
A New Director for the UK's Serious Fraud Office

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Some time in April of this year—the exact date has not yet been decided—the current Director of the UK's Serious Fraud Office (SFO), Richard Alderman, will step down. He will be replaced by David Green QC, who will hold the post for four years.

What are possible implications of this change for the SFO and those it investigates? Our view is that Mr. Green is likely to oversee a subtle shift in emphasis at the SFO, away from settled outcomes and towards more traditional investigation and prosecution of corporate offending.

Mr. Green is a respected criminal barrister with 25 years of experience in both prosecution and defense work. In 2004, he became the first director of the Revenue and Customs Prosecutions Office (RCPO), a government body established to prosecute tax, drug, money laundering and import/export offences. Mr. Green held the RCPO directorship for six years, leading it in its merger with the Crown Prosecution Service (CPS) in 2010. He was Director of the CPS Central Fraud Group for a year following the merger, and in 2011, returned to private practice.

Like Mr. Alderman, Mr. Green also has substantial experience in government. However, he differs from his predecessor in that he has spent the majority of his professional life in private practice. Although he is perhaps not closely associated with white-collar crime, he is particularly well regarded as a prosecutor and his appointment is likely to result in a more aggressive SFO with a greater emphasis on prosecution of serious fraud.

Under Mr. Alderman's leadership, the SFO has seen a gradual move towards more collaborative methods of dealing with corporate offending. In recent years, the SFO has relied increasingly on self-reporting, plea negotiations and civil settlements as alternatives to prosecution, particularly in relation to corruption cases. Since the 2008 *Balfour Beatty* case concerning a £2.25 million civil settlement for "books and records" offences, there have been a number of similar settlements. More recently, the government has proposed the introduction of US-style deferred prosecution agreements which, if introduced, would put an additional plea bargaining tool at the SFO's disposal. While there appears to be significant political support for the proposal, the timeframe for the consultation process means that the formal proposal is unlikely to be put before parliament before

the next parliamentary session beginning in May 2012.

We do not think that under the new Director the SFO will positively seek to reverse this shift towards US-style plea agreements. However, we expect that this approach may be less actively promoted in lieu of traditional prosecution and investigation.

Regarding the UK Bribery Act of 2010, which has been in force for nearly eight months, the SFO is likely to actively look for a "significant" case to prosecute or in which to reach a large settlement. The SFO would particularly welcome a case in which it could establish clear judicial support for the Act's far-reaching extraterritorial scope with respect to the corporate offence of failure to prevent bribery. In addition, and despite businesses' difficulties with the Act's strict prohibition of facilitation payments, we expect no let-up or "soft" approach by the SFO on this issue.

Finally, a more aggressive SFO may scrutinize more carefully companies' hospitality and entertainment events, something of particular relevance in this Olympic year.

However, we need to keep in mind that Mr. Green joins the SFO at a time when its resources are under severe pressure. A 25% budget cut imposed in 2011 is expected to remain in place until 2013. Several senior members of staff resigned in 2011 as a result of speculation over the organization's future. The government's plans to disband the SFO have since been shelved, though the exodus of senior staff continues.

Thus the challenge for the SFO under its new Director will be how to make its mark as an aggressive prosecutor of corporate crime within the confines of limited resources.

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