

## Client Alert: Details of Serco Deferred Prosecution Agreement Released

Date : May 14, 2021

### Introduction

We reported last month on the acquittal of two former Serco Executives, Simon Marshall and Nicholas Woods. You can read our thoughts on those acquittals here <https://www.corderycompliance.com/sfo-loses-case-serco-execs-acquitted/>. Now that the case is over, the SFO has published the Deferred Prosecution Agreement (DPA) it entered into with Serco. The DPA was entered into in June 2019.

### What were the facts behind the DPA?

The Statement of Facts which the SFO has released is quite detailed and is 20 pages long. Some of the interesting facts are:

1. The Statement of Facts talks about 3 Serco employees in particular although as we said in our alert last month, it would appear that the trial only involved 2 of them.
2. The initial investigation related to a report from the Ministry of Justice (MoJ) to the SFO regarding electronic monitoring services Serco provided to the MoJ. The SFO thought that there was insufficient evidence to pursue this investigation but in the process of this investigation, Serco volunteered emails to the SFO which it said raised concerns.
3. At the SFO's request, Serco did not interview employees and looked instead at a document review. It presented the findings to SFO in September 2014.
4. Serco cooperated with the SFO including by refraining from interviewing witnesses, instructing an external law firm to review the documents, providing access to email accounts of employees and former employees with only a very narrow privilege review and agreeing a waiver of privilege over some material including forensic accounting materials.
5. The SFO also gave Serco credit for a management change after the incidents took place.
6. There were extensive emails between the management of Serco entities about bending figures provided to the MoJ.

### What was the settlement?

As part of the DPA, Serco agreed to pay a financial penalty of £19.2m. They also agreed to pay the SFO's costs (£3.7m) and they reached a civil settlement eventually paying over £70.1m of which it seems £12.8m has already been paid to the MOJ relating to these events.

In addition, the DPA was accompanied by an undertaking from Serco to strengthen its group-wide ethics and compliance functions and carry out annual reporting on its group-wide assurance program. Serco's commitment included creating new board-level committees *"to formalise the process of guidance and decision-making on ethical, compliance and compliance assurance issues"*.

### Lessons to be learned

The case illustrates a number of points including:

1. Proper policies, procedures and training must be put in place. It is always better to have processes and procedures to avoid a problem rather than committing to introduce them to help fix it; and
2. Companies must properly investigate wrongdoing properly and promptly – this will give any organisation more flexibility to deal with any issues. Given the failure of the individual prosecutions in this case we can expect prosecutors to ask more searching questions over the conduct of investigations.

There are more thoughts on the long-term consequences of the Serco case in our original post here <https://www.corderycompliance.com/sfo-loses-case-serco-execs-acquitted/>.

### More information

There is more information about this and other bribery related topics here <https://www.corderycompliance.com/category/bribery-corruption/>. You can find out more about Cordery's work in bribery and corruption prevention here <https://www.corderycompliance.com/bribery-corruption/> and investigations here <https://www.corderycompliance.com/internal-investigations/>. There is more information on the Serco DPA here <https://bit.ly/3t2NmC2> and more on the failed prosecutions here <https://bit.ly/3u98szS>.

For more information please contact Jonathan Armstrong or André Bywater who are lawyers with Cordery in London where their focus is on compliance issues.

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