Case No: U20210959
NCN: [2023] EWHC 1976 (KB)

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: 19/07/2021

Before :

MRS JUSTICE MAY

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Between :

Director of the Serious Fraud Office	**Applicant**
- and -	
(1) BLUU SOLUTIONS LIMITED	**Respondent**
(2) TETRIS-PROJECTS LIMITED	

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- -

Robert O'Sullivan QC, Angus Bunyan and Trevor Archer (instructed by the Serious Fraud Office) for the **Applicant**
Lord Garnier QC, Jennifer Carter-Manning QC and Ben Isaacs (instructed by **Reynolds Porter Chamberlain**) for the **Respondent**

Hearing dates: 7 and 19 July 2021
Judgment Date 28 July 2023

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MRS JUSTICE MAY DBE

Mrs Justice May:

Introduction

1. The Respondent companies (respectively "Bluu Solutions Limited" and "Tetris-Projects Limited") operate within the construction industry.

2. Bluu Solutions Ltd was, until 2015, a privately-owned company founded by Robb Simms-Davies. Robb Simms-Davies held a majority shareholding in Bluu Solutions Ltd, the remaining shares being split between Nigel Wilson and a third director who plays no further part in this case.

3. Tetris-Projects Ltd was at all times a wholly owned subsidiary of JLL EU Ltd, a UK holding company within the JLL Group Inc (also referring generically to the group of JLL companies, henceforth 'JLL Group Inc'), a large international corporation. Until Bluu Solutions Ltd was acquired by JLL Capital Investments Ltd (another company within the JLL Group Inc) in 2015, Bluu Solutions Ltd and Tetris-Projects Ltd were competitors. After JLL Capital Investments Ltd acquired Bluu Solutions Ltd in August 2015, Bluu Solutions Ltd remained a separate entity for the purposes of completing existing contracts but from January 2016 the staff of Bluu Solutions Ltd were moved to Tetris-Projects Ltd and the businesses of both companies were effectively merged. Robb Simms-Davies and Nigel Wilson became directors of Tetris-Projects Ltd in December 2015.

4. Unknown to the JLL Group Inc at the time of acquiring Bluu Solutions Ltd, the company had obtained, and/or was in the process of seeking to obtain, a number of contracts through the use of incentives and bribes paid to third parties who misused their positions in order to secure the business for Bluu Solutions Ltd. Payments were made via intermediaries in order to conceal their true origin and purpose. After the merger of the businesses in January 2016 the practice went undetected until a post-acquisition audit, conducted by JLL Group Inc's internal audit team in the summer of 2016, identified significant irregularities and an internal investigation commenced. This culminated, in December 2016, in the companies self-reporting to the Serious Fraud Office (SFO). The SFO conducted its own investigation, starting a process which has led, ultimately, to the application to this court for approval of two Deferred Prosecution Agreements (DPAs) under the provisions of section 45 and Schedule 17 to the Crime and Courts Act 2013 ("the 2013 Act").

5. On 7 July 2021 I heard an application in private, as required by paragraph 7 of Schedule 17 of the 2013 Act. The private hearing resumed for a short time on the morning of 19 July 2021. At the end of that short private hearing, having satisfied myself that it was appropriate to do so, I made the declaration required by s.7 of the 2013 Act, namely that the proposed DPAs were likely to be in the public interest and that their terms were reasonable, fair and proportionate. I reserved my reasons for reaching that preliminary decision to the conclusion of the open hearing which followed immediately afterwards.

6. At that subsequent hearing I approved the DPAs and made the declarations required by paragraph 8 of Schedule 17 to the 2013 Act. This judgment contains my reasons for giving preliminary and final approval.

The legal framework and the court's role

Legal framework

7. This is the eleventh occasion of the court's consideration and approval of a DPA; the material statutory and other provisions are now well-known and have been thoroughly traversed in previous decisions. In this judgment I gratefully adopt the clear exposition of the legal framework applicable to the DPA regime set out by Dame Victoria Sharp P in *Director of the Serious Fraud Office v. Airbus SE* [2020] 1 WLUK 435 at [6]-[10] as applied in that case at [58]-[119], enabling me to give a short summary only of the relevant steps in such applications, and of the court's role in deciding them.

8. Section 45 and Schedule 17 of the Crime and Courts Act 2013 (the 2013 Act) provide for a mechanism by which a corporate body may enter into an agreement enabling it to avoid prosecution for certain specified offences, on terms negotiated with a designated prosecutor (being the Director of Public Prosecutions (DPP) or the Director of the SFO). Before it can take effect, a DPA requires the approval of the court. For such approval to be given the court must be satisfied that the DPA is in the interests of justice and that its terms are fair, reasonable and proportionate.

9. The process for obtaining approval involves two stages. First, an application must be made for a declaration pursuant to paragraph 7 of Schedule 17 to the 2013 Act that the proposed DPA is *likely* to be in the interests of justice and that its proposed terms are fair reasonable and proportionate. That preliminary hearing is conducted in private and any declaration is given in private: see paragraph 7(4) of Schedule 17 to the 2013 Act.

10. If preliminary approval has been indicated, then the second stage of the process involves a hearing in open court allowing the necessary declarations to be made and the reasons for approval to be given: paragraph 8(6) of Schedule 17 to the 2013 Act.

11. Pursuant to paragraph 6(1) of Schedule 17 to the 2013 Act the DPP and the Director of the SFO are required to issue a code of practice ("the DPA Code"). The DPA Code gives guidance on the procedures to the followed and the general principles to be applied in determining whether a DPA is likely to be appropriate in a given case:

12. Although paragraph 7(4) of schedule 17 to the 2013 Act provides that reasons for a decision at the preliminary stage must be given in private, where a DPA is to be approved a practice has developed of reserving such reasons to the final hearing, and for the open judgment to set out the whole reasoning. Given the very short time between the (resumed) private hearing and the final hearing in open court I have followed that practice here.

Court's role as independent overseer of the DPA

13. In accordance with CrPR Part 11.3(3)(c) and (d) the prosecutor (here the SFO), is obliged to include with the initial application

> *"a statement of facts proposed for inclusion in the agreement, which must give full particulars of each alleged offence, including details of any alleged financial gain or loss"* ("the Statement of Facts")

also

"any information about the defendant that would be relevant to sentence in the event of conviction for the offence or offences"

14. Both the prosecutor and the defendant are required to provide written declarations as to the accuracy and completeness of information disclosed and provided to the court, see CrPR Part 11.2(3). It is no part of the court's role at either hearing to make any findings of fact or to resolve any factual dispute, something that is underlined by paragraph 6.2 of the DPA Code which provides, in relation to the Statement of Facts, that:

"The parties should resolve any factual issues necessary to allow the court to agree terms of the DPA on a clear, fair and accurate basis. The court does not have the power to adjudicate upon factual differences in DPA proceedings."

15. As is apparent from the above, in deciding whether or not to approve the DPA, the court exercises no fact-finding function, being dependent for its assessment upon the facts agreed between the parties and presented to it as part of the application. The court's role is one of oversight only, making an independent assessment of the public interest in arriving at the DPA and of the reasonableness, fairness and proportionality of the particular terms which the parties have agreed.

16. That assessment must necessarily include consideration of the level of seriousness of the offending and the culpability of the company concerned. As companies can only act through individuals it will often – almost invariably – be the case that a consideration of the seriousness of the corporate offending will involve reference to the actions of individuals. That is certainly the case here. However, the facts which have been agreed between the SFO and the corporate Respondents and set out in the Statement of Facts in this case, or presented orally to me at the hearings, have not been agreed by any of the individuals to which I refer in this judgment, nor have they been asked for their comments. Accordingly where, for the purposes of explaining my reasons for granting the necessary declarations, I make reference to the conduct of individuals I wish to emphasise that I am making no findings of fact concerning them.

Publication - anonymity and reporting restrictions

17. I understand that criminal proceedings have already been commenced against certain of the individuals concerned in this case. It is vitally important that nothing should prejudice the fairness of those proceedings. At the private hearing I was addressed by the parties as to how the interests in the administration of justice in those criminal proceedings may best be secured. I have also been assisted by submissions from counsel instructed for individuals in those proceedings, alerted by the SFO to a hearing today affecting their clients. Counsel in the criminal proceedings have been given an opportunity to consider the DPAs and this judgment and invited to address me as to any additional steps which may be necessary to avoid prejudice to their lay clients. They provided a very helpful note in advance, which I have considered.

18. Paragraph 8(7) of Schedule 17 to the 2013 Act provides as follows:

"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*
>
> *…*
>
> *(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)."*

19. Paragraph 12 of Schedule 17 allows the court to order that publication may be postponed for such period as the court considers necessary "if it appears to the court that postponement is necessary for avoiding a substantial risk of prejudice to the administration of justice in any legal proceedings".

20. I am satisfied that it is necessary to make an order postponing publication of the DPAs and appended documents, including the Statement of Facts. For the same reason, namely to avoid a substantial risk of prejudice to the administration of justice in criminal proceedings involving certain individuals concerned in this matter, I propose also to make an order under section 4(2) of the Contempt of Court Act 1981 for reporting restrictions preventing the publication of any details which might identify the individuals or companies involved in these proceedings.

The facts of the offending

21. The facts of the offending by Bluu Solutions Ltd and Tetris-Projects Ltd, forming the basis of six counts on the indictment attached to the application, are fully set out in the Statement of Facts accompanying the application and appended to the DPA. It is unnecessary to repeat them all in this judgment; I propose instead to refer briefly to the company background and then summarise matters shortly by reference to each count, sufficiently to explain the background to the SFO's application.

Company background

22. Prior to August 2015 Bluu Solutions Ltd and Tetris-Projects Ltd were independent of each other. Tetris-Projects Ltd was part of the JLL Group Inc but Bluu Solutions Ltd was not. Bluu Solutions Ltd had been founded by Robb Simms-Davies, who was the majority shareholder. Both companies competed in the same market but Bluu Solutions Ltd was larger, had been established for longer and was more profitable than Tetris-Projects Ltd.

23. In August 2015 Bluu Solutions Ltd was acquired by the JLL Group Inc professional advisors which included some consideration of anti-bribery compliance. However, Bluu Solutions Ltd's directors did not disclose the true nature of the company's relationships with third party agents in that process.

24. At the time of acquisition, the intention was for Bluu Solutions Ltd's business to be integrated into Tetris-Projects Ltd and for that company to continue business into the

future. An integration process was planned and organised during the period August to December 2015, throughout which time Bluu Solutions Ltd continued its normal operations. Bluu Solutions Ltd's employees began working for Tetris-Projects Ltd in January 2016, at which point the legacy team at Tetris-Projects Ltd moved into Bluu Solutions Ltd's offices and the business was carried on from there by Tetris-Projects Ltd. From that point the composition of both boards was identical. Robb Simms-Davies and Nigel Wilson had become directors of Tetris-Projects Ltd in late 2015.

25. From January 2016 all new contracts were entered into by Tetris-Projects Ltd. In the first half of 2016 Tetris-Projects Ltd used Bluu Solutions Ltd's bank account to receive payments on new contracts into which Tetris-Projects Ltd had entered, a temporary arrangement whilst a new account was set up. Bluu Solutions Ltd continued to service its existing contracts but entered into no new business, preparatory to being wound down.

Count 1

26. Count 1 charges Bluu Solutions Ltd with bribery in connection with a process of tendering for work at premises of Ernst and Young in Birmingham ("the EY project").

27. In January 2014 the contracting client appointed project managers Sweett Group plc to undertake the project management, cost management and health and safety aspects of the work. Sweett Group plc's role included running a competitive tender for the award of the contract to undertake the works, valued at £2.5million.

28. Roger Dewhirst was at that time employed by Sweett Group plc as an Associate Director. He was not a member of the team working on the EY project but he had contact with colleagues who were. Roger Dewhirst promoted Bluu Solutions Ltd to his colleagues and obtained information from them about the tender which he passed back to Bluu Solutions Ltd and discussed with Robb Simms-Davies. For instance, on 29 April 2014 Roger Dewhirst requested a copy of the Tender Report from a colleague, together with an indication of the points that would be probed at interview. He obtained a copy of the Tender Report by email which he promptly forwarded to Bluu Solutions Ltd, including to Robb Simms-Davies. Robb Simms-Davies forwarded it to Nigel Wilson who responded, *"He's earning his money"*.

29. Between March 2014 and June 2014 payments of £5,000, £25,000, and £30,000 totalling just under £60,000 were made by Bluu Solutions Ltd to Roger Dewhirst directly and indirectly, including payment via a foreign bank account in the name of Robb Simms-Davies's brother to Dawn Dewhirst, the wife of Roger Dewhirst, and through a company (Orange Venture Capital Ltd.) owned by Dawn Dewhirst.

30. Bluu Solutions Ltd was awarded the contract, the final value of which was just under £3million. Bluu Solutions Ltd's gross profit on the contact was £20,719.

Count 2

31. Count 2 charges Bluu Solutions Ltd with bribery in relation to two specific projects in respect of which Bluu Solutions Ltd sought to be appointed as contractor, together with other unspecified projects.

32. After the success of Bluu Solutions Ltd's bid for the EY project, in September 2014 Bluu Solutions Ltd entered into an open-ended retainer agreement with Orange Venture Capital Ltd. (the company owned and run by Dawn Dewhirst). The agreement provided for Bluu Solutions Ltd to pay Orange Venture Capital Ltd. a monthly retainer in return for providing commercial opportunities. Between 22 September 2014 and 23 June 2015 Bluu Solutions Ltd made payments totalling £35,998 pursuant to that agreement, under invoices sent by Roger Dewhirst, who also chased payment.

33. Between 18 March 2016 and 1 June 2016 further payments totalling £96,000 (£80,000 plus VAT) were made to Orange Venture Capital Ltd. from a bank account originally held by Bluu Solutions Ltd but which was at that time also shared with Tetris-Projects Ltd.

34. On 8 September 2014 Robb Simms-Davies used funds derived from Bluu Solutions Ltd to make an initial payment of £22,000 on a Range Rover that was transferred to Dawn Dewhirst a month after purchase.

35. The total value of payments/benefits made in this way to Roger Dewhirst and Dawn Dewhirst amounted to £137,998 (excluding VAT). The parties have calculated that Bluu Solutions Ltd would have expected to secure contracts by means of such retainer to the value of approximately £4.6million, of which the gross profit would have been approximately £414,000.

36. The first of the specific projects covered by Count 2 concerned work for a client in Manchester, Hermes Real Estates Investment Management Ltd. ("the Hermes project"). The client engaged Sweett Group plc to undertake the property management. Roger Dewhirst, still employed at Sweett Group plc, recommended Bluu Solutions Ltd to his colleagues, suggesting that Bluu Solutions Ltd be added to the list of companies invited to tender.

37. Once again, Roger Dewhirst sought and obtained confidential information from colleagues at Sweett Group plc about the tender process, which he then conveyed to Bluu Solutions Ltd , including to Robb Simms-Davies. Information passed on included figures from all the competitor companies who had submitted bids for the tender. On 6 November 2014 Roger Dewhirst sent an email to Nigel Wilson in which he stated that it was looking likely that Bluu Solutions Ltd would win the contract, which by then was worth £3.85million. Roger Dewhirst said that his fee was £77,000, to be paid to Orange Venture Capital Ltd. but that he wanted to avoid any large single payments "so as not to spark any interest from HMRC", and he suggested other options. In the event, however, the Hermes contract was awarded to another bidder and the £77,000 was not paid.

38. The second specific project covered by Count 2 related to a warehouse in the Midlands, for a US company, Myoderm ("the Myoderm project"). In August 2015 Roger Dewhirst was working for Hill International Limited; in that role he commenced

discussions with the US client regarding the appointment of Hill International Ltd Project Monitor for the Myoderm project. The client had by this time selected a contractor but on 3 September 2015 Roger Dewhirst suggested that they invite alternative contractors to bid for the work. On 7 and 9 September 2015 Roger Dewhirst emailed Robb Simms-Davies and Nigel Wilson, forwarding them the correspondence between Hill International Ltd and its US client, together with the project plans and schedule, and proposing that Bluu Solutions Ltd replace the existing contractor. Between September and October 2015 Roger Dewhirst proceeded to share with Bluu Solutions Ltd confidential information and advice given to Hill International Ltd's US client, including, on 24 September 2015, providing Robb Simms-Davies with the price and time-estimate quoted by Bluu Solutions Ltd's competitor for the tender and, on 1 October 2015, forwarding to Bluu Solutions Ltd the competitor's quotation for the project. Roger Dewhirst was aware that Bluu Solutions Ltd had no previous experience in servicing a contract of this nature, yet he promoted Bluu Solutions Ltd to Hill International Ltd's US client and advised Bluu Solutions Ltd to say that they did have relevant expertise and experience.

39. Bluu Solutions Ltd's bid price for the Myoderm contract, which they submitted on 2 October 2015, contained hidden within it a fee payable to Roger Dewhirst. Roger Dewhirst advised Bluu Solutions Ltd that its bid was higher than its competitor, which prompted discussions within Bluu Solutions Ltd in the course of which staff advised Robb Simms-Davies that the price took into account "*Roger Dewhirst's bit"*.

40. Thereafter Roger Dewhirst continued to press the US client to replace the existing contractor with Bluu Solutions Ltd. Bluu Solutions Ltd were finally awarded the contract in February 2016. After the transfer of Bluu Solutions Ltd's business to Tetris-Projects Ltd in January 2016, Robb Simms-Davies and Nigel Wilson, by then directors of both companies, authorised the payment of £80,000 plus VAT from the bank account used by both companies to an intermediary, SiPhi Research Ltd. After retention of VAT and a £5,000 "handling" charge, SiPhi Research Ltd. transmitted £75,000 to Orange Venture Capital Ltd. in three tranches.

41. The final value of the Myoderm contract was £1,522,139. Bluu Solutions Ltd ultimately made a loss on the contract of £190,243.

Count 3

42. Count 3 charges Bluu Solutions Ltd with bribery relating to a contract for work in North London for Kaplan Financial Ltd. ("the Kaplan project"). The contracting client appointed Gerald Eve Ltd. as project manager and cost consultant. Trevor Wright, who had formerly been employed at Bluu Solutions Ltd, now worked for a competitor of Bluu Solutions Ltd. Trevor Wright received monies from Bluu Solutions Ltd, in breach of his contract with the competitor company, and then transferred a portion of those monies to Gerald Eve Ltd.

43. On 4 February 2015 Bluu Solutions Ltd and the competitor employing Trevor Wright were amongst the companies invited to attend an initial interview. Bluu Solutions Ltd was awarded the contract on 6 March 2015.

44. Between 7 June 2015 and 8 June 2015, Zebco Ltd., a company operated by Trevor Wright, issued three invoices to Bluu Solutions Ltd, two of which were described as

"house account consultancy for pre-agreed corpoarte (sic) accounts" and *"Consultancy payment for final works for Kaplan account"* respectively. In an email dated 5 June 2015, before the first invoice from Zebco Ltd. was issued, Robb Simms-Davies told Nigel Wilson to expect to receive an invoice from Zebco Ltd. relating to the London project. Nigel Wilson replied, *"Let's start using personal emails for this sort of stuff..."*.

45. Between 9 June 2015 and 10 June 2016, Bluu Solutions Ltd made nine payments to Zebco Ltd. totalling £206,250 in respect of the Kaplan project. Between 30 September 2015 and 15 July 2016 Zebco Ltd. made five onward transfers totalling £64,620 to Gerald Eve Ltd., who had been appointed by the contracting client as project manager on the Kaplan project.

46. The final value of the Kaplan contract was £3,030,000. Bluu Solutions Ltd's gross profit on the contact was £445,711.

Count 4

47. Count 4 charges Bluu Solutions Ltd with bribery relating to work in Central London for Concentra Consulting Ltd. ("the Concentra project").

48. On 25 September 2015 Robb Simms-Davies asked one of his staff to arrange a meeting with Trevor Wright with a view to helping Trevor Wright to find opportunities to act as project manager for potential clients. In email correspondence which followed Bluu Solutions Ltd discussed a number of possible opportunities.

49. In December 2015 the contracting client appointed Zebco Ltd., Trevor Wright's company, to act for them as project manager on the Central London project. Trevor Wright's role included running the tender process and advising the client on proposals from potential contractors. In a letter to Bluu Solutions Ltd dated 4 January 2016 Trevor Wright confirmed that Zebco Ltd. had been appointed.

50. On 11 January 2016, just days before the transfer of Bluu Solutions Ltd's business to Tetris-Projetcs Ltd, representatives from Bluu Solutions Ltd met with the contracting client to pitch for the contract. Bluu Solutions Ltd td received feedback that the client had preferred a competitor's presentation. The next day Trevor Wright attended at what was by now the combined offices of Bluu Solutions Ltd and Tetris-Projects Ltd to brief staff before they attended another meeting.

51. Following the final presentation by Bluu Solutions Ltd on 13 January 2016 the client decided to award the contract to Bluu Solutions Ltd. The client's decision was influenced by feedback which they received from Trevor Wright and the same employee who had previously represented Gerald Eve Ltd., now representing his own company, Office Consulting Ltd., to the effect that the competitor's proposal was less credible than that of Bluu Solutions Ltd, who would be better able to deliver the project.

52. Zebco Ltd. issued Bluu Solutions Ltd with two invoices dated 26 January 2016 and 14 March 2016, and one invoice to Tetris-Projects Ltd dated 17 May 2016. The invoices themselves did not specify that they were for any particular job but Bluu Solutions Ltd and Tetris-Projects Ltd recorded internally that they were expenses incurred in relation to the Central London project. The invoices totalled £46,609.62 and were paid from

Bluu Solutions Ltd's bank account, which after the transfer of business in January 2016 was being used by Tetris-Projects Ltd.

53. The total value of the Central London contract was £682,606. The gross profit was £137,997.

Count 5

54. Count 5 charges Bluu Solutions Ltd with a failure to prevent bribery relating to the projects which are the subject of counts 1 to 4 on the indictment.

55. In March 2011 the Ministry of Justice published guidance about procedures which companies could put into place to prevent persons associated with them from giving or receiving bribes. The guidance is formulated around six guiding principles: (i) proportionate procedures (ii) top level commitment (iii) risk assessment (iv) due diligence (v) communication including training and (vi) monitoring and review. These form a useful framework for the assessment of the adequacy of a company's anti-bribery and corruption procedures.

56. Prior to its acquisition by the JLL Group Inc, Bluu Solutions Ltd had just a single generic document which represented the totality of its anti-bribery and corruption policy. It was not tailored to Bluu Solutions Ltd's business and none of its terms were implemented or enforced. There was no commitment to anti-bribery processes from top-level staff, on the contrary Robb Simms-Davies and Nigel Wilson took the lead in making corrupt payments to third party agents, doing so indirectly so as to conceal the true nature of such payments. Bluu Solutions Ltd conducted no risk assessments, nor any due diligence on its third-party relationships and it took no steps to mitigate the risks presented thereby. There was no anti-bribery training for its staff, nor did the company seek to promulgate any bribery prevention information, procedures or policies amongst its staff in any other way. Finally Bluu Solutions Ltd conducted no regular monitoring or review of its anti-bribery policy, such as it was, so as to update and improve its procedures as necessary. Whilst the generic document made reference to a "Compliance Manager", there was no one employed by Bluu Solutions Ltd in this role. There was, in short, an abject failure to respond to, or formulate any policies around, any of the six guiding principles referred to above.

Count 6

57. Count 6 is the only charge brought against Tetris-Projects Ltd. Under Count 6 Tetris-Projects Ltd is charged with failing to prevent bribery in relation to the behaviour underpinning one of the projects covered by Count 2 above, specifically the Myoderm project, as well as the behaviour underpinning Count 4, where contracts were signed and/or corrupt payments were made to Roger Dewhirst/Trevor Wright after the merger of Bluu Solutions Ltd's business with Tetris-Projects Ltd in January 2016. Count 6 relates to the period from 15 December 2015 to 30 June 2016.

58. A combination of factors arising from the nature and scope of Tetris-Projects Ltd's business contributed to the company facing a generally lower to medium level of bribery risk during the relevant period. Its anti-bribery procedures should have been proportionate to this level of risk.

59. Before JLL Group Inc's acquisition of Bluu Solutions Ltd and the merger of the business of that company with that of Tetris-Projects Ltd, Tetris-Projects Ltd had a range of anti-bribery procedures in place, as required by the JLL Group Inc. After the acquisition, governance measures were put in place to insert Bluu Solutions Ltd into this compliance framework and to manage the anti-bribery procedures within the new, merged, business.

60. Tetris-Projects Ltd had a designated Director of Procurement and Compliance with oversight of the anti-bribery programme who reported to the Managing Director of the legacy company prior to the merger, and then to Nigel Wilson. There were regular "Legal and Compliance" meetings between August and December 2015 attended by Tetris-Projects Ltd's senior management, including on occasion Robb Simms-Davies and Nigel Wilson.

61. The JLL Group Inc had a Code of Business Ethics embedded within all its group companies. The Code was accepted by all employees on joining Tetris-Projects Ltd, including all Bluu Solutions Ltd employees upon the merger of the businesses in January 2016. Adherence to the Code was a requirement of specific clauses contained within staff employment contracts.

62. As well as the Code of Business Ethics, a number of other group policies and procedures applied to the merged business, including a Corporate Governance and Compliance Policy Manual, an Anti-Bribery and Anti-Corruption Policy Statement, anonymous reporting systems for employees to raise concerns and a Vendor Code of Conduct. There were in addition policies specific to the UK business covering Gifts and Entertainment, Expenses, Business Travel, Conflict of Interest and a Professional Standards Guide. In June 2016 Tetris-Projects Ltd introduced its own business-specific Contracting Policy. However, although the above policies applied to Tetris-Projects Ltd before the merger, and to both businesses after the merger, initially they were not fully implemented. Thus, although a new financial policy was introduced from the time of the merger of the businesses in January 2016, which required non-project related invoices to be sent to the JLL Group Inc cost centre elsewhere, certain of Bluu Solutions Ltd's legacy staff were instructed to keep sending commissions or invoices for Trevor Wright/Zebco Ltd. directly to Tetris-Projects Ltd for processing via *"the old route"*.

63. Top level commitment after the merger was also lacking: As directors of Tetris-Projects Ltd after the acquisition and merger, Robb Simms-Davies and Nigel Wilson continued engaging in the activities vis à vis Roger Dewhirst and Trevor Wright which they had begun at Bluu Solutions Ltd prior to its acquisition by the JLL Group Inc. Neither individual was a sponsor or promotor of a strong compliance culture within Tetris-Projects Ltd. Robb Simms-Davies did not attend the mandatory "Welcome to JLL Group Inc" induction training conducted post-acquisition, notwithstanding a specific requirement that all senior management should do so. He also did not complete his mandatory performance review process, which included a requirement to certify his compliance with the Code of Business Ethics. Nigel Wilson demonstrated more engagement with the new systems, post-merger, but failed by his conduct to demonstrate compliance with them. The remainder of Tetris-Projects Ltd's management team were unaware of the improper activity in relation to the contracts which underpin Count 6.

64. The pre-acquisition due-diligence process included questions on anti-bribery and corruption. They identified that agents used by Bluu Solutions Ltd did not typically have formalised or contractual arrangements and they noted that there were not always clear records of fees paid to agents. As Tetris-Projects Ltd anticipated completing a post-acquisition audit of the new business within a year of acquisition, including consideration of the bribery risk, no specific bribery risk assessment was conducted during the merger of the businesses in January 2016 and the immediate post-merger period.

65. Following acquisition of Bluu Solutions Ltd in August 2015, Tetris-Projects Ltd took a number of steps to review and screen Bluu Solutions Ltd's third party contacts. During the integration period, due diligence was conducted on Bluu Solutions Ltd's sub-contractors, who were required to complete a pre-qualification questionnaire setting out company information and details of processes. However this process was not extended to third parties such as networkers, agents or intermediaries; accordingly the procedures did not identify the bribery risks arising from arrangements with external project managers. Moreover during the relevant period (December 2015–July 2016) Tetris-Projects Ltd did not require certain third party generators of business leads to enter into written contracts, with the result that these third parties were not subject to Tetris-Projects Ltd's standard terms and conditions, or the Contracting Policy introduced in June 2016 referred to above.

66. Tetris-Projects Ltd proceeded, post-acquisition, to communicate its anti-bribery procedures across the business. For example, staff within the merged business could not log on to their computers without first clicking through a statement about the importance of compliance with the Code of Business Ethics and confirming that they had read it and were compliant with it. Employees were also required to certify compliance with the Code as part of their annual Performance Management appraisal and review. However although mandatory, 18 employees did not complete this process in 2016; whilst there were some follow-up emails ultimately no sanctions were imposed.

67. There were also post-integration training sessions conducted for all legacy Bluu Solutions Ltd employees and Tetris-Projects Ltd staff. Members of JLL Group Inc's Legal and Compliance Teams explained group expectations in relation to compliance and ethical business practices, and introduced staff to the anonymous reporting systems which were available. Although these sessions were mandatory for all staff, 7 employees did not attend, including Robb Simms-Davies. Again, although there were some follow-up emails, ultimately there was no sanction.

68. In terms of monitoring and review, Tetris-Projects Ltd commenced updating and developing its policies and procedures post-acquisition and over the course of the integration and post-integration period. This included the introduction of a new expenses system in October 2015, a Gifts and Entertainment Policy in November 2015, a Conflict of Interest Policy in 2016 and a new Contracting Policy in June 2016. In addition, Tetris-Projects Ltd was subject to a routine post-acquisition audit conducted by the JLL Group Inc's Internal Audit team as part of the 2016 audit plan for the business. It was during this audit, starting in August 2016, that concerns were raised which led, ultimately, to the JLL Group Inc referring matters to the SFO in December 2016.

Internal investigation and report to SFO

69. The post-acquisition audit found a number of red flags relating to the awarding of contracts to Bluu Solutions Ltd and Tetris-Projects Ltd. It also identified potential deficiencies in the companies' controls that required further investigation. Accordingly JLL Group Inc instructed external professional advisers to undertake a review and internal investigation. On 1 December 2016 the JLL Group Inc made a voluntary referral to the SFO of concerns identified in the post-acquisition audit and internal investigation. JLL Group Inc also informed law enforcement authorities and agents in the US.

70. I have been told of other regulatory infringements by JLL Group Inc and associated companies including Bluu Solutions Ltd and Tetris-Projects Ltd arising out of separate conduct and I have taken that into account. Full details were provided to me; it is not necessary to set them out in this judgment.

71. As a result of their investigation, the companies took disciplinary action against multiple officers and employees, including dismissing Robb Simms-Davies for gross misconduct. At the same time Nigel Wilson was also dismissed. The executive management of both companies was replaced. There has been significant company-wide remedial action as identified further below.

72. Prompt and full assistance has been provided to the SFO during its investigation. As I regard the extent of this co-operation as a significant factor in my decision, it bears setting out at length:

    (1) The companies voluntarily provided the SFO with detailed initial reports, including reports on the methodology used during the internal investigation and its findings.

    (2) They identified relevant documents and key individuals.

    (3) They subsequently undertook to preserve evidence and provide it to the SFO promptly in an evidentially sound format in response to Section 2 notices.

    (4) They voluntarily provided the SFO with summaries of the first-hand accounts of witnesses who were interviewed during the internal investigation.

    (5) They made witnesses available for interview by the SFO and met the cost of their legal fees when appropriate.

    (6) They consulted with the SFO while undertaking corporate restructuring.

    (7) They ensured that compromise agreements with employees taking redundancy provided for the witnesses to continue to co-operate with the SFO.

    (8) They complied with the SFO's request not to pursue further lines of enquiry or speak to witnesses without the SFO's prior consent.

    (9) They complied with the SFO's requests regarding communications with third parties.

(10) They complied with the SFO's request to keep the relevant corporate entities active rather than cause them to be dissolved as had been the intention following the acquisition.

(11) To avoid a risk of prejudice to the SFO's investigation, JLL Group Inc entered into a Standstill Agreement in civil litigation it had initiated against Robb Simms-Davies and Nigel Wilson that related to the same matters that were being investigated by the SFO.

(12) The companies engaged constructively and pragmatically with independent counsel instructed by the SFO to identify documents subject to legal professional privilege.

(13) They provided a limited waiver of privilege in relation to a significant amount of material, including pre-acquisition due diligence reports, lawyer's notes on the interviews of witnesses during the internal investigation, some internal correspondence and external legal advice.

(14) They were pro-active in relation to the SFO's investigation, including providing a presentation to the SFO on Tetris-Projects Ltd's improved compliance programme and seeking to engage with the SFO's investigation team.

(15) They continued to provide timely co-operation to the SFO despite the significant challenges posed by the pandemic.

Application for approval for two separate DPAs

73. This is the first occasion upon which the court's approval is sought for two separate DPAs arising out of connected facts and a single indictment. There are good reasons to seek separate DPAs in this case:

(i) Bluu Solutions Ltd and Tetris-Projects Ltd have been, and remain, separate corporate entities; although the businesses were merged in January 2016 the companies themselves remained distinct. Unlike the position which obtained in *SFO v Rolls Royce PLC* [2017] 1 WLUK 189, where a single DPA was concluded covering the conduct of a parent and subsidiary, Bluu Solutions Ltd and Tetris-Projects Ltd were never in the relationship of parent/subsidiary.

(ii) The financial penalty for each company arises out of conduct which is separate and distinct as between the two companies; the penalty is consequently capable of being separately calculated.

(iii) As is discussed further below in relation to the penalty, and as appears from the facts above, the assessment of culpability is very different as between Bluu Solutions Ltd and Tetris-Projects Ltd. Bluu Solutions Ltd is charged with 4 counts of bribery and 1 count of failing to prevent bribery over a 28-month period, whereas Tetris-Projects Ltd is charged with one count only of failing to prevent bribery over a period of 7 months immediately post-acquisition.

(iv) Lastly, Bluu Solutions Ltd is no longer undertaking new business and is being wound down preparatory to its dissolution. By contrast Tetris-Projects Ltd is

continuing to operate in the sector, albeit under entirely new management. The DPAs reflect these distinctions, the DPA with Tetris-Projects Ltd in particular containing terms bearing on its status as an operative entity, including a detailed compliance review and monitoring programme.

First requirement – interests of justice

74. Having set out the facts relating to each of the counts on the indictment, together with the history of the companies' own investigation, self-report and subsequent co-operation with the SFO investigation, I turn to consider the interests of justice.

75. Under paragraph 7(1)(a) (preliminary stage) and paragraph 8(1)(a) (final hearing) of Schedule 17 of the 2013 Act the first matter for the court to address is whether it is in the interests of justice for the Director of the SFO to enter into the DPAs in this case. The DPA Code gives some guidance on the general principles to be applied, setting out public interest factors in favour of, and against, prosecution at paragraphs 2.8 1 and 2.8 2 respectively. Reference is also made in the Code to the Bribery Act Guidance and to the General Guidance on Corporate Prosecutions issued jointly by the DPP and the Director of the SFO.

76. The list of relevant public interest factors is never likely to be closed, more will be identified as different cases fall to be decided on their particular facts. The factors identified by Sir Brian Leveson P, in the early case of *Sarclad* [2016] 7 WLUK 211 at [32] (seriousness of predicate offences, importance of incentivising exposure and self-reporting, history of similar conduct, corporate compliance before and after the offending, change of culture and personnel, impact of prosecution on employees and others) have been considered and variously glossed or added to in *Sarclad* and other DPA decisions, from which the following further points appear:

(i) The graver the offending, the stronger the interest in favour of prosecution and against a DPA: in this respect actual bribery offences will be more serious than a failure to prevent bribery: *SFO v Standard Bank plc* [2015] 11 WLUK 802 at [26]. The length of time over which the offending has taken place will also indicate increased severity, particularly when it shows that the conduct formed part of an established business practice within the company: *Sarclad* at [34].

(ii) Practices which were open, rather than concealed, may make corporate behaviour less serious: *Sarclad* at [35]. It must follow that steps taken to conceal mechanisms for making or taking bribes will render the conduct more egregious.

(iii) Bribery of foreign public officials, and/or offending which occurs over many jurisdictions or which affects the integrity/confidence of international markets will be treated very much more seriously: *Rolls-Royce* at [35], *Airbus* at [64]-[65].

(iv) The fact that the organisation was at the time of the DPA "effectively a different entity from that which committed the offence" was regarded as a relevant but by no means necessary requirement in the first DPA decision: see *SFO v Standard Bank* [2015] 11 WLUK 802 at [34]. Nevertheless, in the most recent approval, concerning *Amec Foster Wheeler* (1 July 2021), Edis LJ clearly regarded a complete change of culture and management as a sine qua non of the court granting approval in that case:

> "I would not approve a DPA in this case except in circumstances where the company was under new management and where there is good reason to accept that [the parent company] fully intends to ensure that its activity is carried on without corruption in the future….the change is a change of ownership and management"

(v) Provided that the court, in addressing the second limb of the statutory test for approval, is satisfied that the DPA includes a financial penalty that is "broadly comparable" to the fine which a court would impose after conviction (as required by paragraph 5(4) of Schedule 17 of the 2013 Act) then appropriate punishment will have been imposed on the company and this is also a factor telling in favour of the public interest: see the observations of Edis LJ in the *Amec* case.

(vi) Any delay or lack of initial cooperation can be reflected in the discount applied to the financial penalty but "when judging the public interest in not prosecuting a company …the overall level of co-operation is what matters", per William Davis J in *SFO v G4S Care and Justice Services (UK) Limited* [2021] Crim L.R. 138 at [27]. See also the comments of Dame Victoria Sharp P, in the *Airbus* decision at [73].

(vii) Where the offending has come to light as the result of a takeover, or parent company involvement, a "critical fact" is that the acquiring entity/parent company has made no profit from the offending activity of its subsidiary and/or that it had no prior knowledge of what was going on: *Sarclad* at [42], see also the specific concerns which Edis LJ sought to have addressed prior to giving approval in the *Amec* case.

(viii) In cases where the company is virtually insolvent and being supported by a parent or associated company this may be a consideration telling in favour of approving a DPA in the public interest: *SFO v Airline Services* [2020] 10 WLUK 606 at [53].

(ix) The potential loss of public procurement contracts resulting from any conviction will not of itself be a factor, save only insofar as such loss may impact innocent employees or third parties particularly severely: *Airbus* at [84]-[85].

(x) The DPA regime can include requirements not available as penalties following a successful prosecution: *Rolls Royce* at [60]. The availability of undertakings given by a parent or associated company, which could not have been elicited or imposed in criminal proceedings, was treated as a factor weighing in favour of the DPA in the *Amec* case.

(xi) There is a wider benefit accruing from incentivising companies to self-report, summarised by Edis LJ in *Amec* as follows:

> "The DPA is likely to have a beneficial effect on the behaviour of organisations within the jurisdiction of the SFO in that they will be encouraged to report wrongdoing within their organisations when they discover it, and when they find evidence of it on acquiring another entity. A culture of self-reporting of such conduct is of very substantial benefit to the interests of justice in that it should bring criminal behaviour to light

> which might otherwise go entirely undiscovered, and may also make the investigation of such behaviour much easier, and the conviction of the guilty more likely, see the overriding objective in Crim PR 1.1. This is an important matter both in the interests of the effectiveness of the police, SFO and Crown Prosecution Service whose resources will be better targeted, and also in the wider public interest of detecting crime."

However Edis LJ went on to caution against overreliance on the cost-saving element of self-reporting, in cases where individuals concerned in or responsible for the corporate criminal behaviour are themselves being prosecuted.

(xii) Whilst the collateral effects of a prosecution upon innocent employees and others may be factors in favour of a DPA, it is not the case that the size of the company or severity of effects on others will automatically confer immunity from prosecution: see the *Airbus* decision at [83]. In the *Tesco Stores* case Sir Brian Leveson, PQBD regarded the national economic interest as irrelevant to his consideration of the public interest in the DPA: *SFO v Tesco Stores Limited* [2017] 4 WLUK 558 at [63].

77. With these factors in mind, I turn to the balance of public interest in the case before me. CrPR 11.3(3)(i) requires any application for a DPA to set out why such an agreement is likely to be in the interests of justice.

78. In relation to Bluu Solutions Ltd, the four offences of bribery and with the associated offence of failing to prevent bribery together represent very serious offending. Mr O'Sullivan QC, for the SFO, rightly pointed to the following factors in favour of prosecuting Bluu Solutions Ltd for these offences:

(i) The time over which the offending behaviour occurred: the indictment period runs over 28 months from March 2014 to July 2016.

(ii) The fact that the offending concerned five separate contracts with a combined value of approximately £11.4 million

(iii) The offending was carefully planned and relatively sophisticated. It was initiated by the most senior management at the company. Organising and exploiting relationships with third parties through bribery appeared to be part of the established business practice of Bluu Solutions Ltd.

(iv) Steps were taken to conceal corrupt payments made to third parties.

(v) Bluu Solutions Ltd had negligible policies or processes in place to prevent, detect or reduce the risk of bribery. There was no compliance culture in place, no training, no monitoring, no top-down leadership, rather the contrary.

(vi) Offending of this nature and on this scale undermines the integrity of the market and damages the confidence of all participants. Law-abiding competitors will have been unfairly disadvantaged, wasting significant time and resources on preparing bids for contracts that Bluu Solutions Ltd secured through bribery. Moreover where corrupt payments were included in the cost of contracts the clients will have borne that cost, in effect paying twice.

79. All of the above contributes to a picture of egregious offending and a wanton disregard by Bluu Solutions Ltd of its business compliance obligations. The Code provides, at paragraph 2.5, that

> "A prosecution will usually take place unless there are public interest factors which *clearly outweigh* those tending in favour of prosecution." (my emphasis)

80. Turning to Tetris-Projects Ltd, as identified above the predicate offences were serious. The two directors at Bluu Solutions Ltd responsible for setting up and making corrupt payments became directors also of Tetris-Projects Ltd and appear to have continued the offending there. Although, prior to the audit, Tetris-Projects Ltd had compliance policies and procedures in place these proved inadequate to detect or prevent the continued offending. Nevertheless the offence charged against Tetris-Projects Ltd is of a failure to prevent bribery, not the bribery itself, moreover Tetris-Projects Ltd's offending took place over a considerably shorter period. The SFO has taken the view that the public interest is sufficiently served by charging Tetris-Projects Ltd with the section 7 offence alone.

81. Mr O'Sullivan drew my attention to the following considerations in favour of the DPAs in each case:

(1) The offending is not recent, having taken place between 2014 and 2016. A number of individuals are currently subject to criminal prosecution.

(2) Following discovery of the offending the executive management of Bluu Solutions Ltd and Tetris-Projects Ltd has changed. Disciplinary action was taken against a number of officers and employees. Robb Simms-Davies and Nigel Wilson were both dismissed.

(3) The companies have taken significant remedial action including (a) taking the disciplinary action referred to above, (b) tightening financial controls for making payments, ensuring that any payment goes through different staff for input, authorisation and payment, (c) hiring legal and compliance staff dedicated to Tetris-Projects Ltd, reporting directing to the legal function at the parent company rather than to the executive management of Tetris-Projects Ltd, (d) requiring all suppliers, contractors, sub-contractors, vendors and other third parties to have a written contract which includes as an express term compliance with the JLL Group Inc Code of Ethics, infringement of which will justify terminating the business relationship, (e) conducting due diligence on all new staff, suppliers, contractors, vendors and other third parties before their engagement and conducting periodic reviews (f) improving record-keeping, including a Tetris-Projects Ltd specific gift and hospitality register (g) providing further training on Anti-Bribery and Corruption Policies, conflicts of interest and information security, including interactive e-learning and introducing sanctions to ensure compliance, including withholding or reducing annual performance bonuses, and (h) annual and quarterly staff surveys, enabling anonymous feedback on whether compliance is being taken seriously.

(4) Bluu Solutions Ltd and Tetris-Projects Ltd provided information in the self-report which may not otherwise have come to the attention of the SFO and which triggered the SFO's investigation. Information was provided in real time further to the

findings of the simultaneous internal investigation. Moreover the reported information was comprehensive, covering suspected misconduct in relation to a total of 34 contracts which the SFO considered in the course of its investigation. In this respect Mr O'Sullivan emphasised the timing, pointing out that the reporting by the companies occurred when there had been just one concluded DPA, demonstrating a determination to engage and cooperate in a new and largely untested area of criminal law at a time when there would have been significant uncertainty as to whether the SFO would even entertain a DPA in this case, or on what terms.

(5) The companies have co-operated with the SFO very significantly, as detailed above.

(6) Much of the material supplied by the companies to the SFO was subject to legal professional privilege, which the companies waived. This includes due diligence reports relating to the acquisition of Bluu Solutions Ltd and summaries of interviews conducted as part of the internal investigation. The SFO is satisfied that all relevant material has been disclosed to it.

(7) The SFO is currently unaware of any existing or ancillary matters related to the conduct alleged in the indictment and described in the Statement of Facts and is likewise unaware of any other domestic or foreign law enforcement or regulatory agency seeking to exercise concurrent jurisdiction over Bluu Solutions Ltd, Tetris-Projects Ltd or any associated group companies in connection with that conduct.

(8) Whilst Bluu Solutions Ltd remains active for the purposes of running off and completing the tail of the business into which it had entered prior to its acquisition by the JLL Group Inc, it is not entering into any new contracts and is being kept afloat through capital supplied by JLL Group Inc. It is anticipated that the company will be wound up upon the conclusion of the term of the proposed DPA. All staff are employed by Tetris-Projects Ltd and are subject to the revised procedures and policies referred to above.

(9) If Tetris-Projects Ltd were convicted it would have disproportionate consequences for the company including possible debarment from public contracts and difficulty in finding new customers and suppliers for new contracts going forward, giving rise to a considerable risk of redundancies and jeopardising its ability to fulfil existing contracts given an already precarious financial position.

(10) Undertakings given by JLL EU Ltd (a company within the JLL Group Inc, being the direct parent company of Tetris-Projects Ltd within the group structure) as a term of the DPA with Tetris-Projects Ltd regarding ongoing cooperation with the SFO and commitment to compliance measures afford a significantly wider protection than any order which could be made consequent upon a successful criminal prosecution.

(11) The offending did not concern corruption of any foreign officials and its effect was upon domestic markets only.

Interests of justice - conclusion

82. At the initial hearing I invited the SFO to address further matters concerning the due diligence performed by the JLL Group Inc prior to its acquisition of Bluu Solutions Ltd. Mr O'Sullivan stressed the difficult acquisition context here, where the evidence indicated that not all facts were disclosed to JLL Group Inc by the majority shareholder, Robb Simms-Davies. The SFO has conducted a thorough investigation and is satisfied that the JLL Group Inc acted entirely properly in the acquisition and that it had no prior knowledge of any corrupt activity by Bluu Solutions Ltd. I fully accept, from the information I have been given, that that is so, that JLL Group Inc is an innocent party which, upon its detection of the unlawful activity, has, in the vernacular, thrown open the cupboards at Bluu Solutions Ltd and Tetris-Projects Ltd and cleaned up the mess left by the previous management.

83. The companies are separate, as are the DPAs, and it is important therefore to give separate consideration to the interests of justice bearing on each agreement, however there are some general points which I regard as significant and which apply equally to both: I accept Mr O'Sullivan's point that the timing of the self-report – at a time when only one DPA had then been concluded – adds to the weight of this factor. The extent of the cooperation with the SFO (detailed above) is also highly significant. The determination to self-report and the information and cooperation then provided together provide an example of proactive and responsible conduct following discovery of criminality which is greatly to be encouraged.

84. Like Edis LJ in *Amec* I regard the replacement of management as a necessary feature here, without which I would not have been prepared to give approval. In the case of Bluu Solutions Ltd this is important not because the company is intending to continue in business - on the contrary as I understand it Bluu Solutions Ltd employs no staff and is being run down – but because of the very high culpability attaching to its criminal activity over a considerable period. Replacement of management is a critical factor in the case of Tetris-Projects Ltd precisely because it is still operating and transacting new business.

85. The changes of procedure and reviews of policy introduced at both companies, particularly within Tetris-Projects Ltd as the operative entity, is another important factor weighing in favour of a DPA. It demonstrates a thoroughgoing commitment on the part of the companies to "clean up their act" going forward and provides encouragement to others to do the same.

86. Bluu Solutions Ltd is now a company in managed decline. It employs no staff and is being sustained by its parent company solely in order to complete existing business and to perform its obligations under the DPA. The executive management of the company is wholly changed. Its accounts show a steeply diminishing annual turnover and profit. To that extent there could be no adverse impacts upon staff or customers of a prosecution. On the other hand the DPA will secure a commitment by its parent company to pay a significant financial penalty and to continue to provide such further information as may be required by the SFO regarding the offending activity in the ongoing prosecutions of individuals.

87. Tetris-Projects Ltd remains in business, but under new management. Tetris-Projects Ltd's culpability was significantly lower: the offending was for a shorter time,

moreover Tetris-Projects Ltd had extensive compliance procedures in place, albeit insufficient to protect against the continued criminal activities of the business with which it had merged. Its accounts show that the business is still recovering, in circumstances where it will require support from its parent company to pay any financial penalty, a commitment which the terms of the DPA will secure.

88. I regard the provision of financial support from the parent company, secured by undertakings attached to each DPA, as a further feature in favour of the agreements. Such support has enabled the amounts required to be paid under each DPA to be set and agreed at sums considerably higher than either company alone would have been able to pay. That is a significant benefit. Furthermore, as indicated below, the DPA with Tetris-Projects Ltd incorporates additional valuable undertakings by Tetris-Projects Ltd's parent company. In this way the DPAs secure support and commitment from the parent companies of a kind and to an extent which a successful criminal prosecution could not provide.

89. In considering whether the DPAs are each in the public interest I have also taken into account my conclusions on the proposed terms, discussed further below. The fact that, as I have concluded, the terms of each are fair reasonable and proportionate also weighs in favour of the public interest in the agreements.

90. For the reasons given I am satisfied that the DPAs entered into by the Director of the SFO with (i) Bluu Solutions Ltd and (ii) Tetris-Projects Ltd is in each case in the interests of justice.

Second requirement – DPA terms are fair, reasonable and proportionate

91. Paragraph 5 of Schedule 17 of the 2013 Act sets out the terms which must, and those which may, be included in the DPA. CrPR 11.3(3)(f) and (g)(i) and (ii) require the application for a DPA to describe the proposed terms, explain how they comply with the DPA Code and the applicable Sentencing Guideline(s) and to elucidate how they are fair, reasonable and proportionate.

92. The present DPAs each contain a number of detailed terms, agreed between the SFO and the companies after extended negotiations and with a great deal of expert accounting and other input. As Edis LJ pointed out in the *Amec* case, the fact that the SFO and the companies have collaborated to reach agreement, with expert assistance where required, allows the court to approach the second statutory requirement with a degree of confidence. I have read and considered the proposed terms of each agreement carefully. It is unnecessary to refer to them in any detail in these reasons, instead I shall summarise key matters shortly under the following heads: duration and scope of the agreements, provisions for cooperation, financial requirements, corporate compliance and parent company undertakings.

Duration and Scope

93. Each DPA has a duration of 2 years. The SFO takes the view that 2 years is a necessary and sufficient time to require the companies to provide ongoing cooperation and information relating to the prosecution of individuals; also, crucially, time for Tetris-Projects Ltd to engage in a compliance reform programme which will be subject to independent monitoring and review. Nonetheless, in case the prosecutions should take

more than two years to conclude, by the terms of the undertaking forming part of the Tetris-Projects Ltd DPA its parent company, JLL EU Ltd, undertakes to ensure that Tetris-Projects Ltd and any associated entity will continue to cooperate with the SFO or any other domestic or foreign agency for the full duration of any prosecution brought here or elsewhere arising out of the conduct encompassed by the indictment or described in the Statement of Facts. This undertaking affords a considerable benefit to the interests of justice by ensuring cooperation throughout any prosecution, even if proceedings continue beyond 2 years.

94. As indicated above, the SFO considered information passed to it in relation to 34 contracts but decided that the evidential and public interest tests were met in respect of those to which reference is made in the indictment. However by the terms of the DPA the SFO is not prevented from prosecuting either of the companies, or any associated entities, in respect of further criminal conduct, including conduct disclosed during the investigation and process of negotiation but which has not been charged.

Continuing co-operation

95. The DPA Code characterises an ongoing cooperation obligation as something that is "normally" part of a DPA. Both DPAs include such terms, requiring the companies to cooperate with the SFO and any other domestic or foreign law enforcement agency in investigating and prosecuting conduct which is the subject of the indictment and set out in the Statement of Facts.

96. The terms of the DPA also require the companies to report any further evidence or allegation of serious fraud, bribery or corruption which comes to their notice during the 2-year term of the agreement.

97. I have noted above the undertaking appended to the Tetris-Projects Ltd DPA, given by JLL EU Ltd regarding cooperation for the full duration of any prosecution.

Financial requirements

(1) Compensation

98. Paragraph 5(3) of Schedule 17 to the 2013 Act, setting out the terms which may be included in a DPA include a reference to compensation. Pursuant to section 55 of the Sentencing Act 2020 and as recognised by the Sentencing Guideline entitled *Corporate Offenders: fraud, bribery and money laundering* ("the Bribery Guideline"), also by the DPA Code at paragraph 8.3, priority must be given to compensating the victims of offending, over fines. If compensation is not ordered, reasons must be given.

99. The established principle is that compensation will only be appropriate in clear and simple cases, as previous DPA decisions have recognised: see, for instance, *Rolls Royce* at [81]-[84] and *Airbus* at [94]-96].

100. The SFO has in this case decided that compensation would not be appropriate because of the difficulty in determining precisely what loss has been suffered by any affected party. It has not been possible to calculate the wasted costs incurred by unsuccessful competitors who submitted bids in the rigged tenders. Likewise the amount of any

increase in contract price which may have been charged to the client as a result of bribes paid to agents.

101. It seemed to me at one point that the evidence might have allowed for the identification of such increase in relation to one of the contracts (there was reference to the pricing process within Bluu Solutions Ltd explicitly taking account of Roger Dewhirst's "bit"), but I was satisfied from what I was told that, despite the potential for identification of this amount in relation to one contract, compensation was not a straightforward matter as there remains uncertainty around the issue of civil proceedings which may be brought by the client in question.

102. In these circumstances I accept that a term for compensation has justifiably been excluded from both DPAs.

(2) Disgorgement of profit

103. Disgorgement of profit is a further term which, under paragraph 5(3) of Schedule 17 to the 2013 Act, may be included in a DPA. This measure is reiterated at paragraph 7.9 of the DPA Code. Public policy clearly favours the removal of the fruits of any offending behaviour.

104. The figures that have been agreed, with the assistance of expert accounting input on both sides, are as follows:

(1) For Bluu Solutions Ltd, the sum of £466,430 has been calculated and agreed as the gross profit accruing to it from the contracts obtained through the offending behaviour which is the subject of the counts on the indictment.

(2) In the case of Tetris-Projects Ltd, the gross profit obtained in relation to the two contracts which underpin Count 6 on the indictment has been calculated and agreed at £137,977.

105. I accept without question the analysis and calculations performed by experts instructed on both sides giving rise to these figures.

(3) Financial penalty

106. Under paragraph 5(4) of Schedule 17 to the 2013 Act, the amount of any financial penalty must be "broadly comparable" to the fine that a court would have imposed on conviction following a guilty plea. It is in this area, in particular, that the court is well-placed to exercise an informed supervision of the terms of the DPA.

107. Pursuant to section 50 of the Sentencing Act 2020 a court "must follow" any relevant Sentencing Guideline.

108. In setting any fine, a court is required to take into account the financial circumstances of the offender: see section 125 of the Sentencing Act 2020 referred to at Step 4 of the Bribery Guideline, also CrPD Part VII Q4. Both DPAs contain undertakings of financial support in the payment of any penalty given by JLL Capital Investments Ltd.

109. Steps 1 and 2 of the Bribery Guideline deal with compensation and confiscation respectively, the latter equating in this context to disgorgement of profit. I have dealt with those aspects above.

110. Sentencing Guidelines require a court to approach sentence by reference to an assessment of culpability and harm. The Bribery Guideline sets out at Step 3 the factors to be considered in making such assessment. The figure for harm *"will normally be the gross profit from the contract obtained, retained or sought as a result of the offending"* (my emphasis). The figure for harm is then subject to a multiplier reflecting the degree of culpability of the offending company.

111. In three of the five contracts concerned in the offending covered by the indictment the companies made a profit which can be ascertained. It is the gross profit made on these contracts which forms the basis of the disgorgement figures referred to above. However as appears above in relation to Count 2, Bluu Solutions Ltd made no profit on the Myoderm contract and was not awarded the Hermes contract. An estimate has therefore been made of the profit that Bluu Solutions Ltd would have sought, by reference to the retainer and other payments made to Roger Dewhirst and the size of business which such sums might have been expected to generate, together with the percentage profit margin Bluu Solutions Ltd anticipated making on its contracts. This has resulted in a figure of £414,000. £240,000 of that sum has been attributed to Tetris-Projects Ltd, relating to payments made after the business of Bluu Solutions Ltd was integrated into Tetris-Projects Ltd in January 2016.

112. A table within the DPA for each company sets out the figures for harm arrived at as described above. The total for Bluu Solutions Ltd amounts to £1,018,427; for Tetris-Projects Ltd the total is £377,977.

113. In relation to Bluu Solutions Ltd, culpability has rightly been assessed as High since the offences were committed over a sustained period of time, the company (through its directors) played a leading role in organised unlawful activity and there were steps taken to avoid detection by making payments indirectly using intermediaries, in circumstances which amounted to a culture of wilful disregard of commission of offences with no effort to put effective systems in place. The SFO has assessed that the factors which aggravate and mitigate the offending in the case of Bluu Solutions Ltd are of equal weight such that it is appropriate to apply a multiplier of 300%, given as the starting point for High Culpability under Step 4 of the Bribery Guideline.

114. Tetris-Projects Ltd's culpability is assessed as lower than that of Bluu Solutions Ltd, at Medium. Tetris-Projects Ltd had some systems in place prior to the merger of its business with Bluu Solutions Ltd, albeit inadequate. Tetris-Projects Ltd's offending took place over a shorter time. Moreover the underlying offending had all been instigated by Bluu Solutions Ltd prior to the merger of the businesses. A multiplier of 200% is accordingly proposed for Tetris-Projects Ltd, being the starting point for Medium Culpability at Step 4.

115. There are no further matters requiring further adjustment in accordance with the "step back" requirements under Step 5, which leaves the appropriate discount to be applied as a result of the (notional) guilty pleas. It is necessary to apply a discount as the financial penalty should be comparable to a fine imposed upon conviction after a guilty plea.

116. Ordinarily, a guilty plea would engage a maximum one third discount, as explained in the Sentencing Council's Overarching Guideline *Reduction in Sentence for a Guilty Plea.* However, it has been recognised in DPA cases that a further discount may be appropriate, for the reasons given by Sir Brian Leveson, PQBD, in *Sarclad* at [69]:

> "In addition, given that the admissions are far in advance of the first reasonable opportunity having been charged and brought before the court, that discount can be increased as representing additional mitigation. In the circumstances, a discount of 50% could be appropriate, not least to encourage others how to conduct themselves when confronting criminality…"

117. The SFO has agreed to apply a discount of 50% , in view of the prompt self-reporting and extensive cooperation to which I have referred above. In the case of Tetris-Projects Ltd the SFO also draws attention to the many steps taken by the company to remedy and strengthen its internal compliance programme. I accept that such a discount is appropriate in the circumstances of this case.

118. Applying a 50% discount results in a financial penalty figure of £1,527,641 for Bluu Solutions Ltd and £377,997 for Tetris-Projects Ltd.

119. The final sentencing consideration, affecting Bluu Solutions Ltd, arises from the multiplicity of offences on the indictment, engaging the provisions of the Sentencing Council Guideline on *Totality*. Under this Guideline, a court is required to stand back and determine whether the final sentence is just and proportionate, making an adjustment where necessary. The adjustment for totality which the SFO has adopted here is that of (notionally) applying no separate penalty in respect of the section 7 offence under Count 5, covering, as it does, the same underlying offending as that comprised in Counts 1 to 4.

(4) *Costs*

120. Paragraph 7.8 of the DPA Code states that a term providing for payment of its costs will usually be included. The Criminal Practice Direction (Costs in Criminal Proceedings) Amendment No 1 at paragraph 3.4 provides that a costs order should be made where the defendant has the means and ability to pay.

121. In this case, given the financial position of both companies, the SFO has not sought to include a term within either DPA providing for payment of its costs. I accept that the circumstances justify this stance.

122. The total sums (disgorgement of profit plus financial penalty) required to be paid by the companies under the terms of each DPA are accordingly as follows: £1,994,071 by Bluu Solutions Ltd and £515,994 by Tetris-Projects Ltd.

Corporate compliance

123. Under paragraph 5(3) of Schedule 17 to the 2013 Act and paragraph 7.10 of the DPA Code, a DPA may require the company to put in place robust compliance and/or a monitoring programme.

124. Having conducted, as part of its investigation and ensuing negotiations, a very thorough review of Bluu Solutions Ltd and Tetris-Projects Ltd's compliance policies and procedures, the SFO decided to include within the DPA for Tetris-Projects Ltd, as the operative company, a term requiring reforms of its systems and implementation of a comprehensive compliance plan. The terms require regular reporting to the SFO at 6-monthly intervals and include the provision of an independent report by the company's external legal representatives after one year and again at the end of the period.

Parent company undertakings

125. Appended to each DPA are undertakings given by the respective parent companies. These guarantee the provision of support to Bluu Solutions Ltd and Tetris-Projects Ltd in making payment of the sums referred to at paragraph 124 above. In the case of Tetris-Projects Ltd, JLL EU Ltd further undertakes to provide support to Tetris-Projects Ltd in implementing the compliance plan and to ensure that Tetris-Projects Ltd complies with all remaining terms of the DPA, including co-operation with any related investigation or prosecution, even if proceedings are not concluded within the 2-year term of the DPA.

Fair reasonable and proportionate - conclusion

126. I am satisfied that the terms of each DPA are fair, reasonable and proportionate. Each agreement requires the company to disgorge all profit made from the business obtained through bribery, and to pay a significant financial penalty. The further terms requiring continued co-operation provide proper support for the prosecution of the individuals said to be responsible for the corporate offending. Moreover in the case of Tetris-Projects Ltd, terms which put in place a robust compliance and monitoring programme afford additional protection for the public as Tetris-Projects Ltd (under its new management) continues to trade in the sector.

127. Most importantly, the provisions of the DPAs are in each case buttressed by parent company undertakings. No successful prosecution could extract such guarantees given by a parent company, a circumstance which I regard as particularly important in relation to both aspects of the statutory test for approval.

Conclusion

128. Pursuant to paragraph 8(1) of Schedule 17 of the 2013 Act, I declare that (i) the DPA with Bluu Solutions Ltd and (ii) the DPA with Tetris-Projects Ltd are each in the interests of justice and that the terms are in each case fair, reasonable and proportionate. I consent to the preferment of a bill of indictment in the terms attached to each DPA. I note that, pursuant to paragraph 2(2) of Schedule 17 of the 2013 Act these proceedings

are automatically suspended. The terms of each DPA should now be enforced in default of which an application can be made under paragraph 9(1) of Schedule 17.

129. I have indicated my provisional view that it will be appropriate to make an order postponing publication of the DPAs and associated documents, together with an order for reporting restrictions, but I am prepared to hear any further representations as to the form and content of such order.

130. Finally, I would like to extend my gratitude to all counsel - Robert O'Sullivan QC with Angus Bunyan and Trevor Archer for the SFO and Lord Garnier QC with Jennifer Carter-Manning QC and Ben Isaacs for the companies - and their instructing solicitors for the careful preparation of this case and for the considerable assistance with the facts and the law which they have provided to me over the course of both hearings.

Post-judgment note: An anonymised version of this judgment (which relates to the DPA with the corporate respondents) was handed down to the parties on 19 July 2021. Having heard argument on that occasion Mrs Justice May ordered that its further publication be postponed until after the completion of the criminal proceedings concerning the individual defendants. Those proceedings having now concluded, and having had no objection from the parties, anonymisation is now lifted and this judgment may be published.