the parties to the DPA.

Conclusion

47. There may be cynicism in some quarters about the process by which a corporate entity can take advantage of a DPA. This cynicism is not well-founded. On the previous occasions when a DPA has been approved the point has been made that approval will only be given where there is the clearest possible demonstration of integrity on the part of the company concerned once the criminal activity has become apparent. This will require early self-reporting to the authorities, full co-operation with the investigation, a willingness to learn lessons and an acceptance of an appropriate penalty. The willingness to learn lessons must be shown via real, substantial and continuing remedial measures. All of that has been demonstrated by Serco Group PLC in this case.
48. Finally, I express my thanks to counsel and to those instructing them on both sides. It is less than two weeks since I was first asked to consider approval of this DPA. The significant work done on all sides in assembling relevant material and responding to my requests for further information has meant that the matter has been concluded quickly and efficiently.