

## Recent developments strengthen the position of the SFO

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The SFO will finish 2015 in a much stronger position than when it started. The organisation has managed to secure the conviction of LIBOR trader Tom Hayes, negotiate its first Deferred Prosecution Agreement (DPA) and start to bring companies in front of the courts for offences under s.7 of the Bribery Act 2010 (BA 2010). These successes will help to ease the pressure on the SFO and provide a personal boost to the head of the organisation, David Green.

This is in stark contrast to the position of the SFO at the end of 2014. At that time, Theresa May, the UK Home Secretary, had revived plans to abolish the SFO entirely and bring most of its functions under the control of the “FBI-style” National Crime Agency (NCA). In July this year it seemed as if Ms May was intent on putting these plans into action, as the NCA launched its International Corruption Unit, which assumed responsibility for certain tasks previously carried out by the SFO<sup>1</sup>.

However, the SFO’s recent successes, and some problems at the NCA, should ensure that the Home Secretary’s proposals do not resurface any time soon.

The Hayes verdict was an important political win for an organisation that increasingly has to prove its worth. An acquittal in such a high profile case would have prompted severe criticism and would likely have derailed the ongoing prosecution of others connected with the LIBOR investigation (see previous [WilmerHale W.I.R.E. UK post](#)). No doubt it also bolstered the SFO’s confidence when criminal proceedings were brought against other individuals in relation to EURIBOR manipulation last month.

The first DPA was agreed between the SFO and ICBC Standard Bank (Standard Bank) in November this year. The case broke new ground since, as well as being the first ever DPA with the SFO, it is also the first case in which a company has been brought before the courts for an offence under s.7 BA 2010, which makes it an offence for a corporate to fail to prevent bribery. Whilst the first successfully negotiated DPA is unlikely to lead to an avalanche of more DPAs, given the continuing high threshold for establishing corporate criminal liability in the UK, it is now a benchmark for corporations considering the DPA process (see previous WilmerHale W.I.R.E. UK posts [here](#) and [here](#) on the Standard Bank DPA).

Shortly after concluding the DPA with Standard Bank, the SFO [disclosed](#) that Sweett Group plc, an

engineering and construction firm, admitted an offense under s.7 BA 2010. According to the [charging document](#), Sweett Group failed to prevent its subsidiary, Cyril Sweett International, from paying bribes to secure a cost consulting and project management contract in relation to a hotel in Dubai. Sweett Group pleaded guilty on 18 December 2015 and will return for sentencing on 12 February 2016. This case, and the s.7 element of Standard Bank's DPA, seems to have reopened the debate regarding whether a broader corporate offence of failing to prevent economic crime should be introduced<sup>2</sup>. The introduction of such an offence would likely increase the appetite of corporations to secure DPAs.

These successes have strengthened David Green's position, and press reports suggest that he has been offered a 2 year extension on his current contract (which would bring his tenure to April 2018). An extended term for David Green will likely bring with it the continuity and confidence that will only embolden the organisation further.

As the year comes to a close, things are not looking so bright for the NCA. It was reported to have obtained evidence unlawfully in a number of money-laundering cases leading to three major trials collapsing. Chris McKeogh, deputy director at the NCA, has reportedly said that the trials collapsed due to incompetence and in one case Mr Justice Higinbottom said that the NCA had acted with "patent and egregious disregard for, or indifference to, the constitutional safeguards"<sup>3</sup>.

The Home Office has not released a public statement on the plans to abolish the SFO and incorporate its function into the NCA in light of the above, but these developments will give the SFO useful ammunition should calls for it to be abolished ever reappear.

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<sup>1</sup> For example, maintaining a register of foreign bribery cases.

<sup>2</sup> As one of the reasons given by the Ministry of Justice for dropping the proposed offence was because, at that time it was dropped, there had been no prosecutions under s.7 BA 2010.

<sup>3</sup> *Chatwani & Ors, R (on the application of) v The National Crime Agency & Another* [2015] EWHC 1283 (Admin) – para. 141.