

19 March 2024

## Corruption in UK-Saudi defence contracts: What did the government know?

### Executive Summary

The trial against two men which ended in March 2024, and the sentencing of the company, GPT Special Project Management in April 2021, for making corrupt payments on a UK-Saudi government defence deal has exposed extensive and serious allegations of government complicity.

Both men successfully argued in their defence that they did not know the payments were corrupt given government authorisation and knowledge of the payments. The company on the other hand pleaded guilty to making corrupt payments, although its defence also argued that there was knowledge by the government of these payments. Its financial penalty was significantly reduced as a result of government authorisation and knowledge.

This briefing looks at what has emerged from the different court processes. In particular, it looks at:

- how the court was limited in what it could review – in so far as it could only review material that was relevant to the defence, and it was limited by the level of disclosure the Ministry of Defence (MOD) and the government were willing to give;
- what the court found at the sentencing of the company;
- evidence that emerged during the attempt by the two men to have the case dismissed as an abuse of process; and
- what was heard in court during their trial.

In light of the evidence that has emerged, and become reportable since the two men were acquitted, Spotlight on Corruption is calling for an independent judge-led review into the allegations, a full National Audit Office audit of MOD accounts and contracting arrangements relating to government-to-government agreements with Saudi Arabia, and for Parliament's Defence Select Committee to look at whether the MOD has learned the lessons.

It is essential that lessons are learned from this case to ensure that all government departments have robust procedures for preventing, and play an effective role in combating, foreign bribery.

## **Introduction**

Two men, Jeffrey Cook and John Mason, were [acquitted](#) on 6th March 2024 of charges that they had made corrupt payments on UK defence contracts in Saudi Arabia after over a decade-long investigation by the Serious Fraud Office.

Jeffrey Cook and John Mason were acquitted despite admitting that payments had been made, and despite the fact that GPT Special Project Management Ltd (GPT) – the Airbus subsidiary at the heart of the allegations – was [convicted](#) of making the same payments corruptly in 2021. Mr Cook was convicted of a separate misconduct in public office offence relating to commissions he received when previously an MOD employee.

The core defence that both men put forward was that they did not believe the payments to be corrupt because they had been authorised by the MOD and by the government.

In both the hearings of the company and the men, the courts were only able to look at MOD involvement in the payments in so far as it was relevant to the defence. The information disclosed by the MOD was also limited solely to what was relevant to that defence. But the defence for the two men repeatedly argued that the disclosure was inadequate – and that the defendants and the court were misled by the MOD about the existence of relevant material.

That is why independent scrutiny that focuses specifically on the MOD's knowledge and authorisation is now so critical.

## **The Serious Fraud Office's case against GPT and the two men**

The Serious Fraud Office (SFO)'s investigation was prompted by reports from two whistleblowers. One of these, Michael Paterson, who was Chief Financial Officer of GPT, started raising concerns internally from 2007/2008 about payments being made to subcontractors for which there was no obvious service provided. In 2010, Col Ian Foxley, who was programme director for GPT, discovered Paterson's concerns and took them to the MOD, and Airbus who both forwarded these reports to the SFO.

The SFO's investigation which started in 2012, and the subsequent charges it brought against the two men and GPT centred on a series of payments made by GPT through subcontracts to two Bahrain-registered companies – Simec and Duranton – and a company registered in the Cayman Islands – also called Simec – owned by a British 'fixer' in the Middle East, Peter Austin.

### The fixers



**Salah Fustok**  
Syrian/Lebanese  
businessman,  
considered closely  
associated with the  
Saudi Royal family.  
Also received  
payments



**Peter Austin**  
Well-known British  
fixer in the Middle  
East

### The defendants



**Jeffrey Cook**  
GPT's former  
Managing  
Director



**John Mason**  
GPT's financial  
officer and 10%  
owner of Simec

### The whistleblowers



**Michael Paterson**  
GPT's former  
Chief Financial  
Officer

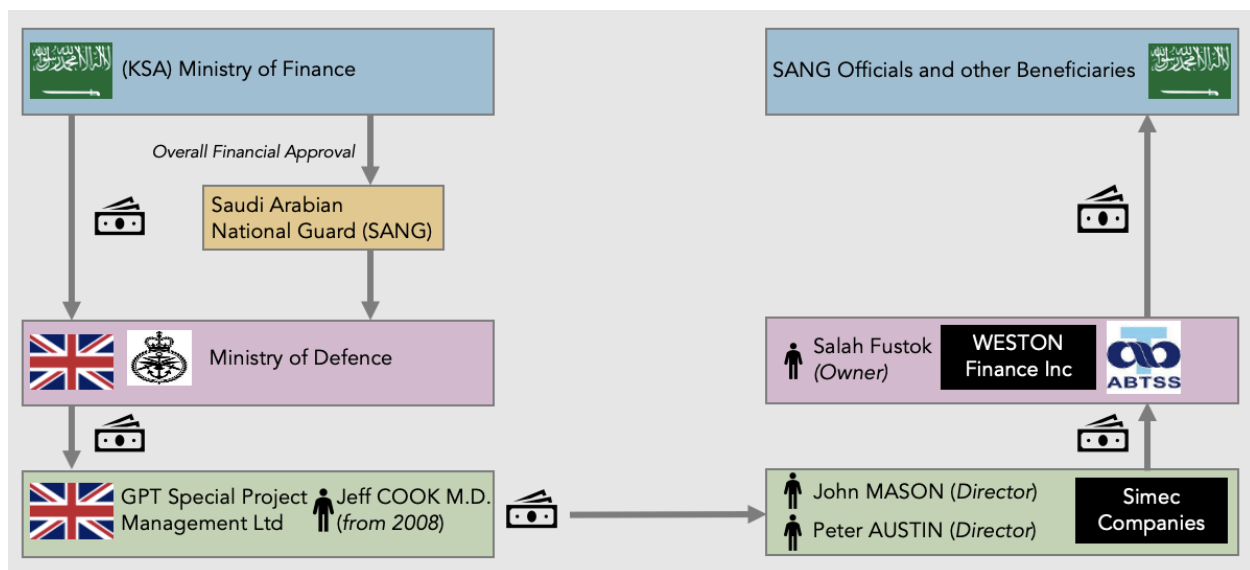


**Colonel Ian Foxley**  
GPT's former  
programme  
director

These payments related to contracts under a government-to-government arrangement between the UK and Saudi Arabia to provide billions of pounds worth of military communications equipment, maintenance and training to its National Guard, known as the Saudi Arabian National Guard Communications (SANGCOM) project.

While payments to Simec companies had been ongoing under SANGCOM contracts since the project's inception in 1978, the SFO's case focused on payments which took place between January 2007 and December 2012 (the indictment period).

According to the SFO's case, Simec and Duranton in turn paid £9.7 million into the bank accounts of senior officials in the Saudi Arabian National Guard (SANG) – including its commander, Prince Mit'eb bin Abdullah – via two companies, Weston Finance Incorporated, and Arab Builders for Telecommunications and Security Services (ABTSS) – companies owned by the politically connected Fustok family.



## **The Ministry of Defence's role within the investigation and trials**

Neither the MOD nor the Defence Export Services Organisation (DESO – now the Defence and Security Organisation), nor any individuals from the department or elsewhere in government faced any charges in the GPT trial. 10 current or former MOD officials, including a former director of DESO, however, were either called as witnesses or gave witness statements.

The court overall did not, and was not able to, scrutinise the evidence relating to government and MOD involvement in potentially corrupt behaviour on UK-Saudi defence contracts except in so far as it was relevant to the defence of the individuals, Jeffrey Cook and John Mason.

As the judge highlighted in a [January 2024 ruling](#), following an application for dismissal by Cook and Mason before the second trial, it was not necessary for him to form a final view on what the government and MOD knew about corruption to allow the trial to go ahead.<sup>1</sup> Both he – and the judge in the first trial, both of whom heard arguments that the case should be tossed out because of MOD knowledge – found that the criminal trials should continue regardless of whether there had been MOD knowledge and involvement.

Despite individual senior civil servants being identified in documents presented to court as those who approved the payments by GPT to the Simec companies, it is not clear to what extent the SFO was able to, or did investigate rigorously the possibility that senior civil servants may have aided and abetted corruption.

The SFO says that it was not able to pursue every suspect or every line of inquiry because the trial had to be manageable, and that they did not find evidence of the government's involvement in corruption in the indictment period.<sup>2</sup> The SFO was heavily reliant on the MOD's cooperation for the trial, and particularly for the disclosure of documents necessary to pursue the prosecution. It did not use its powers under Section 2 of the Criminal Justice Act 1987 to compel the MOD to produce information, and by [protocol](#) is required to apply to the Attorney General when it needs information from other government departments.<sup>3</sup>

Given the difficulties the SFO had getting consent to prosecute in the first place, and given that the SFO is part of the civil service as a non-ministerial department, it is likely to have taken a placatory role with the department to get cooperation rather than a confrontational one. For instance, it resisted defence requests during disclosure exercises prior to the second trial of the two men to use its Section 2 powers to obtain material about government knowledge of payments on other defence contracts.

The SFO's decision not to seek charges against individuals within the MOD, or other parts of government, and whether it has sufficient independence to pursue politically sensitive investigations is something, in our view, that an independent inquiry should also look at.

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<sup>1</sup> Mr Justice Picken (24 January 2024) abuse of process ruling in *R v Cook and Mason* para 339

<sup>2</sup> Verbal press briefing by the Serious Fraud Office (22 February 2024)

<sup>3</sup> Framework Agreement between the Law Officers and the Director of the Serious Fraud Office, para 63

**1978**

Saudi National Guard enters into agreement with UK MOD to purchase military communications equipment and training, known as SANGCOM. Subcontracts with SIMEC – an agent owned by fixer Peter Austin – were incorporated from the beginning.

**1995**

British firm, GPT Special Project Management, becomes main contractor on SANGCOM, with requirement from Saudi and British governments that “facilitation payments” are paid.

**2008**

Internal whistleblower Michael Paterson refuses to sign off on payments to SIMEC.

**2010**

Another whistleblower – Ian Foxley – reports concerns based on Paterson's emails about corruption to GPT parent company, Airbus, and the MOD.

**2012**

SFO opens investigation into whether bribes were paid by GPT via SIMEC between 2007-2012.

**2013**

At request of SANG, UK MOD enters into a contract with US company, Harris, for work under SANGCOM although MOD knew Harris was working with Saudi company ABTSS alleged to be at heart of bribery allegations.

**2014**

MOD gives single-source contract to ABTSS on the SANGCOM project.

**2016**

SFO seeks Attorney General's consent to prosecute.

**2019**

Attorney General gives consent to prosecute.

**2020**

SFO charges three individuals over bribes worth £9.7 million paid to Saudi public officials.

**2021**

GPT pleads guilty to making corrupt payments between 2008 and 2010 and is fined £7.5 million with £20.6 million confiscated. Two individuals plead not guilty on 27 May 2021. Case vs third dropped on medical grounds.

**2022**

First trial against individuals collapses after revelations in court that MOD had not disclosed all relevant material relating to ABTSS.

**2024**

Final trial finds two defendants not guilty of making corrupt payments. One of the men was convicted of a separate misconduct in public office offence relating to when he was previously employed at the MOD.

## **1. What emerged from the GPT corporate sentencing**

In 2021, GPT Special Project Management [pleaded guilty](#) to making corrupt payments to high-ranking Saudi officials in order to secure lucrative defence contracts for the UK government on the Saudi Arabian National Guard Communications Project, or SANGCOM. The company, which became an Airbus subsidiary in 2007, was set up specifically to act as the main contractor on this project.

In imposing a fine of £7.5 million on GPT, and a confiscation order of £20.6 million, the judge, Mr Justice Bryan, [identified](#) that the transactions at the heart of the case “*formed part of a history of corrupt transactions which had persisted for many years, both before and during the indictment period.*”

### **MOD knowledge and approval**

Mr Justice Bryan’s [sentencing remarks](#) identified that:

- a) “*Senior individuals within the MOD*” introduced GPT to Simec when GPT became Prime Contractor (para 79);
- b) The MOD’s DESO approved GPT’s use of Simec and Duranton as subcontractors as well as the costs (para 87) and MOD civil servants working on SANGCOM approved the inclusion of payments to Simec in project documents (para 92);
- c) On each individual invoice for payments to Simec, the Managing Director of GPT noted that the “*MOD has now confirmed arrangement.*” (para 112)

Mr Justice Bryan [concluded](#) his summary of the evidence by stating: “*some of those employed by HMG may have known about, or turned a blind eye to, the payment of bribes over many years, particularly in the early 1990s, but continuing through until the indictment period*” (para 140).

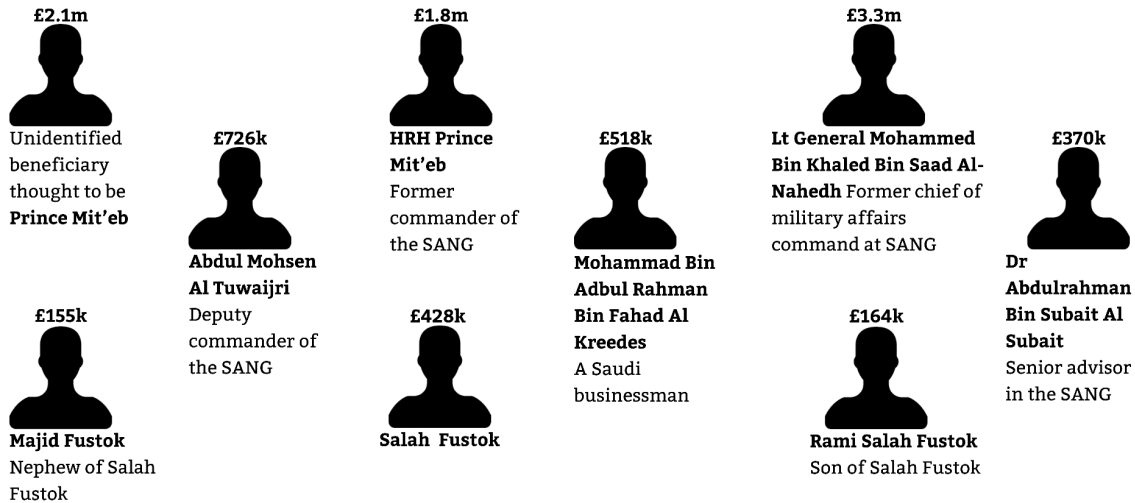
In the final Statement of Facts agreed between the SFO and GPT when it pleaded guilty, it was acknowledged that in 2006, the government was aware that there may have been a document held by SANGCOM in Saudi Arabia which listed all the fixers used by the government and SANG and the amounts they were paid, which was kept in a sealed envelope in a safe.<sup>4</sup> The Statement of Facts concluded that “*it remains possible ... – the defence would say it is certain – that there were some civil servants who, in the indictment period, were aware of the true nature of the payments.*”<sup>5</sup>

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<sup>4</sup> GPT Final Statement of Facts, Annex A of the sentencing remarks, 28 April 2021, para 118.

<sup>5</sup> Ibid, para 121.

## Who received the payments?



Additionally in the Statement of Facts, it is clear that the regional marketing director of DESO between 2003-2006, Malcolm Haworth, signed letters in June 2007 “noting and approving GPT’s use of Simec as its sub-contractor and confirming the reasonableness of the costs,” after Airbus bought GPT as a subsidiary.<sup>6</sup> This letter was given to the project director of SANGCOM which as Jeffrey Cook noted in an email to the director of GPT’s immediate parent company, Malcolm Peto, “authorises the MoD to give approval to us to place the “subcontracts”. It therefore provides the Government top cover that we wanted. This is a considerable achievement and a relief.”<sup>7</sup>

### **HMG’s substantial involvement as a reason for reducing GPT’s fine**

When calculating the fine GPT should pay, Mr Justice Bryan [found](#) that “the involvement of HMG” – the government – was the most significant mitigating factor that “substantially reduce[s] GPT’s overall culpability for its offending conduct.”

He [laid out](#) that: “HMG was substantially involved in the historic corrupt arrangements which led to GPT’s offending conduct. That conduct arose from the long-established unlawful requirement of those at the highest levels of the SANG, with knowledge and approval of senior figures within HMG, that the Prime Contractor should engage in the Simec sub-contractual arrangements, in order to make corrupt payments as a precondition of the selection of Prime Contractor. ... There is evidence to demonstrate that knowledge and at least tacit approval of the arrangements within HMG continued (even if many within HMG were unaware of the true purpose of the ... payments) into the indictment period.”<sup>8</sup> (emphasis added)

This significantly reduced the amount of the fine that GPT was ordered to pay.<sup>9</sup>

<sup>6</sup> Ibid, para 55.

<sup>7</sup> Ibid, para 60.

<sup>8</sup> Mr Justice Bryan (28 April 2021) approved sentencing remarks in *R v GPT Special Project Management Limited* para 173

<sup>9</sup> Ibid. para 179

## 2. What emerged from the 2023 Abuse of Process hearing

Mr Cook and Mr Mason have faced two trials. The first one, which started in May 2022, collapsed two months later in July as new evidence emerged during the cross-examination of MOD witnesses. The judge ruled in favour of the defence that this evidence required further disclosure about material relating to whether the UK government had sought to find other indirect ways to enable payments to Saudi officials to continue after 2012 (ie. after the indictment period).

Between July 2022 and October 2023, the MOD was required to disclose additional relevant material, which proved to be considerable. This resulted in Mr Cook and Mr Mason's defence applying in October 2023 to have the case against them thrown out as an abuse of the court's process, before a retrial was due to commence.

Among other grounds, they argued that the UK government had indeed, on the basis of the material that emerged, considered finding alternative arrangements to continue the bribes in relation to SANGCOM, and the facilitation of opaque payments to Saudi Arabian officials before, during and after the indictment period from MOD bank accounts, and that these were known about at the highest levels of the UK government.

In particular, the defence highlighted three projects where payments were made by the MOD, including to the ABTSS company that was owned by a fixer who was a key feature of the SFO's case against Mr Cook and Mr Mason, and who was named as a beneficiary of the payments that GPT was making to Simec.

The [abuse of process ruling](#), which was made in October 2023 but not handed down until January 2024, gives an overview of the evidence emerging from the disclosures by the MOD. It is not clear, however, whether this still represents the full picture given the redactions to material, and the MOD's track record during the trial of failing to release relevant information.

The three projects were as follows:

### **MODSAP**

MODSAP (the MOD Saudi Armed Forces Project) is responsible for fulfilling and overseeing multi-billion pound UK government defence projects in Saudi Arabia: the ongoing Saudi British Defence Cooperation Programme (SBDCP – which replaced Al Yamamah in 2007) and Al Salam (the sale of 72 Typhoon aircraft to Saudi Arabia). The primary contractor for those two projects under MODSAP is BAE Systems.<sup>10</sup>

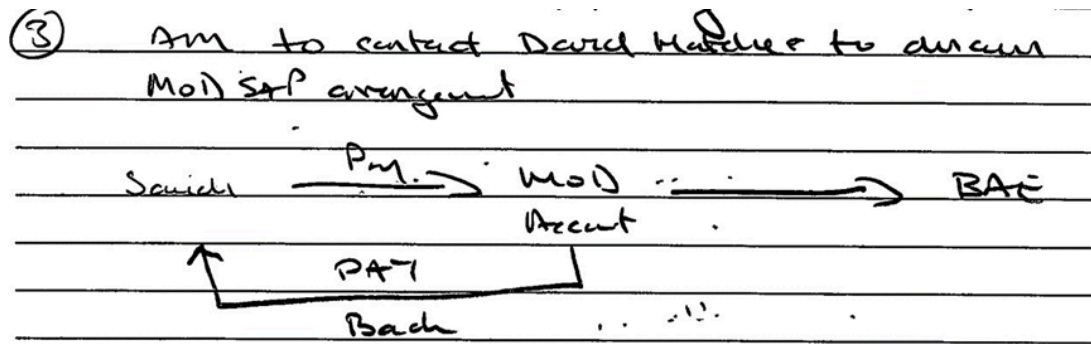
During the first trial a handwritten note of a meeting between MOD officials (Alan Richardson, Andrew Manley and Robert Miller) from February 2011 was shown to the court – referred to as the 'Manley Diagram'.<sup>11</sup>

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<sup>10</sup> BAE Systems Fulfilling obligations under agreements signed between the UK and Saudi Arabian Governments

<sup>11</sup> Mr Justice Picken (24 January 2024) abuse of process ruling in *R v Jeffrey Cook and John Mason* para 42





The defence argued that this diagram showed that under MODSAP, money was paid by the Saudis to the MOD, who diverted some of this money back to the Saudis after paying BAE Systems. The defence argued that after Foxley's allegations resulted in Airbus halting the payments from GPT in 2011, the UK government considered this type of model for the continuation of payments to Saudi officials on the SANGCOM project.

Additional information about how the mechanism outlined in the Manley Diagram worked emerged during subsequent disclosure after the first trial collapsed.<sup>12</sup>

This included that the MOD and Foreign Office helped negotiate new funding arrangements for SBDCP and Al Salam. These were in place from 2007 to 2011 and were signed by the Head of the MOD's DESO following submissions about the arrangements to the Prime Minister.<sup>13</sup>

These new funding arrangements were described as follows:

- the Saudi National Monetary Authority (subsequently known as the Saudi Central Bank) transferred funds to a Gulf International Bank account in the UK on a monthly basis;
- the money was transferred, under authorisation by the Saudi Ministry of Defence and Aviation (MODA), to a UK MOD-administered account at the same bank;
- money (representing 17.6% of the monthly budget) was then transferred in accordance with the new funding arrangements to a MODA "operational fund";<sup>14</sup>
- these funds were used at MODA's discretion, and while the MOD had "no visibility" of what the fund was used for,<sup>15</sup> it knew it was used or likely to be used for payments including category 9 or "miscellaneous contingency" that had previously been under investigation by the SFO and had included payments for the personal benefit of high-level Saudi officials;<sup>16</sup> and
- the MOD continued these funds even after the Saudi MODA said they would make other arrangements if the government was unwilling to continue to do so, and noted that doing so had helped to "maintain and enhance the UK's reputation as a trustworthy partner."<sup>17</sup>

<sup>12</sup> Mr Justice Picken (24 January 2024) abuse of process ruling in *R v Jeffrey Cook and John Mason* para 122

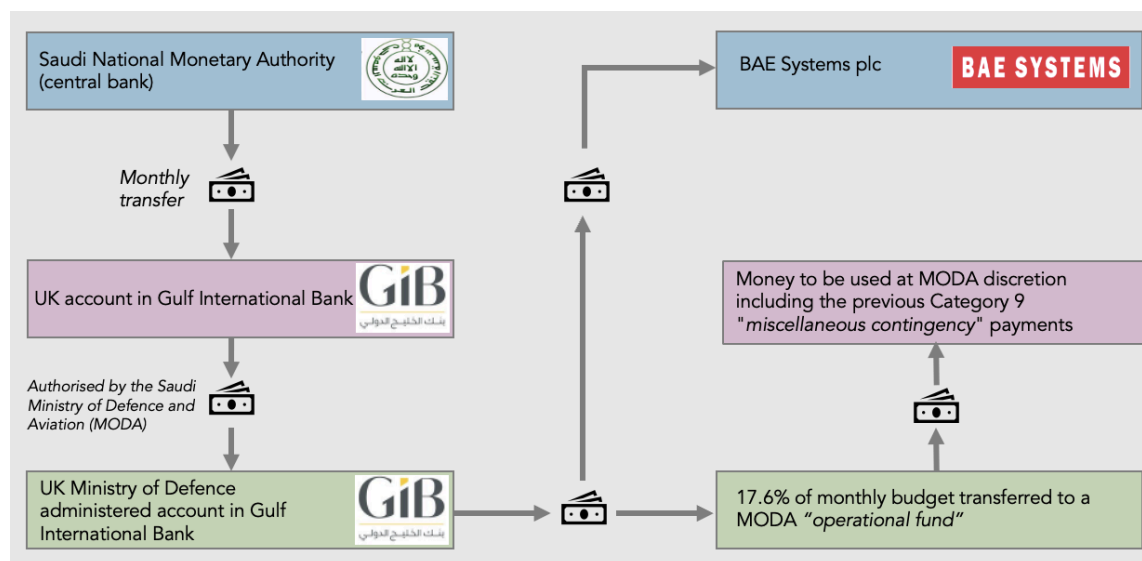
<sup>13</sup> Ibid. para 132

<sup>14</sup> Ibid. para 127

<sup>15</sup> Ibid. para 188

<sup>16</sup> Ibid. para 132

<sup>17</sup> Ibid, para 190



In October 2010, the Head of Commercial at MODSAP, Stephen Pollard, recommended to the Permanent Secretary that the new funding arrangements continue for another five-year period, from January 2012 to 2017.<sup>18</sup>

In April 2011, Chris Cook (MODSAP Deputy Head of Finance) confirmed the MOD's willingness to extend the new funding arrangements for another five-year period from 2012, with the inclusion of the MODA "operational fund."<sup>19</sup> The defence case was that these arrangements then continued from 2012 although the SFO said it had not seen evidence to that effect. The MOD told the Guardian newspaper that the arrangements had not continued beyond 2011.<sup>20</sup>

Similar funding arrangements appear to have been considered for the Al Salam Typhoon project but with the difference that "some of the support services provided under the project are provided by other companies," according to a note cited in the abuse of process ruling.<sup>21</sup>

After Foxley's revelations and the termination of Simec's contract by Airbus, there were discussions within the MOD about how ongoing payments could be made on the SANGCOM project, including whether a MODSAP-type or Salam-type arrangement could work for the project – although it was not ultimately implemented on SANGCOM.<sup>22</sup>

From the disclosure exercise it also emerged that despite huge international and domestic outcry and an ongoing judicial review of the government's decision to force the SFO to drop its investigation into bribes by BAE on the Al Yamamah deal, the government continued to authorise payments that had been under investigation – including to maintain a jet for Prince Bandar – until December 2007. The payments appear to have been made in order to ensure the smooth passage of the deal signed between the UK and Saudi Arabia in

<sup>18</sup> Ibid. para 187

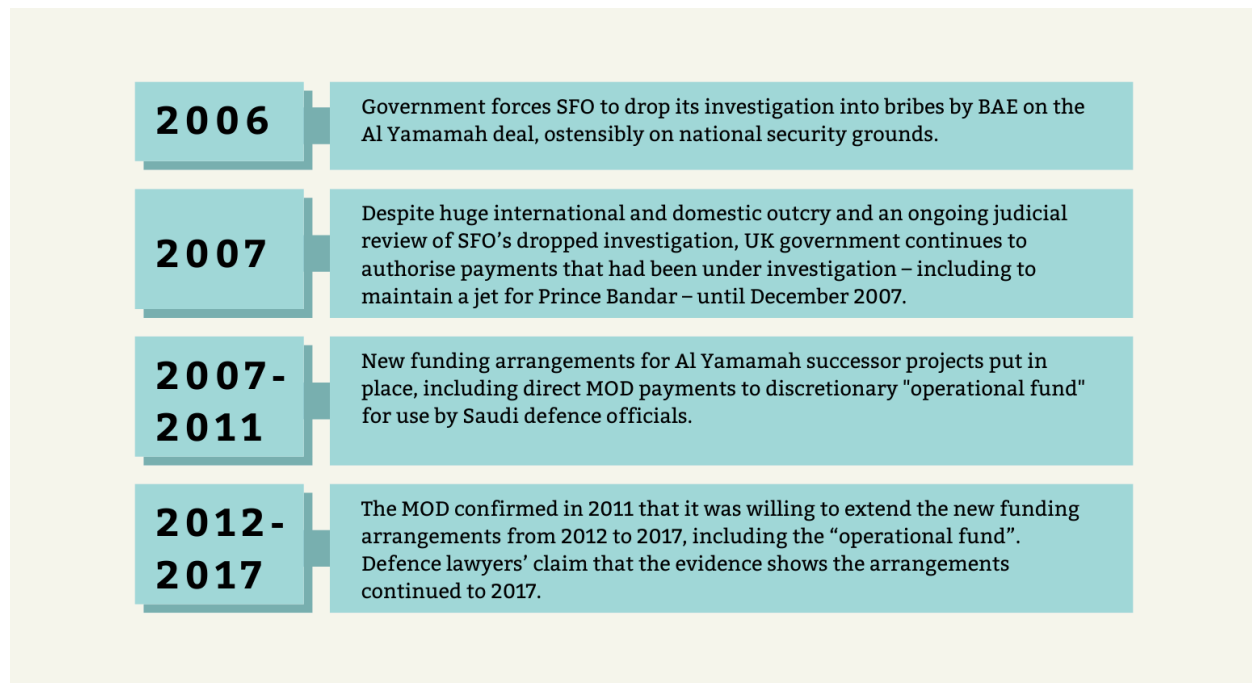
<sup>19</sup> Ibid. para 220

<sup>20</sup> <https://www.theguardian.com/world/2024/mar/08/mod-paid-millions-into-saudi-account-amid-bae-corruption-scandal>

<sup>21</sup> Mr Justice Picken (24 2024) abuse of process ruling in *R v Jeffrey Cook and John Mason* para 184

<sup>22</sup> Second trial (9 January 2024) *R v Jeffrey Cook and John Mason*

September 2007 for the sale of Typhoon fighter jets.<sup>23</sup> Mr Justice Picken identified that the decision to make these payments was known about “in the highest echelons of [the UK] government”, including the then Defence Secretary.<sup>24</sup>



## Project Arrow

Information provided at the eleventh hour of the first trial showed that, in 2014, at the direction of Prince Mit'eb (then Minister, and former Commander, of the Saudi National Guard), the MOD gave a single-source contract on the SANGCOM project to ABTSS. ABTSS was the Fustok family-owned firm named in the GPT indictment for channelling bribes to Saudi officials.<sup>25</sup>

More details emerged during the second abuse of process hearing in October 2023, including that this arrangement was known about at the highest levels of the UK government. The Secretary of State was briefed on the proposal and discussed it with Prince Mit'eb on 8 April 2014.<sup>26</sup>

The July 2014 business case for Project Arrow said the project would require funding from SANGCOM project funds of £7.7 million, that GPT would not be offered this project and that ABTSS would itself subcontract a significant proportion of the project to an unnamed local company.<sup>27</sup> The contract was signed on 5 August 2014.

<sup>23</sup> Mr Justice Picken (24 January 2024) abuse of process ruling in *R v Jeffrey Cook and John Mason* para 171

<sup>24</sup> *Ibid.* para 240

<sup>25</sup> *Ibid.* paras 79-99

<sup>26</sup> *Ibid.* para 89

<sup>27</sup> *Ibid.* paras 91-92

The defence claimed that the contract was renewed for a further £4.5 million in August 2017 but noted that very little information was provided about this renewal.<sup>28</sup> Significantly, by that stage, the MOD had received a due diligence report about ABTSS, which detailed that its owners, the Fustok family, were relevant to an ongoing SFO investigation, and identified risks including of “*corruption and bribery*”, and “*fraud and regulatory breaches*” in relation to Salah Fustok as a politically exposed person.<sup>29</sup>

The defence case was that the MOD entered into the original 2014 and renewed 2017 contract without doing its own due diligence at a time when it was publicly known that the Fustoks were involved in SANGCOM, which was the subject of the SFO’s investigation, and had received agency fees.<sup>30</sup> The SFO acknowledged that a business case was prepared in 2017 to renew the Project Arrow contract for £4.5 million but said the contract did not appear to have been renewed.<sup>31</sup>

However, it was noted that there were significant gaps in the material that was disclosed, which made it impossible for the defence to push this angle further.

## **Harris Corporation**

In 2013, at the request of the SANG, the UK government entered into a contract with the US-based Harris Corporation for work under SANGCOM. This was after Harris had told the MOD that it would be using ABTSS and had a longstanding arrangement to pay ABTSS commission payments that represented 15% of the contract value for ill-defined “*soft services*”.<sup>32</sup>

The defence argued in the second abuse of process hearing, in October 2023, that the MOD had also sought to rely on Harris’s purported due diligence on ABTSS as cover for utilising the ABTSS itself. The defence added that, despite MOD officials knowing about the SFO’s investigation into GPT and its interest in ABTSS and the Fustoks, the MOD did not inform the SFO that it was entering into this contract.<sup>33</sup> Details only started to emerge at a late stage of the first trial.

The defence argued that this showed the UK government knew about and facilitated the payment of commissions by prime contractors to subcontractors on SANGCOM after the indictment period – a claim that the SFO had denied.<sup>34</sup>

## **What the judge found**

While the court [ruled](#) that the trial should not be dismissed and that there was no abuse of process in prosecuting the individuals, Mr Justice Picken declined to “*form a final view*” about what HMG and the MOD knew about the MODSAP, Project Arrow and Harris arrangements summarised above.

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<sup>28</sup> Ibid para 98; see also Jeffrey Cook’s skeleton argument for second abuse of process application (22 February 2023) paras 51-52

<sup>29</sup> Ibid. para 97

<sup>30</sup> Ibid. para 98

<sup>31</sup> SFO’s skeleton argument for second abuse of process application (23 June 2023) para 189

<sup>32</sup> Ibid. para 249

<sup>33</sup> Ibid. para 251

<sup>34</sup> Ibid. para 253

Mr Justice Picken noted that the evidence presented by the defence about MODSAP was not conclusive that officials had connived in corrupt payments. Ultimately, he found that *“even if there was corruption in relation to MODSAP, it does not necessarily follow ... that there was a link”* between that corruption and the SANGCOM project.<sup>35</sup> He also highlighted that it was worth bearing in mind Mr Cook’s role in an alternative model being considered and his insistence, until his retirement in 2013, that the SANGCOM contract could not be performed without the *“essential services”* provided by Simec.<sup>36</sup>

Mr Justice Picken noted that the defence did not press their reliance on Project Arrow *“because it is not clear, based on the disclosure which has been provided, what precisely took place”* and relevant UK government knowledge or involvement had not been established. As a result, he did not give close consideration to Project Arrow.

Mr Justice Picken was also not persuaded that the government’s decision to proceed with the Harris contract was necessarily evidence of complicity in corruption. He was unable to conclude, based on the evidence provided, that Harris was a ruse intentionally set up and pursued by the MOD in order to continue to pay bribes to Saudi officials.<sup>37</sup> However, he recognised that *“ultimately... it will be for the jury to reach a conclusion”* in the trial of Cook and Mason.<sup>38</sup>

### **3. What the individual defendants argued at trial**

During their subsequent trial, which started in November 2023, both Jeffrey Cook – who had been employed by GPT – and John Mason – former financial officer at GPT’s subcontractor, Simec – accepted that payments had been made to the Simec companies.

However Cook’s defence was that *“he was approving payments to Simec (only) that were contractually required and consented to by both parties, which system had been in place for decades.”*<sup>39</sup>

Mr Mason’s defence meanwhile was that he did not know *“the purpose of the payments ... [and] he believed them to be legitimate payments for services actually rendered.”*<sup>40</sup>

Both relied extensively on documents released during the disclosure exercise by the MOD to make their case.

#### **The Cook defence**

In summing up the defence’s closing arguments for both men, the judge highlighted their position that *“what Mr Cook stands charged of ... is what the MOD were themselves doing and had been doing for a substantial period of time.”*<sup>41</sup>

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<sup>35</sup> Ibid. para 320-321

<sup>36</sup> Ibid. para 322

<sup>37</sup> Ibid. para 324

<sup>38</sup> Ibid. para 325

<sup>39</sup> Mr Justice Picken, Summing up for the jury, (21 February 2024)

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

This included defence arguments that:

- a) In the context of other MOD contracts in Saudi Arabia, the MOD approved and authorised payments made between 2009 to 2017 to the same agents (the Fustoks) that Cook was accused of authorising payments via a subcontractor, Simec.
- b) That the MOD were long aware since 1969 of the Fustoks' modus operandi in order to win contracts for the UK over other countries, the level of fees they charged, and their relationship with Simec.
- c) That the MOD directly authorised GPT to use Simec despite knowing this history and relationship.
- d) That the same behaviour had happened on the Al Yamamah contract (involving BAE Systems) – into which a SFO investigation was dropped in 2006 following government intervention ostensibly on national security grounds, including payments which continued during 2007 in order to secure a new Typhoon contract (known as Al Salam).
- e) And that discussion had taken place within the MOD during 2011 to continue the payments for the SANGCOM project with a similar arrangement to that set up for the Al Salam Typhoon contract.

The final pitch to the jury by Mr Cook's defence was that the payments made by GPT were "***a lethal game of pass-the-parcel with HMG as the main player and in this context Mr Cook was left holding the parcel.***"<sup>42</sup>

### **The Mason defence**

Mr Mason's defence was:

- a) That he was the fall guy for Peter Austin who was the real 100% owner of Simec and Duranton, on behalf of whom he held 10% of the shares to meet local requirements, and that he was just the accountant.
- b) That all payments on the SANGCOM project including on the subcontract to Simec were seen and approved by the MOD so that he did not suspect it involved bribery, and that "*all he was just doing was essentially what he was told to do in a back-office administrative type way.*"
- c) That "*the MoD required [subcontracting payments via Simec] to be paid since they knew that otherwise the SANG would not contract.*"<sup>43</sup>

### **The prosecution's position**

In their closing speech, the SFO argued that:

- a) GPT was wholly responsible for ensuring the performance of Simec, not the MOD or anyone else. The MOD SANGCOM team were there to supervise and make sure the

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

contract was organised properly, “...but that did not relieve GPT of the job of ensuring that if there was work to be done under the subcontracts, Simec did it.”

- b) GPT’s contracts with the MOD prohibited the company from paying commissions and required it to disclose details of any commissions. Mr Cook was responsible for ensuring that commissions were not paid. It was accepted by the defendants and the prosecution that GPT had not told the MOD about the payments to Saudi officials.
- c) Mr Cook argued that the MOD gave him “gave him top cover, somehow the MoD were the people leading him on in this” but he was not straight with the MOD, and did not seek their authorisation personally or produce paperwork to confirm authorisation.
- d) Mr Mason’s work involved dividing up how much money was to go elsewhere, based on codes he established. There was no paperwork to substantiate Mr Mason’s case that the onward payments, by Simec to others, were for genuine services.<sup>44</sup>

### **What was heard in court**

Not all of the officials whose names appear on documents presented to court suggesting government knowledge and authorisation of the payments gave evidence to the court.

Key actors identified in evidence, such as Colonel Mike Rough (former project director of SANGCOM) and Simon Kershaw (former team leader of the Satellite Communications (SATCOM / IPT) team at the MOD) – both [identified](#) by Mr Justice Bryan as those “most likely to have known or suspected” that corrupt payments were being made in the period 2002-2006<sup>45</sup> – and Colonel Jo Fletcher (project director of SANGCOM) were not cross-examined. Both went on from the MOD to work at GPT after Foxley’s allegations emerged.

The court heard that some evidence pointed to government approval of opaque payments to subcontractors and a culture of secrecy around this. A witness statement from Lee Toman, a former SANGCOM Senior Commercial Officer, provided evidence that in 2008 he had raised concerns about the payments made via Simec which appeared as “bought in services” in the contract, to the business manager and project director of SANGCOM.

According to the statement, he was told that this was a “standard charge within Saudi contracts ... effectively providing local cultural support from consultants to help smooth the way” for business. He was also shown a letter from the head of the DESO clearly stating that these payments were “an acceptable element within the contract.”<sup>46</sup> When Toman asked for a copy of the letter he was told this was not freely available and when he recommended the introduction of a standard MOD pricing template that would bring greater transparency, he was blocked.

The role of DESO in providing cover for MOD officials handling the contract also came out in other evidence. Peter Bush, a former SANGCOM business manager from 2009, for instance confirmed that no questions were asked within SANGCOM about the “bought in services” under subcontracts with Simec due to them being “backed off” by DESO. Mr Bush noted that the “bought in services” “had been there for many many years and has been accepted by senior members of MOD, DESO that it is a requirement in order to do business there.”<sup>47</sup>

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<sup>44</sup> Second trial (13 February 2024) closing speech of Mark Heywood KC on behalf of the SFO, R v Jeffrey Cook and John Mason

<sup>45</sup> Mr Justice Bryan, (14 April 2022) abuse of process ruling in R v Jeffrey Cook and John Mason, para 385

<sup>46</sup> Lee Toman witness statement, read to the court on 22 January 2024.

<sup>47</sup> Mr Bush evidence, 22 January 2024.

It was also cited by Mr Manley (former Commercial Director General at the MOD from February 2010) who noted in court that evidence had been provided for the trial that Alan Malpas (Regional Director of the Defence and Security Organisation, after transferring from DESO) had sent a letter authorising the “*bought in services*”. Mr Manley also noted that having visited Saudi Arabia in 2010, after joining the MOD from a commercial role in Shell, he made a statement to defence legal services about his “*concerns that the Ministry of Defence was getting caught up, or had been caught up in some inappropriate activity.*”<sup>48</sup> Manley’s involvement in the project was terminated in April 2011 shortly after he raised his concerns with senior MOD officials and gave a statement to an MOD lawyer.<sup>49</sup>

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<sup>48</sup> Mr Manley, evidence to the court, 9th February 2024.

<sup>49</sup> Mr Justice Bryan, (14 April 2022) abuse of process ruling in *R v Jeffrey Cook and John Mason*, paras 216-219