

David Green: The SFO's new bruiser

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Battle is brewing between the Serious Fraud Office and City banks and companies as David Green QC, the new SFO director, starts to make his mark. In the seven months since he was appointed, Green has issued threatening noises to the City and companies about hospitality, rowed back on earlier statements about deals companies can do to stave off prosecutions, warned banks that a big Libor case is looming and taken on Barclays over the fees it paid to Middle Eastern advisors.

Green, a relatively shadowy figure in the law enforcement community, says 'war, war' rather 'jaw jaw' is more his style as he hardens up the image of an organisation, which many observers had started to say was looking soft and weak at the knees. 'I would like the SFO to have a hard-edged tough reputation. It should be something which is feared. You don't want to be investigated by the SFO. The banks know that they are under the microscope. People are beginning to realise through gritted teeth that banks do misbehave. We do need the banks but we need straight banks and honest bankers. That is the kind of thing that will emerge from all this.' Colleagues who have seen this commercial barrister across the courtroom describe him as a 'prosecutor's prosecutor.' Another said, 'he relishes a fight'.

He sent out an uncompromising message out in October when the guidance notes to the UK Bribery Act were thrown out. This put the sensitive hospitality issue back on the corporate agenda. Green says, 'I am sceptical of Guidance Notes. I suspect the motives of those that want absolutely precise guidance, because I suspect they want to wait round the corner and hit you over the head with it, and say, you are acting contrary to your guidance. The criminal law covers an endless multitude of possibilities and possible sets of facts. It is very hard to be specific. On corporate hospitality, it rather depends on the motive and the context and the timing and the value. You can't just say, Wimbledon tickets are OK. They'll say that you said, 'Wimbledon tickets are alright.'

But the prosecution of those that manipulated the Libor rate really sets Green's pulse throbbing. Having extracted a £3.5m annual boost to the SFO's annual budget from the Government to finance the probe, he is raring to go. 'It is unbelievably complicated. A criminal investigation is to an altogether different depth and thoroughness than that of the FSA which has been regulatory. We have to take it much further than the FSA and spread it to other banks. There is an international dimension to the criminality.' The investigation is targeting UK incorporated banks and Green is piling all his resources into it. 'We are dealing with British bankers although others were involved. These things should be dealt with in London if they possibly can.' He says he is in a race with American investigators from the SEC to get charges out first. 'Some people may get to the finishing post in terms of charges against corporations and individuals. So be it. There isn't much I can do about it. I am not going to break our necks and bring some sort of crap prosecution just for the sake of it. It isn't going to work... There is a competition for jurisdiction. There have been some frank and fair discussions with the Securities and Exchange Commission in the US.'

In fact, the SFO had first right of refusal to investigate the Libor case two years ago, but the then SFO Director Richard Alderman turned it down, handing it over to the FSA. Green is privately boiling at

the decision. 'With hindsight it would have been better [if the SFO had made the initial investigation]. I couldn't say if I was in Richard's shoes, I would have made a different decision.'

No holes will be barred in mounting the investigation, including covert sources of intelligence. Sleuths in suits will enable the SFO to get ahead of banks that seek to cover up or mislead an SFO investigation. 'I am really going to ramp up our intelligence ability. There is a vast amount of information available in open-source material. It is all over the place. It needs to be collated and worked up, and then blended with more sophisticated intelligence. This will then be blended with more exotic intelligence which we can get from an outside source like the City of London Police, right the way up to using Covert Human Intelligence Sources if appropriate and any more exotic intelligence.'

Banks and accountants are also being seconded to the investigation, although they can expect to work for their money. Green cannot resist a dig at the bankers, 'I don't want a load of expensive banking experts sitting around on the staff fulltime, buffing their nails and puffing their Montecristos. I don't want that.' The investigation team is also being supplemented by staff from the FSA, with whom the SFO is working closely, says Green.

The outcome of the Libor probe will be announced in short order. Green is wary of a repeat of previous SFO long-drawn-out cases – like Blue Arrow, BAe and the Maxwell brothers -- where millions were spent on investigating and prosecuting cases which either failed to come to court or resulted in acquittals. 'This is not going to drag on for years, this is not going to be a four year investigation, two year break and three year trial. I want results as quickly as possible. We have to be surgical about it. The SFO has had the reputation for wanting to put some enormous complicated canvass showing everything the defendants are alleged to have done before the jury. We can't do that. We have to make this really focused on particular types of misconduct. I want some result on at least part of the investigation within six months of starting the investigation. So we are talking about early 2013 for a decision.'

If Libor does not work out, Green warns that future cases taken on by the SFO (whose remit covers cases where sums of no less than £2m are involved) will be no less high profile or sensitive. 'I see the SFO tackling the high end. It tackles the most difficult cases and that is a high risk environment but that is what we are supposed to do. The answer is to do it well with the right people and the right financing. The answer is not to dumb down and do the easier cases which of course you can do quicker, which of course you can get to court quicker. We will not run away from cases because they are difficult or expensive or take a long time to investigate or involve big numbers.' He wants cases that 'make an impact' without draining the public sector institution's coffers dry.

This is a key problem for the SFO which has seen its budget cut . This has fallen 26 per cent since the 2008-9 fiscal year to £39.5m in 2010-11 and it is due to drop another 25 per cent to £30.5m by 2014-15. 'I am not happy about the funding model. If a succession of large scale enquiries comes along at once, you get stretched so thin, it is not tenable.' He is aiming to tap the funds confiscated from criminals to add to the Government's shrinking allocation. 'It is a good source of income, and as a matter of principle I see nothing wrong with prosecutors being in part funded by money taken from criminals. I am all for that.' The SFO already receives 36% of the confiscated funds under the Asset

Recovery Incentivisation Scheme, but the Home Office receives 50%. Green sees scope for raising the SFO's percentage.

If the new bruiser at Elm Street gets his way, banks and companies who decide to resist the SFO will find the alternative to co-operation very uncomfortable and expensive.

Green and the Tchenguiz case

Green's bleeding at the SFO was not easy. He joined in April 2012 (from HM Revenue and Customs, where he was head of prosecutions) just in time to close down the Tchenguiz case—where the property tycoons were accused of fraud on an Icelandic bank -- amid shame-faced embarrassment. The investigation was subsequently stopped. 'The big lesson from Tchenguiz is so obvious it screams at you, is that the SFO made a mistake, in fact several mistakes in the information, the formal document which was put before a judge to get a warrant. There were factual errors in it. That should never have happened. Why did it happen? Because there was insufficient quality control.' He recoils at the widely reported claim that the SFO suggested that the Tchenguiz brothers should make a donation to charity as part of a settlement of their case. 'I am not confirming or denying. But if true, that seems to me extraordinary for a prosecutor to be doing that. It is said to be true. I wasn't there. You'd have to ask Richard Alderman.' Since then Green says he has revamped SFO processes and appointed some heavy hitting government officials to revamp procedures.

One outcome of the Tchenguiz fiasco was Green's decision to curb dawn raids. Green says that this merely reflects the nature of the new SFO cases. 'We are not doing any dawn raids in the Libor case and that is the biggest investigation we have done for ages. You don't need a dawn raid unless you want great amounts of publicity and in my experience pride comes before a fall. Having photographers outside the Tchenguiz house in Mayfair [for the raid] was ridiculous. It is not the way I want to do business at all. You don't need dawn raids half the time. Most the people we deal with realise that it is in their interest to be cooperative.'