
UK's Serious Fraud Office Secures LIBOR Conviction

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On Monday 3 August, Tom Hayes was convicted and sentenced to 14 years' imprisonment for his part in the manipulation of the London Interbank Offered Rate ('LIBOR'). The result has attracted attention because it was the first prosecution brought by the UK Serious Fraud Office ('SFO') on allegations of benchmark manipulation.

Whatever verdict had been returned, the dust was not expected to settle anytime soon. The former trader, convicted of eight counts of conspiracy to defraud for the central role he played, now faces a long prison sentence. Mr Hayes and his lawyers are left to consider grounds of appeal and to reflect on whether the imbalance between English and US sentencing, which Hayes claimed had driven him to self-incrimination, may be showing signs of easing. Meanwhile, David Green, the Director of the SFO, is galvanised by the conviction. In an interview with the Wall Street Journal only a day after the verdict, Mr Green announced the SFO's plans to lay further criminal charges in the autumn against others for their part in manipulating LIBOR. He gave no indication as to the seniority or role of those individuals. Anyone charged in the future will join the ranks of the eleven who are set to stand trial in the next year, six of whom are alleged to have conspired with Hayes. Although the facts and circumstances of each case will vary, the Hayes verdict will inevitably focus the minds of others in a similar position. In the meantime, it is worth considering the immediate issues raised by the verdict: how the reputation of the SFO will be affected and the possible grounds for any review of Hayes' sentence.

For the SFO/David Green

The SFO, which has to a large extent staked its reputation on the outcome of its LIBOR investigations, will be pleased with the result of the trial. However, the agency will be well aware that memories of its troubled history are unlikely to be expunged by this success. The outcome will be assessed against the circumstances of the case overall. As is so often the position with criminal offences committed in the financial services sector, whilst the context of the conduct may be highly complex the core allegation is one of dishonesty. In Hayes' case this was particularly stark. Whilst it may therefore not have been the most challenging of convictions to secure, Hayes's acquittal would have prompted severe criticism and precipitated an existential crisis for the SFO.

In political terms, therefore, it an important win which will undoubtedly embolden the SFO in its

efforts to secure convictions in its ongoing investigations and prosecutions. However, whilst the conviction may help to ensure that the Home Secretary's proposal to abolish the SFO and bring its functions under the National Crime Agency do not resurface any time soon, there will be great pressure on the SFO to repeat this in the pending trials.

For Hayes

Hayes was sentenced to 14 years' imprisonment for a total of eight counts of conspiracy to defraud. The Judge separated Hayes' conduct at each of the banks where he worked, making the sentences in respect of each consecutive rather than concurrent. In passing sentence, Mr Justice Cooke made plain that there was no mitigation which could successfully be presented on Hayes' behalf. Having provided the SFO with what may have seemed like a complete confession, a central plank of Hayes' defence was that his apparent candour had been motivated by a fear of extradition to the US. He changed lawyers and retracted his confession upon being charged by the SFO.

Many will have strong, and divergent, views on the appropriateness of Hayes' sentence. Amongst legal commentators, many were surprised by its length. Hayes will no doubt appeal the sentence, and the Court of Appeal will need to consider whether the sentence is wrong in principle or manifestly excessive in its totality. In respect of the first limb, it could be argued that the decision to draw a distinction between Hayes' conduct at each of his employers, imposing consecutive sentences for each, was artificial. In respect of the second limb, it is arguable that the totality of the sentence is manifestly excessive given that the maximum sentence for any one count of conspiracy to defraud is 10 years. Whilst the Court of Appeal may be receptive to the totality argument, the unique nature of these offences could be relied upon in upholding the sentence. Whilst Mr Justice Cooke dutifully cited and applied the sentencing guidelines, they are unlikely to have provided any real assistance in the sentencing process. Neither would he have been aided by case law: the LIBOR benchmark rigging allegations are novel.

Moreover, the seniority of the trial judge, the effectiveness of the sentence as a powerful deterrent and the public appetite for "banker bashing" will mean that a significant reduction in the sentence is by no means certain.