

Client Update

First SFO Bribery Act Convictions Confirm New and Severe Sentencing Regime

LONDON

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On Friday 5 December 2014, following a two-month trial in London's Southwark Crown Court, the jury returned convictions on the first charges brought by the Serious Fraud Office under the Bribery Act 2010 (the "Act").¹ The case revolved around an alleged "Ponzi scheme" involving Sustainable AgroEnergy plc ("SAE"), a company that had promoted biofuel investment products linked to jatropha tree plantations in Cambodia.² Investments of tens of millions of pounds, predominantly consisting of pensions savings, were obtained on the basis of fraudulent representations as to the state of the plantations and the commercial viability of the venture. The total value of the fraud was £23m. Following the failure of the plantations, the group of companies to which SAE belonged was placed in administration in March 2012.³

The SFO had brought charges of conspiracy to commit fraud by false representation, fraudulent trading, and conspiracy to furnish false information, against all or some of the four defendants. In addition, Bribery Act charges of giving and receiving bribes, pursuant to, respectively, sections 1 and 2 of the Act, were brought against three defendants, one of whom was acquitted of all charges.⁴

¹ SFO press release: "City directors convicted in £23m Green biofuel trial" (5 December 2014), <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/city-directors-convicted-in-23m-green-biofuel-trial.aspx>.

² See, e.g. "How an eco-pioneer from Torquay launched a miracle crop, risked a fortune, and ended up in a Cambodian prison", *The Independent*, 5 April 2013; and "SFO claims biofuel group used Ponzi scheme", *Financial Times*, 8 October 2014.

³ See SFO press release: "Four charged in 'bio fuel' investigation" (14 August 2013), <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2013/four-charged-in-'bio-fuel'-investigation.aspx>.

⁴ SFO press release: "City directors convicted in £23m Green biofuel trial" (5 December 2014).

The individuals convicted of bribery were Gary Lloyd West, former Director and Chief Commercial Officer of SAE, and Stuart John Stone, Director of SJ Stone Ltd, a sales agent of unregulated pension and investment products. They had conspired to produce false sales invoices of £3.1m, allowing Stone to obtain commission rates of 65% on investors' funds. The direct loss to investors from this particular scheme was, after recovery, some £2.3m.⁵ In addition to significant and elaborate efforts to conceal these false invoices, West received bribes from Stone for his collaboration in the scheme.⁶ Consequently, West was convicted of two offences of being bribed under section 2 of the Act, and Stone of two offences of bribing another person under section 1.

This was the first sentence passed under the new sentencing guideline for bribery offences under the Act, published by the Sentencing Council on 23 May 2014 and applicable to all sentences passed from 1 October 2014.⁷ His Honour Judge Beddoe agreed with the prosecution submission that the bribery offences were in the topmost category of the sentencing guideline, meaning that they involved high culpability and serious harm. The starting point for this sentencing bracket is seven years' imprisonment, with a range of five to eight years. In mitigating for their clients, counsel for both West and Stone pointed to the fact that they were of previous good character. Counsel for West also insisted on the wellbeing of his three children and counsel for Stone pointed to his client's youth at the time of the offences and submitted that he had since matured (and married). Judge Beddoe imposed a total of thirteen years' imprisonment on West, of which four were in respect of the bribery offences; Stone received six years' imprisonment for bribing West.⁸

These sentences reflect a clear increase in the English sentencing regime for bribery offences. They can be compared to the sentences recently imposed on Innospec Ltd executives Dennis Kerrison and Miltiades Papachristos in respect of what the Court of Appeal referred to as a "*prolonged, cynical and serious*

⁵ Prosecution opening at sentencing hearing on 8 December 2014.

⁶ SFO press release: "City directors convicted in £23m Green biofuel trial" (5 December 2014).

⁷ Available at:
http://sentencingcouncil.judiciary.gov.uk/docs/Fraud_bribery_and_money_laundering_offences_-_Definitive_guideline.pdf.

⁸ SFO Press release: "City directors sentenced to 28 years in total for £23m 'green biofuel' fraud" (8 December 2014), <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/city-directors-sentenced-to-28-years-in-total-for-23m-green-biofuel-fraud.aspx>.

corruption of public officials in a foreign country".⁹ The trial judge had originally sentenced Kerrison to four years' imprisonment, and Papachristos to 18 months. Kerrison's sentence was reduced to three years' imprisonment on appeal.¹⁰ Until Stone's six-year sentence, the harshest sentence for bribery offences was the five years imposed on Andrew Rybak on 31 January 2012 for having solicited and obtained corrupt payments for passing on confidential procurement information to bidding suppliers in oil and gas engineering projects in Iran, Egypt, Russia, Singapore and Abu Dhabi between 2001 and 2009, projects worth a total of £66m.

The sentences imposed on West and Stone on 8 December 2014 were in respect of commercial private sector bribery, and so there is still no guidance as to how the courts will treat bribery of public officials. It should be noted that the intended corruption of senior public or law enforcement officials is a factor indicating high culpability under the guideline, and that the effect of the corruption in undermining the proper functioning of local or national government is an important consideration in determining degree of harm caused. Given the absence of those considerations from the present case, these sentences show even more starkly that the new sentencing guideline will lead to a significant increase in sentences for bribery offences across the board. There is little doubt but that individuals convicted of commercial bribery in international commerce, and/or the corruption of public officials, can in the future expect considerably harsher sentences than has been the case until now.

Neither SAE nor any other corporate entity was charged in this case. Therefore, the provisions of the bribery sentencing guideline relating to the corporate sentencing regime, including the Act's "corporate offence" of failing to prevent bribery, remain untested.

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Please do not hesitate to contact us with any questions.

⁹ *R v Papachristos and Kerrison* [2014] EWCA Crim 1863 (judgment of 19 September 2014), at paragraph 78.

¹⁰ *Ibid.*