

Aim for the crime, shoot for the cover-up: the SFO secures a conviction for destroying evidence

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The factual proof of a financial crime is typically found in the financial data and supporting documentation. Given the evidential obligation on investigative and prosecutorial bodies to identify, collect, verify and analyse the financial and other supporting data in respect of an alleged crime, the temptation for a defendant to tamper with or destroy such evidence can be overwhelming.

Consequently, prosecutors often find success by pursuing conduct which is contingent on, or ancillary to, the main criminal wrongdoing (such as bribery or corruption) but which can by itself lead to standalone criminal offences being made out, such as the destruction of evidence, false accounting, money laundering or failing to maintain adequate accounting records.

Last month saw a timely reminder of the risks of an attempted cover-up. On 21 December, the SFO [announced](#) that Richard Kingston (a 54 year old former Managing Director of Sweett Group plc) had been found guilty of two destruction of evidence offences, contrary to section 2 (16) of the Criminal Justice Act 1987. Mr. Kingston was convicted of concealing, destroying or otherwise disposing of two mobile telephones, knowing or suspecting that the data stored on those phones would be relevant to the SFO's inquiries. The jury in the case were told that despite knowing of the SFO's investigation, Mr. Kingston destroyed mobile phones containing emails, texts and WhatsApp messages pertinent to the SFO's investigation into allegations of bribery. He was sentenced to 12 months' imprisonment on each count, to run concurrently.

An offence is committed under section 2 (16) where a person knows or suspects that an SFO investigation is being, or is likely to be, carried out and falsifies, conceals, destroys or otherwise disposes of documents which he knows or suspects are, or would be, relevant to the investigation. Section 177 (3) of the Financial Services and Markets Act 2000 provides for an identical offence in respect of FCA investigations.

Potential contingent offences are not restricted to the destruction of evidence, particularly where corporate entities are involved. The mislabeling of corrupt payments, often as 'consultancy fees', the use of complex corporate structures and the deployment of euphemistically titled 'creative' accounting practices to conceal the true nature of improper transactions may all present prosecutors with the possibility of pursuing money laundering offences (as bribery and corruption

form predicate offences under the Proceeds of Crime Act 2002) and wider ‘books and records’ style offences of false accounting (under the Theft Act 1968) or failure to maintain adequate accounting records and making false, misleading or deceptive statements to a company’s auditor (under the Companies Act 2006).

The risks incurred by such behaviour are material and SFO’s message is unequivocal. Speaking after Mr. Kingston’s conviction, the SFO’s General Counsel, Alun Milford said, “Richard Kingston actively took steps to frustrate our inquiries into his involvement, and that of others, in the suspected payment of bribes. We will not hesitate to pursue those who may set out similarly to disrupt our investigations.”

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