Neutral Citation Number: [2026] EWHC 37 (Admin)

Case No: AC-2025-LON-000992

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/01/2026

Before :

LORD JUSTICE EDIS

MR JUSTICE CALVER

- -

Between :

GURALP SYSTEMS LIMITED	**Appellant**
- and -	
THE DIRECTOR OF THE SERIOUS FRAUD OFFICE	**Respondent**

- -
- -

Simon Farrell KC and Rosa Bennathan for the **Appellant**
Trevor Archer (instructed by **the Serious Fraud Office**) for the **Respondent**

Hearing dates: 18 November 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on Tuesday 13 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Edis and Mr Justice Calver:

1. This is the judgment of the court to which we have both contributed.

2. This is an appeal to this court by case stated from a decision of the Crown Court, which lies pursuant to section 28(1) of the Senior Courts Act 1981, unless the decision of the Crown Court related to trial on indictment[1]. It concerns the meaning and enforceability of a Deferred Prosecution Agreement dated 22 October 2019 ("the DPA") agreed between the Serious Fraud Office ("SFO") and Guralp Systems Limited ("GSL"). On the same day, 22 October 2019, the Crown Court (the late William Davis J as he then was) declared further to paragraph 8(1) of Schedule 17 to the Crime and Courts Act 2013 ("Schedule 17") that (a) the DPA was in the interests of justice and (b) the terms of the DPA were fair, reasonable and proportionate. By paragraph 8(3) of Schedule 17 the DPA came into force on the making of that declaration.

3. On 20 November 2024 the SFO made an application pursuant to paragraph 9 of Schedule 17 for a determination by the court that GSL was in breach of the DPA ("the DPA Application").

4. On 31 January 2025 William Davis LJ, as he had become, gave his decision on that application in writing. He was then asked by GSL to state a case, which he did on 14 February 2025. The questions of law which he posed in it for the High Court are as follows:-

> (i) Was I correct to conclude that the terms of the [DPA] were such that it remained in force as at 21 November 2024?
>
> (ii) Was I correct to find that the Crown Court had jurisdiction to decide whether [GSL] had failed to comply with the terms of the [DPA]?

5. William Davis LJ expressly said that he was stating that case for the opinion of the High Court on the assumption that the High Court will conclude that it has jurisdiction pursuant to section 28(1) of the Senior Courts Act 1981. The first question is whether that assumption was correct.

The jurisdiction of the High Court to hear this appeal

6. Sections 28(1) and (2) of the 1981 Act, so far as relevant, are in these terms:-

> **28 Appeals from Crown Court and inferior courts.**
>
> (1) Subject to subsection (2), any order, judgment or other decision of the Crown Court may be questioned by any party to the proceedings, on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Crown Court to have a case stated by that court for the opinion of the High Court.
>
> (2) Subsection (1) shall not apply to—

[1] See section 28(2)(a) of the Senior Courts Act 1981.

> (a) a judgment or other decision of the Crown Court relating to trial on indictment;

7. The effect of a DPA is set out in paragraph 2 of Schedule 17:-

> **Effect of DPA on court proceedings**
>
> 2. (1) Proceedings in respect of the alleged offence are to be instituted by the prosecutor in the Crown Court by preferring a bill of indictment charging P with the alleged offence (see section 2(2)(ba) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (bill of indictment preferred with consent of Crown Court judge following DPA approval)).
>
> (2) As soon as proceedings are instituted under sub-paragraph (1) they are automatically suspended.
>
> (3) The suspension may only be lifted on an application to the Crown Court by the prosecutor; and no such application may be made at any time when the DPA is in force.
>
> (4) At a time when proceedings are suspended under sub-paragraph (2), no other person may prosecute P for the alleged offence.

8. Mr Trevor Archer, on behalf of the SFO, accepts that the High Court has jurisdiction to hear this appeal and this is therefore common ground. However, he made succinct submissions to explain why the SFO takes this position in order that we might determine the matter in case it arises again.

9. Mr Archer submits that the principles to be applied can be found in *Re Smalley* [1985] AC 622 and *R v Manchester Crown Court ex p H and D* [2000] 1 Cr App R 262 and that their application can be seen in other decisions which it is not necessary to cite. The meaning of the phrase "*relating to trial on indictment*" was further considered by the House of Lords in *In re Sampson* [1987] 1 WLR 194. The effect of the two principal decisions of the House of Lords on this issue was succinctly summarised by Richards LJ in *R (Crown Prosecution Service) v Crown Court at Bolton (General Council of the Bar intervening)* [2013] 1 WLR 1880 at [13]:-

> "The courts have avoided judicial definition of the exclusionary words in section 29(3), though various pointers have been formulated, including whether the order or decision sought to be reviewed was one "affecting the conduct of a trial on indictment" (see *In re Smalley*), whether it was "an integral part of the trial process" (see *In re Sampson* [1987] 1 WLR 194)…"

10. These are decisions concerning section 29(3) of the 1981 Act (or its predecessor, namely section 10(5) of the Courts Act 1971) rather than 28(2) but the exclusionary words are the same and the meaning of the exclusion must be the same in relation to appeals by case stated as it is in relation to judicial review.

11. In *R v Manchester Crown Court ex p H and D* Rose LJ referred to the number of "not always apparently reconcilable decisions" which have been made about the meaning of the "exclusionary words in section 29(3)". He considered that the stage in the proceedings when a decision is made will often be relevant to deciding whether judicial review is excluded or not.

12. In our judgment this is not a marginal case where it is necessary to analyse the appropriate test any further. Whichever way the test is formulated, the answer is the same.

13. The effect of a DPA is to prevent a trial on indictment from ever taking place, provided its terms are complied with. If they are not, then the enforcement measures available in the event of breach may allow such a trial to proceed if the agreement is terminated by the court under paragraph 9(3)(b) of Schedule 17, and the prosecutor then applies to lift the suspension of the criminal proceedings under paragraph 2(3). Once a DPA has been approved by the court and until the consequent suspension is lifted a trial on indictment is impossible.

14. A judicial decision about a DPA taken during the period of suspension does not, in these circumstances, "relate to a trial on indictment". This gives effect to the natural meaning of those words. It also produces a sensible result in line with the statutory purpose, which is to give exclusive jurisdiction to the Crown Court in dealing with trials on indictment and matters relating to them, while allowing an effective remedy for those aggrieved by other decisions it may make. If it were otherwise, the prosecutor could never challenge an adverse judicial decision made during the time when criminal proceedings are suspended by a DPA, and a defendant would only be able to do so if there were a subsequent trial and conviction. There is no purpose to be served by interpreting the exclusionary words so that they have this effect and, in our judgment, Mr Archer is right to submit that the High Court does have jurisdiction to consider this appeal by case stated.

The substantive appeal

15. We turn next to the substantive appeal. It is convenient to set out part of the stated case. In it, William Davis LJ said:-

> "1. On 22 October 2019 I made a declaration pursuant to Schedule 17 of the Crime and Courts Act 2013 in relation to a deferred prosecution agreement made between the Serious Fraud Office and Guralp Systems Limited. When I made the declaration I was sitting in the Crown Court at Southwark.
>
> 2. On 21 November 2024 the Serious Fraud Office applied to the Crown Court pursuant to paragraph 9 of Schedule 17, the Serious Fraud Office believing that Guralp Systems Limited had failed to comply with the terms of the deferred prosecution agreement.
>
> 3. Guralp Systems Limited raised an issue of jurisdiction. They argued that, by the point at which the application pursuant to paragraph 9 was made, the deferred prosecution agreement had expired. Thus, the agreement was not in force. A condition

> precedent for an application pursuant to paragraph 9 is that the agreement is in force when the application is made.
>
> 4. Both Guralp Systems Limited and the Serious Fraud Office provided written submissions on the issue of jurisdiction. On 27 January 2025 I heard oral submissions from counsel for both parties. I reserved my decision on the issue.
>
> 5. On 31 January 2025 I handed down judgment on the preliminary issue of jurisdiction. Although the judgment has a neutral citation number for the King's Bench Division, I sat in the Crown Court in order to decide on the issue of jurisdiction.
>
> 6. For the purpose of the application, I was provided with a bundle of documents headed Volume 1: DPA breach application and legislation. I attach the bundle to this case stated. It includes the deferred prosecution agreement (at pages 19 to 27) and the judgment I handed down on 22 October 2019 when I made the declaration pursuant to Schedule 17 (at pages 28 to 39).
>
> 7. The facts I found for the purposes of the breach application are set out in my judgment on the issue of jurisdiction. I attach the judgment to this case stated. The judgment also sets out my conclusions as to the meaning of the deferred prosecution agreement."

16. The judgment handed down on 22 October 2019 sets out the circumstances which caused the SFO and GSL to reach an agreement that they would proceed to a DPA under Schedule 17. That is a Crown Court judgment and such judgments are not generally published in the National Archives. The judgment of 31 January 2025 is also a Crown Court judgment, although it has a Neutral Citation Number which might suggest otherwise. This judgment will not be comprehensible without access to these earlier judgments and these are accordingly attached as Annex 1, the 2019 judgment, and Annex 2, the 2025 judgment and the case stated.

The issue

17. The documentation required for the DPA Application included a draft indictment and a Statement of Facts. This concerned the admitted misconduct of GSL. The draft indictment was treated in the way required by paragraph 2 of Schedule 17, see [7] above. The DPA says:-

> **"The Indictment and Acceptance of Responsibility·**
>
> 1. GSL acknowledges and agrees that the SFO will prefer the draft Indictment, attached hereto as Appendix A, charging GSL with Conspiracy to make corrupt payments, contrary to s.l Criminal Law Act 1971; and Failure to prevent bribery by employees, contrary to s. 7 Bribery Act 2010.
>
> 2. GSL agrees that the Statement of Facts is true to the best of its knowledge and belief.

> 3. In the event of it becoming necessary for the SFO to pursue the prosecution that is deferred by this Agreement, the Statement of Facts may be used as an admission by GSL in accordance with section 10 of the Criminal Justice Act 1967."

18. The DPA required a number of things of GSL. First, the company was required to co-operate with the SFO by Section A, paragraphs 9-12. Paragraph 10 creates a disclosure obligation "during the Term of this Agreement" to supply information relevant to individuals being investigated in relation to the conduct described in the draft indictment and the Statement of Facts. Secondly, by Section B, GSL agreed to disgorge profits to the SFO in the sum of £2,069,861. Paragraphs 13-17 established a machinery for payment of this sum and paragraphs 25-26 laid down a mechanism for dealing with breaches. Thirdly, by Section C, paragraphs 19-24 ("Corporate Compliance Programme") GSL was required to review and maintain its existing programme for compliance with the Bribery Act 2010 and other applicable anti-corruption laws. This required annual reports to the SFO during the Term of the DPA.

19. The only allegation of breach of the DPA which is made is that GSL has failed to pay any of the £2,069,861. This is agreed, but GSL contends that no enforcement action can now be taken because the DPA expired on 22 October 2024. The application to the court was made by the SFO 30 days later, on 21 November 2024.

20. The critical paragraph in considering that contention is paragraph 4:-

> **"Term of the Agreement**
>
> 4. This Agreement is effective for a period beginning on the date on which the Court makes a declaration under Schedule 17, Section 8(1) and (3) of the Crime and Courts Act 2013 and ending on or before 22 October 2024, when the financial terms set out in Paragraphs 13-14 below[2] have been fully satisfied (the "Term")."

21. Other paragraphs which are relevant to the interpretation of the DPA with a view to deciding whether the DPA was in force at the time when the application was made are 7, 13-17, and 25-26.

> "7. The SFO further agrees that if GSL fully complies with all its obligations under this Agreement, or the Agreement as varied with the approval of the Court, the SFO will not continue the criminal prosecution against GSL upon the draft Indictment and at the conclusion of the Term the Agreement will expire. Within 30 days of the Agreement's expiration the SFO will give notice to the court and to GSL that the proceedings under the draft Indictment are to be discontinued.
>
> ……..
>
> **B. Disgorgement of profits**

[2] i.e. the disgorgement to the SFO of the £2,069,861

13. The SFO and GSL agree that £2,069,861 is the amount of gross profit unlawfully generated by GSL as a result of the offences alleged in the Indictment and Statement of Facts. GSL agrees that a total of £2,069,861 be disgorged to the SFO for onward transmission to the Consolidated Fund.

14. GSL agrees to pay this sum following the Court's declaration under Schedule 17 section 8(1) and (3) of the Crime and Courts Act 2013 and, subject to paragraphs 15 and 17 below, by the date which falls five years from the date of this Agreement. Subject to paragraphs 15 and 17 below, failure to do so will constitute a breach of this Agreement. The £2, 069,861 of profits disgorged is final and shall not be refunded.

15. Unless the subject of a Court application as described in paragraph 17 below, at the sole discretion of the SFO late payment of the disgorgement amount by up to 30 days will not constitute a breach of this agreement but will be subject to interest at the prevailing rate applicable to judgement debts in the High Court.

16. GSL agrees that no tax deduction will be sought in the UK or elsewhere in connection with the disgorgement of profits.

17. The SFO and GSL acknowledge and agree that in the event that GSL finds it is unable to meet the payment terms set out in paragraph 13 above (to be assessed by GSL in the fourth or final year of this Agreement), GSL will propose an alternative payment plan and will provide evidence to the SFO by 22 April 2024. The parties acknowledge and agree, for the avoidance of any doubt, that any anticipated failure by GSL to comply with the payment terms as set out in paragraph 14 above is an event that could lead to the parties applying to court to vary the terms of this Agreement under paragraph l0(l)(b) of Schedule 17 of the Crime and Courts Act 2013.

…….

Breach of the Agreement

25. In the event that the SFO believes that GSL has failed to comply with the terms of this Agreement, the SFO agrees to provide GSL with written notice of such failure prior to commencing proceedings resulting from such failure. GSL shall, within 30 days of receiving such notice, have the opportunity to respond to the SFO in writing to explain the nature and circumstances of the failure, as well as the actions GSL has taken to address and remediate the situation. The SFO will consider the explanation in deciding whether to make an application to the Court.

> 26. If, following receipt of GSL's response described in paragraph 25 above, the SFO believes that GSL has failed to comply with the terms of this Agreement and that any such failure is not being reasonably addressed, the SFO may apply to the court for the Agreement to be terminated and the suspension of draft Indictment lifted thereby reinstituting criminal proceedings."

Schedule 17

22. Paragraph 5(2) of Schedule 17 says:-

> "A DPA must specify an expiry date, which is the date on which the DPA ceases to have effect if it has not already been terminated under paragraph 9 (breach)."

23. Paragraphs 9(1)-(3) of Schedule 17 provide:-

> "**Breach of DPA**
>
> 9 (1) At any time when a DPA is in force, if the prosecutor believes that P has failed to comply with the terms of the DPA, the prosecutor may make an application to the Crown Court under this paragraph.
>
> (2) On an application under sub-paragraph (1) the court must decide whether, on the balance of probabilities, P has failed to comply with the terms of the DPA.
>
> (3) If the court finds that P has failed to comply with the terms of the DPA, it may—
>
> (a) invite the prosecutor and P to agree proposals to remedy P's failure to comply,
> or
> (b) terminate the DPA."

24. Paragraphs 10(1)-(3) of Schedule 17 provide:-

> "**Variation of DPA**
>
> 10 (1) At any time when a DPA is in force, the prosecutor and P may agree to vary its terms if—
>
> (a) the court has invited the parties to vary the DPA under paragraph 9(3)(a), or
>
> (b) variation of the DPA is necessary to avoid a failure by P to comply with its terms in circumstances that were not, and could not have been, foreseen by the prosecutor or P at the time that the DPA was agreed.

> (2) When the prosecutor and P have agreed to vary the terms of a DPA, the prosecutor must apply to the Crown Court for a declaration that—
>
> (a) the variation is in the interests of justice, and
>
> (b) the terms of the DPA as varied are fair, reasonable and proportionate.
>
> (3) A variation of a DPA only takes effect when it is approved by the Crown Court making a declaration under sub-paragraph (2)."

25. Paragraphs 11(1), (2) and (4) are in these terms:-.

> **"Discontinuance of proceedings on expiry of DPA**
>
> 11 (1) If a DPA remains in force until its expiry date, then after the expiry of the DPA the proceedings instituted under paragraph 2(1) are to be discontinued by the prosecutor giving notice to the Crown Court that the prosecutor does not want the proceedings to continue.
>
> (2) Where proceedings are discontinued under sub-paragraph (1), fresh criminal proceedings may not be instituted against P for the alleged offence.
>
> (4) A DPA is not to be treated as having expired for the purposes of sub-paragraph (1) if, on the expiry date specified in the DPA—
>
> (a) an application made by the prosecutor under paragraph 9 (breach) has not yet been decided by the court,……"

The submissions on this appeal

26. Mr. Farrell KC, appearing with Ms Rosa Bennathan for GSL, submits that the issue is a straightforward matter of construction, as follows. Paragraph 5(2) of Schedule 17 requires that an expiry date must be specified in the DPA and the place where that is done is in paragraph 4. That provides that the term of the DPA ends "*on or before 22 October 2024, when the financial terms set out in Paragraphs 13-14 below have been fully satisfied (the Term)*". Action for breach of the DPA (under paragraph 9 of Schedule 17) can only be taken when the DPA is in force, see paragraph 9(1) thereof. It follows that 21 November 2024, when the SFO purported to take such action, was too late. This means that the provisions of paragraph 11(1) of Schedule 17 apply and the criminal proceedings against GSL "are to be discontinued".

27. Mr Farrell has taken us to the correspondence which passed between GSL and the SFO on and before 22 October 2024 to show that GSL has been open about its inability to pay the disgorgement of profits because of unforeseen circumstances which have adversely affected its business. These include the COVID pandemic and the war in Ukraine. He also relies on the correspondence to show that both parties were of the

view, at least until a late change of position by the SFO on 22 October 2024, that the expiry date of the DPA was indeed 22 October 2024.

28. Mr Trevor Archer, for the SFO, makes the submissions which found favour with William Davis LJ in his January 2025 judgment. He submits that paragraph 4 of the DPA is to be construed alongside paragraphs 7, 13-17 and 25-26 which clearly envisage that enforcement action may be taken in the event of breach. The natural and ordinary meaning of the words in clause 4 are that *if GSL complied with the financial terms* then the DPA would expire on or before 22 October 2024. Clause 4 did not specify a specific expiry date in the event that GSL failed to settle the financial terms by that deadline. However, in the event of such a breach the expiry date must, at the very least, cater for the 30-day notice period set out in paragraph 25 of the DPA.

29. Mr. Archer accordingly submits that since the deadline for payment did not expire until midnight on 22 October 2024 there was no breach until that point. The enforcement provisions clearly mean that it was agreed that the DPA would not expire at 22 October 2024 and the application of the 30 day notice period means that the DPA was still in force when the breach application was issued on 21 November 2024.

Discussion

30. This is an issue of construction. Did the DPA expire at 22 October 2024 if GSL had not paid the whole of the sum required, or did it continue in force so that enforcement action could be taken in relation to the non-payment?

31. The agreement concerned is not a commercial contract negotiated between commercial organisations. It is an agreement of a kind which was created by statute and which is intended to operate in the public interest. It can only be made between a designated prosecutor and a body corporate, a partnership or an unincorporated association. The power to reach such an agreement arises when the designated prosecutor is considering prosecuting such a person for an offence listed in Part 2 of Schedule 17. That list includes a large number of offences which may be compendiously described as "financial or corporate crime". The Director of Public Prosecutions and the Director of the Serious Fraud Office are both designated prosecutors. They have jointly published the Deferred Prosecution Agreement Code of Practice ("DPA Code") pursuant to paragraph 6(1) of Schedule 17. This makes it clear that they are required to consider the public interest in deciding whether to propose a DPA, and gives detailed guidance about factors which may determine where the public interest lies in any case. This kind of agreement cannot be reached by a private prosecutor acting in its own commercial interest. The agreement cannot come into force unless the court makes the declaration under paragraph 8 of Schedule 17 that it is, among other things, in the interests of justice.

32. The declaration under paragraph 8 has no parallel in ordinary commercial negotiations leading to the formation of a contract. It has a number of purposes, among them the protection of the integrity of the criminal justice system. The DPA allows a person who admits wrongdoing (including committing a crime) to avoid a conviction by meeting stringent conditions, which typically consist of or include a significant financial penalty. Parliament clearly intended that this should only occur where the Crown Court considers the proposed DPA at a public hearing and is satisfied that it is an appropriate way of dealing with the case. DPAs will usually at least provide for the recovery by

the state of the proceeds of crime and may also require the payment of additional sums by way of penalty and costs. They may frequently include terms designed to ensure that the governance of the person concerned is enhanced so that it complies with the law in the future. They may be more effective in securing payment and future good conduct than the sentencing process following conviction. In this case, as in others, the court when deciding whether to make the paragraph 8 declaration, took into account the possibility that a fine calculated in accordance with guidelines may put the company out of business. In that event, innocent employees may lose their jobs and the state would not recover the fine. Accordingly, the public interest and the interests of justice receive careful consideration by the designated prosecutor and by the court.

33. The point of setting out these considerations in this case is to make the point that the ordinary principles of contractual construction need to be applied to the construction of a DPA such as the one in the present case with them in mind.

34. The court made its declaration in this case under paragraph 8, having carefully read the proposed DPA. There is no suggestion that its understanding of what it meant was not, at that time at least, shared by the SFO and GSL. The judge certainly thought that the DPA was enforceable in the event that the money was not paid. No doubt the SFO did as well. GSL, it is to be remembered, joined with the SFO in inviting the court to make the declaration. The judge stated his understanding of the consequences of breach in paragraph 41 of his reasons for making the declaration:-

> "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."

35. Counsel then appearing for GSL did not tell the judge that he had misunderstood the contract because the only remedy in the event of non-payment was an application to vary its terms under paragraph 10. Machinery for that to happen was provided by paragraph 17 of the DPA, see [21] above. That enables, but does not require, such an application to be made before the 22 October 2024. However, the judge clearly thought that in the event of non-payment by the expiry date the SFO could take steps to remove the suspension of the indictment and to proceed with its prosecution. GSL has not served any evidence to suggest that it did not share this reading of the DPA at the time it was concluded; there is no suggestion that it had any different reading and deliberately kept silent about that fact (which would have involved a failure to deal with the court and the SFO in good faith, in this context). In these circumstances it appears that all parties to the hearing in October 2019 understood that if the money was not paid by the expiry date the SFO could take the steps which it has now taken to renew the criminal proceedings. They invited the court to take an important step in criminal proceedings

on that basis. That is a relevant matter in the construction of this DPA which finds no parallel in commercial negotiations.

36. The legal principles by reference to which a commercial contract is to be interpreted were summarised by Lord Neuberger in *Arnold v Britton* [2015] AC 1619 at [15]:

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean, to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words … in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the [contract], (iii) the overall purpose of the clause and the [contract], (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party' s intentions."

37. The court's task is accordingly to ascertain the objective intention of the parties and not their subjective intentions, which are inadmissible. It is also well settled that it is not legitimate to use as an aid to the construction of a contract anything which the parties said or did after it was made: *James Miller and Partners Ltd v Whitworth Street Estates (Manchester) Ltd* [1970] AC 583. In particular, the correspondence to which we were referred passing between the parties long after the DPA was concluded, of their subjective understanding as to how the contract was intended to operate, is inadmissible. We do not consider that it assisted in determining the proper construction of the DPA in any event.

38. The documents which were before William Davis J in October 2019, and his judgment of 22 October 2019 in which he granted a declaration that the DPA is likely to be in the interests of justice and that the proposed terms of the DPA are fair, reasonable and proportionate, were clearly part of the background knowledge reasonably available to the parties at the date when the DPA was concluded (also on 22 October 2019). Moreover, they explain the overall purpose of the DPA, and show the facts and circumstances known or assumed by the parties at the time that the document was executed. They are accordingly admissible material in construing the DPA. They also underline that the context here was (i) the desire of the SFO and the court to ensure that the DPA constituted an effective means of furthering the interests of justice in a way which was fair reasonable and proportionate, and (ii) the agreement of GSL to the proposed course to achieve that goal.

39. The background facts to which we have adverted in paragraphs [34]-[35] and [38] strongly suggest that a reasonable person would have understood the (objective) intention of the parties to be, in answer to the question in paragraph [30], that the DPA should continue in force after 22 October 2024. Very clear words would be required to show that it was the intention of the parties that GSL would be relieved of any obligation to pay any part of the disgorged profits which remained unpaid at 22 October 2024. There are no such clear words; indeed, that construction would be quite contrary to the interests of justice which the hearing in October 2019 had been concerned to promote.

40. Moreover, in paragraphs 39-40 of the judgment, immediately before the passage quoted in [34] above, William Davis J stated:-

> "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. It follows that it was known to the parties that the purpose of the DPA was to obtain the disgorgement of the gross profit of by GSL by (at the latest) the fifth anniversary of the DPA (i.e. 22 October 2024). However, it was also known to them that there was a possibility that GSL would not be able to meet the disgorgement figure within those 5 years. That could, of course, only be definitively established by the end of the fifth year (i.e. at midnight on 22 October 2024).

42. As the Judge made clear, it must also have been known to the parties that the two possible consequences of GSL failing to meet the terms of the agreement by midnight on 22 October 2024 were that (i) an application might be made under Paragraph 10 of Schedule 17 to vary the agreement and that in order to for that to happen necessarily the DPA had still to be in force; and (ii) GSL might be prosecuted. In the latter case

that would require the SFO to make an application to the court for the termination of the DPA, which would again require the DPA still to be in force under Paragraph 9 of Schedule 17.

43. Accordingly the parties knew that the duration of the agreement was to be for a full five years in order to allow for full payment by GSL by that date, but if full payment was not made by the end of five years, the DPA would remain in force thereby enabling the SFO to take further steps to seek to obtain full payment, whether by way of variation of the DPA or by way of an application to the court to terminate the DPA.

44. Unsurprisingly, the terms of the DPA itself are consistent with this being the objective intention and purpose of the agreement, as described by William Davis J.

45. By clause 4 the DPA will cease to have effect on or before 22 October 2024 if the financial terms are satisfied by GSL. In other words, in accordance with paragraph 5(2) of Schedule 17 (see [22] above), the DPA specifies an expiry date, being the date when the financial terms are satisfied (i.e. full payment is made of the disgorgement sum); and the DPA is accordingly effective for five years provided that the financial terms have been fully satisfied by GSL.

46. This is put beyond any doubt by clause 7 of the DPA (see [21] above), which expressly provides that if GSL fully complies with all of its obligations under the DPA (in particular full satisfaction of the financial terms by 22 October 2024), then: (i) the SFO agrees not to continue the criminal prosecution against GSL and (ii) the Agreement expressly expires on the specified expiry date. It is a necessary corollary of this fact that if the financial terms have *not* been fully satisfied by GSL by 22 October 2024 then (i) the SFO is free to continue to prosecute GSL and (ii) the DPA remains in force.

47. As William Davis J explained in the passage set out in [34] above, it is necessary for the DPA to remain in force for the purpose of dealing with GSL's breach of contract. The SFO can either (i) vary the terms of the DPA in the case of unforeseen circumstances (in order to allow for an extended payment timetable) or (ii) make an application to the court by reason of GSL's breach of contract in failing fully to satisfy the financial terms by 22 October 2024: see clause 14 set out at [21] above.

48. Clauses 25 and 26 then provide the procedure to which SFO must adhere, as a matter of fairness, before it makes any application to the court when GSL is in breach of the Agreement. In order to give efficacy to the DPA as an instrument of justice in the way we have described, the SFO is afforded a reasonable period of time in order to determine whether to make such an application to the court and if it determines to do so, to make it. At the expiry of that reasonable time, if no application has been made to address the breach, the DPA will expire. The application by the SFO in this case was certainly made within a reasonable time and it is not necessary to consider how much longer may have been available before the DPA would have expired. On the making of such an application, the court has power by paragraph 9(3) of Schedule 17 to determine whether GSL has failed to comply with the terms of the DPA, and, if so, to invite the SFO and GSL to agree proposals to remedy that failure, or terminate the DPA.

49. The case now advanced by Mr Farrell KC on behalf of GSL involves reading clause 4 of the DPA in isolation both from the rest of the DPA and from its context. Clause 14, in particular, makes it clear that failure to pay the disgorged profits by the 22 October

2024 is a breach of the DPA. Clauses 25 and 26 then specify the machinery for enabling the SFO to determine what action to take. Construing the DPA so that it remains in force for the purposes of those paragraphs and allows effective action in the interests of justice, is a conclusion which follows from the correct approach to construing commercial contracts as explained in *Arnold v Britton*. Furthermore, the particular context of the creation of a DPA in the context of a criminal prosecution, and of the DPA in the instant case, only serves to strengthen that conclusion.

Conclusion

50. For these reasons, we would answer the first question posed by William Davis LJ as follows:-

> "(i) Was I correct to conclude that the terms of the deferred prosecution agreement were such that it remained in force as at 21 November 2024?" **YES**.

51. The second question appears to be a reformulation of the first. It reads:-

> "(ii) Was I correct to find that the Crown Court had jurisdiction to decide whether Guralp Systems Limited had failed to comply with the terms of the deferred prosecution agreement?"

52. The jurisdiction of the Crown Court depends on whether the application was issued at a time when the DPA was in force. The answer to the first question is that it was. Accordingly, the answer is the same. The proceedings instituted by the SFO application are validly constituted and the Crown Court has jurisdiction to proceed to determine them.