

## BRIBERY CONVICTIONS IN THE UK //

On 28 April 2021, the Serious Fraud Office (SFO) [announced](#) a prosecutorial victory against GPT Special Project Management Ltd (GPT), after the company pleaded guilty to one count of corruption contrary to section 1 of the Prevention of Corruption Act 1906. The SFO had been investigating the company since 2012, charging it in July 2020. This month's Bulletin examines the state of corporate convictions for bribery in the UK, and the resulting consequences, with a focus on offences contrary to the UK Bribery Act 2010 ("Bribery Act").

### Companies convicted of corruption offences

The below table summarises corporate convictions for bribery offences over the past decade. Notably, there have been only two prosecutions under the Bribery Act, one of which came as a result of a full trial.

Company	Date	Offence	Penalty
GPT Special Project Management Ltd ("GPT")	April 2021 (guilty plea)	Prevention of Corruption Act 1906, section 1	£7.5 million fine; £20.6 million confiscation; £2.2 in costs
Alstom Network UK Ltd	April 2018 (conviction)	Criminal Law Act 1977, section 1	£15 million fine; £1.4 million in costs
Skansen Interiors Ltd	February 2018 (conviction)	Bribery Act, section 7	Absolute discharge
F.H. Bertling Ltd	September 2016 (guilty plea)	Prevention of Corruption Act 1906, section 1; Criminal Law Act 1977, section 1	£850,000 fine
Alstom Power UK Ltd	May 2016 (guilty plea)	Prevention of Corruption Act 1906, section 1; Criminal Law Act 1977, section 1	£6,375,000 fine; £10,963,000 compensation to Lithuanian Government; £700,000 costs
Sweett Group Plc	December 2015 (guilty plea)	Bribery Act, section 7	£1.4 million fine; £851,152.23 confiscation; £95,031 costs
Smith and Ouzman Ltd	December 2014 (conviction)	Prevention of Corruption Act 1906, section 1	£1,316,799 fine; £881,158 confiscation; £25,000 costs

Three of the above companies – GPT, Skansen Interiors, and FH Bertling Ltd – no longer exist. GPT, acquired by Airbus in 2007, was closed down in April 2020. Skansen Interiors has been dormant since 2014, a factor which led to criticism of the CPS' decision to prosecute, and to the anomalous penalty in the chart above (there were no assets for a financial penalty to be imposed). FH Bertling went into voluntary liquidation in 2018, but its parent, Germany-based Bertling Group, still thrives. The remainder are still active and trading.

## Consequences of conviction

There are a number of consequences once a company is convicted of a bribery offence contrary to the Bribery Act, most commonly including financial penalties, disgorgement of profits, and debarment.

### Fines & Disgorgement

The determination of any financial penalty for Bribery Act offences is set out in the Sentencing Council's document entitled [Corporate offenders: fraud, bribery and money laundering](#) (the "Guidelines"). The Guidelines apply to companies sentenced on or after 1 October 2014, regardless of the date of the offence, and sets out a 10-step guide for the Court to follow in assessing the sentence. These steps include:

1. Compensation (if any identifiable victims can be found to be compensated)
2. Confiscation (aimed at depriving the defendant of the proceeds of their criminal conduct)
3. Determining the offence category (which includes assigning a level of culpability and determining the harm caused by the offender)
4. Determining the starting point for the fine (with a starting point of between 100% and 300% of the harm figure)
5. Adjusting the fine (where the Court should consider the overall effect of its orders; whether it removes all gain; whether an appropriate additional punishment should be added; and whether it ensures an appropriate deterrent effect)
6. Considering any factors which would indicate a reduction, such as levels of cooperation
7. Reducing the fine for a guilty plea
8. Determining whether to make any ancillary orders
9. Considering the totality principle; and
10. Delivering reasons for the penalty/penalties imposed.

A prosecution and conviction of a company does not prohibit individuals within the company from subsequently facing a prosecution for offences arising from the same conduct.

### Debarment

Debarment refers to the exclusion of an entity from public contracts, whether as a supplier, contractor, or service provider, and is a potentially very serious consequence of a bribery conviction. The UK's public procurement regime is derived from EU public procurement laws and was adopted into domestic law via the [Public Contracts Regulations 2015](#) (the "Regulations").

Mandatory debarment will automatically apply to a company convicted of sections 1, 2, or 6 of the Bribery Act, and will apply for a maximum of five years. Convictions under section 7 of the Bribery Act may result in discretionary debarment lasting a maximum of 3 years, if it is shown that the violation amounted to "grave professional misconduct, which renders its integrity questionable" (Regulations 57(8)(c) and 57(12)).

If a company becomes subject to mandatory, or even discretionary, debarment, it may be able to rely on the concept of "self-cleaning" as described in Regulation 57(15). This provides a set of conditions that, if satisfied, can demonstrate a company's reliability despite the existence of a relevant ground for mandatory or discretionary debarment. This includes that the company paid compensation for the damage caused; collaborated with investigating authorities to clarify the facts and circumstances relating to the misconduct; and has taken concrete technical, organisational, and personnel measures to prevent further misconduct from occurring.

# RECENT NEWS //

## SFO round-up: case against former Serco executives collapses & Statement of Facts released; investigation into the Raedex Consortium group of companies announced; former Unaoil executive allowed to appeal jail term; Petrofac to deal with UK SFO investigation quickly; and Patisserie Valerie appeal

On 26 April 2021, the Serious Fraud Office (SFO) announced that it offered no evidence against Nicholas Woods and Simon Marshall, the Serco Geografix executives who had been charged with misconduct in connection with the company's 2019 Deferred Prosecution Agreement (DPA). The SFO's [press release](#) stated that the Judge directed the jury to return verdicts of not guilty. This announcement followed the SFO's review of its disclosure process for the trial, which uncovered errors made in the non-disclosure of certain materials. The SFO sought an adjournment to remedy the position so that it could pursue a retrial, but this was rejected by the Judge. The SFO stated: "we are considering how best to undertake an assessment to prevent this from happening in the future." Two days after the not-guilty verdict against the executives was returned, the SFO released the [Statement of Facts](#) of the Serco DPA. The terms of the Statement were subject to reporting restrictions until the conclusion of the trial against Woods and Marshall.

On 9 April 2021, the SFO [announced](#) that it was investigating suspected fraud in relation to the activities of the Raedex Consortium, including the companies Buy2Let Cars, PayGo Cars, Raedex trading as Wheels4Sure and Rent2Own Cars. On 8 April, the SFO, with the assistance of the National Crime Agency and City of London Police, conducted searches on two residential premises in connection with this investigation. The SFO also arrested and interviewed one individual, who was released pending further investigation, and conducted an interview with a further individual. In March, the FCA [confirmed](#) that Raedex was part of an unauthorised investment scheme where customers invested in car leases through its car rental companies. The FCA stopped Raedex from entering into any new car leases in February while allowing existing lease agreements to continue.

On 20 April 2021, Petrofac Group Chief Executive Sami Iskander spoke about the company's financial results for 2020 and commented that the on-going SFO's investigation into the company and its subsidiaries "continue to have very real and material impact on the business." Iskander said the company is focused on bringing this matter to closure as quickly as possible. In the remarks, Iskander noted that the period following former Petrofac executive David Lufkin's [guilty plea to bribery charges](#) (in January 2021) had been particularly difficult. The SFO announced its investigation into Petrofac in May 2017 for suspected bribery, corruption, and money laundering. No charges have yet been brought. See [Petrofac's corporate webpage](#) for more.

Finally on 21 April 2021, the SFO [issued a public appeal](#) for investors in Patisserie Valerie to help it "build a more detailed and comprehensive understanding of the suspected wrongdoing and to continue to progress the investigation" into the collapsed chain. The SFO said it had "identified a number of investors who have suffered a loss of share capital" and asked investors to complete a questionnaire.

## UK announces first sanctions under Global Anti-Corruption Sanctions Regulations 2021

On 26 April 2021, in a [statement to Parliament](#) following the Global Anti-Corruption Sanctions Regulations 2021 (*SI 2021/488*) coming into force, the Foreign Secretary [announced sanctions](#) against 22 individuals involved in serious corruption in Russia, South Africa, South Sudan and throughout Latin America. These are the first designations of [sanctions](#) under the new Global Anti-corruption regime. The measures used include asset freezes and travel bans against those involved in the diversion of \$230

million of Russian state property through a fraudulent tax refund scheme uncovered by Sergei Magnitsky - one of the largest tax frauds in recent Russian history.

## CPS launches ambitious plan to combat economic crime

On 30 March, the Crown Prosecution Service (CPS) laid out its first-ever [Economic Crime Strategy](#) which sets out an ambitious plan to combat economic crime. The strategy highlights that fraud is now one of the most common crime types in England and Wales. Some £479 million was lost in 2020 to scams where people were tricked into making bank transfers to fraudsters, according to data from UK Finance. Over the past financial year, the CPS has prosecuted 10,000 economic crime cases. Eighty-six percent of reported fraud is now estimated to be cyber-enabled, fuelled by advances in technology. The CPS will focus on how prosecutors can better help and support victims, including those who are most vulnerable. See the [CPS webpage](#) for further details.

## FCA's Mark Steward discusses the importance of effective AML controls

The FCA [published a speech](#) by Mark Steward, Director of Enforcement and Market Oversight, on the importance of purposeful anti-money laundering (AML) controls. The speech was delivered at the AML & ABC Forum 2021 on 24 March 2021. Key points from the speech include the following:

- systems and controls that are purposeful and efficient in identifying suspicious activity are vitally important, as failures provide cover for criminals and criminal activity which affect the wider community and erode general confidence in the financial system;
- drawing on large fines imposed by the FCA on Commerzbank AG's London branch (for its failure to have effective policies and procedures in managing money laundering risks) and Goldman Sachs International (for its approving committees' failures to assess relevant money laundering risk factors in carrying out transactions for Malaysia's 1MDB fund), Mr Steward notes that record-keeping of the identification, management and assessment of financial crime and money laundering risks involved in transactions are vital to effective governance;
- AML systems can become overly complicated, bureaucratised, expensive and vulnerable to gaming by unscrupulous players. The focus can become the maintenance of the system, rather than the identification and management of risks. Therefore, such systems must explicitly focus on the 'activating purpose' and function of these controls to ensure they work effectively and achieve that purpose;
- drawing on 42 current AML investigations currently being carried out by the FCA, Mr Steward notes that these investigations require a systemic understanding of how a firm operates, its governance controls, cultural habits and the inner workings of opaque systems;
- the FCA has increased surveillance of online investment promotions targeting offers from unauthorised firms, potential investment scams and 'too good to be true' promotions (such as lead generation websites). The FCA's Warning List, designed to protect consumers in several ways (for example, in relation to investment scams) has increased by over 100% from 2019 with alerts concerning over 1,000 firms. The FCA also encourages firms to review the Warning List when seeking to scrutinise transactions and suspicious activity; and
- the FCA, as the AML supervisor of cryptocurrency firms, has developed the 'Unregistered Cryptocurrency Business List' to help consumers and FCA-authorized firms identify cryptocurrency firms who have not sought registration under the Money Laundering Regulations. The FCA notes that this list should also be used by firms seeking to scrutinise transactions and suspicious activity.

## Tribunal grants Ticketmaster stay of appeal proceedings

In *Ticketmaster UK Limited v Information Commissioner [2021] UKFTT 0083*, the First-Tier Tribunal General Regulatory Chamber (the Tribunal) has granted Ticketmaster Ltd a stay of its appeal against a [monetary penalty notice](#) issued against the company by the Information Commissioner's Office in November 2020, for breaches of Articles 5(1)(f) and 32 of the GDPR. Ticketmaster brought an appeal against the penalty notice, disputing it had breached its security obligations and in the alternative, the size of the fine. At the same time, Ticketmaster also applied to the Tribunal for a stay of the appeal proceedings because similar liability issues were due to be considered by the High Court in ongoing actions which arose from the same cyber-attack incident that led to the issuing of the penalty notice. They concern separately a group action by Ticketmaster customers who allege their personal data was compromised as a result of the incident and a Part 20 action between Ticketmaster and the supplier of the chat-bot targeted in the cyber-attack. The grounds for a stay of the appeal until judgment had been handed down in the High Court proceedings included (1) determination of the liability issue by the High Court would be very likely to dispose of or at least narrow the scope of the liability issue as it arises in the appeal, and help reduce the demand on the resources of the Tribunal and the parties by avoiding duplicative proceedings; and (2) a stay would help avoid the risk of a conflict of determinations by the High Court and the Tribunal on overlapping issues connected to Ticketmaster's liability for the security breaches. The Tribunal accepted that its determination of the appeal would be materially assisted by a substantive judgment from the High Court and granted Ticketmaster its application for a stay.

## Denmark charges US and UK nationals in cum-ex fraud case

On 13 April 2021, the State Prosecutor for Serious Economic and International Crime (SEIC) [announced](#) that it has raised formal charges against three US nationals and three UK nationals for having defrauded the Danish Treasury of more than DKK 1.1 billion through a German bank. The Danish prosecutor said that hundreds of fictitious share trades between 27 US one-person pension plans, nine companies, and intermediaries went through the German North Channel Bank in Mainz in the period between March 2014 and August 2015. The sole purposes of the alleged fictitious trades was to draw massive amounts of money out of the Danish Treasury which neither the US pension plans nor the companies involved were entitled to receive. The Danish Treasury was allegedly defrauded of more than DKK 1.1 billion by means of dividend tax reclaims which neither the pension plans nor the companies were entitled to. Based on extensive and complex investigations over several years, the SEIC said it has now formally charged six persons with gross fraud in this in contravention of section 279 of Danish the Criminal Code, and the maximum penalty for this is eight years' imprisonment.

## ABN Amro reaches €480m anti-money laundering settlement

On 19 April 2021, ABN Amro announced that it has accepted a settlement offer from the Dutch Public Prosecution Service (DPPS) in connection with the previously announced investigation by the DPPS into ABN Amro's compliance with its obligations under the Dutch Anti-Money Laundering and Counter Terrorism Financing Act between 2014 and 2020. As part of this settlement, ABN Amro will pay €480 million. ABN Amro said in its press release that it "fully cooperated with the DPPS throughout the investigation," and "based on the investigation, the DPPS identified serious shortcomings in ABN Amro's processes to combat money laundering in the Netherlands, such as the client acceptance, transaction monitoring and client exit processes,". As part of the settlement, ABN Amro agrees to pay a fine of 300 million and 180 million as disgorgement. The amount of the fine reflects the seriousness, scope and duration of the identified shortcomings. Read more in the final [Settlement Agreement](#) and [Statement of Facts](#).

## NatWest cooperating fully with FCA-led money laundering case, chairman says

On 21 April 2021, NatWest Chairman Howard Davies commented on the FCA's prosecution against the bank for alleged failures to comply with anti-money laundering regulations. Speaking at a virtual shareholder event, Davies said the group "has taken these matters extremely seriously and has co-operated fully throughout the FCA's investigation." NatWest is the first UK banking institution to be charged by the FCA under the Money Laundering Regulations 2007. An adjournment of the initial hearing was agreed by the court at the request of both parties to allow for a detailed consideration of the case by NatWest in an appropriate timeframe. The initial hearing will now take place on 26 May 2021. Davies noted that the bank has over 4,000 colleagues dedicated to that task has (over the past three years) invested almost £500 million in anti-money laundering systems and controls. Read more in the Chairman's speech [here](#).

## New London courts designed to tackle financial crime get City approval

On 22 April 2021, the City of London [announced](#) that plans for a new "Justice Quarter" have been given a green light. The Salisbury Square development will encompass crown, magistrates, county and civil courts, as well as a new City of London Police headquarters, built to tackle national fraud and economic crime. This new court replaces the ageing Mayor's and City of London Court, the City of London Magistrates' Court, and will also contain eight Crown courtrooms. Criminal cases heard at the Old Bailey will not be affected by the scheme. The building will provide significantly improved facilities and will be equipped to deliver justice in the modern age.

## Financial Services Bill - House of Lords completes report stage and proposes amendments

The House of Lords has completed the report stage of the Financial Services Bill 2019-21. Details of the proceedings are set out in [Hansard](#). Members discussed digital identification, supervision of the FCA, a new UK Finance Watch body and the response from the regulators to Parliamentary scrutiny. The third reading took place immediately afterwards with no debate.

Following completion of the third reading, the Bill will now pass to the House of Commons for consideration of the [House of Lords amendments](#), which have been published alongside [explanatory notes](#). Among other things, the amendments include new clauses that:

- amend the Financial Services and Markets Act 2000 (FSMA) to require the FCA to: (i) have regard to the principle that firms should not profit from exploiting consumer vulnerabilities, biases or constrained choices when considering the degree of consumer protection that it should secure; and (ii) make rules (by 6 April 2022) introducing a duty of care owed by FSMA authorised persons towards consumers when carrying on FSMA regulated activities;
- give HM Treasury the ability to bring interest-free buy-now-pay-later products within the scope of FCA regulation;
- amend the Payment Services Regulations 2017 (SI 2017/752) to provide that in certain circumstances the provision of cash, where there is no corresponding purchase of goods and services, is to be included in the list of activities that do not constitute a payment service;
- require the FCA to make rules imposing a cap on the standard variable rates charged to borrowers with inactive lenders or unregulated entities who cannot switch providers because of their financial circumstances (mortgage prisoners); and
- require the FCA and the PRA to consider the carbon target for net zero emissions as set out in the Climate Change Act 2008.

## FCA commences criminal proceedings against two individuals

The FCA announced that it has commenced criminal proceedings against Larry Barreto and Tassib Hussain for conspiracy to commit fraud by false representation and carrying out regulated activities without authorisation. Mr Barreto traded as Barreto and Partners, an unauthorised financial services firm, and Mr Hussain is an accountant who ran Keystone Chartered Accountants. Both defendants were allegedly involved in falsifying self-employment and employment documentation to support mortgage applications for Mr Barreto's clients who did not have sufficient income. Mr Barreto also allegedly provided advice in relation to regulated mortgage contracts without authorisation to do so. The plea and trial preparation hearing is scheduled for 19 May 2021.

## The Pension Regulator publishes blog post; ECPA responds to consultation on prosecution of criminal sanctions

Following industry concerns about the extent of the Pensions Regulator's (TPR) new criminal offences powers under the Pension Schemes Act 2021 (PSA 2021), TPR has published a blog post briefly examining the new powers in an attempt to alleviate these concerns. The PSA 2021 introduced two new criminal offences under PSA 2021 where action or inaction results in either: (1) the avoidance of an employer debt to a defined benefit (DB) scheme; or (2) or a material reduction to the chance of members getting their DB benefits in full. On 11 March 2021, TPR published a consultation on its draft policy on how it will use its new criminal powers under PSA 2021 to investigate and prosecute those two offences. The consultation has now closed. TPR's blog reiterates that when these powers come into force (expected Autumn 2021) they should not be of worry to those who are doing the right thing and properly thinking through the actions and decisions they take. However, TPR stresses that such powers should cause anxiety for those who intentionally want to avoid liabilities or even put pension savings at risk. TPR explained that it is not in the business of making the lives of competent and responsible trustees, advisers or employers, or anyone operating in this space, harder. TPR also reconfirmed that it will not be targeting acts pre-dating the offences coming into force and that it will remain a balanced, proportionate and risk-based regulator working with, and not against, the pensions industry.

Separately, on 21 April 2021, the Employer Covenant Practitioners Association (ECPA) has responded to TPR's consultation on its draft policy on how it will use its new criminal powers under the PSA 2021. The ECPA is supportive of legislation designed to combat 'the most serious intentional or reckless conduct that endangers pension schemes and members' savings'. However, it has also expressed concerns regarding TPR's draft policy in relation to the uncertainty surrounding these sanctions, and whether they could "dissuade parties from investigating in, or interacting with, sponsors of DB schemes."

### Horizon Scanning

#### Look out for:

**Trial commencement:** NatWest is scheduled to appear at Westminster Magistrates' Court on 26 May 2021 in relation to FCA's criminal proceedings against it in respect of offences under the MLR 2017.

**Sentencing hearing:** on 14 January 2021, David Lufkin, a British national and the former Global Head of Sales at Petrofac pleaded guilty at Westminster Magistrates' Court to three counts of bribery. The matter has been listed for a mention hearing on 21 June 2021.