

## **Bluu Solutions Ltd and Tetris Projects Ltd Deferred Prosecution Agreements—what lessons can be learned?**

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**Corporate Crime analysis:** On 17 March 2023, the Serious Fraud Office (SFO) published details of its Deferred Prosecution Agreements (DPA) with Bluu Solutions Limited (BSL) and Tetris Projects Limited (TPL). The DPA's, approved by the Court on 9 July 2021, were published after reporting restrictions were lifted following the acquittal of three individuals in criminal proceedings, and include financial penalties of over £2.62m and disgorgement of profits of £604,407. Quinton Newcomb and Farheen Ishtiaq-Stansfeld, Partner and Senior Associate in Fieldfisher's Commercial Crime team consider the Deferred Prosecution Agreements entered into with Bluu Solutions Limited and Tetris Projects Limited and the practical lessons to be learned.

### **What was the background to the Deferred Prosecution Agreements (DPA)?**

The publication of the DPA's follows from the guilty plea of Roger Dewhirst, a project manager and former director of Sweett Group Plc, for accepting bribes worth £291,000 in May 2022. This guilty plea is the first criminal conviction against an individual defendant following on from a DPA that the SFO has secured, since DPA's were first introduced.

### **What was the conduct covered?**

BSL and TPL, both subsidiaries of real estate company Jones Lang LaSalle (JLL Group), were involved in the business of office refurbishment. Their parent company self-reported to the SFO following its discovery of bribery payments during the tender process for five office refurbishment contracts worth approximately £11.5m.

During the period between 1 March 2014 and 31 July 2016, BSL sought to influence the award of five such contracts, successfully winning four. Two of the contracts were entered into by BSL and two by TPL. Payments were made by two senior directors of BSL totalling £466,858, and included payments directly and indirectly as inducements or rewards, often from personal bank accounts and included payment to a Range Rover dealership for a vehicle registered to Mr. Dewhirst's wife. During this period, BSL had minimal procedures in place to prevent persons associated with it from committing bribery.

On 6 August 2015, BSL was acquired by the group that owned TPL, with both directors taking up roles in the new company, however the improper conduct continued following this move. As part of the integration, various anti-bribery procedures were introduced into the new business; however, these were not adequate, primarily due to the lack of top-level commitment by the two directors.

The wrongdoing was uncovered in August 2016, when the JLL Group Global Internal Audit team conducted a post-acquisition audit of TPL, which identified a number of red flags in relation to the awarding of contracts to BSL and TPL. An internal investigation followed, resulting in a voluntary self-report to the SFO on 1 December 2016. The JLL Group also informed the US Department of Justice and the Securities Exchange Commission about its referral. A simultaneous referral to the UK Competition and Markets Authority led to fines imposed upon five other corporate groups that were also involved in cartel offences voluntarily disclosed. The SFO subsequently opened its investigation on 13 February 2017.

### **What were the key terms of the DPA?**

In addition to the penalties and disgorgement of profits, BSL and TPL were given credit for the prompt and voluntary self-disclosure of the misconduct. Following referral to the SFO, the JLL Group undertook 'remedi-

al, consolidating and strengthening action', which included the replacement of several members of upper-level management and disciplinary action against the two directors. This also included the termination of relationships with all third parties involved in the conduct in the first half of 2017 and improvement in compliance policies and financial controls, due diligence process and policies and procedures.

### **What were the noteworthy aspects of the DPA?**

Under the terms of the DPA's, BSL accepted responsibility for four offences of bribery and one of failure to prevent bribery during the tender process for refurbishments worth approximately £11.5m. TPL subsequently accepted responsibility for one offence of failure to prevent bribery totalling £2.62m.

The companies were required to pay a combined financial penalty of over £2.62m and disgorgement of profits of £604,407.

Notwithstanding the remedial measures already in place, TPL must also follow a 24-month Compliance Plan. The Compliance Plan requires the review, update and implementation of a compliance programme designed to detect and prevent bribery and other anti-corruption provisions, and includes reporting provisions to the SFO.

As we have seen from other high-profile DPA's, the DPA's entered into by BSL and TPL did not preclude the SFO from bringing prosecutions against any present or former officer, director, employee, consultant or agent. Notably, however, after it did so, a jury acquitted the defendants after only a few hours of deliberation. Whilst the SFO alleged that the payments were bribes to influence the tender process, the jury accepted the defence case that the payments were legitimate fees for providing the introduction or lead for the projects, and unconnected with the tender process.

### **What are the practical lessons to be learned from the DPA?**

After eight years and 12 such agreements, the SFO has finally been able to secure its first conviction against an individual connected to conduct which is subject to a DPA, albeit through a guilty plea. This follows a litany of unsuccessful prosecutions and high-profile acquittals, embarrassing defeats on appeal, and the discontinuance of prosecutions marred by disclosure issues.

There are increasingly vociferous and credible voices questioning the DPA regime, in its current form. They highlight the unfairness which is suggested by the seemingly now endless parade of corporate DPA's followed by failed or non-existent prosecutions of the very individuals whose supposed criminal conduct was relied upon as a proper basis upon which the companies in question entered into them. This case seems highly unlikely to mark the start of a successful streak for the SFO in securing convictions against individuals in such circumstances.

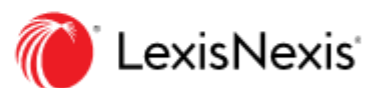
Those focused on the UK Plc balance sheet, have heralded DPA's a successful enforcement method for the SFO. With increased public scrutiny, continuing calls for the abolition of the agency, the Institute for Economic Affairs' report identifying the need for '*radical institutional change*,' and with the impending extension to the '*failure to prevent*' offences, it seems unlikely that the SFO will materially shift its focus from the use of DPA's, as a low-risk and cost-effective means of enforcement against companies, any time soon. Equally, for as long as they are available, many companies – and particularly those who require access to public procurement exercises – will still consider the DPA an attractive means of disposing of economic crime issues when they arise.

In that context, the BSL and TPL DPA's illustrate the credit given to corporates for implementing remedial measures and self-reporting wrongdoing, in accordance with the SFO's guidelines. With increased regulator focus on corporate compliance programmes, the DPA's highlight the importance of good corporate governance and of having adequate procedures in place to detect and prevent wrongdoing, both in form and in substance.

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