



## In the City

### Seriously Fraught Office

**S**ERIOUS Farce Office director David Green has just been presented with another big potential legal bill – to go with the multi-million bills payable to the brothers Tchenguiz – just as the fraudbuster's future is in home secretary Theresa May's sights and on the line with next year's Libor (and then the probable Forex) rate-rigging prosecutions.

The proposed prosecution of directors, solicitors and a QC involved in running and advising the South Wales opencast miner Celtic Energy was thrown out for a second time earlier this month. But unlike Tchenguiz, this was a prosecution launched by Green himself, rather than his predecessor Richard Alderman, so there is no legacy alibi for the embarrassing and expensive failure which raises questions of legal competence.

The now dropped prosecution revolved around the decision in 2010 by privately-owned Celtic Energy, the largest Welsh coal producer, to sell the freeholds of four opencast sites to British Virgin Islands companies, Oak Regeneration and its subsidiaries, secretly controlled by two Celtic directors, to avoid or reduce the required obligation to restore the sites and to free up cash reserves held by Celtic for that purpose. Substantial payments were made to the six defendants.

It was claimed that the £100m-plus cost of restoring the land could not be met by the BVI companies, which had minimal cash assets, potentially leaving local councils and taxpayers with most of the bill. The four sites are on land covered by Neath Port Talbot, Bridgend and Powys local authorities.

The defendants were charged with conspiracy to defraud in January last year after an investigation launched in 2011. The case was first dismissed by the trial judge in February this year. The SFO then took the rare step of effectively appealing that decision by asking the high court to restore the charges via a voluntary bill of indictment. This was rejected two weeks ago by Lord Justice Fulford.

The seven-day high court hearing saw the six defendants represented by no fewer than eight QCs (three representing the accused QC Stephen Davies), including some of the most prominent and expensive at the criminal Bar, while the SFO itself fielded two QCs.

These did not include the originally expected prosecuting QC Ian Winter – hired even though he had previously advised Celtic. "A somewhat curious choice as an adviser to the SFO", remarked trial judge Mr Justice Hickinbottom.

The SFO's failure – highlighted by the Hickinbottom and Fulford judgments – was due to it changing its case against the defendants three times before the trial and then again before the high court. It was found to be wrong in law. "I fear the SFO in this case failed at the outset to identify the proper legal underpinnings of the charges," Lord Justice Fulford stated, "and instead it varied its case in law against the accused as the arguments unfolded."

The trial judge had accused the SFO of not approaching the case "with particular analytical precision". Fulford described that criticism as mild. Rejecting the SFO's request to overrule Hickinbottom, he was damning of its whole approach to the Celtic prosecution.

Fulford said: "The effect of granting a bill of indictment on this occasion would be to allow the prosecution to treat the original proceedings 'for all practical purposes as a dummy run', and, having realised they had – on more than one occasion – chosen the wrong legal basis, to permit the SFO 'to bring virtually the same proceedings but in a form in which they could have been brought if proper thought had been given by the prosecution to them in the first place'."

The legal issues mainly concerned whether the three local councils were or could be victims of an alleged deception by the offshore transfer; whether Celtic and Oak were or could be victims

of their owners; whether the conspiracy involved a legal or illegal agreement; and the extent to which the sale of the freeholds removed the restoration liabilities from Celtic. The SFO was said to be wrong on all counts.

The four freeholds were transferred for £1 each, plus a reverse premium of £1.25m paid by Celtic to Oak. The restoration cost was estimated by Celtic at more than £100m.

The transfer took place after Stephen Davies QC provided an opinion that the scheme was legal, commercial and transferred responsibility for restoration to the BVI companies – after providing an initial opinion that it did not. This change of mind followed payment of a £250,000 fee. Davies' clerk, upon being told of the size of the fee for the second opinion negotiated by Davies personally, was quoted as declaring: "Fuck me, that's a serious amount of money."

The second opinion made no reference to the first and less expensive negative opinion – an opinion that had also been agreed by Ian Winter QC, the proposed likely prosecutor, whose advice had been sought previously.

Davies denied that he knew the transaction was not at arm's length, claimed his second opinion was legally correct and that the fee was justified. Evidence given during the pre-trial hearing raised doubts about the SFO's view that the Davies opinion was either wrong or "bogus" – an initial foundation for the prosecution.

All the now acquitted defendants always denied the allegations of fraud and claimed that the freehold transfer was legal. However, the Hickinbottom and Fulford judgments contain unflattering details about both the deal and some of those involved.

The SFO relied on "evidence of documents being produced by the solicitor defendants for use in the BVI which, falsely, indicated that the BVI company was truly independent of Celtic and was buying the sites at proper value with a view to developing them with alternative uses in the future". There were good reasons too for choosing the BVI. "The company laws of the BVI prize confidentiality, privacy and indeed secrecy. Using BVI companies would make it difficult for anyone to investigate the dealings, true ownership and real financial worth of the purchasing company."

Solicitor Eric Evans was said to have explained the "real underlying intentions" of the plan – which he called "the Big Picture" – to a fellow solicitor in his Cardiff law firm M & A this way:

*"Eric said it took on average two years to obtain disclosure of the ownership of a BVI company and that as he had set up nine companies with their ownership hidden, then in theory, it would take eighteen years to establish the true owners and by which time he felt he would not be around to face the music. I recall him telling me that after some 18 months or so had elapsed he would simply put the BVI Company into liquidation and the liability for filling the holes would then fall back on the Local Authorities. I told him that the Local Authorities 'were all clients of the firm' and he simply replied 'fuck them'."*

After the sale Celtic's owner Richard Walters and finance director Leighton Humphreys were paid bonuses of £6.9m and £1.7m by a BVI company they owned. Evans and assistant solicitor Frances Bodman received loans of £160,000 from a BVI company owned by Evans, which was paid £650,000. Another BVI company owned by senior partner David Whiteley was paid £450,000.

These arrangements were kept secret, said

## NUMBER CRUNCHING

**£60m** Fine given to Royal Bank of Scotland last week for software failure which had disastrous effects for 6.5m customers in 2012

**£600m** Bonus pot shared among Royal Bank of Scotland staff in 2012

## EU-phemisms

*"Britain has brought us all together on the subject of migration of people"*



**We've agreed they can bugger off**

the SFO. All the defendants but Davies had "signed a confidentiality agreement under which they agreed severely to restrict disclosure of information in relation to the transaction to advisers, bankers, etc," recorded Hickinbottom.

"The (SFO) evidence is that the conspirators entered into a confidentiality agreement on 16 June 2010, thereafter going to great lengths of subterfuge to keep the true nature of the transaction secret, and leave a paper trail for those who might later investigate it indicating the transaction was a normal arm's-length commercial transaction with an independent company; and putting distance between themselves (notably Walters and Humphreys, and their company Celtic) and the BVI company."

Lord Justice Fulford was keen to take no view of that evidence. "This decision should not be taken as any kind of comment on my part as regards the suggested criminality of the proposed defendants. Whether or not any of them committed a criminal offence is a question that falls wholly outside the remit of this application."

Celtic continues mining operations at three of the four sites. At two it is believed restoration will take place at no public cost; restoration of the other two sites remains under negotiation. Meanwhile the SFO and David Green have to wait to see how much this latest legal blunder will cost them and the taxpayer.

### Friends on the move

**T**HE planned Aviva takeover of Friends Life did not entirely surprise everyone in the City, to judge by the share price movement in previous weeks.

From 292p in mid-October, the price had reached 335p by the week before last Friday's after-hours announcement. The price started to accelerate upwards the previous day and had closed at 347p. The bid is worth just under 400p a share. Is this a case for examination by the Financial Conduct Authority? Its own report, meanwhile, is still awaited into how it zapped the Friends price last March by misleading the stock market, via a bungled "leak" to the *Daily Telegraph* about its plans for annuity companies.

### Rolls reeling

**F**URTHER developments in the SBM/Petrobras corruption story since *Eye* 1378 will increase nervousness at Rolls Royce about its relationship with former Brazilian agent, Julio Faerman.

The US Department of Justice has dropped its probe into the listed Dutch production services group SBM Offshore; but both it and the Securities & Exchange Commission have reportedly opened an investigation into its major customer, the state-owned Brazilian oil giant, Petrobras. Petrobras did gas turbine business with Rolls Royce. The DoJ – like our own SFO – is already on the Rolls Royce case regarding its activities in the Far East.

Then on 14 November, Brazilian police

See over...

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