

CPS SECURES ADDITIONAL S.7 BRIBERY ACT CONVICTIONS //

The Metropolitan (Met) Police and Crown Prosecution Service (CPS) recently secured three corporate convictions for offences contrary to [section 7 of the Bribery Act 2010](#) (failure of commercial organisations to prevent bribery). This is the CPS' second successful prosecution of a company under the Bribery Act; their first prosecution was of [Skansen Interiors in 2018](#), which was investigated by the City of London Police. The case made comparatively fewer headlines than bribery cases investigated and prosecuted by the Serious Fraud Office (SFO), but still offers important considerations for corporates and their advisors.

The facts

The case concerned the conduct of a group of individuals and corporate bodies who were involved in bribing a senior manager at Coca-Cola Enterprises UK Ltd. Noel Corry, the manager in question, worked for Coca-Cola Enterprises in the Electrical and Automation division, with responsibility for subcontracting site service work to a number of companies. In addition to personally leading on the identification of appropriate contractors, Corry was able to influence the selection process.

Corry was found to have perpetuated a corrupt scheme to award contracts in exchange for bribes in two ways. He conspired with senior managers at certain companies to enable them to obtain fictitious contracts to carry out electrical services where little, or no, work was required; and he would provide confidential and sensitive information to contract bidders to enable them to win contracts over bid rivals, with contract funds then being applied to his personal benefit.

The other individuals involved in the scheme were Peter Kinsella, Regional Manager of Boulting Group Limited (now WABG Limited), and Gary Haines, Managing Director of Tritec Systems Limited and Electron Systems Limited. Corry received payments amounting to £950,000, along with concert and football tickets. Detectives found a document on Corry's work computer named "Slush," which detailed the funds coming in and where he spent the money. They also discovered that Haines and Kinsella paid Corry through a company named "Trojon Ltd," which had neither staff nor premises.

The Met Police [reported](#) that Boulting, which had a turnover of over £100 million a year, benefitted from contracts worth £13 million that were obtained through bribery, and that approximately £350,000 in bribe payments had been made by Kinsella. Tritec and Electron were much smaller companies, with

an annual turnover of around £1 million. The CPS estimated that £600,000 in bribe payments were made by Haines to Corry on behalf of these companies.

All three individuals, and the companies where Kinsella and Haines worked, pleaded guilty and were sentenced on the 14th of April as follows:

Individuals	
Noel Corry	20 month suspended sentence
Gary Haines	21 month suspended sentence
Peter Kinsella	12 month suspended sentence
Companies	
WABGS Limited (previously Boulting Group Limited)	£500,000 fine
Tritec Systems Limited	£70,000 fine
Electron Systems Limited	£70,000 fine

Key considerations

This case raises a number of interesting points for practitioners to consider:

- The Met Police [reported](#) that their investigation was launched in 2013 after Coca-Cola Enterprises made a report of bribery and corruption. Detective Superintendent John Roch of the Met [stated](#): “I’d like to thank Coca-Cola Enterprises UK for assisting and supporting this investigation; we have worked closely with them throughout the case”. Alistair Dickson of the CPS [said](#): “Coca-Cola Enterprises were wholly unaware of Corry’s corrupt actions to enrich himself”. Clearly, Coca-Cola Enterprises was the victim of this corrupt scheme involving some of its contractors and a corrupt employee (and they are reported to have sued Corry for damages and settled).
- The case gives us little additional insight as to how an “adequate procedures” defence might be made out under section 7(2) of the Bribery Act. The Met statement reports: “It was found that Boulting were grossly negligent in preventing the offences occurring and failed to put in place means by which bribery would be uncovered.” The CPS further said: “The contracting companies should have had in place compliance measures which would have prevented the payments being made and led to the corruption being exposed”.
- The fines were low. Compared with some of the blockbuster sums we have seen from recent [SFO](#) guilty pleas and DPAs, the penalties imposed on Boulting, Trittec, and Electron are very small, especially if one considers Boulting’s turnover at the time and value of the contracts generated. The Met and CPS statements did not report whether disgorgement of profits were ordered against the companies, or what other penalties may have been imposed (such as mandatory enhancements to a compliance programme).
- Finally, the SFO was not involved. Although the Bribery Act [permits](#) both the Director of Public Prosecutions and the Director of the SFO to prosecute, the vast majority of prosecutions in relation to section 7, and the only Deferred Prosecution Agreements (DPAs), have been undertaken by the SFO. There is no commentary on why the police and CPS pursued this case, but it perhaps reflects the purely domestic nature of this case and the comparatively lower sums involved by way of bribe payments. It is a worthwhile reminder that Bribery Act prosecutions can be undertaken by the CPS as well as the SFO, and different considerations will surely apply when dealing with either agency.

With very limited details in the public domain, the case raises more questions than answers.

RECENT NEWS //

OFSI confirms commencement date for strict liability sanctions offences

The Director of the Office of Financial Sanctions Implementation (OFSI) confirmed that [section 54 of the Economic Crime \(Transparency and Enforcement\) Act 2022](#), which makes civil sanctions breaches a strict liability offence, will come into force on 15 June. “For breaches of financial sanctions that are committed after 15 June 2022, OFSI will be able to impose civil monetary penalties on a strict civil liability basis”, Giles Thomson wrote in a [statement](#). “This means the previous requirement for OFSI to prove that a person had knowledge or reasonable cause to suspect that they were in breach of financial sanctions will be removed, but we still bear the burden of proof to establish that there was a breach of financial sanctions prohibitions”. OFSI has published new [guidance](#), entitled “Enforcement and monetary penalties for breaches of financial sanctions - in force 15 June 2022”. Thomson’s statement confirmed that the strict liability standard will not apply to matters being enforced on a criminal basis.

SFO update: GPT execs trial starts; Global Forestry Investments execs found guilty of fraud; Glencore Energy (UK) Ltd charged with seven counts of bribery

The trial of two men linked to GPT Special Project Management - an Airbus subsidiary that [pleaded guilty](#) to corruption in April 2021 - began on 5 May at Southwark Crown Court. The Serious Fraud Office (SFO) [charged](#) Jeffrey Cook and John Mason in July 2020 with one count of corruption contrary to section 1 of the Prevention of Corruption Act 1906. Cook has also been charged with misconduct in public office, a common law offence.

The SFO [announced](#) the conviction of two company directors behind fraudulent green investment schemes in Brazil, which took in approximately £37 million from around 2,000 investors. On 31 May, Southwark Crown Court found Andrew Skeene and Julie Bowers, former directors of Global Forestry Investments, guilty for three counts of conspiracy to defraud and one count of misconduct in the course of winding up a company. According to SFO Director Lisa Osofsky, the investigation, which was conducted with assistance from partner agencies across the globe, “exposed an intricate web of money transfers, forged documents and invented identities used to scam pensioners and savers out of their money under the false pretence of environmental protection”. The SFO opened its investigation into Global Forestry Investments in February 2015.

Finally, the SFO [charged](#) Glencore Energy (UK) Ltd with seven counts of bribery in connection with its oil operations. The company indicated it will plead guilty to all charges and will be sentenced on 21 June.

FCA update: 2022 fines information published; staff strikes following cuts to pay

The Financial Conduct Authority (FCA) [updated its website](#) detailing fines issued during the calendar year ending 2022. The total amount of fines issued thus far is £10,117,360, with the highest fine (£9,103,523) being issued to [GAM International](#) for breaches of [FCA Principles 2 and 8](#), relating to the management of conflicts of interest in the asset management sector. Two other fines have been issued, against [Barclays Bank](#) for £783,800 for breaches of Prin. 2 related to financial crime in the corporate banking sector, and against individual for an amount of £230,037.

FCA staff members of the Unite union embarked on “historic” strike action on 4 May. Unite [reported](#) that this is the first action facing the FCA since its inception, and follows months of refusals by FCA

management to listen to the concerns of their workforce. Unite had [previously reported](#) that FCA staff voted for industrial action following a dispute around changes to pay and conditions, with 75% voting in favour, and 89.8% voting to support industrial action short of strike action. The initial 48-hour strike occurred at the FCA's London and Edinburgh offices. Further strike action is planned for 9-10 June and 5-6 July.

ICO fines facial recognition database company Clearview AI Inc more than £7.5m and orders UK data to be deleted

The ICO [fined](#) Clearview AI Inc, a facial recognition company £7.5 million for collecting images of people from social media platforms and the web to add to a global database. The ICO also issued an [enforcement notice](#), ordering the company to stop obtaining and using the personal data of UK residents that is publicly available on the internet, and to delete the data of UK residents from its systems. According to the ICO, the US-based company has collected more than 20 billion images of people's faces and data from publicly available information on the internet and social media platforms all over the world to create an online database, where people could upload an image of a person to the company's app, and check for a match in the database. People whose data and images were collected were not informed. The enforcement action resulted from a joint investigation with the Office of the Australian Information Commissioner, which focused on Clearview's use of people's images, data scraping from the internet, and the use of biometric data for facial recognition.

Environment Agency issues £27 million in fines for breaches of climate change schemes

On 24 May, the Environment Agency [announced](#) it had issued fines amounting to £27 million for breaches of climate change schemes in place to reduce greenhouse gas emissions and help the UK reach its net zero target. The civil penalties against [33 companies](#) cover the 2020-21 financial year, for breaches of the European Union Emissions Trading System, CRC Energy Efficiency Scheme, Energy Savings Opportunity Scheme and Fluorinated Greenhouse Gas regime. Liz Parkes, Deputy Director for Climate Change at the Environment Agency, said: "These schemes are an important part of the nation's efforts to reduce emissions and hit net zero by 2050. The fines published today should serve as an important reminder for all organisations to ensure that they are compliant with these schemes and are playing their part in tackling climate change". The UK aims to cut its greenhouse gas emissions to net zero by 2050.

HMRC issues largest ever civil penalty for breach of weapons export restrictions

HM Revenue and Customs (HMRC) issued its largest ever penalty for a breach of UK arms controls, [fining a company £2.7 million](#) for shipping weapons overseas without permission. The Department for International Trade said on 4 April that it had reached the settlement in February with an unidentified business over the unlicensed export of "military goods." Under UK arms controls measures, "military goods" includes tanks, missile systems, chemical warfare agents, and smaller weapons like machine guns and hand grenades. The size of this penalty is far greater than any previously issued; fines issued in 2020 totalled £700,000.

UK's new sanctions regime is underwhelming, campaign groups say

The organisations REDRESS and the UK Anti-Corruption Coalition (UKACC) [published a review](#) examining the first year of operation of the UK's anti-corruption sanctions. The report observes that the effectiveness of the government's extension of post-Brexit sanctions through the [Global Human Rights](#)

[Sanctions Regulations 2020](#) has been undermined by the absence of a strategic approach, insufficient coordination with allies including the US, and a lack of implementation and enforcement. Since the rules came into force last year, the UK has sanctioned 27 corrupt actors, 14 of whom have been involved in corruption in Russia. However, between September 2021 - when Liz Truss was appointed Foreign Secretary - and February 2022, no individuals or companies were targeted. The report highlighted that the UK has targeted less than 10% of individuals penalised under the US “Magnitsky” sanctions. “This slowdown is suggestive of serious capacity constraints within the [Foreign, Commonwealth and Development Office] which are limiting the ambition with which the regime can be used,” said UKACC co-chair Susan Hawley. Among its six key recommendations, the report said that sanctions should complement other enforcement measures, including asset recovery mechanisms which would facilitate the repatriation of unscrupulous gains to the true victims of corruption.

APPG Economic Crime Manifesto published; recommends reinvesting DPA proceeds into fighting economic crime

The government should reinvest some of the money secured from successful enforcement actions into its anti-corruption agencies, according to the All-Party Parliamentary Group (APPG) on Anti-Corruption and Responsible Tax and the APPG on Fair Business Banking. The two groups presented their joint [Economic Crime Manifesto](#) on 12 May, which made three recommendations on economic crime enforcement. First and “at the very least”, the Treasury should increase public spending on economic crime enforcement from £100 million to £300 million to match private sector funding raised by the Economic Crime Levy Treasury. Second, the Treasury should support economic crime enforcement through a cross-governmental Economic Crime Fighting Fund comprising a proportion of the proceeds of deferred prosecution agreements, as well as fines and asset recoveries. Finally, the Government must amend the “outdated and ineffective” laws concerning corporate criminal liability for economic crime. *(At the time of press, the Law Commission’s review of this topic and promised report is still outstanding).*

Former Dechert white collar partner found responsible for leaking client information

The High Court found that Neil Gerrard, the former head of white collar investigations at Dechert LLP, leaked his client’s confidential materials to the press and the Serious Fraud Office to generate work and increase billable fees. Eurasian Natural Resources Corporation (ENRC), a former Dechert and Gerrard client, sued the firm and Gerrard for breaches of Gerrard’s duties as a solicitor, including disclosing confidential and/or privileged material about it to the SFO. ENRC also sued the SFO, claiming that certain of its officers were aware of Gerrard’s breaches of duty and actively participated in or encouraged them. In his nearly 400-page judgment, Mr Justice David Waksman launched a scathing attack on Gerrard, calling him a “highly unreliable and at times dishonest witness”, and concluding that Gerrard did indeed leak both privileged and client confidential information to pressure his client into expanding the scope of his internal investigation. Though Waksman J dismissed most of ENRC’s case against the SFO, he did find certain agents engaged in “bad faith opportunism” in receiving the intelligence supplied by Gerrard. Damages awarded to ENRC will be decided at a later date. ([Eurasian Natural Resources Corp Ltd v Dechert LLP and another \[2022\] EWHC 1138 \(Comm\)](#)).

Government commits to second Economic Crime bill

Legislative proposals outlined in the [Queen’s Speech](#) on 10 May include a further Economic Crime bill to “strengthen powers to tackle illicit finance, reduce economic crime and help businesses grow”. Following the enactment of the [Economic Crime \(Transparency and Enforcement\) Act 2022](#). The

inclusion of the bill in the Queen's Speech means it should be put before Parliament within the next 12 months before being made into law.

Department for International Trade publishes updated anti-bribery and corruption guidance

The Department for International Trade published updated guidance to help companies prove their business and supply chain is free from bribery and corruption. *Bribery and corruption in trade: reducing the risk* sets out practical steps businesses can take to reduce risks, including assessing risks, researching potential trading partners, training staff, and keeping up-to-date records of training and mitigation procedures.