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SFO Pursuit Of Barclays Execs 'Lies In Tatters' After Acquittals

By [Richard Crump](#)

Law360, London (February 28, 2020, 8:12 PM GMT) -- A London jury handed the [Serious Fraud Office](#) a major defeat Friday when it acquitted three former Barclays executives after just hours of deliberations, raising serious questions about the watchdog's decision to pursue the financial crisis-era case through two trials and a series of court setbacks.

The jury took about six hours to find the trio [not guilty of fraud charges](#) linked to the bank's financial crisis-era fundraising, one of the most high-profile prosecutions ever brought by the anti-fraud agency.

The verdict in favor of Roger Jenkins, Tom Kalaris and Richard Boath over allegations they fraudulently funneled millions of pounds to Qatar in return for it investing in Barclays comes after a series of court defeats for the SFO as part of an eight-year investigation costing £10 million (\$12.8 million).

Alistair Graham, head of white-collar crime at [Mayer Brown LLP](#), said the SFO's decision to carry on with the case "lies in tatters" following "months of legal arguments and intense and stressful cross-examination in not just one but two trials."

"The jury took just a day and a half — an embarrassingly short time — to find all three not guilty," Graham said. "The SFO may wonder whether the enormous cost not just in time and money but stress on individuals was justified."

At the heart of the case was the allegation that the bankers lied to the stock market in public documents that failed to disclose Barclays was paying Qatar more than double what it gave other investors who collectively pumped £11.2 billion into the British lender.

The SFO had originally charged both Barclays PLC and [Barclays Bank PLC](#) in connection with Qatar's £3.9 billion capital injection in the bank in two emergency cash calls in June and October 2008. But the criminal court dismissed the case against the bank in May 2018 and the SFO [failed to get the charges reinstated](#) on appeal.

The SFO tried to use Chris Lucas, the chief finance officer of Barclays at the time, as a co-conspirator, [positioning him as the mouthpiece](#) for the defendants to make the representations in the investment prospectuses. The SFO said it would have indicted Lucas as well, but he was too ill to stand trial.

The SFO ultimately "tied themselves up in knots to get through on their original case that investors were misled" when none of the defendants were responsible for the bank's public documents, said [Taylor Wessing LLP](#) partner David McCluskey.

The trial was also the second the SFO had put on against the three men after the original trial judge on the case threw out the charges against all three men as well as former chief executive John Varley halfway through the proceedings.

The Court of Appeal revived the case against the first three in 2019 but [acquitted Varley](#), agreeing there was insufficient evidence against him to proceed. But Aziz Rahman, senior partner at [Rahman Ravelli](#), questioned the wisdom of the SFO in pursuing the bankers after Barclays itself had already been acquitted.

"The SFO did all it could to shoehorn these charges into court and, as a result, it has been left with egg on its face," Rahman said. "The fact that it had to go to such lengths to ensure this case came to court should have been a clear warning to it about the case's lack of strength."

The case centered on allegations that Jenkins, Barclays' former head of Middle East investment; Kalaris, the former head of Barclays' wealth unit; and Both, the investment banking arm's former European co-head of financial institutions, devised a sham side advisory services agreement with Qatar to funnel £322 million in secret fees to the Gulf state.

But the SFO's case was hamstrung by the fact that the bank's board and lawyers, including its general counsel Mark Harding and external law firm [Clifford Chance LLP](#), had approved the deal as a legitimate way to pay the Qataris their extra fees as long as genuine services were provided.

The SFO also failed to call any live witnesses to back up its claim the lawyers had been duped into signing off on the agreement, while none of the attorneys were charged with any offense.

"It was extremely damaging to the SFO's argument," said Shaul Brazil, a partner at [BCL Solicitors](#). "The case couldn't be properly brought on the basis they brought it faced with the facts the agreements had been reviewed and approved by internal and external lawyers who are not accused of any wrongdoing."

Prosecutors were also accused by defense attorneys of being "[seduced by the word 'jail'](#)" in conversations between the bankers. The jury was played calls where the bankers said, "None of us wants to go to jail," joking that the "food sucks and the sex is worse."

But defense attorneys told the jury not to be distracted by "throwaway comments and the poor jokes of stressed and tired men trying their best in impossible circumstances."

"Just because there was evidence of people saying, 'I don't like the idea of going to jail,' it doesn't constitute proof of criminal intent," McCluskey said. "You can argue it is proof of the opposite."

The three men maintained that the money Barclays paid to Qatar, including its prime minister at the time, Sheikh Hamad bin Jassim al-Thani, was for legitimate advisory services that generated valuable business as the bank tried to expand in the Middle East.

And the SFO was also accused of "[riding two horses in opposite directions](#)" by reversing its original claim that Qatar would not have entered the side deals because it was not a strategic investor in favor of arguing that the advisory deal was irrelevant because the Gulf state had become a strategic investor.

This volte-face led to Jenkins' attorney John Kelsey-Fry saying the SFO's case was so confused it was like a field of diseased hares crashing into each other.

"The SFO's case was incoherent and internally inconsistent and frankly did not make sense," BCL's Brazil said. "The SFO tried to smash square pegs into round holes."

Matthew Cowie of [Dechert LLP](#) said the SFO has recently had to "learn the hard way" that the "strength and cogency of evidence required in overseas corruption or high-profile frauds" make it difficult to get a conviction for economic crime in the U.K.

"The bar is high for the SFO to get convictions in corporate crime jury trials. The SFO's recent trial record is not particularly positive, especially in overseas corruption cases," Cowie said. "The absence of live evidence in recent cases is a problem. That could have been a factor in the Barclays case, and the SFO needs to carefully consider its strategy and strength of its case in planning jury trials."

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