

CEP Magazine – November 2021

UK deferred prosecution agreements: Self-reporting and continued cooperation

By Sam Tate and Emily Pica

Sam Tate (sam.tate@rpc.co.uk) is the Head of White Collar Crime and Compliance at RPC, and **Emily Pica** (emily.pica@rpc.co.uk) is an Associate at RPC on the White Collar Crime and Compliance team in London, the United Kingdom.

- [linkedin.com/in/sam-tate](https://www.linkedin.com/in/sam-tate)
- [linkedin.com/in/emily-pica](https://www.linkedin.com/in/emily-pica)

Six years and 12 deferred prosecution agreements (DPAs) later, DPAs are becoming seen as a norm in the United Kingdom (UK) enforcement landscape. As in the United States (US), UK DPAs offer an alternative to long, public, and expensive prosecutions, and for the UK's Serious Fraud Office (SFO), UK DPAs offer a mechanism through which, in appropriate cases, corporations are held to account for their wrongdoing while making considerable contributions to the state coffers and ensuring corporate reform.

Below we consider DPAs in more detail from both the perspectives of corporations and the SFO, with a focus on self-reporting with a view to entering a DPA.

Corporations

In the early days of UK DPAs, self-reporting offered little certainty to companies that found a major bribery issue. Today, corporations faced with the issue of whether to self-report benefit from both a growing number of legal practitioners experienced with the UK DPA process and seeing the treatment of those companies that have gone before them en route to a successful settlement. By way of practical example, the SFO's approach to penalty discounts for cooperation is far clearer. According to our analysis of the 12 DPAs, for extraordinary cooperation, a 50% reduction in penalty appears to be the norm for UK DPAs, with relatively recent suggestions from the court that approval for a further discount is not beyond the realm of possibility.

There is also much more clarity concerning when cooperation must happen. In the G4S Care & Justice Services (UK) Ltd (G4S) DPA of 2020, the court concluded that although G4S had cooperated fully with the SFO's investigation, its full cooperation came relatively late.^[1] Accordingly, G4S received a reduced discount of 40%.

Furthermore, we now know that a range of factors will be important as to whether cooperation is rewarded, and even a failure to self-report will not necessarily be viewed by the court as an impenetrable roadblock to demonstrating the requisite “*extraordinary or otherwise exemplary*” cooperation. Rolls-Royce PLC (Rolls-Royce) did not self-report to the SFO, and yet the court approved a 50% penalty discount, as the company was able to make up for its initial lack in cooperation by providing exemplarily support to the SFO's investigation and an open policy to further self-reporting across a range of new matters and countries.^[2]

Finally, we have recently updated SFO guidance on UK DPAs and *Evaluating a Compliance Programme*, and the fact is that the much-feared class actions and ancillary litigation (that it was assumed would flow from UK DPAs)

does not appear to have risen materially.

All of these factors combined provide even more reason for hesitant companies to see UK DPAs as, if not a good outcome to a self-report, at least the best available outcome and one with some certainty of form and process.

This document is only available to members. Please log in or become a member.

[Become a Member](#) [Login](#)