
US Charges and Arrest of UK Trader

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The high-profile arrest of a UK futures trader throws a spotlight on the severe sentences available to the US justice department, Christopher David writes.

The news reports that a London-based futures trader, Navinder Singh Sarao, has been arrested by the British police at the request of the US authorities, to be extradited to America to face charges of market manipulation and wire fraud, brings back memories of the NatWest Three, Gary McKinnon and Christopher Tappin.

All of these people are British citizens who resisted extradition through the English courts and the media and, apart from McKinnon, were ultimately extradited to the US to face criminal prosecution for a range of criminal offences.

Whenever the US authorities make an extradition request of this nature it is usually followed by much discussion about the unfairness or unbalanced nature of the US/UK extradition treaty.

This is despite the fact that the review of the UK's extradition arrangements in September 2011 conducted by the Rt Hon Sir Scott Baker, David Perry QC and Anand Doobay concluded that the US/UK treaty does not operate in an unbalanced manner.

Notwithstanding this conclusion, the British government amended the UK legislation in October 2013 to introduce a 'forum bar' which allows a court to bar an extradition where a substantial measure of the requested person's conduct was performed in the UK and where it is in the interests of justice to do so.

It is not possible on the available facts to comment substantively on whether this may be a route which Mr Sarao could successfully resist extradition but it may well be an interesting test of the new legislation.

Perhaps of greater concern is not that the UK may, if after following the proper procedures, extradite its citizens to the US, but rather what waits for those citizens when they get there.

The sentences for white collar offences in the US are far more severe than in the UK and a

defendant convicted of market manipulation and wire fraud could face a prison sentence of 20 to 30 years or more.

It is due to these severe penalties that it is rare that a defendant faces trial but rather that they negotiate a plea with the Department of Justice (DoJ).

It is against this backdrop that Mr Sarao's case should be considered, in that the extradition request is an opening position by the DoJ for negotiations and whilst there are many legal hurdles that both sides must get over, the end game is a settlement which both sides can accept.

Of course if Mr Sarao is innocent then he should defend himself in front of a jury but he will face a long battle with significant legal fees and a high risk of a large prison sentence at the end of it – it is faced with this choice that many defendants negotiate a plea they can live with out of pragmatism, irrespective of whether they actually did anything wrong.

Christopher David *writes for the Gazette on white collar crime issues*