Case No: U20201392

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: 17/07/2020

Before :

MR JUSTICE WILLIAM DAVIS

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Between :

SERIOUS FRAUD OFFICE	**Applicant**
- and -	
G4S CARE AND JUSTICE SERVICES (UK) LIMITED	**Respondent**

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Crispin Aylett QC, Hannah Willcocks and Raoul Colvile (instructed by **the SFO**) for the **Applicant**
Clare Montgomery QC and Katherine Hardcastle (instructed by **Freshfields Bruckhaus Deringer LLP**) for the **Respondent**

Hearing dates: 10th and 17th July 2020

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Approved Judgment

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Mr Justice William Davis:

Introduction

1. G4S Care and Justice Services (UK) Limited ("G4S C&J") is a private limited company registered in the United Kingdom. In 2018 the company reported net assets in excess of £85.5 million, revenue of over £341 million and profit of over £17.7 million. The principal activity of G4S C&J was described in the company's 2018 annual report as "the provision of highly specialised services to central and local governments and government agencies and authorities including adult custody and rehabilitation, prisoner escorting and immigration services". It is a wholly owned subsidiary of G4S plc, a public limited company incorporated in the United Kingdom. This parent company employs over 550,000 people worldwide. In 2019 its reported revenue was over £7.7 billion. In excess of £1.2 billion of that sum resulted from its operations in the United Kingdom.

2. Between 2005 and 2013 G4S C&J provided electronic monitoring services for the Ministry of Justice ("MoJ"). To be strictly accurate the first contracts for the provision of such services were between Securicor Justice Services Limited, the previous name of G4S C&J, and the Secretary of State for the Home Department i.e. the Home Office as the government department then responsible for those services. The Ministry of Justice took over the responsibility for the services when it was created in 2007. For ease of reference I shall refer to G4S C&J as the relevant supplier of electronic monitoring services throughout.

3. Electronic monitoring equipment plays a vital role in the criminal justice system. It is used to monitor those accused of criminal offences remanded on bail with a curfew condition, those convicted of a criminal offence made the subject of a sentence other than immediate custody to which a curfew requirement is attached and prisoners released early on home detention curfew and/or released on licence where the licence involves monitoring of some kind.

4. In 2013 the MoJ contacted the Serious Fraud Office ("SFO") in relation to the electronic monitoring services being provided by G4S C&J. At that point the concern was whether G4S C&J had rendered invoices and been paid for monitoring people when in fact no monitoring had taken place. The SFO investigated that proposition. It was determined that there was no sufficient evidence that this had occurred dishonestly. In December of the same year the MoJ raised with G4S C&J a concern that the company had not complied with its obligations in relation to financial reporting and notification of unanticipated costs efficiencies. In January 2014 G4S C&J reported to the SFO that it had discovered material which indicated that the company had failed to provide accurate financial reports to the MoJ.

5. The SFO has investigated the report made in January 2014 by G4S C&J. The conclusion of the investigation was that there had been fraudulent conduct in relation to the contracts for the provision of electronic monitoring services. Further, it was concluded that, from August 2011 and by reference to the identification principle, the company was criminally liable for that conduct. The draft indictment charges G4S C&J with three offences of fraud. The SFO have invited G4S C&J to enter into a deferred prosecution agreement in relation to its alleged criminal conduct. The company is willing to do so.

The legal framework

6. A deferred prosecution agreement ("DPA") provides a mechanism whereby an organisation – not an individual – can avoid prosecution for certain financial offences through an agreement with a prosecuting authority. In this jurisdiction the only prosecuting authority which thus far has reached such agreements is the SFO though the Director of Public Prosecutions also is statutorily entitled to do so. The statutory framework is to be found in Schedule 17 of the Crime and Courts Act 2013 ("the 2013 Act"). The Criminal Procedure Rules Part 11 set out the relevant rules of court.

7. This is the eighth instance of a DPA in this jurisdiction. Sir Brian Leveson P., as he then was, dealt with the first four DPAs. In his judgments in *Serious Fraud Office v Standard Bank PLC* [2015] 11 WLUK 804 (the first DPA to be considered and approved following the implementation of the 2013 Act) he summarised the operation of the DPA regime. In his preliminary judgment he said:

> *"1. The traditional approach to the resolution of alleged criminal conduct is for a prosecution authority to commence proceedings by summons or charge which then proceeds in court to trial and, if a conviction follows, to the imposition of a sentence determined by the court. By s. 45 and Schedule 17 of the Crime and Courts Act 2013 ("the 2013 Act"), a new mechanism of deferred prosecution agreement ("DPA") was introduced into the law whereby an agreement may be reached between a designated prosecutor and an organisation facing prosecution for certain economic or financial offences. The effect of such an agreement is that proceedings are instituted by preferring a bill of indictment, but then deferred on terms: these terms can include the payment of a financial penalty, compensation, payment to charity and disgorgement of profit along with implementation of a compliance programme, co-operation with the investigation and payment of costs. If, within the specified time, the terms of the agreement are met, proceedings are discontinued; a breach of the terms of the agreement can lead to the suspension being lifted and the prosecution pursued.*
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> *2. By para. 7-8 of Schedule 17 to the 2013 Act, after negotiations have commenced between a prosecutor and relevant organisation, the prosecutor must apply to the court, in private, for a declaration that entering into a deferred prosecution agreement in the circumstances which obtain is likely to be in the interests of justice and that the proposed terms are "fair, reasonable and proportionate". Reasons must be given for the conclusion expressed by the court and in the event of such a declaration (either initially or following further negotiation and review), formal agreement can then be reached between the parties. In that event, a further hearing is necessary for the court to declare that the agreement is, in fact, in the interests of justice and that the terms (no longer proposed, but agreed) are fair, reasonable and proportionate.*
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> *3. If a DPA is reached and finally approved, the relevant declaration, with reasons, must be pronounced in public. Thereafter, the prosecutor must also publish the agreement and the initial or provisional positive declaration (along with any earlier refusal to grant the declaration) in each case with the reasons provided. In that way, the entirety of the process, albeit then resolved, becomes open to public scrutiny. …"*

Sir Brian Leveson P. added this in his final judgment:

> *"2. In contra-distinction to the United States, a critical feature of the statutory scheme in the UK is the requirement that the court examine the proposed agreement in detail, decide whether the statutory conditions are satisfied and, if appropriate, approve the DPA. ... The court retains control of the ultimate outcome. ...*
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> *4. Thus, even having agreed that a DPA is likely to be in the interests of justice and that its proposed terms are fair, reasonable and proportionate, the court continues to retain control and can decline to conclude that it is, in fact, in the interests of justice or that its terms are fair, reasonable and proportionate. To that end, it remains open to continue the argument in private, again on the basis that, if a declaration under para. 8(1) is not forthcoming, a prosecution is not jeopardised. Once the court is minded to approve, however, the declaration, along with the reasons for it, must be provided in open court. The engagement of the parties with the court then becomes open to public scrutiny, consistent with the principles of open justice ...."*

8. Since that first instance of the court considering a DPA in which two judgments were given, one following the preliminary declaration that a DPA was likely to be in the interests of justice and the other after final approval of the DPA, the practice has been for a single judgment to be given at the second stage of the process. I shall follow that practice.

9. In this case I conducted the private hearing pursuant to Paragraph 7 of Schedule 17 of the 2003 Act on the morning of Friday 10 July 2020. At 4.30 p.m. on the same day I made a declaration that entering into the proposed DPA was likely to be in the interests of justice and that its proposed terms were fair, reasonable and proportionate. The declaration was postponed for that short period bearing in mind concerns expressed by G4S plc about ensuring an orderly market. I reserved my reasons for the preliminary declaration until the outcome of the application for final approval of the DPA pursuant to Paragraph 8 of Schedule 17 of the 2013 Act. The hearing of that application took place today, Friday 17 July 2020. It was held in public. There has been no change in circumstance since I made the preliminary declaration. Therefore, I have given final approval to the DPA. This judgment sets out my reasons for the declarations I have made.

The facts

10. In September 2003 the Home Office issued an Invitation to Propose to several large contractors in relation to a new generation of contracts for electronic monitoring of alleged and convicted offenders. Five geographical areas in England and Wales were identified with a separate contract to be awarded in relation to each area. G4S C&J submitted a bid in respect of all five areas. In due course it was successful in relation to three areas: North East and North West England; South East and South West England; East Midlands, Yorkshire and Humberside.

11. Amongst the other contractors submitting a bid was Serco Limited. That company was awarded the contracts for the other two areas: London and Eastern; West Midlands and Wales. What transpired in relation to those contracts can be seen from my judgment in

relation to the approval of the DPA with that company: *SFO v Serco Geografix Ltd* [2019] 7 WLUK 45.

12. From an early stage in the bidding process it was known to G4S C&J that the Home Office was anxious to make costs savings in the new contracts. The company was an existing supplier of electronic monitoring devices. On 21 June 2004 the Home Office wrote to the company under the heading "CURFEW ORDER USAGE AND EXPENDITURE". Because there had been an increase in the use of curfew orders by the courts and due to the pricing arrangements then in place for electronic monitoring devices, the Home Office foresaw that a point would be reached when it no longer could afford to support the curfew order scheme. In the letter the Home Office said that it was considering a close audit of the company's financial records with a view to identifying whether there were "duplicated or otherwise unjustified costs" in the operation of the scheme. The Home Office also wished to establish the profit margins then being obtained. The expectation was that the company would be "running a lean operation with reasonable rather than excessive profits".

13. In July 2004 G4S C&J submitted its best and final offer for the electronic monitoring contracts. The company in its offer forecast a profit margin of 8.3% for the life of the contract in each case. Documents prepared within the company shortly before the submission of the bid and dated three days after the letter from the Home Office referred to above indicated a true anticipated profit margin over the life of the contract of 17.9%. Despite this, the bid documents included the assertion that the company's charging structures were transparent and that efficiency savings over the lifetime of the contract would be shared as costs benefits with the Home Office.

14. The contract for each of the three areas in respect of which G4S C&J was successful included terms under the heading VALUE FOR MONEY. There was a general term that the company would co-operate with the Home Office to demonstrate value for money throughout the life of the agreement. The company agreed to implement reasonably achievable opportunities to reduce the costs of providing electronic monitoring services. It agreed that the Home Office would be entitled to recover 50% of the value of "any unanticipated cost efficiencies" which the company achieved. The company was obliged to provide all information reasonably necessary to enable the parties to identify such cost efficiencies. In particular, the company was required every six months throughout the contract term to submit a financial model to the Home Office. In each case the model was to take account of actual revenues and costs incurred together with a forecast of revenues and costs over the remainder of the contract term. The purpose of the financial model was to provide the Home Office with sight of the underlying costs of G4S C&J. The Home Office thereby would be able to know that the company's pricing was realistic. The company provided a warranty that "all statements and representations" made by the company would be "to the best of (the company's) knowledge, information and belief true and accurate at the time of supply".

15. The contract in relation to each area commenced on 1 April 2005. G4S C&J obtained two extensions of the contract in relation to each area. This resulted in the company providing electronic monitoring services under the contract until March 2013. There was then a transition agreement which resulted in continued provision by the company until March 2014.

16. The first financial model was submitted on 23 November 2005. The table below identifies each model submitted. As can be seen, each one reported costs to the Home Office (and in due course the MoJ) substantially in excess of the costs set out in the company's internal management accounts. The precise means by which the costs reported to the Home Office and the MoJ differed from the true costs varied. In some cases, the true cost of contract expenditure on field equipment, communications and vehicles was not provided. The financial models were based on the unit costs as set out in the company's best and final offer made in July 2004 whereas the company had been able to make savings over the course of the contracts. In other cases, costs were reported which had not been incurred because they "always had been shown historically". In yet other cases there was reported expenditure which was not and never had been incurred.

Date Submitted	Reporting Period For Actual Costs	Costs Reported as Actual to MoJ (£)	Costs in EM Management Accounts (£)	Variance (£)
23 November 2005 ("**FM 1**")	Apr 05 - Sep 05	14,019,295	12,234,363	1,784,932
1 June 2006 ("**FM 2**")	Apr 05 - Mar 06	29,189,681	25,255,063	3,934,618
6 March 2007 ("**FM 3**")	Apr 05 - Sep 06	44,022,021	38,239,409	5,782,612
11 December 2007 ("**FM 4**")	Apr 05 - Sep 07	78,455,344	66,200,049	12,255,295
9 September 2008 ("**FM 5**")	Apr 05 - Mar 08	102,738,172	82,374,599	20,363,573
19 October 2009 ("**FM 6**")	Apr 05 - Sep 09	166,061,185	131,249,670	34,811,515
21 June 2010 ("**FM 7.1**")	Apr 05 - Mar 10	187,041,081	146,435,083	40,605,998
29 June 2010 ("**FM 7.2**")	Apr 05 - Mar 10	187,047,272	146,435,083	40,612,189
5 December 2010 ("**FM 8**")	Apr 05 - Sep 10	207,317,406	161,195,630	46,121,776
17 August 2011 ("**FM 9.1**")	Apr 05 - Mar 11	230,344,383	176,901,472	53,442,911
29 September 2011 ("**FM 9.2**")	Apr 05 - Mar 11	230,344,383	176,901,472	53,442,911
May 2012 ("**FM 10**")	Apr 05 - Mar 12	278,836,853	208,111,067	70,725,786

17. The draft indictment contains three counts. Count 1 relates to FM 9.1, Count 2 to FM 9.2 and Count 3 to FM 10. In each case the offence alleged is fraud, namely falsely representing that the financial model reported costs actually and genuinely incurred under the contract. As is apparent, FM 9.1 and FM 9.2 were identical in relation to reported costs incurred to date. FM 9.2 in addition contained forecast figures for the rest of the contract term. In terms of the misrepresentation as to costs genuinely incurred FM 9.2 added nothing. It is reflected by a separate count because it was submitted by the company to the MoJ some six weeks after FM 9.1. The financial models to which the draft indictment refers concealed the true cost of expenditure on field equipment, communications and vehicles in the manner already outlined. They also made false representations about the capital cost of the acquisition of another company by G4S C&J.

18. The Statement of Facts prepared pursuant to Paragraph 5(1) of Schedule 17 of the 2003 Act sets out the course of dealing between G4S C&J and the Home Office and the MoJ together with dealings internal to the company in much greater detail than I have described them in this judgment. Such detail is not necessary for a proper understanding of the nature of the fraud. To go further into the detail inevitably would risk identifying individuals and their roles. Since there is at least the prospect of

proceedings against individuals in the foreseeable future, identification of individuals by me in this judgment would prevent its publication until those proceedings were concluded. I have been made aware of the identity and positions of individuals employed by the company so as to allow me to assess their seniority and the responsibility of the company itself for the fraud. It is better that the public is informed as fully as possible now via this judgment of the nature of the company's conduct and the basis of the DPA. This judgment provides a description of the nature and extent of the fraud practised by the company sufficient to allow a proper appreciation of what it involved - and what it did not involve.

19. It must be understood that the DPA is an agreement between the SFO and G4S C&J. The Statement of Facts on which it is based is agreed by the company. Were there to be a breach of the DPA and were the court to permit the SFO to reinstitute the criminal proceedings, the Statement of Facts would be treated as an admission by the company of the facts set out therein pursuant to Section 10 of the Criminal Justice Act 1967. Insofar as the Statement of Facts refers to individuals, none of those individuals played any part in the process whereby the DPA was concluded. Therefore, this judgment is not to be taken as indicating liability of any kind on the part of any particular individual.

20. As is apparent from the table above, the total variance over the period 2005 to 2012 between the costs reported to the Home Office and the MoJ and the costs as they appeared in the company's management accounts was in excess of £70 million. This variance was reflected in the financial models FM 9.1, FM 9.2 and FM 10 since each model set out the historic costs. On this basis the company accepts criminal liability for the relevant part of those costs. As I already have indicated, the criminal liability of the company via the identification principle ran from August 2011. The company asserts and the SFO concedes that not all of this sum was reported dishonestly. The company's position is that £42,792,531 was incorrectly reported. Had the Home Office and the MoJ been aware of the true position, they could have invoked the Value for Money terms of the contract. Since most of the dishonest reporting was motivated by a desire to conceal unanticipated cost efficiencies, the fraud led to the company retaining monies which otherwise it would have been obliged to share with the Home Office and the MoJ.

21. The Director of the SFO is satisfied that there is sufficient evidence to satisfy the evidential stage of the Full Code Test in the Code for Crown Prosecutors in relation to each of the counts on the draft indictment. The material I have seen – both internal documents from G4S C&J and documents provided by the company to the MoJ – confirms that her view is correct and appropriate.

Events following the report made in January 2014

22. On 12 March 2014 G4S C&J entered into a settlement deed with the Secretary of State for Justice. The company paid a total of £121,268,715 to settle the MoJ's claims against the company in relation to the provision of electronic monitoring services. This sum included £22,115,505 representing a 50% share of "unanticipated cost efficiencies" for the period April 2005 to December 2013.

23. The SFO investigation was announced in November 2013 and commenced in January 2014. From the outset G4S C&J co-operated with the investigation. The level of co-operation initially was less than it was after October 2019 at which point the company's level of co-operation intensified very significantly. It was then that the company provided access to all interviews conducted by its solicitors and accountants, a limited waiver of privilege being granted at that stage. Overall the company assisted in a substantial way with the SFO investigation: responding voluntarily to many investigative requests from the SFO; providing digital and hardcopy material to the SFO and/or notifying the SFO of when and how data had been destroyed; assisting the SFO to obtain or trace third party evidence and material.

The interests of justice

24. The fraud practised by G4S C&J related to an important part of the criminal justice system. It involved a very substantial loss to the public purse. I must emphasize that the fraud did not directly undermine the integrity of the electronic monitoring system. The company's dishonest activity did not include charging for monitoring of non-existent people. Equally, the concealing of the true costs of the contract with the MoJ is bound to have a substantial adverse impact on the confidence in the process whereby public functions are contracted out by HM Government.

25. The financial models submitted in August and September 2011 and in May 2012 set out historic costs which were inaccurate, those historic costs relating to a period of approximately 6 years. Although the criminal liability of G4S C&J via the identification principle relates to a period of around 12 months, the financial models reflect business practice over a longer period.

26. These factors, coupled with the company's less than full co-operation with the SFO investigation until a relatively late stage, point to the public interest being properly served by prosecution of G4S C&J. The SFO acknowledge that these factors are of significance. However, they argue that they are outweighed by other factors against prosecution, namely:

- Prompt reporting in January 2014 by the company to the SFO of the fraudulent conduct reflected in the draft indictment.
- Co-operation with the SFO in their investigation.
- The relative age of the conduct.
- The remedial measures taken by G4S plc as the parent company.
- The disproportionate consequences which potentially would flow from any conviction of G4S C&J.
- The potential collateral effects on the public and on the employees and shareholders of G4S C&J in the event of conviction.

These are factors which any prosecutor considering a DPA may take into account when assessing the public interest: see Deferred Prosecution Agreements Code of Practice at paragraph 2.8.2.

27. I can deal with the first three of those bullet points relatively briefly. G4S C&J undoubtedly reported the fraudulent conduct without delay once suspicions had been raised. The MoJ wrote in December 2013 expressing concern that the company may not have complied with its obligations in relation to financial reporting. The MoJ asked for co-operation in their exercise in determining whether their concern was justified. Within a month the parent company had reported to the SFO the discovery of documents indicating G4S C&J had not provided truthful financial information. After that initial report there was co-operation with the SFO investigation. As I have said already, this co-operation was not as full as it might have been in the initial stages. However, when judging the public interest in not prosecuting a company in favour of entering into a DPA, the overall level of co-operation is what matters. Initial reluctance to co-operate fully can be dealt with when considering the discount on any financial penalty. The conduct goes back to the period 2005 to 2013. Self-evidently it is not recent and there is no continuing misconduct.

28. Just as in the proceedings concerning *Serco Geografix,* the company which engaged in fraudulent misconduct is a wholly owned subsidiary of a much larger parent company. The distinction between *Serco Geografix* and this case is that G4S C&J remains a substantial trading entity. Thus, the steps taken by the parent company are all the more important. G4S has implemented and will continue to implement a far-reaching programme of corporate renewal. This has involved: significant personnel changes; the creation of a Board Risk Committee to oversee the most sensitive and important contracts held by G4S and its constituent companies; a change in reporting lines so that financial officers and auditors within a company are required to report to Group officers rather than the leadership of the individual company; expansion of the Group audit function with an emphasis on risk assessment; introduction of a 360 degree review process of all contracts with HM Government. The programme also has involved reviews and assessments of the financial governance of G4S by outside bodies. The process of corporate renewal is continuing. Following approval of the DPA, a term of the agreement will be that G4S by March 2021 will appoint a Group level head of internal audit and compliance with a properly funded office. In addition, an independent person will be appointed as Reviewer of the corporate renewal being undertaken by G4S. By December 2020 the Reviewer will provide a report to the SFO identifying any additional steps which G4S should take to ensure that their internal controls, policies and procedures meet defined criteria intended to prevent any fraudulent or corrupt practices. I am satisfied that the steps which have been taken and will be taken hereafter by G4S are very significant. They are steps which only can be enforced under the aegis of a DPA. Prosecution and conviction of G4S C&J could not sensibly achieve this objective. The public interest in the remedial steps is very high.

29. I turn to the question of disproportionate consequences and collateral effects. In relation to the DPA between the SFO and Airbus SE recently approved by Dame Victoria Sharp P, it is apparent from her final judgment that she was provided with specific evidence about the potential loss of contracts were Airbus SE to be convicted of failing to prevent bribery. The draft indictment in that case contained five counts of an offence contrary to Section 7 of the Bribery Act 2010. There also was evidence that the loss of those

contracts would put many thousands of jobs around the world at risk. The President concluded that, notwithstanding the egregious nature of the conduct engaged in by Airbus SE, these collateral effects would be disproportionate.

30. The position here is that G4S C&J depends very substantially on public contracts within the United Kingdom. I have no direct evidence of the effect on employment were the company to lose some or all of those contracts. Barry Hooper, the chief commercial officer within the MoJ, has made a witness statement in which he says that exclusion of the company would have a detrimental effect on the market for provision of prisoner and escort services and of new prisons. His description of this effect is limited and general. Were this issue to be critical I would require further evidence from Mr Hooper. In fact, for the reasons to which I now turn, it is not.

31. Procurement of public contracts is governed by the Public Contracts Regulations 2015. Regulation 57 deals with exclusion of a company from participation in a procurement procedure. Mandatory exclusion will follow upon conviction for one or more of a number of specified offences as set out in Regulation 57(1). Fraud is not one of those offences unless the fraud concerns the financial interests of the European Communities. That is not this case. Discretionary exclusion is governed by Regulation 57(8). A company may be excluded in one of a number of factual situations. Regulation 57(8)(c) provides for discretionary exclusion where it can be demonstrated that the company "is guilty of grave professional misconduct, which renders its integrity questionable…" Were G4S C&J to plead guilty to fraud, the company plainly would be guilty of such misconduct. However, if approved, the DPA will involve an admission by the company of exactly the same fraud to which any conviction would relate. Looked at objectively, there is no material distinction between a conviction after an early plea of guilty and the admission made as part of the DPA. The same could not necessarily be said were the conviction to follow a contested trial. That would add to the questions surrounding the company's integrity. However, that is not an issue that I need to resolve. On the facts here, the issue does not and could not arise.

32. Not only is there no material distinction to be drawn between conviction and DPA on an objective analysis of the facts of this case, but also I have evidence from the Chief Commercial Officer for HM Government who operates within the Cabinet Office and who has overall responsibility for decisions relating to discretionary exclusion from public procurement. That evidence is to this effect: in March 2019 the Cabinet Office agreed with G4S a programme of work arising out of the SFO's investigations; the corporate renewal activity since that date and continuing in part flowed from that agreement; further assurances were given by G4S in March 2020; in July 2020 the Cabinet Office panel of officials recommended that G4S should continue to be monitored in relation to continuing corporate renewal and in the context of regular supplier relationship management processes. The evidence of the Chief Commercial Officer is that whether G4S C&J is convicted as opposed to entering into a DPA is not the issue. Rather, the Cabinet Office is concerned with and will remain concerned with the governance changes made by G4S. Regulation 57(13) of the 2015 Regulations deals with what is termed "self-cleaning". This arises where the company provides evidence of measures taken which demonstrate the company's reliability despite the conduct which would justify exclusion from public procurement. What is important for the Cabinet Office is whether the steps taken by G4S satisfy the self-cleaning

provisions rather than whether the conduct is proved by conviction or by entering into a DPA.

33. I have engaged in this analysis because of my underlying concern that the court's approval of a DPA should not be determinative of any procurement decision in relation to public contracts relating to the criminal justice system. Whilst the DPA Code of Practice provides in terms for weighing disproportionate consequences and collateral effects in the balance when assessing the public interest, there is also a real public interest in maintaining the integrity of private contractors operating in the criminal justice system. The discretion in Regulation 57(8) of the 2015 Regulations is a political discretion not a judicial discretion. Whether fraudulent conduct should lead to the exclusion of such a contractor is a political judgment and not one in which the court should play any part. Since the decision as to G4S's future participation in those contracts will depend on factors other than the approval of the proposed DPA, my approval of a DPA in this case will not involve me in any aspect of that political judgment. The consequence of the Cabinet Office's position is that collateral effects could result from the fraudulent conduct of G4S C&J. However, those effects, should they occur, will be unconnected with the fact that the company has entered into a DPA rather than has been the subject of a prosecution.

34. I am satisfied that the interests of justice will be served by approval of a DPA rather than G4S C&J being prosecuted. The company has accepted that it engaged in fraudulent conduct and that this included historic costs covering a period of around eight years which were falsely represented in Financial Models 9.1, 9.2 and 10. It has compensated the MoJ in full and it has undertaken a root and branch self-cleaning process which is continuing. This latter factor is of particular significance. It will protect the public in the longer term in a manner more effective than any prosecution could expect to achieve. Lest it be thought that a DPA rather than a prosecution means that the company in some sense has avoided the consequences of its criminality, these matters should be borne in mind. The absence of a conviction will not affect substantially any damage to the reputation of the company given the nature and terms of the DPA. The agreement coupled with this judgment informs the world at large of the conduct of the company. Moreover, the basis of the financial penalty will be the same as would follow conviction.

The terms of the DPA

35. A copy of the agreement is annexed to this judgment. I am satisfied that its terms are fair, reasonable and proportionate. In summary, the agreement provides for the following: payment of a financial penalty in the sum of £38,513,277; payment of the SFO's reasonable investigation costs in the sum of £5,952,711; a corporate renewal programme as set out above which is already underway and which will continue; an undertaking by G4S to maintain the corporate renewal programme. The duration of the agreement will be three years from the date of the final approval thereof.

36. The agreement makes no provision for payment of compensation or of any sum to represent disgorgement of profits. The settlement deed dated 12 March 2014 included the sum of £22,115,505 to represent a 50% share of "unanticipated cost efficiencies". The compensation due to the MoJ as a result of the offences alleged in the draft indictment is £21,396,265. The payment in March 2014 must be credited against the compensation amount. It follows that no compensation now is due. The profit

unlawfully obtained as a result of the fraud is also £21,396,265. Because of the payment in March 2014 no further sum is due in relation to disgorgement of profits.

37. The financial penalty payable by G4S C&J is calculated by reference to the Sentencing Council Definitive Guideline on Fraud, Bribery and Money Laundering. Corporate Offenders are dealt with at pages 47 to 53 of the Guideline. Steps One and Two in the Guideline – compensation and confiscation – do not need to be considered for the reasons set out in the preceding paragraph. Step Three requires an assessment of the offence category. Culpability in this case was high. The company played a leading role in organised planned unlawful activity. The fraud involved a serious abuse of a position of trust as a contractor receiving payments from public funds. Harm is represented by the actual or intended gross gain to the company. This figure is the same as that set out in the preceding paragraph i.e. £21,396,265.

38. Step Four in the Guideline involves the setting of the starting point for the financial penalty with adjustment thereafter to take account of factors increasing or reducing seriousness. The starting point is set by applying a multiplier to the harm figure. Where the culpability is high the starting point is 300%. That gives a financial penalty before further adjustment of £64,188,795. There are factors increasing seriousness: attempts made to conceal the misconduct; substantial harm caused to the integrity of government. There are also factors reflecting mitigation: no previous convictions; voluntary reimbursement of the sums lost; co-operation with the investigation; offending committed under previous directors or managers. Balancing these factors cannot be a mathematical calculation. The SFO's submission is that the factors increasing and reducing seriousness are of equal weight such that no adjustment is needed to the figure of £64,188,795. I agree. The seriously aggravating factor of the damage to the integrity of government procurement processes is counterbalanced by the substantial mitigation afforded by the level of co-operation which has been and will be provided by G4S.

39. Step Five in the Guideline requires the court to step back and consider the overall effect of the financial orders proposed. The penalty in this case is precisely as indicated by the Guideline. Thus, it fulfils the objectives of punishment and deterrence. The removal of gain has already been achieved. There is no issue in relation to the means of G4S C&J which might affect its ability to implement compliance programmes. Similarly, the penalty will not cause any unacceptable harm to staff or customers of the company. Standing back I am satisfied that there is no requirement for any adjustment to the penalty in order to achieve proportionality.

40. Steps Six and Seven require consideration of assistance to the prosecution and reduction of sentence for a guilty plea. There is no doubt that a reduction of one-third to reflect the notional plea of guilty will be appropriate. That is the effect of paragraph 5(4) of Schedule 17 of the 2013 Act taken together with the Sentencing Council Guideline on Reduction in Sentence for a Guilty Plea. As I explained in *SFO v Serco Geografix* the appropriate discount where a DPA is approved generally will be greater than one-third.

> *"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."

This rationale applies to G4S C&J to a significant extent. The company reported the fraudulent conduct at an early stage. Overall, the company has co-operated fully with the SFO's investigation. The company has engaged in substantial rehabilitative efforts which continue. It compensated the MoJ very promptly once the fraud was apparent. However, the discount of 50% as applied in other instances where the court has approved the DPA has been where the co-operation of the company concerned has been extraordinary or otherwise exemplary. As I have outlined, there were aspects of the company's co-operation in this case which were less than full at the outset. Until October 2019 it could not be said that the level of co-operation was exemplary. This affects the level of discount to be applied to the financial penalty. The SFO's position is that a discount of 40% is appropriate taking into account all of the circumstances. I agree with that proposition. The discount should be greater than one-third because of the overall level of co-operation and the unusually wide scope of the self-cleaning steps taken by G4S. It should not be 50% because full co-operation with the SFO investigation came relatively late in the day. A discount of 40% gives a financial penalty figure of £38,513,277.

41. The final step required by the Guideline is consideration of whether the penalty is just and proportionate to the offending behaviour. The penalty in this case has been determined by reference to the fraud practised by G4S C&J which included the historic costs set out in the financial models to which the indictment refers. I am satisfied that it is just and proportionate. This sum is to be paid within 30 days of my final approval of the DPA as given today.

42. Even with the co-operation of G4S C&J, investigation of the company's conduct by the SFO was complicated and protracted. The SFO is entitled to its reasonable investigation costs. I am satisfied that the sum expended by the SFO - £5,952,711 – is fair, reasonable and proportionate. This sum also will be paid within 30 days of final approval of the DPA.

43. A significant part of any DPA will be the compliance measures agreed by the company in question. I have set out at paragraph 28 of this judgment the measures taken by G4S C&J and by G4S as the parent company. There are two highly significant aspects of the renewal programme in this case. First, the parent company has entered a formal and binding undertaking to ensure that the compliance measures are maintained and enforced. These measures will be applied Group-wide by the parent company. This is similar to the position in *SFO v Serco Geografix.* The undertaking here is of even greater significance because the wholly owned subsidiary in this case continues to trade in a substantial way. Second, G4S C&J and G4S plc have agreed that an external Reviewer will be appointed to review and to report on the compliance measures being taken by those companies. The detailed provisions relating to the external and independent Reviewer are set out at paragraphs 35 to 42 of the DPA. The intensity of the external scrutiny as set out in the DPA is greater than in any previous DPA. This is necessary and appropriate given the exposure of both G4S C&J and the parent company to government contracts. Equally, it is an important factor in providing reassurance to the SFO, to relevant government departments and to the wider public that both

companies have proper controls in place to ensure the integrity of their accounting and governance processes. The DPA will last for three years during which period the compliance measures will continue and will be reviewed. This will provide further reassurance as to the conduct of G4S and G4S C&J.

Order and publication

44. Pursuant to Paragraph 8(1) of Schedule 17 of the 2013 Act, I declare that the DPA in this case is in the interests of justice and that its terms are fair, just and proportionate. I consent to the preferring of a bill of indictment charging G4S C&J with three counts of fraud contrary to Section 1 of the Fraud Act 2006. The proceedings are automatically suspended by reason of Paragraph 2(2) of Schedule 17 of the 2013 Act. The terms of the DPA will be enforced. In the event of any default, the SFO will be able to make an application under Paragraph 9(1) of Schedule 17 of the 2013 Act.

45. I have annexed the DPA to this judgment. Both the DPA and the judgment can be published forthwith. As I have set out at paragraph 18 above, the Statement of Facts on which I have drawn for my factual summary includes material from which individuals may be identified. Although the applications in writing for approval of the DPA contain less material which might identify those individuals, there is a significant risk that one or more of them could be identified on a close reading of the application. In my view publication of the Statement of Facts and of the applications for approval would create a substantial risk of prejudice to the administration of justice in any proceedings against those individuals.

46. I shall make an order for postponement of publication of the Statement of Facts under Paragraph 12 of Schedule 17 of the 2013 Act. In addition, I shall make an order under Section 4(2) of the Contempt of Court Act 1981 (a) postponing publication of the applications for approval and (b) restricting any reporting of these proceedings which could tend to identify any individual previously employed by G4S C&J. These orders are annexed to this judgment. They will continue until the conclusion of any criminal proceedings against any such individual or until further order. The orders are expressed in the alternative as being until further order. Any interested party who wishes to apply to vary or to remove the order may do so on 48 hours' notice in writing, notice to be given to the court and the parties to the DPA.

Conclusion

47. The DPA requires G4S C&J to pay a significant financial penalty calculated as if the company had been convicted of fraud. It also provides for corporate renewal which will be for the benefit of G4S and, more important, for the benefit of those contracting with the companies within the G4S Group. As with other DPAs which the court has approved, the outcome provides the deterrent appropriate to the corporate wrongdoing to which the agreement relates whilst also acting as an incentive to other organisations in a similar position for self-reporting.

48. I conclude by thanking counsel and those instructing them on both sides. Cases such as this require very substantial preparation in order to provide digestible and comprehensible material to the court. I have been greatly assisted by the various documents provided.