JUDICIARY OF
ENGLAND AND WALES

R v TOM HAYES

SOUTHWARK CROWN COURT

SENTENCING REMARKS OF MR JUSTICE COOKE

3RD AUGUST 2015

1. The sentence I am imposing is one of 14 years in all.
    a. on Counts 1-4 - 9 years and 6 months concurrent on each count
    b. on Counts 5-8 - bearing in mind totality, 4 yrs 6 months concurrent on each count, but consecutive to Counts 1-4- making 14 years in all

2. You have been convicted by the Jury of 8 Counts of conspiracy to defraud. There is no separate standard of dishonesty for any group of society and what you did, with others, was dishonest, as you well appreciated at the time. What you did was blatant with those who shared your approach, but where you knew that others would not approve, at Citi, for example, you sought to manipulate by more subtle and surreptitious means, in the same way as you used the brokers with some of their contacts. All was done to benefit the trading profit of your book or that of your desk.

3. In the course of two interviews on 31 Jan and 1 Feb 2013, in order to be accepted on a SOCPA programme, you admitted your part in conspiring with others to influence the submissions at the banks which employed you, and of other banks, by whatever means you and the brokers could use. Sometimes it was a question of seeking favours from individuals, sometimes those individuals were treated or entertained by the brokers, as you knew and approved. You worked with 3 sets of brokers whom you rewarded, to influence other banks to make submissions which suited you or your bank's trading book. Having signed a SOCPA co-operation agreement on 23 March 2013, in a series of further interviews between then and June 2013, you descended into greater detail about those activities and those involved with

you in them. In short, in those interviews you admitted each and every ingredient of the offences. In particular you admitted in clear terms that you understood that the LIBOR submission process was meant to be independent of trading considerations and that LIBOR submissions were intended to represent the true borrowing rate of the submitting banks.

4. Having pressed the SFO to be charged in this country in order to minimise the likelihood of extradition to the US to face charges there, following charge on 18 June 2013, you changed lawyers in August and withdrew from the SOCPA process on 9th October. You made use of the SOCPA process, agreeing to plead guilty and to give evidence against co- conspirators before opting out of it, when the threat of extradition had diminished. Thereafter, every legal argument that could be made has been made.

5. I make it clear that I do not increase the sentence on that account, but it means that there is little to be said in mitigation even though some information supplied may assist the Prosecuting authorities in pursuit of some lines of enquiry.

6. The seriousness of this offence in the context of the LIBOR benchmark and banking is hard to overstate. High standards of probity are to be expected of those who operate in the banking system, whether they are bankers involved in dealing with deposits and the lending of money or traders in an investment banking context. What this case has shown is the absence of that integrity which ought to characterise banking. You succumbed to the temptation, as a regulated trader, in an unregulated activity, because you could, to seek to skew Yen LIBOR submissions with a view to changing the published rate from what it otherwise would be, in order to gain an advantage for your bank's trading profit, with the concomitant benefits which would come to you as the result of trading success, in the shape of status, seniority and remuneration, particularly by way of bonus.

7. It is effectively impossible to assess the scale of the losses caused to the counterparties to the trades in which you and your employers participated. At various times you referred, when talking to others, to the difference that a movement of 1 basis point would make in respect of the substantial nominal sums you traded. Those figures varied from $500,000 a basis point to $750,000 - $1m a basis point to as much as $2.5m a basis point. At times you were looking to get the 6m rate down by as much as 15 basis points, though ordinarily the alterations sought were in the order of fractions of a basis point. There is reference in your interviews to achieving movements of 5-10 points, though that may well not have been achieved. The number of attempts to influence LIBOR rates in which you were involved is huge and the Prosecution focussed on 27 Illustrative periods in which there were numerous efforts over the time of your employment at UBS (approx 3 years), and 5 similar Illustrative periods in the time of your employment at Citi (approx 9 months), when the evidence showed many more instances.

8. It is no excuse to say that banks were involved in lowballing at the time in order to avoid suggestions of liquidity or solvency issues in the stressed markets of 2007-2009. That was not permissible but was different in kind from the attempted manipulation of LIBOR to make profits, even if the movements you sought were generally of lesser figures than those which you suggested to the jury were the result of lowballing on the basis of directions from more senior managers at the bank.

9. The essence of your defence was that the type of activity in which you were involved was commonplace in the market at the time and was established practice, not perceived as wrong by those involved. The fact that others were doing the same as you is no excuse, nor is the fact that your immediate managers saw the benefit of what you were doing and condoned it and embraced it, if not encouraged it. The evidence established that when you arrived at UBS, some internal manipulation was going on, mostly in other currencies, of which you were essentially unaware but not external manipulation of Yen Libor of the kind which you engendered. It was you who developed the practice amongst the yen traders and submitters and had all the contacts with the London brokers and one or two traders or trader/submitters at other banks who would do as you asked if you would do the same for them, as you offered to do. The ethos at Citi was different, despite your attempts to tar all with the same brush as yourself.

10. You played a leading role in the manipulation of Yen LIBOR as was recognised by others at the time. You exerted pressure on others, effectively training those junior to you in the activities in which you were involved. You made corrupt payments to brokers for their assistance.

11. The documents record what you did and they speak for themselves, though the extent to which the published rates changed from what they would otherwise be cannot be assessed, particularly as there appear to have been some other banks (but by no means all, as you suggested) attempting the same activity with contrary trading interests to yours.

12. The conduct involved here must be marked out as dishonest and wrong and a message sent to the world of banking accordingly. The reputation of LIBOR is important to the City as a financial centre and of the banking industry in this country. Probity and honesty are essential, as is trust which is based upon it. The LIBOR activities, in which you played a leading part, put all that in jeopardy.

13. I have had regard to the Sentencing Guidelines:

    a. I have no doubt that the sums involved in the conspiracies ran into millions of USD – well over the Category A figure of £500,000 with its starting point based on £1m.

b. You had a leading role- you were the centre- the hub of the conspiracy and involved others. From the documents it appears that on your first day's trading at UBS in September 2006 you approached Mr Farr to influence the rate in a manner which suggested, as you accepted, that you had made earlier requests when at RBC. The idea that you put forward to the investigators that it was Mr Read who first put you on to the idea of using brokers to influence rates, when you were in a loss-making position at UBS cannot be correct.
c. I do not accept that the practice simply "evolved", save in the sense that you developed it with different brokers and contacts that you had, all of whom received additional fees for "LIBOR Services" or brokerage on "wash trades" which had no commercial purpose save to make payments to them in a way that would not be obvious, whether to accountants, auditors or others. You were, as a market maker in Yen derivative trading (with, on your own say-so, 40% of the market) a man with considerable influence which you used for the dishonest purposes I have outlined, being prepared to help people at other banks on their trades, if it did not cost your bank and even to trade in a manner favourable to other banks, if the end result inured to the advantage of your book.
d. The offences were thought through and regular- working on a day to day basis as to the fixing risk, but also from time to time, and particularly in the Summer of 2009, entering into clear schemes to fix the market over a m ore extended period, such as the turn, using, on that occasion Deutsche and Mr Farr's contact with HSBC to keep rates high and then drop them. In interview you described this as the most dishonest of your activities. There was sophistication and planning involved in this and overall the fraudulent activity was conducted over a period of 4 years at UBS and Citi.
e. You received a good number of warnings from brokers about the need to hide what you were doing but proceeded in a brazen manner and even after receiving clear guidance from Citi in December 2009 as to what was permissible in talking to submitters, as I am satisfied you did, you persisted in seeking to make approaches to the Citi submitter in as surreptitious a way as possible, using Mr Hoshino.
f. The number of victims is not clear on the evidence, but you and your employers had many counterparties to trades which were affected by what you did.

14. In short these offences are of high culpability and the intended loss, the actual loss and the risk of loss are all such as to place the harm in Category A of the Guidelines.

15. I can see little by way of mitigation, though your counsel has said all that could possibly be said on your behalf, referring to your age, family life, and the ethos in which you operated, as well as to the Aspergers Syndrome with

which you were diagnosed shortly before trial., which was agreed to be of no relevance to the issue of dishonesty.

16. The maximum sentence is 10 years for a count of conspiracy, which is generally recognised as too low. The starting point for a Category A case of high culpability based on a loss figure of £1m is 7 years. The figures here exceed that by a distance and the number of counts must drive the sentence up. The right approach here, in my judgment is to look at the 4 counts when you were at UBS as distinct from the 4 counts relating to the time when you were at Citi and to bear in mind the principle of totality.

17. In such circs I sentence you

    a. on Counts 1-4 to 9 years and 6 months concurrent on each
    b. on Counts 5-8, bearing in mind totality to 4 and a half years concurrent on each, but consecutive to the earlier counts- making 14 years in all.

18. You will serve up to half your sentence in custody before you are released on licence: you must abide by the terms of the licence and commit no further offence or you will be liable to be recalled and you will then serve the rest of the sentence in custody.

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