

WHERE NOW FOR DEFERRED PROSECUTION AGREEMENTS?

A note of a breakfast seminar held on 16 September 2026





BUSINESS CRIME & FRAUD TEAM

Where Now For Deferred Prosecution Agreements?

The [Business Crime and Fraud](#) team at Red Lion Chambers hosted a breakfast on 16th September 2026 examining the operation of Deferred Prosecution Agreements ("DPAs") more than a decade after their introduction. Barristers from Red Lion Chambers have appeared in nine of the fourteen DPAs to come before the courts.

The discussion was chaired by [Cameron Brown KC](#) and featured contributions from **Matthew Wagstaff**, Director of Legal Services at the Serious Fraud Office, **Emily Agnoli**, Partner at Simmons & Simmons, and **Dame Victoria Sharp**, President of the King's Bench Division. Audience contributions were made under the Chatham House Rule.

The discussion explored whether the incentives underpinning the DPA regime are proving effective, the challenges facing corporates considering self-reporting, the relationship between corporate resolutions and individual prosecutions, and the extent to which recent changes to corporate criminal liability may alter the landscape in years to come.

A clearer framework, but an uncertain process?

Opening the discussion, Matthew Wagstaff observed that while the SFO now operates within a much clearer framework for self-reporting and cooperation, the regime had yet to generate the volume of DPAs originally anticipated. Although the early years of the Bribery Act saw an initial surge, the regime had lost momentum, with the Ultra Electronics Holdings case standing as the SFO's only recent DPA.

Emily Agnoli welcomed the SFO's updated guidance, which set out very clear timelines around self-reporting and investigative decisions, which was helpful for corporates. She noted that the SFO will now endeavour to make contact within 48 hours of a self-report and take a decision whether to investigate within six months. However, one of the principal difficulties from a corporate perspective is what happens after that six month period. Corporates want certainty. At present, cases take an average of four to five years

to reach resolution, leaving companies exposed to significant uncertainty for a substantial period of their corporate life cycle.

Matthew Wagstaff agreed that although the average time was generally decreasing (and is now closer to three to four years), more needed to be done to reduce the length of investigations. As a general principle, genuine cooperation from companies should facilitate a quicker resolution. To that end, the SFO had sought to provide as much clarity as possible to corporates through its guidance. Accordingly, if a company reports promptly and cooperates fully, in the absence of any exceptional circumstances, the SFO would invite it to enter DPA negotiations. However, there will always be a degree of uncertainty, not least because any DPA ultimately remains subject to judicial approval.

Attendees raised the issue of advising corporates on the likely scope of an SFO investigation. Investigations can evolve as further information emerges, creating difficult conversations between advisers and boards who may originally view issues as isolated incidents. The Ultra Electronics Holdings investigation was cited as an example of "scope creep", having expanded from a single-jurisdiction inquiry into a global investigation.

Matthew Wagstaff acknowledged the challenges that arise when investigations uncover further issues, even where a company genuinely believes the problem to be isolated. While the Ultra Electronics Holdings case involved some case-specific factors, there is no easy way to mitigate the possibility of an investigation expanding as new facts emerge.

Defining genuine cooperation

A significant strand of the discussion focused on what constituted genuine cooperation in practice.

Matthew Wagstaff explained that genuine cooperation is fundamentally a matter of transparency, requiring companies to disclose issues openly rather than hoping the SFO's scrutiny will not extend to them. Meaningful cooperation, as set out in the guidance, involves proactively preserving evidence, identifying and ensuring access to witnesses, providing clear narratives, and helping investigators understand the evidential picture. Matthew contrasted this with companies that simply respond to Section 2 notices, stressing that mere compliance with legal obligations alone does not amount to genuine cooperation.

Emily Agnoli observed that genuine cooperation is not measured by the volume of material disclosed but by the extent to which a company actively assists the

investigation. Even where Section 2 notices are broadly drafted, practical examples of cooperation in action include helping investigators navigate evidence through chronologies, organised document sets and early identification of potential issues. Emily emphasised the importance of engaging candidly, particularly where corporates discover potentially problematic material but cannot yet explain precisely what had occurred.

Matthew Wagstaff agreed, describing openness and early engagement, including frank acknowledgment of gaps in a company's knowledge, as precisely the sort of conduct the SFO encourages.

Awareness of the need for self-reporting by corporates

Emily Agnoli noted that, while awareness of DPAs and corporate crime risks are front of mind for lawyers advising corporates, Boards often encounter these areas for the first time when a serious issue arises.

Matthew Wagstaff agreed that, although awareness had increased significantly across the corporate landscape, these issues are not at the forefront of every Board's agenda. As a result, some instances of potential wrongdoing that ought to be self-reported are likely still going unreported.

Contributions from attendees explored whether the current incentives to self-report remained sufficiently attractive from a corporate perspective. It was contended that the costs and consequences of self-reporting are broadly comparable to those faced by companies who choose to wait and see whether misconduct is detected. Where a company faced substantial financial penalties, civil consequences and years of co-operation, Boards may see little advantage in self-reporting in the absence of a separate regulatory imperative to do so. Concerns were also expressed that many DPA cases have not led to successful prosecutions of individuals, potentially weakening the perceived deterrent effect of failing to self-report.

Matthew Wagstaff responded that a 'wait and see' approach was an increasingly high-risk strategy. The SFO now has access to an expanded range of enforcement tools, including the offence of failure to prevent fraud. In addition, section 250 of the Crime and Policing Act 2026 will make it easier to attribute criminal liability to companies across a broader range of economic crimes, moving beyond the section 7 failure to prevent bribery offence, which formed the basis of 11 of the 14 DPAs concluded to date (for more, [see this note](#) from Red Lion's breakfast on s.250 held on 14 July 2026). The SFO is also investing heavily in its proactive intelligence capabilities and has expressed support for

the introduction of a whistleblower incentivisation scheme. Taken together, these developments will increase the likelihood of misconduct being detected, thereby strengthening the incentive for companies to self-report and seek a DPA.

Emily Agnoli pointed out that, while the growing body of DPA judgments provided insight and guidance into the types of cases that reach resolution through the regime, there is far less visibility of cases that never progress to a DPA or prosecution. Greater transparency, on an anonymised basis, about cases that do not proceed and the reasons why, could help companies better understand the range of potential outcomes.

Matthew Wagstaff agreed to reflect further on this suggestion. The SFO had not previously considered publishing this information but there is potential value in providing anonymised examples. Such cases would likely turn on evidential or public interest considerations.

Prosecutions of individuals in the shadow of DPAs

A central theme of the discussion was the difficulty of prosecuting individuals following corporate resolution.

Emily Agnoli identified the historic nature of many corporate crime cases as presenting a particular challenge for prosecuting individuals. By the time investigations commenced, memories may have faded, and key personnel may no longer be available to provide an eye-witness account. Both Emily and Matthew agreed that, while a company may be prepared to accept responsibility for wrongdoing where some of the circumstances remain less clear, the position is very different for individuals facing potential criminal liability and a custodial sentence.

Matthew Wagstaff stressed the importance of ensuring that the factual narrative underpinning a DPA is grounded in objective evidence and not unduly swayed by the corporate perspective, particularly where subsequent prosecutions of individuals are contemplated.

Attendees, however, highlighted a structural tension. As DPAs are often agreed before every aspect of the evidence has been fully tested, an asymmetry can emerge between the agreed narrative, which ties the SFO down, and the evidence ultimately relied upon in prosecutions of individuals. This can create difficulties for the Prosecution, including with disclosure. One suggestion was to draft the statement of facts at a higher, broader level of generality to afford the SFO greater flexibility in subsequent prosecutions.

The practical significance of DPAs in the prosecution of individuals was questioned by others. DPAs are unlikely to be relied upon by individual defendants and therefore do not form part of the evidence at trial. It was clarified the issue is not with the DPA itself but the extent to which the SFO may become constrained by the narrative adopted during the corporate resolution when later pursuing individuals.

Matthew Wagstaff acknowledged the force of these criticisms. The SFO must avoid treating a DPA statement of facts as the definitive account of events and remain alert to the possibility that individuals may have a different perspective. In any case, a thorough evidential analysis will always be conducted before a statement of facts is agreed.

Naming of individuals in DPAs

There was broad agreement that the naming of individuals in DPA statements of facts remains a highly contentious and unresolved issue. Several attendees expressed concern that the public implication of individuals who are never charged gives rise to unfairness. Keeping statements of facts at a high level would also potentially reduce this risk of prematurely attributing blame to individuals.

Cameron Brown KC raised the possibility of adopting a default position whereby individuals identified in DPA materials would remain anonymous unless and until a decision had been taken to prosecute them. Emily Agnoli questioned whether naming individuals necessarily adds value to the public understanding of corporate resolutions.

Looking across the Atlantic

Discussion also explored comparisons with the US Department of Justice. Attendees questioned whether the DOJ's perceived success in prosecuting individuals reflected more effective enforcement, better public relations, or differences in the types of cases pursued, for example, the US tendency to prosecute fewer facilitation-type cases.

Attendees challenged whether the comparison was apt, given that part of the DOJ's success may stem from its emphasis on regulating corporate conduct, rather than focusing on pursuing individuals in every case.

Matthew Wagstaff agreed that the US comparison was not necessarily like for like, given the DOJ's far greater size and longer history. The SFO aimed, where appropriate, both to

resolve cases with companies, and to pursue culpable individuals. It was, however, noted that the SFO has had limited success in pursuing individuals following a DPA, with only one conviction secured to date, and that conviction having been obtained by way of a guilty plea.

Several attendees highlighted that a key distinction between the UK and US systems lies in the latter's well-developed plea-bargaining framework, which can encourage greater cooperation from individuals facing prosecution. US authorities also possess a wider range of enforcement tools, creating stronger incentives for corporates to cooperate with investigators.

Pivoting on this point, Cameron Brown KC outlined the difficulties of presenting complex historic overseas corruption cases to juries, where the evidence can be dry and technical, and where there is a risk that certain forms of misconduct may be regarded as an accepted feature of doing business in a particular jurisdiction. Against that backdrop, Cameron asked whether the SFO would be willing to engage in the practice of 'flipping' witnesses, or making greater use of insider witnesses.

Matthew Wagstaff recognised the value of insider witnesses in bringing a human dimension to complex cases and indicated that the SFO would like to make greater use of both insider witnesses and the practice of 'flipping' witnesses, although identifying suitable individuals remained a challenge.

Should DPAs extend to individuals?

Discussion then turned to the recommendations advanced by Jonathan Fisher KC in his Report (*[Fraud in the Digital Age](#)*), including the possibility of extending DPAs to individuals.

While stating that the SFO does not have a settled position on this proposal, Matthew Wagstaff expressed personal scepticism, noting that the concept may be better suited to volume crime rather than serious economic crime cases handled by the SFO. Emily Agnoli similarly doubted whether such arrangements would be particularly attractive to individuals.

Attendees also considered alternative mechanisms for resolving misconduct in other regulatory contexts. By way of comparison, individuals accused of insider trading may, in certain FCA cases, agree a regulatory resolution which avoids criminal prosecution, even where the underlying conduct is serious, and they are in positions of significant trust. The

FCA has increasingly moved away from prosecuting all cases and providing a regulatory off-ramp where appropriate to do so. This presents an alternative path whereby enforcement outcomes are tailored to securing a particular regulatory objective rather than invariably pursuing criminal proceedings.

Discussion identified a broader fairness concern that individuals are frequently considered only after corporate resolutions have been concluded, leaving them at the end of the enforcement process. It was suggested there is a need for more creative mechanisms to address this imbalance, such as earlier consideration of individual liability or a greater willingness to engage in plea negotiations.

Matthew Wagstaff cautioned that requiring investigations into individuals to reach a more advanced stage before concluding a DPA could significantly delay corporate resolutions.

Emily Agnoli also questioned whether a corporate would remain willing to enter into a DPA if equivalent agreements could not be reached with the individuals whose conduct underpinned the wrongdoing.

Enhancing detection through whistleblower incentivisation

Cameron Brown KC referred to another proposal from Jonathan Fisher KC, to introduce a whistleblower incentivisation scheme, and asked whether it reflected the direction of travel for the SFO. Drawing on statistics suggesting high levels of participation by UK nationals in US whistleblower programmes, Cameron asked whether the SFO would support a similar model in the UK.

Matthew Wagstaff was unequivocal in supporting the recommendation to build whistleblower incentivisation into the statutory scheme, describing it as a significant reform capable of tipping the scales in favour of self-reporting and detection.

Attendees considered that individuals are unlikely to be motivated by financial rewards alone and that greater use of non-prosecution agreements ('NPAs') could provide a more meaningful incentive for individuals to come forward. While it was noted that the current statutory framework already permits such agreements, concerns were raised that they did not provide sufficient certainty for individuals who may ultimately be prosecuted, notwithstanding their cooperation.

The judicial viewpoint

Dame Victoria Sharp reflected on the morning's discussion, highlighting that the issues raised by DPAs could usefully be viewed through four lenses: structural, legal, cultural and procedural.

From a structural perspective, the judiciary is asked to absorb substantial volumes of material, generated during lengthy investigations and negotiations, in a relatively short period of time. Questions from the judicial perspective can arise concerning anonymisation, the interests of third parties and other ancillary matters, not previously ventilated by parties in the way their discussions have unfolded, and these can give rise to complex satellite litigation which has important implications for both corporates and individuals.

On legal issues, Dame Victoria Sharp observed that the expansion of corporate criminal liability, including through section 250, may well increase the number of cases in which a DPA is considered. Any resulting increase would have implications for judicial and institutional capacity.

The discussion also considered the different cultural settings in which DPAs operate. In the United States, the prevalence of plea bargaining, together with the range of consequences available where cooperation is not forthcoming, may create different incentives for corporate engagement. The implications of those differences for the operation of the UK regime were explored.

Building on the contributions of other attendees, Dame Victoria Sharp noted the potential benefits of greater procedural streamlining, while emphasising that the conduct of investigations and the terms sought in negotiations are matters for the prosecuting authorities. From the court's perspective, a more focused process may assist in ensuring that any application is presented as clearly and efficiently as the interests of justice permit.

Finally, Dame Victoria Sharp touched on the way in which prosecutions of individuals, following a DPA process, are dealt with at trial. Where the prosecution of individuals follows a lengthy investigation, the volume and complexity of the material may present challenges for all parties. Careful identification and presentation of the issues and evidence is important to the effective administration of justice.

Dame Victoria reflected that it was extremely valuable for all parties to be engaged in these kinds of discussions about DPAs, including considering whether there was any

scope for positive adjustment to the current regime, while recognising the distinct constitutional and statutory responsibilities of prosecutors, parties and the court. Mathew Wagstaff agreed, confirming there was a good case to be made for establishing a forum where interested stakeholders could continue the conversation.

Conclusion

A decade after the arrival of Deferred Prosecution Agreements, there was broad agreement that the regime remains an important component of the UK's corporate enforcement framework. Yet structural, legal, cultural and procedural questions persist both within the DPA regime itself and in the wider enforcement landscape. These include whether investigations can be concluded more quickly, whether the incentives to self-report are sufficiently compelling, and how best to reconcile corporate resolution with the fair prosecution of individuals. At the same time, recent reforms to corporate criminal liability and growing support for whistleblower incentivisation have the potential to reshape corporate enforcement more broadly. In light of that it was considered that the next chapter of the DPA regime may look very different from the first.

Additional Resources

Further reading on the evolving landscape of DPAs can be found in an article by Cameron Brown KC and Sam Smart of Mishcon de Reya, published by the New Law Journal (May 2026), available [by clicking here](#).

Corporate liability in multi-jurisdictional investigations, including DPAs and settlement trends, are discussed by Cameron Brown KC and Kabir Sondhi of Kingsley Napley in a webinar published by Lexis Nexis which can be accessed [by clicking here](#) (if your firm is not already a Lexis Nexis subscriber, quote code WUA20 for discounted access).

CONTACT US

For more information on Red Lion Chambers, our Business Crime and Fraud Team, or to discuss how our barristers might be able to help you and your clients, please contact **Maurice MacSweeney**, our Client and Business Development Director, who will be pleased to speak with you (Tel: 020 7520 6153).

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We are recognised nationally for our expertise in serious crime (including Business Crime and Fraud, Regulatory Crime, Health and Safety Law, and Environmental Crime), and Inquests and Public Inquiries, Professional Discipline, and Public & Administrative Law. Our barristers are regularly instructed in some of the most significant, complex, and high profile cases to come before the courts and tribunals in England and Wales.

With more than 110 barristers, including over 25 King's Counsel, we offer clients a real depth of expertise at every level of seniority. Our members advise, defend, and prosecute on behalf of corporations, government bodies, regulators, public authorities, professional organisations, and private individuals, delivering practical, strategic, and commercially focused solutions to challenging legal issues.

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We combine a deep knowledge of the principles and legislation underpinning this area of law with extensive experience of how those principles are applied in practice. Our barristers are recognised for their market-leading expertise in matters involving the Financial Conduct Authority (FCA), Serious Fraud Office (SFO) investigations and prosecutions, and Financial Reporting Council (FRC) investigations, as well as proceedings instigated by the Crown Prosecution Service and National Crime Agency. Members of Red Lion Chambers have been instructed in nine of the fourteen Deferred Prosecution Agreement cases to have been heard since 2015.

Crucially, we place this specialist knowledge within the broader commercial context, enabling us to provide pragmatic, strategic advice that supports effective decision-making and protects our clients' wider business interests.

We are well placed to advise and represent clients at every stage of proceedings, from the earliest stages of an investigation through to trial and any subsequent proceedings. We act for prosecuting authorities, corporations, company directors, senior executives and individuals, advising on current and future regulatory obligations as well as defending and prosecuting all aspects of business crime and fraud. We are also highly experienced in matters that involve parallel civil, regulatory and criminal proceedings, as well as LPP, restraint, and asset recovery proceedings.

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Our expertise includes:

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- Rapid assessment of complex legal, evidential and technical issues.
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Red Lion Chambers
18 Red Lion Court
London
EC4A 3EB

DX: 478 London/Chancery Lane
T: +44(0)20 7520 6000
E: clerks@18rlc.co.uk