

Client Alert: SFO secures convictions of two former Oil Executives

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We first wrote this alert on 20 July and we have updated it to reflect the sentencing hearings.

Introduction

Two former Unaoil executives were convicted in London on 13 July 2020 of bribing an Iraqi government official to win lucrative oil contracts worth \$800 million. Ziad Akle and Stephen Whiteley were found guilty of conspiring to make corrupt payments to “level the playing field” against their competitors following a 10-week trial led by the UK’s Serious Fraud Office (SFO).

The case however raised concerns about contact made by connections of one the companies involved with Lisa Osofsky the SFO’s Director which have somewhat foreshadowed the verdict in the case. The jury were unable to reach a verdict against a third defendant, Paul Bond, which will lead to a second trial in January 2021. The SFO has said another defendant may be added to that trial. Akle has announced his intention to appeal.

What was this about?

The case was part of a long-running investigation into Unaoil. This trial concluded on 26 June 2020 but the verdict was only reported in July after reporting restrictions were lifted by Judge Martin Beddoe.

Akle and Whiteley were employed by Unaoil. Bond was employed by SBM Offshore. A fourth man, Basil Al-Jarah pleaded guilty to charges before the trial.

The case involved the payment of bribes in a number of countries including Nigeria, Angola, Azerbaijan, The Democratic Republic of Congo, Iran, Iraq, Kazakhstan, Libya and Syria.

The trial started at Southwark Crown Court in January, but was adjourned in March in light of the pandemic. We talked about the delay in the case and some other issues relating to bribery and the pandemic in our alert in May – www.bit.ly/covbribe. The trial resumed with social-distancing measures in place.

The SFO’s case was that Oday Al Quoraishi (known by the codename Ivan) was a deputy general manager of projects at South Oil Company, or SOC, part of Iraq’s Ministry of Oil, between 2005 and 2011. He was paid a total of \$608,000 by Unaoil.

Unaoil’s founder and chairman, Ata Ahsani, and his sons Cyrus and Saman are subject to criminal proceedings in the US. Cyrus and Saman Ahsani, Unaoil’s former chairman and chief executive respectively, pleaded guilty to US bribery charges in March 2019 and expect to be sentenced in October 2020.

What punishment did they receive?

Akle was sentenced to 5 years imprisonment. The judge in his sentencing remarks called his activities “utterly exploitative at a time when the economic and political situation in Iraq was extremely fragile.” This was not a sentence under the UK Bribery Act 2010 – the proceedings were brought under prior legislation. Whiteley was sentenced to 3 years imprisonment for his “intended and actual” part in the bribery.

Al-Jarah is due to be sentenced on 8 October 2020.

Criticism of SFO Director

During the trial Ms. Osofsky was criticised by the judge over her dealings with a US representative of the Monaco based Ahsani Family. Akle had tried to have the proceedings against him dismissed arguing that Osofsky had repeatedly made improper contact with a former US Drug Enforcement Administration Supervisory Special Agent,

David Tinsley, who had gone on to set up a private intelligence agency.

It has now emerged that the judge held a pre-trial hearing in January without the jury present. It was said in court that Tinsley had communicated via text message with Osofsky, pushing for the Ahsanis to be dealt with in the US rather than the UK and offering to help the SFO secure a guilty plea from Al-Jarah and Akle. The judge dismissed Akle's bid to halt the trial but in February held a closed hearing in court to give reasons for his decision which included criticism of Osofsky. The judge disapproved of back channel contact between Tinsley and Osofsky and said that Osofsky was "vulnerable to flattery in her dealings with him" as he was "talking up her talents".

The court heard that Tinsley had started exchanging messages with Osofsky in September 2018. The judge recommended that the SFO should consider holding an internal review of the SFO's contact with Tinsley to see what lessons could be learned.

In court Akle produced transcripts of conversations which he had seemingly covertly recorded from meetings with Tinsley which seemed to suggest that Tinsley was pushing him to plead guilty and cooperate with the authorities. Akle's lawyer said in court that Osofsky had sent texts to Tinsley like a teenager who had just found a new best friend. The court also heard that Osofsky had been warned by case controllers at the SFO on 3 separate occasions in 2019 to stop these communications with Tinsley.

The SFO said in a statement on 13 July that the Judge found no evidence that the SFO had acted in bad faith nor that it had done anything unlawful but that it accepted the Judge's criticisms of the way in which contact was handled. It said that it would review its conduct and put a protocol in place covering conduct and contact with non-legal representatives.

Lessons to be learned

The case illustrates a number of points including:

1. Rumours of the death of bribery enforcement in the UK were premature. This case, and the Airbus case in February (see bit.ly/busbribe) show the SFO's intention to play their role in investigating and prosecuting corrupt conduct. Here whilst the main operations of Unaoil were not in the UK and the payments took place outside of the UK the UK still played a significant role in the investigation and the prosecution;
2. Companies need to supervise those they do business with properly – this will include their sales channel. We predicted this as a key trend in compliance in 2017 and this case illustrates those concerns. You can find out more in our video here – <http://www.corderycompliance.com/predictions-for-2017-the-rise-of-the-digital-world/>
3. Management is expected to help stamp out corruption too – if they do not there may be personal consequences;
4. Proper policies, procedures and training must be put in place;
5. Emails are often witnesses to corruption. It is no longer possible to turn a blind eye (if it ever was). Any executive who suspects something must say something; and
6. Companies must properly investigate bribery promptly – this is unlikely to involve back-channel contact with a senior official but will involve proper legal advice and established and proper ways of raising concerns.

There are details of Cordery's work in this area here <http://www.corderycompliance.com/bribery-corruption/> and here <http://www.corderycompliance.com/internal-investigations/>

For more information please contact Jonathan Armstrong or André Bywater who are lawyers with Cordery in London where their focus is on compliance issues.

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