

SFO prosecutes private sector corruption on offshore projects

In the latest large private sector corruption prosecution to be concluded, the SFO has secured four convictions against individuals in respect of corrupt payments made to them in return for passing on confidential procurement information in relation to high value offshore oil and gas engineering projects in Iran, Russia, Singapore and Abu Dhabi between 2001 and 2009.

The convictions of Andrew Rybak, Ronald Saunders, Philip Hammond and Barry Smith, (sentenced to terms of imprisonment of between five years' and twelve months, suspended for eighteen months) follow the SFO's longstanding Operation Navigator, which started life as a joint investigation with City of London Police. The jury could not reach a verdict in respect of a fifth defendant, and the SFO are seeking to prosecute a sixth individual, currently residing in the Philippines.

The convictions secured are for offences under the law as it stood prior to the UK Bribery Act 2010 ("BA 2010"), which entered into force on 1 July 2011, as the conduct, which related to overseas private sector contracts worth a total of approximately £66 million, occurred prior to this date. This shows the SFO's willingness to tackle private sector corruption in relation to offshore projects.

An interesting question is whether, had the BA 2010 been in force, this could have been a case in which the companies involved could have faced prosecution for the new corporate offence of failure to prevent bribery. Clearly, the company whose information was leaked could not have been prosecuted. But, had the BA 2010 been in place at the relevant time, the supplier companies bidding for the contracts, whose employees paid for the information, may have been susceptible to prosecution for the corporate offence depending on whether they fell within the jurisdictional reach of the BA 2010 – which, as previously noted, is broad¹; if so, the next question would have been whether their procedures were adequate to prevent the conduct in question.

The application of these provisions, in particular, of the BA 2010 to a case of large scale corruption, and in particular corporate corruption, is, however, still awaited. Munir Patel, a Magistrates' Court clerk convicted in October 2011², remains the only individual or organisation known to have been convicted under its provisions.

Notwithstanding the continuing hiatus whilst more substantial examples of corporate corruption work their way through the investigation and prosecution phases, the SFO has maintained a high profile, and has on occasions attracted judicial disapproval in its attempts to innovate in the way it has concluded investigations.

Most recently, after the inaugural use by the SFO of civil recovery powers under Part V of the Proceeds of Crime Act 2002 ("POCA") against a shareholder of Mabey & Johnson Limited ("M&J")³, where that shareholder agreed to return historic dividends derived from overseas corruption, the SFO's determination to utilise the powers in its armoury in innovative ways

¹ http://www.cliffordchance.com/publicationviews/publications/2010/07/new_bribery_act_givesgreentocorporat.html

² http://www.cliffordchance.com/publicationviews/publications/2011/11/the_bribery_act_2010fromsmallacorns.html

³ http://www.cliffordchance.com/publicationviews/publications/2012/01/shareholders_carryfinancialriskforbribery.html

is clear. Furthermore, interest is focussing on whether the SFO will be given even greater powers to pursue alternatives to prosecution in appropriate cases; in particular there has been debate surrounding the use of Deferred Prosecution Agreements and Non Prosecution Agreements.

The prosecution of these four subjects of Operation Navigator falls firmly into the category of action which the SFO has traditionally taken to tackle corruption, namely contested criminal proceedings against individuals following a lengthy investigation, which, it appears, will lead to confiscation orders against the individuals convicted.

As such, this case does not assist us with assessing (and it is perhaps, in any event, too early to fully judge) how, how often and how successfully the SFO will seek to deploy proceedings under BA 2010 and/or use more flexible methods of resolution.

As Richard Alderman's tenure as Director draws to a close, this case, whilst an indication of the resolve of the SFO to tackle instances of historic corruption by individuals, contrasts with the approach of swift and consensual resolution for which he has campaigned in the corporate arena since 2008.

Whether the innovative approach of the SFO will be continued will depend on a number of factors, including the significant continuing budgetary pressures, and the approach of Richard Alderman's successor, David Green, formerly of the HM Revenue & Customs prosecution arm of the Crown Prosecution Service, which has traditionally maintained a much more conservative approach to disposing of large scale investigations.

Regardless of the person at the helm of the SFO, it is likely that robust action against individuals involved in corruption will continue to feature prominently on the SFO's enforcement agenda. Another key part of its strategy is to add another string to its bow by becoming, in effect, an anti-corruption regulator with which industry engages in addition to continuing to fulfil its role as a stern prosecutor in egregious cases such as this. As more cases trickle through, including more where BA 2010 applies and cases relating to the conduct of corporate organisations, it will be instructive to observe, at a time of transition for the SFO, how this twin track approach works in practice.

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