Case No: U20190840

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: 22/10/2019

Before :

MR JUSTICE WILLIAM DAVIS

- -

Between :

SERIOUS FRAUD OFFICE	**Applicant**
- and –	
GURALP SYSTEMS LIMITED	**Respondent**

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- -

Simon Mayo QC, Trevor Archer and Greg Unwin (instructed by **the SFO**) for the **Applicant**
Hugo Keith QC (instructed by **Addleshaw Goddard LLP**) for the **Respondent**

Hearing dates: 10th October and 22nd October 2019

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Approved Judgment

Judgment Approved by the court for handing down.

MR JUSTICE WILLIAM DAVIS:

1. Guralp Systems Limited ("GSL") is a relatively small UK registered company which specialises in the development, design, manufacture and sale of devices and systems for seismic measurement. The devices and systems can be used both on land and under the sea. They are used in a wide variety of circumstances: earthquake early warning systems; major civil engineering projects; oil exploration and extraction; monitoring nuclear weapons testing under the relevant UN treaties.

2. Despite the relatively modest size of the company in terms of its number of employees – currently around 110 – and its financial standing – which I shall consider in more detail hereafter – GSL's business is international. Its systems are deployed throughout the world. Many of its contractual relationships are with public bodies, both national and international.

3. GSL was incorporated in 1987 by a man named Dr Cansun Güralp. For much of the period with which I am concerned (November 2003 to May 2015) Dr Güralp managed every aspect of GSL's business. He was an active director of the company until January 2015. GSL employed someone named Natalie Pearce from October 1997 onwards. She reported to Dr Güralp. By 2010 her title was Head of Sales. Though she was not a director of the company, she attended board meetings by invitation. In 2010 a man named Andrew Bell joined GSL. He was a director of the company from that point until his resignation in July 2015. Initially he was the finance director of GSL. From November 2013 he acted as managing director.

4. In December 2014 Dr Christopher Potts was appointed as Executive Chairman of GSL. By the middle of 2015 he had assumed the roles of Chief Executive and Chairman of the company. In September 2015 he formed suspicions around the relationship between GSL and an individual named Dr Chi who had held various positions with a government funded research institute in the Republic of Korea. Having spoken to individuals with knowledge of GSL's dealings with Dr Chi, Dr Potts terminated all contractual and other relationships existing between GSL and Dr Chi. Dr Potts then instructed a firm of solicitors, Addleshaw Goddard, to undertake an internal review.

5. As a result of that review GSL on 23 October 2015 reported its concerns to the SFO and to the United States Department of Justice. A report by way of a presentation from Addleshaw Goddard was provided on 19 November 2015 to the SFO.

6. In 2017 Dr Chi was tried in the United States for and convicted of a money laundering offence relating to the corrupt payments he had received from GSL and another company based in the United States. He was sentenced to a period of imprisonment. In this jurisdiction three individuals – Dr Güralp, Ms Pearce and Mr Bell – have been charged with conspiracy to make corrupt payments to Dr Chi. At the time of the preparation of this judgment, their trial is about to commence.

7. The indictment on which Dr Güralp, Ms Pearce and Mr Bell are to be tried charges them with conspiracy to make corrupt payments to Dr Chi, Dr Chi being a co-conspirator. The draft indictment in the case of GSL charges the company with a like conspiracy and with failing to prevent bribery by employees. The SFO have invited

GSL to enter into a deferred prosecution agreement in relation to its alleged criminal conduct. GSL is willing to do so.

Deferred Prosecution Agreements

8. The concept of a Deferred Prosecution Agreement ("DPA") has been fully explained in earlier judgments in relation to previous DPAs. This is the sixth DPA which has come before the court for consideration. Nonetheless, it is worth summarising the structure as prescribed by s. 45 and Schedule 17 of the Crime and Courts Act 2013 ("the 2013 Act"). In short, a DPA is potentially available for certain economic or financial offences to a body corporate, a partnership or an unincorporated association in respect of whom the only criminal sanction is financial: it does not cover (nor does it protect from prosecution) any individual. It provides a mechanism whereby, subject to the approval of the court, prosecution can be avoided by entering into an agreement on negotiated terms with a prosecutor designated by the 2013 Act.

9. The court's role is as follows. Following the commencement of negotiations and what might become an agreement, the scheme mandates that a hearing must be held in private for the purposes of ascertaining whether the court will declare that the proposed DPA is "likely" to be in the interests of justice and its proposed terms are fair, reasonable and proportionate: see paras. 7(1) and (4) of Schedule 17 of the 2013 Act. Reasons must be given and, if a declaration is declined, a further application is permitted (paras. 7(2) and (3) ibid). In that way, the court retains control of the ultimate outcome and, if the agreement is not approved, the possibility of prosecution is not jeopardised as a consequence of any publicity that would follow if these proceedings had not been held in private.

10. If a declaration has been granted pursuant to para. 7(1) of Schedule 17 and the DPA is finalised on the terms previously identified, para. 8 of Schedule 17 comes into play. This provides:

> *"(1) Where a prosecutor and P have agreed the terms of a DPA, the prosecutor must apply to the Crown Court for a declaration that – (a) the DPA is in the interests of justice, and (b) the terms of the DPA are fair, reasonable and proportionate.*
>
> *(2) But the prosecutor may not make an application under sub-paragraph 1 unless the court has made a declaration under paragraph 7(1) (declaration on preliminary hearing).*
>
> *(3) A DPA only comes into force when it is approved by the Crown Court making a declaration under sub-paragraph (1).*
>
> *(4) The court must give reasons for its decision on whether or not to make a declaration under sub-paragraph (1).*
>
> *(5) A hearing at which an application under this paragraph is determined may be held in private.*

> *(6) But if the court decides to approve the DPA and make a declaration under sub-paragraph (1) it must do so, and give its reasons, in open court.*
>
> *(7) Upon approval of the DPA by the court, the prosecutor must publish – (a) the DPA (b) the declaration of the court under paragraph 7 and the reasons for its decision to make the declaration, (c) in a case where the court initially declined to make a declaration under paragraph 7, the court's reason for that decision, and (d) the court's declaration under this paragraph and the reasons for its decision to make the declaration, unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings)."*

11. In this case I conducted the private hearing pursuant to Paragraph 7 on 10 October 2019. The hearing was arranged at very short notice, the relevant papers only being delivered 36 hours prior to the hearing. The urgency arose because of the imminent commencement of the trial of Dr Güralp and the other individual defendants. I made a declaration in accordance with Paragraph 7 of Schedule 17. As is now the practice I reserved my reasons for doing so until the outcome of the application pursuant to Paragraph 8 of Schedule 17. The application for final approval of the DPA was heard on 22 October 2019. As permitted by Paragraph 8(5) that hearing also was in private. I shall consider later in this judgment how the requirement of Paragraph 8(6) is to be met in the context of an imminent trial of Dr Güralp when the alleged criminal liability of GSL is very largely dependent upon culpability on the part of Dr Güralp.

The facts

12. Dr Chi between 1999 and 2015 held senior positions at the Korea Institute of Geoscience and Mineral Resources ("KIGAM"). In July 1999 he introduced himself via e-mail to Dr Güralp. Dr Chi then was head of the Earthquake Research Centre at KIGAM. GSL already had conducted some business with KIGAM but only on a limited basis. Over the course of the following 3 years Dr Chi developed a relationship with GSL via correspondence both with Dr Güralp and Natalie Pearce.

13. In June 2002 Dr Chi visited the offices of GSL in this country. Ostensibly this visit was intended to allow Dr Chi to meet technical staff at GSL and to discuss future legitimate dealings between KIGAM and GSL. In fact the visit was used as the opportunity to open discussions on the creation of a corrupt relationship between Dr Chi and GSL. Later in June 2002 a draft agreement was created in which a "technical advice fee, $500" was to apply to orders from the Republic of Korea. In February 2003 Dr Güralp and Dr Chi signed an agreement whereby Dr Chi agreed to provide support and advice to GSL in the seismological market in Korea and to recommend GSL products to those requiring seismology equipment and expertise.

14. Over the course of the following 12 years GSL made payments to Dr Chi totalling $1,034,931. Between 2003 and 2009 eight separate cash payments totalling $70,451 were made to Dr Chi. Sometimes the cash was handed to Dr Chi when he was visiting the UK offices of GSL. On two occasions Dr Chi asked that someone from GSL should

go to Heathrow Airport in order to hand over cash to him there. Between 2005 and 2015 payments were made by bank transfer to an account held by Dr Chi at Bank of America in the United States. There were 31 such payments totalling $964,480.

15. The nature and extent of Dr Chi's relationship with GSL was kept secret. Self-evidently payment in cash of so-called advice fees involved secrecy. Dr Chi made it clear to Dr Güralp and Natalie Pearce that they were to be circumspect about the payments when in contact with his colleagues at KIGAM. Dr Chi deleted e-mails which referred to advice fees and to assistance being provided by him to GSL. On one occasion confirmation of payment by GSL of advice fees was achieved by an e-mail which simply stated "yes, done". Payments to Dr Chi's United States bank account avoided any scrutiny by the Korean Government of that aspect of his financial affairs.

16. After the coming into force of the Bribery Act on 1 July 2011 GSL addressed the issue of an anti-bribery and corruption policy with the assistance of an external law firm. This concentrated the minds of those involved in the dealings with Dr Chi. Andrew Bell was responsible for authorising the payments to Dr Chi at this point. He and Natalie Pearce agreed a form of words on invoices raised in relation to advice fees, namely "invoice for technical consultancy on parametric information and product development". Dr Chi was advised as to this form of words and used it on all invoices submitted thereafter. The words used were deliberately opaque. In an e-mail he sent to Natalie Pearce who had devised the form of words Andrew Bell said "perfect, no-one will ever understand any of that".

17. In return for these payments Dr Chi provided assistance to GSL in four areas. First, Dr Chi's position at KIGAM meant that he was able to recommend GSL's products to other public and quasi-public companies in the Republic of Korea. GSL would have been able to market its products and expertise without the intervention of Dr Chi. But Dr Chi's assistance was significant and led to sales which otherwise would not have occurred. As part of the assistance given by Dr Chi, he promoted GSL products during a period between 2006 and 2008 when they were experiencing problems with computer systems. Despite those problems he attested to the reliability of GSL's systems.

18. Second, Dr Chi advised GSL on pricing strategy and on public sector procurement practices within the Republic of Korea. For instance, in 2003 he explained to GSL that the overarching public procurement body held records of prices paid on government orders and that as a matter of course would seek a lower price on later contracts. Thus, he artificially increased the list price for GSL as submitted by him to the public procurement body. He also advised GSL that it should not offer a discount to any customer in Korea. Because records were kept of prices and because purchase departments could obtain those records, a discount to one customer would lead to a reduction in the price chargeable by GSL in relation to all customers.

19. Third, Dr Chi was in a position to influence the technical specifications required of seismic equipment because KIGAM was responsible for issuing certificates for such equipment. The requirements were set so that they corresponded with the specifications of GSL's equipment. In 2010 another Korean government institution was given the power to issue certificates. Whereas KIGAM only certified GSL's equipment, the other institution initially certified equipment from other companies. This changed when Dr Chi ensured that the other body with the power to certify agreed that the test results from both institutions should be the same.

20. Finally, Dr Chi provided GSL with confidential information e.g. a presentation provided by one of GSL's competitors to KIGAM and details of a rival company's pricing policy.

21. In substantial part because of the assistance given by Dr Chi as part of his corrupt relationship with GSL, GSL's revenue from contracts in the Republic of Korea grew significantly between 2003 and 2015. In the year ending January 2003 revenue barely exceeded £20,000. By 2015 it had increased to an annual figure of over £1.45 million. Although not all of this increase was tainted by the corrupt relationship with Dr Chi, it has been calculated that the total gross profit attributable to corruption over the relevant period is £2,069.861.00.

The proposed indictment

22. The draft indictment in relation to GSL contains two counts. The first count charges a conspiracy to make corrupt payments between April 2002 and September 2015. Dr Güralp, Natalie Pearce and Andrew Bell also are charged on that count. The count on which they are about to be tried is in similar terms but without reference to the company as a co-conspirator. The criminal agreement alleged is that GSL (together with the named individuals plus Dr Chi) agreed to make corrupt payments to Dr Chi as an inducement or reward for showing favour to GSL in relation to the affairs of KIGAM. The particulars of the favours provided by Dr Chi reflect the matters set out at paragraphs 17 to 20 of this judgment.

23. The second count charges failing to prevent bribery by employees. This count covers the period from 1 July 2011, namely the introduction of the Bribery Act 2010, to 15 September 2015. It deals with the failure by GSL to prevent its employees, particularly Natalie Pearce and Andrew Bell, from bribing Dr Chi. This count is of secondary importance and adds little to the first count.

24. 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 both counts on the draft indictment. The material I have seen confirms that her view is correct and appropriate.

The interests of justice

25. It hardly needs to be said that the agreement to make corrupt payments involved serious and sustained criminality. For around a decade and a half GSL routinely made corrupt payments to an official of a Korean government agency. They totalled in excess of $1 million. For a relatively small enterprise this was a very substantial sum. The profit obtained by GSL from these payments exceeded £2 million. The criminal conduct was planned by senior officers and employees of the company and it continued over many years. When the Bribery Act 2010 was introduced nothing effective was done to prevent the corrupt behaviour: rather the reverse. The effect of the corrupt practices on GSL's competitors must have been significant. On the face of it the activity of GSL richly merits prosecution.

26. However, it is to be observed that many of the features of the corrupt activity of GSL also were present in relation to the activity between 1989 and 2013 of Rolls-Royce PLC i.e. bribery of foreign public officials, persistent offending over many years, criminal conduct involving careful planning, involvement of very senior employees within the organisation. Moreover, the sums involved in Rolls-Royce were greater by a factor of about 100 and the geographical spread of the corruption was much wider so that there was real harm to the confidence of the markets. In January 2017 application was made for approval of a DPA in relation to the corrupt practices of Rolls-Royce. In that case Sir Brian Leveson engaged in a balancing exercise in which he set off the seriousness of the offences against the factors supporting the approval of a DPA. The gravity of the offending by Rolls-Royce did not of itself prevent the DPA being in the interests of justice. I must conduct the same balancing exercise.

27. The first matter to be set in the balance in favour of a DPA is the fact that GSL reported the making of the corrupt payments to the authorities both in this country and in the United States. This reporting did not consist simply of an indication to the authorities of a suspicion of corrupt payments with an offer to assist in any investigation. Rather, GSL engaged an outside law firm to assess the position. Upon that law firm reaching its conclusions, GSL required the law firm to make a detailed presentation of its findings. Much of the core material relied on for the purpose of the application for a DPA and in the extant criminal proceedings is drawn from the findings of the outside law firm instructed by GSL albeit that the SFO conducted its own thorough investigation to establish the nature and extent of the criminality involved.

28. The second point to be taken as favouring a DPA is that those responsible for the corrupt payments are no longer associated with GSL. Those now in charge of the running of GSL are those who reported the criminal activity to the authorities. It is axiomatic that a completely different approach now is inherent in the operation and management of GSL.

29. Third, GSL had not previously or otherwise engaged in criminal conduct. This may be of limited value given the sustained nature of the criminal agreement involving Dr Chi. Equally, GSL operates throughout the world and has done so since around 1987. The corrupt activity with which Dr Chi was concerned was isolated in the sense that it did not form part of a pattern involving other foreign officials. This is to be contrasted with the position in relation to Rolls-Royce.

30. Fourth, substantial steps have been taken by GSL since Dr Potts discovered what had been going on vis-à-vis Dr Chi. GSL's relationship with five distributors in different locations was terminated following compliance concerns raised either during the investigation by the outside law firm or in the course of the SFO's investigation. These steps were taken on a safety-first basis without clear evidence of any criminal conduct. This despite the fact that GSL conducted a significant amount of business with the distributors. In addition, GSL has introduced a new compliance programme. This occurred even before the position in relation to Dr Chi became apparent to Dr Potts and other members of the new management team. Further steps were taken once the nature and extent of the corrupt payments became known.

31. Fifth, a DPA can and will enshrine the co-operation thus far provided by GSL to the prosecuting authorities on a continuing basis.

32. The SFO invite me to consider the proportionality of a prosecution of GSL. One issue concerns debarment from public contracts. This arose in a very different context when I was considering the DPA proposed in relation to Serco Geographix Limited. As I said in that case, it should not be part of the court's function in approving a DPA to make what might be termed a quasi-political decision in relation to public procurement. In relation to Serco the issue arose simply in the context of procurement by the UK Government. The position was governed by the Public Contracts Regulations 2015. The effect of the 2015 Regulations is that, where a company is convicted of a relevant offence (which in this case would be corruption), the company can avoid the mandatory exclusion from public procurement exercises by demonstrating sufficient self-cleaning measures. The evidence from the Cabinet Office provided in the proceedings concerning Serco indicated the discretionary power would be exercised in Serco's favour. So it was that I was able to approve the DPA.

33. In this case the 2015 Regulations are of limited (if any) relevance. GSL's business is based in this country but the activity of the company is largely international. It should be noted that the 2015 Regulations are intended to implement the 2014 EU Public Procurement Regulations. Thus, GSL's position in any jurisdiction subject to EU law will mirror that applicable under the 2015 Regulations. But GSL will be more concerned with the public procurement position in the wider world, particularly Asia and the United States. I have no evidence as to the position outside the EU. Such evidence would be time consuming and costly to obtain. It does not appear to me that it would be a useful exercise in the context of my decision. On behalf of GSL it was said that it was understood that, in general terms, a conviction would be likely to have a more deleterious effect than a DPA vis-à-vis the risk of mandatory debarment in a public procurement exercise. Some jurisdictions in which GSL is likely to operate may provide for mandatory debarment in the event of a conviction. Equally, the likelihood is that the existence of a DPA also would affect GSL's ability to engage in public procurement exercises around the world since GSL accept the statement of facts on which it would be based. Whether the position will be significantly different in any particular jurisdiction whether GSL's criminality is reflected in a DPA or by a conviction is impossible to say. All of that means that the question of proportionality of a prosecution in terms of GSL's ability to bid for public contracts is of some significance but, given the understandable lack of evidence on the topic, not as great as the potential effect of a conviction on the financial viability of GSL to which I now turn.

34. For reasons which will become apparent when I come to consider the terms of the DPA, GSL is in a precarious position financially. If it were to be prosecuted to conviction, the sentencing judge would be required to apply the Sentencing Council Fraud, Bribery and Money Laundering Offences Definitive Guideline in relation to corporate offenders. GSL's offending undoubtedly involved high culpability. The gross profit resulting from the corrupt activity was approximately £2 million. The outcome by reference to the guideline would be a fine of around £4 million (i.e. £6 million less a third discount for plea) with any confiscation order to be met in addition to that sum. That level of financial penalty – or any sum remotely near to it – would put GSL out of business. That might be avoided were the judge to adjust the financial penalty very substantially at Step 5 of the sentencing process. Equally, the guideline does envisage a company being put out of business as an acceptable consequence in a bad case. It is possible that this would be regarded as just such a case.

35. The workforce at GSL are innocent parties. Were GSL to be forced out of business the employees would suffer as a result of the criminality of a very small number of senior employees and officers of the company. In addition, the current senior management team of GSL has done all that it can to remedy the position and to co-operate with prosecuting authorities in two jurisdictions. It is also of some significance that GSL is a company offering an unusual expertise. Were it to cease trading, there would be some deleterious effect on agencies around the world which require the seismological expertise available via GSL.

36. In those circumstances I accept the argument that approval of a DPA will be a more proportionate response to GSL's past corrupt activity than prosecution and conviction.

37. For all of those reasons I am satisfied that, subject to the terms of the DPA being fair, reasonable and proportionate, it is in the interests of justice for the conduct of GSL to be resolved through the mechanism of a DPA.

The terms of the Deferred Prosecution Agreement

38. A copy of the proposed agreement is annexed to this judgment. It is not necessary for me to rehearse its terms in detail. However, there are aspects of the DPA which are unusual and/or which are different to any previous DPA approved by the court. Each impinges on the question of whether the agreement is fair, reasonable and proportionate.

39. First, the duration of the agreement is to be five years. This period is not unique. The DPA in respect of Rolls-Royce set a term of five and a half years. However, that was in the context of disgorgement of profits and payment of financial penalties amounting to nearly £500 million with annual payments due in excess of £100 million. In this case the sums due to be paid are a tiny fraction of those amounts. Nonetheless, I am satisfied that the length of the term of the DPA is fair. As will become apparent when I consider the financial consequences of the DPA for GSL, even modest disgorgement of past profits will require GSL to be given significant time to meet those sums.

40. Second, the agreement requires disgorgement of gross profit of £2,069,861.00 but no timetable is set within the agreement. All other DPAs which have been approved by the court either have required almost immediate payment of any financial penalty or have set a clear timetable of payments on defined dates. In this instance GSL's financial position does not permit such a timetable to be set. Rather, the agreement is that GSL will pay the total due by the fifth anniversary of the date of the agreement. Having been directed to the financial statements relating to GSL made available at the private hearing on 10 October 2019, I am satisfied of two matters. First, a specific timetable is not a practicable option in this case. Second, there is a sensible prospect that, by the end of the term of the agreement, the financial position of GSL will have permitted payment of the disgorgement figure. The profit and loss and the cash flow forecasts for the years 2019 through to 2024 demonstrate a gradually improving picture over the course of that five years. Self-evidently forecasts are just that i.e. the best estimate that can be given based on certain assumptions. I am persuaded that these forecasts are sufficient to justify the lack of any timetable from the DPA.

41. Third, the agreement acknowledges the possibility that GSL, notwithstanding the forecasts to which I have referred, will not be able to meet the disgorgement figure

within the term of the agreement. In those circumstances, it could be that application would be made under Paragraph 10 of Schedule 17 to vary the agreement. It is very unusual for a DPA to be approved on the basis that its terms might not be met. Equally, the circumstances pertaining to GSL are unusual. It also must be recognised that another consequence of GSL failing to meet the terms of the agreement might be that the company will be prosecuted. In those circumstances the agreement fulfils the requirement of fairness and proportionality.

42. Fourth, the agreement does not provide for payment of any financial penalty. In the case of Sarclad, the appropriate penalty by reference to the guideline was £8.2 million after discount for plea. The court in that case recognised that such a financial penalty was unrealistic for Sarclad. The interests of justice did not require the company to be pursued into insolvency. The SFO calculated that Sarclad in fact would have available £352,000 to meet a financial penalty. That was the figure identified in the DPA and approved by the court. Here the SFO are satisfied that GSL cannot sensibly meet any penalty over and above the disgorgement sum and the DPA does not provide for any financial penalty. By reference to the guideline and allowing for a 50% discount, the financial penalty in this case ought to be around £3 million. The position here is not different in principle to that which obtained in Sarclad. There is a difference in perception between payment of £352,000 and no payment at all. In reality the distinction is non-existent. Sarclad ought to have paid a penalty of over £8 million but agreed to pay only £352,000. GSL's notional penalty is barely a third of that which Sarclad ought to have met. The fact that GSL is not to pay any penalty does not set any new precedent. The approach is the same as was taken in the case of Sarclad. The court was satisfied that the overall sum payable in that case was fair, reasonable and proportionate. I reach the same conclusion in this case.

43. Fifth, the agreement does not provide for payment of any costs. This is precisely the position as obtained in Sarclad. The court accepted that the DPA in that case was fair, reasonable and proportionate despite the lack of any provision for payment of costs. For the same reasons I am satisfied as to those factors in this case.

44. The DPA provides for a corporate compliance programme. Such a programme already is in place. The agreement provides for annual reports in relation to that programme and its implementation to be submitted to the SFO in relation to that programme. Further, GSL will undertake to report any past, present or future conduct falling within the aegis of the SFO as soon as it becomes known to any director of GSL.

45. Taking into account all of the circumstances of the case and the position of GSL, I am satisfied that the DPA which has been proposed represents a fair, reasonable and proportionate resolution of the allegations against GSL. It follows that I make a declaration pursuant to Paragraph 8 of Schedule 17 of the 2013 Act. It was for all of the reasons set out above that I made the declaration pursuant to Paragraph 7 of Schedule 17.

Order and Publication

46. In the normal course of events the DPA, the Statement of Facts and this judgment setting out my reasons for making the declarations pursuant to Paragraphs 7 and 8 of Schedule 17 of the 2013 Act would be published forthwith. Unusually the hearing at which I decided to make the declaration pursuant to Paragraph 8 was held in private as

permitted by Paragraph 8(5). This is because the trial of the individuals identified in the course of this judgment commenced on the day before that hearing.

47. Although the hearing was in private, the declaration itself must be made in public in open court. Therefore, there will be a public hearing at which the declaration will be made and reasons given. However, the proceedings against the named individuals are active within the meaning of the Contempt of Court Act 1981. Section 4(2) of that Act provides as follows:

> *"In any such proceedings the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose."*

The issue arises as to the form of any order appropriate in this case. A not dissimilar problem arose in relation to the DPA reached between the SFO and Tesco Stores Limited in 2017. In that instance an order was made postponing reporting of the public hearing in relation to the DPA together with the DPA, the statement of facts and the judgment of Sir Brian Leveson. However, reporting of the fact of the DPA and its bare terms was permitted. In part that was because Tesco was and is a listed company with rules of disclosure and transparency. In addition, the prosecution of individuals, although in train, had not reached the advanced stage as applies in this case.

48. In the light of those matters I propose to make an order under Section 4(2) of the Contempt of Court Act 1981 in the following terms:

"There shall be postponed until the earlier of the conclusion of the trial of Cansun Güralp, Natalie Pearce and Andrew Bell (T20187155 and T20187191), or further order of either this court or the judge with conduct of the trial, the publication of:

(a) the deferred prosecution agreement between Guralp Systems Limited and the Serious Fraud Office approved by the court ("the DPA");

(b) the statement of facts in support of the DPA;

(c) any report of the hearing pursuant to paragraph 8(1) of Schedule 17 of the Crime and Courts Act 2013; and

(d) the declarations of the court under paragraphs 7(1) and 8(1) of the said Schedule, and the reasons for its decision to make the declaration."

This will be subject to any submissions and representations made by any interested party, including the press, in respect of this proposed order. As will be made clear to the press, it is highly likely that the order will be relatively short lived given the stage reached in the trial of the named individuals.

Conclusion

49. As with previous DPAs in respect of which the court has made declarations pursuant to Paragraphs 7 and 8 of Schedule 17 of the 2013 Act, the circumstances demonstrate that the company which has entered the DPA is very different to that which engaged in the conduct as set out in the statement of facts. Those running the company are wholly different from those who were in charge at the time of the relevant conduct. The corporate practices of the company have changed completely. A rigorous compliance programme is in place with appropriate provision for regular review thereof.

50. In addition, the relevant conduct did not come to light in the context of another enquiry (as was the case with Serco) or via an internal whistleblower (Tesco) or through internet postings (Rolls-Royce) or due to the intervention of an associated enterprise (Standard Bank and Sarclad). In this instance those who had taken over the running of the company in 2015 identified the conduct, instructed outside solicitors to investigate and self-reported to the SFO. Had they wished to do so, they presumably could have covered up what had gone on and/or allowed the corrupt practices to continue.

51. That is the context in which I have concluded that a DPA met the interests of justice in the circumstances as set out within this judgment.

52. As I have explained in this judgment the terms of the DPA in this case are unusual. Nonetheless, I am satisfied that the terms are fair, reasonable and proportionate. The financial burden on a relatively small company will be onerous. Given the financial information with which I have been provided, it is appropriate that no defined stage payments should be set even though this may mean delay in payment of the sums due under the DPA.

53. The materials which I have had to consider was provided to me at short notice. I have been given very considerable assistance in my assessment and understanding of the materials by counsel and by those instructing them for which I am very grateful.