

The successful conviction of LIBOR ‘ringmaster’, Tom Hayes, is a much needed win for the UK [Serious Fraud Office](#) (SFO), which had been under pressure for its lacklustre performance over many years.

But how did the SFO win this one when proving conspiracy to defraud has been so difficult in the past?

There are three main reasons, in addition to the fact that Mr Hayes did not help his cause by the [retraction of his earlier confession](#)

First, the SFO stuck doggedly to its task. The prosecutor, Mukal Chawla, was resolute in deflecting claims that Hayes was just one of the boys and everyone was doing it. Despite the fact that ample evidence was provided that others, and some more senior to Hayes, were involved in wishing to manipulate LIBOR, Mr Chawla kept [insisting](#) that ‘Yes that is true but Mr Hayes committed a crime’. Any muddying of the waters would have tilted the jury towards the defendant – reasonable doubt etc.

The second important point was that the SFO had the evidence and it was not the obscure financial gobbledegook that is normally proffered to juries in such cases. The SFO’s case rested almost exclusively on transcripts of recorded conversations in very plain English.

Examples include “Just give the cash desk a Mars bar and they will set wherever you want”. No need for an Economics degree or a knowledge of international finance to work that one out.

“Mr Hayes’ desire was to earn and make as much money as he could’ concluded the prosecutor. The jury knew the numbers were not small, because they had been given details of Hayes’ super-sized remuneration.

‘Keep it Simple, Stupid’, worked.

Unleash the Gorilla!

Written by The Conversation

But how did the SFO land this catch of tasty evidence? The old fashioned way – they just went and took it!

This was because of the third reason that the conviction was successful – cooperation between regulators. Novel idea?

Banks are required to record and retain all telephone and electronic conversations on their trading floors. All the regulators did was to go to the banks and demand copies of these conversations. Led by the Commodity Futures Trading Commission (CFTC) in the USA, regulators in the UK, Europe and Japan descended on the banks and [scooped up hundreds of hours of evidence](#) of widespread corruption amongst international banks and brokers.

Then regulators broke a habit of a lifetime and shared the information among themselves. This closed off the time honoured tactic of banks playing one regulator off against another – they were stymied whichever way they turned.

Nor is the saga over, but it remains to be seen whether [further convictions will result](#) or whether the prosecutors will call a truce.

Before moving on it is worth noting that one bank, Deutsche, held out on giving the evidence to regulators. Destroying the myth of German efficiency they claimed that the evidence had been wiped. But the regulators were resolute, demanding that Deutsche recreate the evidence and eventually over 18 months late and having spent many millions of dollars in new technology, Deutsche handed over the evidence. For that obstruction, Deutsche was hit with the [largest LIBOR fine](#) of over US\$ 2.4 billion for obstructing regulators and the co-CEOs were forced to resign.

Does the conviction of Hayes give any hope to the beleaguered conduct regulator in Australia?

Australia has its own scandal, but here it is the Bank Bill Swaps ([BBSW](#)) rate that has been manipulated.

We know BBSW has been manipulated because ASIC has required three banks, UBS, BNP-Paribas and Royal Bank of Scotland, to sign [Enforceable Undertakings](#) (EU) not to manipulate it or other benchmarks again.

Now the claim is that BBSW was only manipulated a tiny bit and did no discernible damage anyway. But how do we know that? Because the banks concerned told us so. In the investigation of BNP-Paribas, it was [revealed](#) that an 'independent' investigation found that the market impact was not significant.

It has been rumoured over the last month that the head of ASIC, Greg Medcraft, is getting very [frustrated](#) at the stonewalling of certain banks in revealing information to ASIC in its ongoing BBSW investigation.

Can we learn from the successful conviction of Tom Hayes for manipulating LIBOR?

Cooperation is the key and the solution is at (or nearly at) hand.

Just this May, the Treasurer, Joe Hockey announced the creation of a new [Serious Financial Crime Taskforce](#) (SFCT) to crack down on white collar crime. The new taskforce has some very heavy hitters, including the ATO, Australian Crime Commission, Australian Federal Police, ASIC, Commonwealth Director of Public Prosecutions and the Australian Customs and Border Protection Services.

That line up of experts in criminality should rattle even the most hardened stonewaller.

Assuming that the SFCT is looking for a nice easy one to get them off the blocks, Mr Medcraft should suggest to his colleagues on the task-force that BBSW might be a good one to start with and hand over the evidence collected so far, plus an indication of the information that may be being withheld.

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With a new level cooperation and evidence being chased, it only remains for the prosecutors (probably ASIC) to focus on the key culprits, safe in the knowledge that wrongdoers have nowhere to turn.

If, as [ASIC claim](#), “benchmarks are seen to be open to abuse, market confidence may be affected” then the government should take possible manipulation seriously and unleash the SFCT.

Read more <http://theconversation.com/unleash-the-gorilla-45697>