WILMERHALE

LIBOR acquittals are a blow to the SFO, but not a fatal one

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This week, all six brokers accused of conspiring with Tom Hayes to manipulate the LIBOR benchmark were found not guilty at Southwark Crown Court.

At first glance, this looks like a humiliating defeat for the SFO. Following the successful prosecution of Tom Hayes in August 2015, a conviction against the six brokers would have galvanised the SFO going forward, and sent a clear and unequivocal signal to the industry. Instead, two juries with inconsistent findings on the same conspiracy strikes a discordant note.

Despite this, the impact of this verdict on the SFO's benchmark manipulation investigation should not be overstated. Optically, a clean sweep of not guilty verdicts after just two days of deliberation following a fifteen-week trial is a major loss for the SFO. However, a trial of the brokers, who were one step removed from the rate-setting itself, was always going to be more challenging. The SFO's case against the brokers centred around their allegedly facilitating a scheme to manipulate the Yen LIBOR rate, masterminded by Hayes. By contrast, the key to the SFO's success in securing a conviction against Hayes lay in his proximity to, and alleged influence over, the benchmark submission process. Although the six brokers and Hayes were tried as co-conspirators, from the SFO's point of view the Hayes case represented the core of the matter, and a conviction against the brokers would have been a collateral win.

The SFO ended 2015 on a determined note. The message was clear: the SFO is willing and able to come down hard on financial crime in the Square Mile. The broker trial verdict is unlikely to dampen significantly the SFO's enthusiasm; it might be a setback, but it is certainly not the death knell for future investigations of this nature.