



Helping you see the risks

Quarterly UK Fraud and Corruption Enforcement Update

October 2020



Welcome to Eversheds Sutherland's quarterly Fraud and Corruption Enforcement update which provides a quick overview of the recent key developments relating to criminal investigations and enforcement actions tackling fraud, bribery and corruption offences in the UK.



New Serious Fraud Office guidance on Deferred Prosecution Agreements

On 23 October 2020 the UK's Serious Fraud Office ("**SFO**") published [new guidance](#) on Deferred Prosecution Agreements ("**DPA**"). DPAs were introduced in the UK in February 2014 as an alternative to prosecution for corporate defendants charged with economic crimes such as fraud or bribery. The recent publication forms part of the SFO's Operational Handbook which is drafted as internal guidance for the SFO's prosecutors and investigators, but offers external practitioners a valuable insight into the factors which the SFO will consider when deciding whether a case may be suitable for a DPA, as well as the process which will be followed once a corporate defendant has been invited into DPA negotiations.

The detailed guidance emphasises that self-reporting and co-operation are key factors. It also provides useful clarification that the self-report should be made "within a reasonable time of wrongdoing coming to light", which will alleviate some of the pressure felt by companies in the past to make a quick report before it was even clear that criminal offences had been committed.



The SFO intensifies the fight against fraud

On 21 August 2020 the SFO announced charges against 3 individuals in connection with their investigation into the collapse of the £100 million Cayman Island domiciled Axiom Legal Financing. The 3 men, two solicitors and an Independent Financial Advisor have been charged with various offences relating to an alleged fraudulent scheme to divert money from the fund for their own benefit.

Six years after the SFO opened an investigation into the collapsed Anglo-Iranian commodities trader Balli Group PLC and Balli Steel PLC, the SFO further announced in September and October 2020 that it had charged 5 senior executives, including the former CEO and former finance director with various offences including fraudulent trading, intent to defrauding creditor, and one count of conspiracy to defraud the Development Bank of Singapore Limited.



Slow progress in HMRC's enforcement of the Criminal Finances Act

Since the introduction of the Criminal Finances Act 2017 in September 2017, companies have been potentially criminally liable under the 'corporate criminal offence' ("**CCO**") where they have failed to prevent those who act for, or on their behalf from, criminally facilitating tax evasion.

Her Majesty's Revenue and Customs ("**HMRC**") are responsible for the investigation of CCOs. In the [2015-2020 HMRC departmental plan](#), HMRC set themselves the goal of 100 prosecutions a year for serious and complex tax crime, yet HMRC have [recently reported](#) that as at 13 October 2020 there were only 13 live CCO investigations, 3 of which have been opened since 13 July 2020. HMRC reported that the investigations span 10 different business sectors including financial services, oils, construction, labour provision and software development, and across all customer groups ranging from small businesses to some of the UK's largest organisations.

Whilst the number of investigations appear relatively low, it is clear that HMRC are enforcing the legislation across a wide scope of business sectors and that this is set to increase in time.



First unexplained wealth order based only on alleged involvement in crime

The NCA has secured an Unexplained Wealth Order (“UWO”) against properties and assets owned by Leeds businessman, Mansoor “Manni” Mahmood Hussain, with a combined value of £9,802,828. The settlement was agreed on 24th August 2020 and the High Court sealed the recovery order on 2nd October 2020.

The NCA claimed that Mr Hussain has links to a murderer jailed for 26 years, an armed robber and a convicted fraudster who acted as his accountant, used threats of violence and blackmail to buy his properties which were funded by his criminal associates. Despite submitting 127 lever arch folders and a 76-page statement to explain where his money came from for the properties, Mr Hussain failed to sufficiently prove that the properties were not illicitly financed.

UWOs were first introduced in January 2018. This UWO is ground-breaking as it is the first obtained solely on the basis of an individual’s alleged involvement in serious organised crime.



SFO use additional powers to recover proceeds of crime

In September 2020 the SFO announced that it had recovered £500,000 worth of jewellery from a safe deposit box under the listed asset provisions of the Proceeds of Crime Act 2002.

The listed asset provisions allow the SFO and other enforcement agencies to seize, detain and/ or forfeit listed assets such as precious stones, watches and artistic works, where it is believed the assets represent the proceeds of crime or are intended to be used for unlawful conduct.

The safe deposit box was held by the former partner of Nisar Afzal who was a key suspect in the SFO’s Birmingham Mortgage Fraud case which was opened in 2006.

It was alleged that two brothers Nisar and Saghir Afzal defrauded a number of Birmingham mortgage advisors into providing mortgages totalling almost £50million for properties worth only £5,688,125, with the assistance of a dishonest chartered surveyor Ian McGarry. Saghir Afzal and Mr McGarry entered guilty pleas in late 2010/ early 2011, and were sentenced to 13 and 7 years in prison respectively.

However Nisar Afzal fled to Pakistan before he could be charged, and remains outside the jurisdiction with a warrant for his arrest outstanding. The listed asset order was obtained on the basis that the jewellery had been purchased by Nisar Afzal or with the proceeds of his crimes.



SFO and Competition and Markets Authority cooperation on criminal cartel cases

On 21 October 2020 it was announced that the SFO and the Competition and Markets Authority (“CMA”) have signed a [Memorandum of Understanding](#) (“MoU”) which enables the authorities to cooperate in relation to investigations of criminal cartel offences brought under the Enterprise Act 2002.

The MoU makes clear that the CMA will have primary responsibility for undertaking all initial criminal enquiries and that the SFO will refer to the CMA in the first instance any information it receives regarding criminal cartel activity. The MoU does however provide scope for joint investigations and CMA or SFO led investigations as well as SFO led criminal investigations occurring in parallel to CMA civil investigations.



The SFO's Director outlines her crimefighting wish list

The SFO's director, Lisa Osofsky, has recently delivered a number of keynote speeches which focus upon the future challenges in the economic crime arena. Ms Osofsky is of the view that there is still much that needs to be done and has outlined two key areas which she argues would be a "magic wand" for tackling financial crime.

Firstly Ms Osofsky has renewed the call for a corporate failure to prevent fraud or economic crime offence, akin to the existing corporate offences of failure to prevent bribery and failure to prevent the facilitation of tax evasion.

The proposed 'failure to prevent' offence was first raised by Ms Osofsky's predecessor David Green in 2014. The then Conservative and Liberal Democratic coalition government appeared interested in the proposal and included examination of the case for the new offence as part of the UK's Anti-Corruption plan in December 2014. In January 2017 the Government finally announced a call for evidence on the case for reform of the law on corporate criminal liability for economic crime, but still has not published the results of this consultation.

Interestingly Ms Osofsky also called for an extension to the SFO's powers under section 2 of the Criminal Justice Act 1987 which enable the SFO to compel a person to attend an interview with the SFO or to produce specified documents within a specified timeframe. Failure to comply with a notice served under these powers without reasonable excuse is a criminal offence.

The SFO can only use these draconian powers in fraud and domestic bribery cases once the SFO has formally opened an investigation, but Ms Osofsky believes that it would greatly assist the SFO if those powers could be used even where a formal investigation had not been opened.

Ms Osofsky has also called for the introduction of a "tipping off" offence whereby the recipient of a notice issued under section 2 powers would commit a criminal offence if they were to "tip off" the subject of the investigation.





Five fast facts

- 1** £28.9 million is the amount paid to the SFO in prosecution costs through the DPAs settled prior to October 2020.
- 2** Between April 2019 and March 2020 the SFO obtained 11 confiscation orders with a combined value of £13 million and recovered £7m from the enforcement of order previously obtained.
- 3** £40 million was the estimated cost of Operation Holbein, the SFO's last criminal cartel investigation into alleged pharmaceutical price fixing.
- 4** 33 opportunities for investigations into Corporate Criminal Offences have been rejected by HMRC since September 2017, and 18 live opportunities are currently under review.
- 5** 629 notices were issued under the SFO's section 2 powers between April 2019 and March 2020.



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