

Senior Partner Aziz Rahman assesses the challenges facing the Serious Fraud Office in the wake of the Barclays acquittals

6 Mar 2020 Azizur Rahman.

The acquittal of three Barclays executives is certainly not the Serious Fraud Office's (SFO) finest hour. Nobody at the SFO would ever claim that to be the case.

But some at the agency may emphasise the fact that this was a case that was given the go-ahead by David Green when he was the SFO's Director. Current SFO Director Lisa Osofsky arrived to find it half-baked in her in-tray and was left with the task of concluding it. Her supporters and many onlookers are of the opinion that this is one more example of the new regime having to deal with the legacy of the previous regime. But it is a case that prompts comparisons between Green-era SFO and the agency under Osofsky's leadership. It could be argued that neither comes out smelling of roses.

As it has a legal duty to protect the integrity of the City and UKPLC, the SFO has to be seen to be taking on the big prosecutions. It cannot be seen to be shying away from the "big ticket" cases at a time when the likes of the US' Department of Justice is showing no such reticence. To be fair to David Green, he did show a willingness to prosecute the big cases. What has to count against him, however, is that he did not stay around to see many of them through to completion. As a result, Osofsky has been left holding the baby regarding prosecuting individuals in relation to Barclays and Tesco and in deciding to abandon long-running investigations such as Libor and Glaxosmithkline. These are all Green-driven initiatives that have come to nothing.

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In Osofsky's defence, it can be argued that dropping investigations is understandable from someone who is looking to take a new broom approach to her agency's caseload. But that then begs the question why did she proceed with the trial of the three Barclays executives when the case against the bank itself had collapsed and its former chief executive had already been acquitted? While it may not be easy to walk away from such a huge commitment, the writing was surely on the wall for this case a long time ago.

This is one reason why the Osofsky-led SFO has to show, in practical and positive terms, how it differs from the agency that it was under Green. If the Green-led SFO could be classed as a watchdog guarded by pitbulls – taking an aggressive approach at every opportunity – Osofsky has made it clear that she wants to achieve results through co-operation rather than relying on confrontation. Yet little, so far at least, seems to have been achieved by this approach. The number of new cases opened by the SFO fell by 50% during Osofsky's first full year at the SFO helm and few successes have been chalked up. In the short term, the SFO can be pleased with itself over the Airbus settlement, which both swelled the Treasury coffers and exemplified what can be achieved through international co-operation. But the Osofsky-led SFO has to be seen to be holding to account those who are guilty of wrongdoing. Co-operation in any way is only worthwhile if it achieves something.

There is also the nagging feeling that the SFO does not have a clear idea of how to deal with individuals once the agency has concluded a settlement with a company. This has to be addressed if the SFO under Osofsky is to build its own legacy. The SFO of David Green could be criticised for employing aggressively blunt tactics which were perhaps never designed to encourage co-operation. Quite how the Osofsky-led SFO can transform itself so that it is now seen as both friend and foe is perhaps its major challenge going into the future.

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Aziz Rahman is Senior Partner at Rahman Ravelli and its founder. His ability to coordinate national, international and multi-agency defences has led to success in some of the most significant corporate crime cases of this century and top rankings in international legal guides. He is recognised worldwide as one of the most capable legal experts regarding top-level, high-value commercial and financial disputes.

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