

**REGINA**

**V**

**GEORGE ALEXANDER**

**STEPHEN DARTNELL**

**SIMON MUNDY**

**CARL CUMISKEY**

**SENTENCING REMARKS**

At a time when electronic communication was evolving rapidly, ET came up with a simple, but innovative concept of laying fibre optic cables through sewers. The unique selling point was that the cost of installing cables was dramatically reduced. Trenches did not have to be dug and the consequent disruption of digging up roads was avoided. ET realised the potential, protected his ideas with patents and trade marks and set up his company H20 in 2003. He developed the business in a sensible and professional way. He persuaded Water Authorities to allow use of their sewers and targeted public bodies, such as Local Authorities, universities and NHS Trusts, to enter contracts with H20 to connect a town hall with a library, or one college building with another. He recruited you CC at an early stage as H20's finance director. You were so convinced of the potential of H20 that you came out of early retirement and even helped finance the early costs with your own money.

H20 did win contracts – fairly small contracts - to connect one building to another. Installation costs were met by a connection fee, typically in the region of £10,000. Profit came from annual rental fees. Finance was a problem from the beginning. All new businesses need capital, to pay the day to day costs and to develop the business. It was obvious that it would take time for H20 to take off and profits to roll in. Some funding was obtained from organisations such as Enterprise Ventures. But there were limits to what was being advanced and so H20 turned to Total Asset Finance, SD's company. TAF were prepared to advance funds to H20 on being assigned the contract between H20 and the customer, so being assigned the annual rental income. The benefit to H20 was that it received funds immediately and the advantage to TAF was the profit it received

over the years as the annual rentals were paid. This arrangement was perfectly legitimate.

Regrettably, it was at this point that the fraud began. TAF was an established and successful business. It lent money to companies from its own funds, and borrowed money to lend from other companies, typically banks. In the course of this fraud it turned to the Belgian Bank KBC for the funding needed to purchase H20's contracts. And just as H20 assigned the contracts and rental income to TAF, so TAF reassigned them to KBC. It was a double assignment arrangement. Again, this was quite legitimate.

You SD realised how easy it would be to defraud KBC of vast sums of money. All that had to be done was to alter the figures of the original contract, for example, by increasing the annual rentals of £10k to £100k or £1m or more, and then assign the inflated contract to KBC. Once you knew that the first bogus applications worked, you escalated the fraud. KBC was duped into advancing money on altered, and then completely fictitious contracts. In a period of almost 3 years, KBC was defrauded of over £142 million. On 3 occasions Barclays Asset Finance was defrauded in exactly the same way, £16.8 million being obtained. The actual loss to KBC is in the region of £117 million. The loss to Barclays is nil, as the 3 fraudulent payments were repaid from funds which were obtained by re-assigning the contracts to KBC.

The KBC fraud succeeded for a number of reasons:

- KBC trusted TAF
- KBC trusted its own staff based who processed the TAF applications in its UK office
- The due diligence procedures in the KBC UK office were not as rigorous as they might have been
- TAF ensured that the original customer did not know the contract had been assigned by TAF to KBC
- TAF paid the annual payments as they became due, paying from funding obtained from KBC during the course of the fraud.

Perhaps the most important reason the fraud worked was because TAF had an insider in KBC's UK office, you SM. During the fraud, SD paid you £881k to ensure that all TAF's applications for funding from KBC were approved.

Of the money received from KBC, TAF passed on about £40 million to H20, but by far the greater proportion was used by you SD for a number of purposes, including:

- Making loans to other client companies
- to pay enormous commissions to GA
- to bribe to SM, and
- to fund your extravagant lifestyle, largely through your Directors loan Account.

It was one of the 3 contracts TAF assigned to Barclays that led to the uncovering of the fraud. TAF failed to ensure that Barclays did not notify the 3 customers that TAF had assigned the contracts to Barclays.

Consequently, Barclays notified Tendring District Council, that the first annual repayment of something like £1m, was due to be paid on a particular date. This was a hugely inflated figure of that in the genuine contract and the Council officer dealing with it immediately questioned the figure, wanting to know exactly what was going on.

You SD then did everything you could to emasculate the investigation. You immediately arranged to repay all 3 Barclays loans, raising the money by re-assigning the fraudulent contracts to KBC. The fact that TAF paid the breakage fees of about £800k, demonstrates how keen you were to cover up the fraud. You made up an entirely false explanation, you blamed an innocent employee for making some error and you did everything you could to delay the investigations of both Tendring and Barclays.

One would have thought that if anything would stop the fraud in its tracks, this would have been it. Not a bit of it. The fraud against KBC was resumed. Fortunately, neither Mr Canfield of Tendring, nor Barclays were prepared to let the matter drop and despite your very best efforts the fraud was finally uncovered some months later.

As I have already mentioned, the fraud continued as long as it did as the annual payments to KBC were paid when they became due. The payments of course came from the funds advanced by KBC. This fraud has therefore strong similarities to what is often called a Ponzi fraud. But it must have been obvious to you fraudsters that it would come to light once the annual payments ceased. So what was going on? Other basic questions also come to mind. Why did a successful businessman of previous good character such as you SD become involved in fraud? Why

were you GA, SM and CC, all hard working men of good character, prepared to play important roles in the fraud?

The answer to all these questions lies in the potential success of ET's concept. Laying optic fibre in sewers might well have led to significant profits. But it went further than that. ET had a yet more ambitious plan – the creation of Fibrecities – connecting every building in a city to H20's fibre optic network. Two cities, Bournemouth and Dundee, actually agreed to become Fibrecities. The Local Authorities recognised the benefits to their rate payers and there would be no financial cost to the Councils. H20 would bear the cost of installing the network, and would raise its profit by allowing a service provider such as BSKyB or BT to provide the service. The customer would pay the provider for the service and the provider would then pay H20.

If Fibrecity were to take off, you were all confident that H20's share price would rocket and the shareholders would become very rich indeed. The shareholders included you SD, and you CC. That is why you SD financed H20. That is why you became a substantial shareholder. That is why you became a director. That is why you were prepared to lend H20 millions of pounds, of money you had obtained fraudulently from KBC, without any real security. And the truth is that H20 and Fibrecities came very close to succeeding. They came to within a hair's breath of entering into a lucrative contract with BSKyB and there were serious negotiations with other service providers. If it had succeeded, KBC would have received all its rentals or the contracts would have been paid in full. No one would know there had ever been a fraud.

ET was acquitted of being involved in the fraud, as the jury accepted that he did not know that TAF was raising the money fraudulently. He did not know because he left the details of raising finance to you CC, his finance director, and to you SD, both of whom he trusted. You CC participated in the fraud simply because as a shareholder you needed H20 to succeed. If it did you stood to make huge gains. You were prepared to assist making false contracts to enable TAF to defraud both KBC and Barclays.

The actual altering and forging of fictitious contracts was largely done by you, GA, You were SD's right hand man and you did exactly as you were told to do. SD did not have to stand over you and tell you what figures to put into the documents. He left that to your own initiative, and you did not let him down. Why were you prepared to do it? You were not a shareholder of H20, looking to make a huge profit at some time in the

future. Your reward was immediate. You were paid enormous commissions every time KBC was defrauded.

The evidence against each of you was compelling. Not one of you has accepted dishonest involvement in these offences. Of course, you have each accepted that with hindsight that fraud was committed, but have sought to exonerate yourselves. One of the least attractive aspects of the case has been the attempts of each of you to blame others, including each other, for what happened. But I do not add to your sentences either for contesting the case or for the manner you have defended yourselves. But that said, not one of you is entitled to the credit the law affords to those who plead guilty to offences they have committed by way of a substantial reduction of the appropriate sentence.

When considering the appropriate sentences in respect of Counts 1 and 2, I am assisted by the Sentencing Council Definite Guideline in Fraud, Bribery and Money Laundering Offences. In respect of Harm, you all fall into Category 1, the loss being far in excess of the figure of £500,000 referred to in the Guidelines. In all your cases you fall into Category A as far as culpability is concerned. I will identify the factors that lead me to this conclusion when I turn to you individually.

## **STEPHEN DARTNELL**

On any view, you are the principal offender in this case. But for you, these frauds would not have taken place. You corrupted your trusted employee GA into offending by paying him large commissions on each KBC payment. You also corrupted SM by bribery, persuading him to ensure the false applications to KBC for funding were successful by paying him enormous kick backs. You alone are responsible for the plight of KL – your loyal assistant at TAF, who did exactly what you told her to do. The jury found that she was not knowingly involved in these frauds. But she has been investigated, arrested, interviewed and tried and has had all this hanging over her head for years. You are entirely responsible for that.

You have had a very successful career in the field of asset finance, building up a profitable and respected business. When you came across H20 and learned of ET's concept, you saw the prospect of huge rewards – both in terms of the profits from advancing funding and from the potential rise in the value of your shares in H20. So confident that you

would make millions, you were prepared to commit fraud, believing that your dishonesty would never be found out. It was your idea to defraud KBC and later Barclays. You played a direct part in the fraud and GA did what he did because you told him to do it. Your motive was sheer greed.

There are a number of aggravating factors in your case. They include:

- using money from KBC to lend to other client companies
- using money to fund your life style
- your attempts to stop Barclay's investigation by repaying their 3 advances
- your attempts to delay any investigation into the fraudulent activity as they came to light.
- The corruption of GA and SM.

The factors that place you in the High Culpability category of the Guidelines, include:

- playing a leading role
- involving others through influence and bribery
- abusing your position of trust with KBC and Barclays
- the sophisticated nature of the offences and that they involved significant planning
- that the fraud continued over a period of almost 3 years.

As far as mitigation is concerned, I am afraid there is very little. I am well aware of the devastating impact your conviction and sentence will have on both you and your family and I hardly need to point out that you alone are responsible for this. For the reasons set out by the Court of Appeal in the case of R v Bright [2008] 2 Cr. App. R (S) 102, good character also counts for very little in such a serious case. Indeed, I am of the view that your reputation was a factor in the success of this fraud. As far as delay is concerned, there has been a substantial period of time between the end of the offending and today. It does not amount to significant mitigation. You denied any dishonesty from the outset. The investigation of such serious offending over such a long period took an enormous amount of time. Much of the delay was therefore due to your failure to accept your guilt.

The maximum sentence for a single offence of fraud is 10 years imprisonment. In a case where a defendant falls into the high categories of both harm and culpability, the Guidelines suggest a starting point of 7 years imprisonment, with a sentencing range of 5-8 years, based on a £1m

loss. The loss here is about 117 times more than that. In my view, the offending reflected in Count 1 is of the utmost gravity and the only appropriate sentence in respect of

**COUNT 1** – is the maximum sentence allowed by law, namely, 10 years imprisonment.

The transactions reflected in Count 2 are grave in their own right, and the Guidelines, even on the lower loss figure, are as in the case for Count 1. These transactions reflect similar serious frauds committed against Barclays, within the period covered by Count 1. Barclays were defrauded as KBC, in the wake of the banking crisis, had stopped their UK business activities. Count 2 was therefore a new series of frauds against a 2<sup>nd</sup> victim. I do not accept that Counts 1 and 2 are one course of criminal conduct and it follows that a consecutive sentence is appropriate.

That said, if I were to impose the appropriate sentence and make it consecutive to the sentence I have just imposed in respect of Count 1, the total sentence would be too high in the context your offending as a whole. I have the totality principle very much in mind. I therefore reduce the sentence on

**COUNT 2** to 5 years imprisonment consecutive to the sentence imposed on Count 1.

Bribing SM over such a long period is a most serious offence in its own right and imposing a consecutive sentence could well be justified. However, I have again to consider the totality principle, and in these circumstances, I am prepared to regard the bribery to be an aggravating feature of Count 1, which I have of course already taken into account when sentencing you on Count 1. The sentence I impose on

**COUNT 3** is therefore 6 years imprisonment which will run concurrently with the sentences imposed on Counts 1 and 2.

The Total sentence is therefore 15 years imprisonment.

You will serve half the sentence before you are released on licence. If on release you fail to comply with the licence conditions, you are liable to serve the whole or part of the remaining sentence in custody.

I now turn to the issue of your Disqualification as a Director, pursuant to section 1 of the Company Directors Disqualification Act 1986. In all the

circumstances of this case, you shall not be a director of a company, act as a receiver of a company's property, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the court for a period of 12 years.

## **GEORGE ALEXANDER**

You were SD's right hand man during the whole of the fraud. You had worked for him for many years and were completely trusted by him. It is clear that you were a particularly good salesman and you were rewarded with a good salary and generous commissions. You were able to live very well. Unfortunately, when you were asked to inflate the figures on the contracts and then fabricate fictitious contracts, you had no hesitation in doing so. You did not initiate these offences, but you did exactly what you were being asked to – creating and altering the documents and submitting them to your funder. You participated in the fraud with your eyes wide open. Your role was to deal with the day to day organisation of the frauds. As to the identity of the person who forged the signatures on the documents, I am quite satisfied that it was you who forged the majority of them. You had no qualms about creating a document and then writing CC's signature where required – even though CC would happily have signed had you asked him. You signed simply because it was easier than sending it to him to sign. You also signed the names of the customers' agents as and when required.

You were prepared to act dishonestly for two reasons. Firstly, out of misplaced loyalty to SD. But, secondly, out of sheer greed. You were only too well aware that SD was prepared to pay you commission on the enlarged and fictitious contracts that you assigned to KBC. Over the period of the offending you received £3.133m in commissions. You spent the money on yourself.

I accept Miss Healey's submission that you did not play a leading role in these offences, in the sense that SD did. You certainly led the altering and fabricating of documents and it is conceded that you played a significant role in the offences. You fall to be sentenced in the highest category of the Guidelines.

I do not repeat the remarks have made in SD's case about other matters mentioned in mitigation concerning previous good character, delay and



personal mitigation. They apply equally to you – and also, of course, to SM and CC.

**COUNT 1-** 8 years imprisonment

**COUNT 2-** 4 years consecutive – again having regard to the totality principle.

Total sentence - 12 years

The effect of the sentence ...

## **SIMON MUNDAY**

There is little to add to that which I have already said in respect of your role in these offences. You were employed by KBC as Head of the Asset Finance division in the UK branch and you grossly breached the trust your employers KBC placed in you. You were paid a generous salary and had no qualms at all in betraying your employer and your colleagues by taking almost £900k in bribes, to ensure that TAF's applications for funding were approved. You were a competent and an efficient member of KBC's staff, and when you picked up a problem with one of the early TAF applications, you started to ask questions. SD saw that you might interfere with the fraud and so he bought you off. You had no hesitation deciding to sell your good character and your integrity. You had no thought to the consequences to KBC, its shareholder, employees and its customers. Your only concern was to make sure that no-one at KBC knew what you were doing, and that you were covering up the bribes as payments for genuine work done on a self employed basis.

You have never admitted your guilt, but have sought to persuade the jury that SD was paying you commissions to stop you leaving KBC so that when a job became available for you at TAF, you would be available to take it at short notice. This explanation was nonsense and lacked any credibility at all. Indeed, SD himself contradicted your account when he gave evidence. You too were simply motivated by greed. You knew perfectly well what you were involved in and you thought you would never be caught. You tried to hide your bribes by firstly paying them into your then girlfriend's bank account, and then by setting up a company and having the bribes paid into the company account under the pretence

of them being payments for work done for TAF. Both these matters are aggravating features of the offending.

As far as Count 1 is concerned, your role was obviously important, but the prosecution do not say you played a leading role. But you played a significant role and your offending remains firmly in the highest category of both harm and culpability as set out in the Sentencing Guidelines.

As to Count 3, the maximum sentence under section 1 of the Prevention of Corruption Act 1906 is 7 years imprisonment. There is no Definitive Guideline dealing with corrupt payments, though the Fraud Guidelines do deal with similar offences of bribery under the Bribery Act 2010. I have had the principles of this section of the Guidelines in mind when considering the appropriate sentence in respect of Count 3.

I have considered carefully how to approach sentence in the circumstances of your case. On the one hand, it can be argued that the correct approach is to regard Count 1 as the principal offence with the corrupt payments being an aggravating feature. On the other hand, it can be argued that Count 3 is the principal offence. In my view, the former is the appropriate approach. You knew that fraudulent applications for funding were being made by TAF, you knew the amounts involved, you ensured that they were successful and you were well rewarded for your assistance. I therefore sentence you on the basis that the bribes are part and parcel of the fraud. I should say that whichever way one approached sentence, the total sentence is the same.

**COUNT 1**- 7 years imprisonment

**COUNT 3** – 6 years concurrent (having regard to the totality principle)

Total sentence – 7 years

## **CARL CUMISKI**

As the financial director of H20, you were well aware of the financial difficulties H20 faced from its early days until its demise. You believed in ET and his concept and you were prepared to work hard to make the company a success. You were ET's right hand man in the sense that

without cash flow H20 would have collapsed long before it eventually did. So you were a key player.

I accept that until you were introduced to TAF, the idea of raising funding through fraud had not crossed your mind. But as soon as you met GA and SD, you were made aware of the ease of securing funds through false representations and you assisted GA doing just that. You were only too aware how much income was actually being generated by the genuine H20 contracts. And conversely you could not have failed to see how much money was been paid to H20 on the altered and fictitious contracts. Not only did you not do anything about it, but as I have said, you created and signed documents used to defraud the banks. You worked hand in glove with GA to defraud both banks.

I do accept that your criminality is not as great as that of GA. The evidence shows that you did not know everything that he and TAF were doing and how much TAF was receiving on the false documents. But you certainly did know how much H20 was paid by TAF on the fraudulent contracts and it was greatly in excess of the figures in the genuine contracts. You are also in a different position to GA in respect of benefit from the fraud. GA received his commissions. You received nothing but your salary. The reason you became involved was the prospect of large profits in the future. If H20 succeeded, as a shareholder, you would stand to make a huge amount of money.

As far as Count 2 is concerned, you were well aware what was going on and played your part. You were also involved in repaying the loans and re-assigning them to KBC. When the Barclays fraud came to light, you took part in drafting the answers to Barclays questions, with the intention that it would stop any further investigation. I accept that you did not do this on your own initiative, but on direction. Regrettably, you continued to play your part in the continuing defrauding of KBC.

**COUNT 1**- 7 years

**COUNT 2** – 3 years imprisonment consecutive

Total sentence – 10 years

Disqualified as a Director – 10 years