

Getting tough on financial fraud—lessons from recent SFO prosecutions

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Corporate Crime analysis: Andrew Katzen, partner, and Fiona Bowen, paralegal, both at Hickman & Rose, examine the background to a recent prosecution by the Serious Fraud Office (SFO) concerning a £160m finance fraud, and assess the significance of the sentences imposed and the judiciary's approach.

Original news

Financing fraud leads to sentences totalling 44 years, [LNB News 10/02/2017 94](#)

Four men have been sentenced to a total of 44 years in prison after being found guilty of a £160m financing fraud, the SFO has confirmed. Individual sentences range from seven to 15 years. The four men had been found guilty, variously, of conspiracy to commit fraud and conspiracy to make corrupt payments.

What was the background to the prosecution?

On 7 February 2017, the SFO successfully secured four convictions in the case of [R v Alexander and others](#) at Southwark Crown Court. The initial investigation into Total Asset Finance (TAF) was commenced by the SFO as far back as 2011, in connection with the purchase of alleged false and inflated receivables agreements by KBC Bank (KBC) and Barclays Asset Finance.

TAF financed the work of H20, a company that installed fibre-optic cables to provide high-speed internet access. TAF advanced funds to H20 on the basis it was assigned the contract between H20 and the customer, and as such, would receive an annual rental income. TAF then reassigned the contracts to KBC and Barclays. The fraud occurred when the reassigned contracts were altered to promise far higher annual rentals than would in reality be due, and as such, fraudulent contracts were assigned for an inflated price. The fraud escalated when, in addition, TAF began 're-assigning' completely fictitious contracts.

One feature of this case is that the companies involved had a unique, working and profitable business model which generated lawful revenues. Indeed, when TAF began funding H20 there was legitimate activity, as H20 contracted for and acted to install fibre-optic cables, TAF financed the work and was assigned rental income contracts.

Even though the case concerned a fairly small start-up company based in Cheshire, it met the SFO's criteria for prosecution of serious and complex fraud in that at least two criteria of the director's statement of principle were covered—significant economic harm and public interest.

What was the judge's approach to sentencing and the key issues arising from the sentencing remarks (including application of Fraud Sentencing Guidelines and the Totality Guidelines)?

The convicted men were of good character and successful in their respective fields, and as noted in HHJ Gledhill QC's sentencing remarks the 'motive was sheer greed'. Of those convicted, two were employed by TAF, one by KBC, and one by H20—that is to say, this complex fraud involved individuals working across three organisations. Further, it continued undiscovered for a period of almost three years. The banks were defrauded of a very significant sum (circa £160m) and the resulting loss to KBC bank was in the region of £117m. These factors were all noted in the sentencing remarks by HHJ Gledhill QC who also went as far as to call the evidence against the convicted men 'compelling'.

A number of issues were highlighted in the sentencing remarks, including the breach of trust that enabled the fraud to be so profitable and to span such a lengthy time period. HHJ Gledhill QC described the attempts the men went to 'emasculate' the investigation and emphasised that the fraud actually resumed after the investigation. He criticised the lack of acceptance of dishonest involvement from all of the convicted and their efforts to lay the blame on one another for the fraud.

Both the Sentencing Guidelines and the totality principle were referred to in sentencing, with reasons given for how they were being applied in each case. The serious, complex nature of this fraud is very much reflected in the severity of

sentences that were handed down, ranging from seven to 15 years. Dartnell, formerly of TAF, was sentenced to ten years for conspiracy to commit fraud and a further five years for a second count of fraud to run consecutively. Dartnell also received a sentence of six years for conspiracy to make corrupt payments, to run concurrently with his 15-year sentence.

George Alexander, formerly of TAF, received eight years for the first count of conspiracy to commit fraud and a further four years for the second count to run consecutively, giving a total sentence of 12 years.

Carl Cumiskey, formerly of H20, was sentenced to seven years for the first count of fraud and three years for the second, to run consecutively, meaning a total sentence of ten years.

Simon Mundy, formerly of KBC, was sentenced to seven years' imprisonment for the fraud offence and received a six-year sentence for conspiracy to make corrupt payments, with both sentences to run concurrently, resulting in a seven-year sentence in total.

What do the sentences imposed tell us about increased trends in sentencing fraud offences and the imposition of consecutive sentences for connected offences?

Stephen Dartnell was described as the principal offender and he received the maximum sentence for fraud, ten years for his first offence against KBC. The judge regarded his case as falling in to the highest category for both harm and culpability and that previous good character and delay attracted little mitigation.

The Sentencing Guidelines lines are explicitly cited as giving a sentence range of five to eight years for a loss of £1m. HHJ Gledhill QC commented that as the loss here was 117 times the £1m amount it was a case of the 'utmost gravity', thus the maximum sentence was applied.

However, Dartnell's sentence for the second count of fraud against Barclays was reduced to five years in light of the totality principle—had the 'most appropriate' sentence for that fraud been applied the sentence would not reflect the totality principle. The sentences are to run consecutively as HHJ Gledhill QC held the offences were a separate set of frauds against a separate victim. HHJ Gledhill QC noted that the fraud against Barclays commenced when KBC ceased its UK activities. This reasoning ran across the two other individuals' sentences that contained an offence against Barclays, which had the effect of lengthening sentences considerably.

Dartnell's third offence of corrupt payments however is concurrent with his fraud sentences, as otherwise it was judged that the sentence would exceed the totality principle.

Following the reasoning behind the sentence for one individual demonstrates that the sentences were not out of step with the Sentencing Guidelines nor the totality principle. They are severe, as the guidelines allow for in a case such as this where the loss is immense.

Do you find these sentences for historic corruption offences surprising? Are these in line with sentences being imposed for offences of a similar nature?

Essentially, the sentences handed down do follow the Sentencing Guidelines in terms of categorising harm and culpability for the offences, given the severity of the loss. The sentences themselves for fraud were extended by the decision to view the separate counts of fraud as not a single course of criminal conduct, and the additional offences of conspiracy to give corrupt payments.

It could be argued that HHJ Gledhill QC could have viewed the frauds as a course of criminal activity, and allowed the sentences to run concurrently as they were undoubtedly offences of the same kind, as there is no suggestion the method of fraud was at all altered.

What are the key learning points for corporate crime practitioners?

This case demonstrates the SFO's commitment to prosecute offences and remain focused on an investigation and criminal case across a significant time period. The key learning point for practitioners is that serious, complex and high-value frauds are going to be dealt with much more firmly than they would have been previously.

There is no reason to expect that the judiciary will not follow Sentencing Guidelines and, evidently, not shy away from imposing what appear to be severe sentences when the highest levels of harm and culpability are present.

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