

COVID-19 Set To Create Wave Of UK Fraud, Graft Prosecutions

By Richard Crump

Law360, London (April 25, 2020, 1:29 AM BST) -- While British enforcers are already warning of a jump in small-scale fraud amid the pandemic, COVID-19 is poised to set off a wave of bigger investigations, ensuring coronavirus-related crime will be a focus of white collar prosecutors for years to come.

The Serious Fraud Office and the U.K.'s other white collar prosecutors will likely end up pursuing a raft of cases arising out of the COVID-19 crisis, much like the wave of prosecutions over alleged wrongful conduct by bankers that emerged out of the 2008 financial crisis, according to Laura Dunseath, a barrister at Eversheds Sutherland.

"The SFO will want to show it is relevant and important and will want to have a stake in this. We won't see any coronavirus-related activity by SFO for six to 12 months, but it will then figure for the next six years," said Dunseath, a former SFO case controller.

Here, Law360 looks at the investigations attorneys expect Britain's main law enforcement agencies to pursue in the wake of COVID-19.

Health Care Fraud

Fraud aimed against the National Health Service or other health and social care providers is expected to be the first priority for investigators.

"There will be a high public interest," said Suzanne Rab, a barrister at Serle Court. "This is plainly one of the most invidious examples of how this tragedy could play out and should be a high priority for SFO."

And the SFO has a history of dealing with large cases of alleged fraud against the NHS, including the



The COVID-19 crisis is likely to create a wave of fraud and graft probes for the Serious Fraud Office and other white-collar prosecutors. (AP)

2008 investigation into an alleged conspiracy by a group of pharmaceutical companies to defraud the NHS out of £120 million (\$148 million) by fixing the price of drugs in the 1990s.

That investigation — codenamed Operation Holbein — was the biggest case ever brought by the SFO at the time. However, it collapsed in part because price-fixing did not become a statutory offense until 2002.

Charity Fraud

There is also a clear public interest in prosecuting individuals behind fake charities purportedly aimed at helping key workers, the vulnerable or finding a vaccine.

While plenty of legitimate charities have been set up and existing charities have redirected their attention to providing financial aid and support to those suffering because of COVID-19, they are vulnerable to misuse by individuals seeking out financial aid they are not eligible for.

There have been reports of fraudsters impersonating charitable volunteers to target individuals for personal gain, including collecting money for help that never arrives.

Similar types of bogus charities were set up in the wake of the Grenfell Tower fire in central London in 2017, in which 72 people died.

“We have seen SFO investigations into corruption launched in previous years on the back of charitable and humanitarian work,” said Neil Williams, legal director at Rahman Ravelli solicitors. “It is possible that corruption will take place in U.K. entities during coronavirus humanitarian aid efforts and will be a focus for law enforcement in the years to come.”

Investment Fraud

Consumers have been warned about so-called pension liberation frauds seeking to exploit savers' anxieties because of recent volatility in the stock market.

In early April, The Pensions Regulator, the Financial Conduct Authority and the Money and Pensions Service jointly warned people not to make rash pension decisions as fraudsters seek to prey on public fears over the impact of the pandemic to dupe victims out of their savings.

These frauds try to lure people in with offers that look too good to be true, such as high return investments.

Schemes that in the past have tried to use ethical investing in renewable energy and green projects as hooks, as in the SFO's current case over an alleged fraud over planting trees in the Brazilian rainforest, may now be retooled to take advantage of the specific circumstances of the pandemic.

“Likely scams include the offer of an opportunity to invest in ‘good causes,’ such as in coronavirus vaccine development startups, sanitizer production, the manufacturer of personal protective equipment, all with the promise of high returns,” Williams said.

Cybercrime

Cybercriminals have been adept at exploiting the COVID-19 pandemic, launching phishing and ransomware campaigns that law enforcers expect to grow.

The U.K.’s National Cyber Security Center said it has removed more than 2,000 online coronavirus scams in the last month, including fake online shops selling virus-related items that never arrived and more traditional malware and phishing operations.

Still, the U.K.’s fraud reporting center has recorded total losses of approximately £2 million due to COVID-19 fraud since the start of February.

Fraudsters have been spoofing government websites, asking for donations to the NHS or pretending to offer tax refunds from HM Revenue & Customs to gather financial details.

With a huge number of people working remotely, often with outdated security systems, cybercriminals are targeting industries as well as individuals.

“We are seeing a significant increase in cyberattacks on businesses especially in terms of online identity theft,” said Dechert LLP’s Paul Kavanagh. “We are seeing attacks on investment management businesses particularly.”

Historic Fraud

With official projections forecasting a recession for the U.K. deeper than during the financial crisis, many companies are likely to head into administration or end up facing increased government control.

And that scrutiny will likely expose past fraud that was well hidden when the economy was stable.

A famous example of this is the multibillion-dollar Ponzi scheme run by Bernie Madoff, which was revealed during the 2008 financial crisis.

“As the economic tide goes out, past corruption is invariably revealed,” said Bambos Tsiattalou of white collar boutique Stokoe Partnership Solicitors. “Such revelations may well keep the enforcement agencies busy for many years to come.”

Other instances of fraud or corruption could be unearthed in companies that become acquisition targets, with the buyers reporting their findings to authorities to protect themselves from money laundering charges.

"It is inevitable that when companies start to fail against the economic impacts they will fall into administration or become acquisition targets and there will be a focus on the historic state of those businesses," said Rab. "The pre-acquisition due diligence might well uncover legacy fraud that otherwise would go undetected."

Government Contract Fraud

Government contracts and schemes to help protect taxpayers and businesses from the pandemic's economic fallout will be prime targets for fraud. Contracts being rushed through are open to potential bribes and scams.

Investigators should focus on direct attacks on government schemes given the "enormous public interest in safeguarding the vast amount of public funds involved," according to Dechert's Tim Bowden.

"Government schemes to put funds back into the hands of private individuals and businesses will always be attractive to fraudsters," Bowden said. "The support is needed urgently, and there may be insufficient time to perform adequate due diligence and anti-fraud checks."

For example, the government's new coronavirus job retention scheme may lead to illicit claims — HMRC's chief executive has already said he expected the scheme to be a target.

In a similar vein, Companies House — the U.K.'s corporate register — may see an increase in the incorporation of companies that are cloned — where fraudsters pretend to be from a legitimate company — so that false claims can be made in their name, according to Williams.

"Tax and benefit fraud are likely to increase dramatically," said Williams. "The infallibility or fallibility of the government's schemes is yet to be comprehended."

Market Manipulation

Insider trading is also a potential concern amid the increased volumes of activity on the exchanges.

"The FCA will be looking very closely at markets and insider dealing to see if there are any trends and fluctuations that are unexplained," said Covington & Burling LLP's Ian Hargreaves. "We will only see the outcome of that in several months or even several years' time."

The crisis could also offer an opportunity for companies to massage their accounts in an attempt to make the numbers add up in the hope things turn around, after the FCA eased corporate reporting rules, telling companies not to issue preliminary results and gave them more time to file their financial results.

"That could give companies the ammunition to think long and hard about how they account for their

current position,” said Hargreaves. “Less reputable businesses could bury bad news now for the future because they might see the current crisis and the delay as a way of being creative with their accounting.”

Cartels

The government has relaxed competition regulations to allow retailers to work together more closely during the coronavirus outbreak, which attorneys say could generate future prosecutions if companies go too far.

The Competitions and Markets Authority has launched a COVID-19 task force to monitor market developments, identify harmful sales and pricing practices and take enforcement action if necessary.

The antitrust watchdog warned in an open letter to the pharmaceutical and food and drink industries that they should not capitalize on the current situation by charging unjustifiably high prices for essential goods or making misleading claims around their efficacy.

“The CMA has warned companies not to use the crisis as cover for coordination about the distribution of products not related to the pandemic and exchanging information on longer term business strategy, where this is not necessary to meet the needs of the current situation,” said Cooley (UK) LLP’s Christine Graham. “The CMA has been clear that it has a range of powers options at its disposal to tackle businesses seeking to exploit the situation.”

--Editing by Alyssa Miller.