



JUDICIARY OF
ENGLAND AND WALES

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v

**Peter Johnson
Jonathan Mathew
Jay Vijay Merchant
and
Alex Pabon**

Sentencing Remarks of HHJ Anthony Leonard QC

Southwark Crown Court

8th July 2016

1. On 3rd October 2014 you, Peter Johnson, pleaded guilty to conspiracy to defraud. It was a courageous decision and in what is the third trial involving Libor, you are the first defendant to enter a plea of guilty. After a trial lasting just under three months the jury returned verdicts of guilty against you, Jonathan Mathew, Jay Merchant and Alex Pabon. You do not receive any additional sentence because you decided to contest the charge but you each lost the benefit which will be afforded to Johnson for his plea of guilty.
2. This prosecution, put shortly, has centred on you as Libor submitters and US Dollar traders getting together to manipulate the market for your own benefit and, as a consequence, to the benefit of Barclays Bank. You did it to improve the position on your own books knowing that was bound to cause loss to the counterparties. That was because each transaction involved a zero sum gain; whatever you gained, the counterparty lost.
3. The actual benefit to each of you in terms of an increased bonus was small and is impossible to estimate. I do not judge that was your true motivation. However retaining your job or being promoted to the next level at the bank did depend on making a profit on your book, something which was under daily scrutiny at the bank.

4. Each of you earned or could have earned in the future, if your career had flourished, very significant amounts of money:

Johnson: your income and bonus rose from £630,000 in 2005 to £1,205,000 in 2007.

Mathew: Your income rose from £109,500 in 2005 to £280,750 in 2007.

Merchant: In 2005 your total income was £700,000 and by 2007 your annual salary and bonus reached £2,209,831.

Pabon: In the full year 2005 you earned £183,933 and in the short period you worked for Barclays in 2006 you earned a further £40,454.

5. It is clear from your annual self-assessments and from what you said in evidence that in your case, Mathew, you hoped for promotion. In fact, when Johnson was promoted within the bank, you took over from him. I have no doubt that you hoped to earn as much as he did in the long term.

6. In your case, Pabon, I am satisfied that you had the same incentive to improve your position and your income. However, your realisation of what Gourtay and your own trading had cost Barclays together with finding yourself burnt out by the job, led you to think about leaving by March 2006, and doing so shortly afterwards. It follows that both your income and your involvement in the fraud was less than that of your co-defendants, and that will be reflected in your sentence.

7. I judge that there was a further factor which persuaded each of you on the dollar trading desk to manipulate the rates, and that was a desire to play the markets whilst influencing the result. Trading was all about a fraction of a basis point here and a fraction there.

8. In sentencing Hayes, Mr Justice Cooke considered that it was hard to overstate the seriousness of his conduct and observed that

“High standards of probity are to be expected of those who operate in the banking system, whether they are bankers 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 that ought to characterise banking.”

9. I respectfully agree with his remarks and add that the City has become a very different place over recent years. Sally Scutt, the Deputy Chief Executive of the British Bankers' Association, said in evidence that when the Financial Services and Markets Act 2000 came into force, the City moved away from an era where the motto of the City had been "my word is my bond". She said that it was beyond people's imagination that anyone would deliberately abuse the Libor definition and use it for their own purposes, rather than for the public good and to ensure that the market ran in a professional way. She said that there was a level of trust and the purpose of the Libor definition was not to take one's own commercial interests into consideration.
10. By their verdicts the jury has characterised your behaviour as dishonest as you must have known that it was.
11. I have been asked to consider your offending as being in a different category to that of Hayes. I agree that there are real and significant differences between his criminality and that which was alleged against you collectively. It explains why the sentencing judge imposed consecutive sentences which took his total sentence to 14 years. Although that was reduced on appeal to 11 years, the Court of Appeal accepted that his culpability was high, the harm serious and a deterrent element was plainly required. They reduced the sentence to eight years on the charges of fraud and three years consecutive in relation to another offence of conspiracy to defraud to take account of his age, non-managerial position and mild Asperger's condition.
12. In considering the appropriate sentences in respect of each of you, I am faced by the same difficulty that Mr Justice Cooke faced, that the maximum sentence for fraud is ten years, and the starting point for a loss of £1 million is seven years which leads to little room for differentiating between fraud involving loss in that amount and one that involves losses calculated the millions or in which the reputational effect of the fraud is grave.
13. I have considered the Sentencing Guidelines. I will address issues of culpability and personal circumstances later, but first will deal generally with the question of loss caused or intended in respect of Harm A in the Definitive Guidelines. It has been argued, in particular by Mr Davies QC on behalf of Merchant but adopted by others, that the loss or risk of loss ought to fall into category 3 or, possibly 2 at the highest. The submissions are based on the fact that it has been impossible to calculate the actual loss in this case, and that attempts to do so have produced figures which, at the absolute maximum, come to \$553,000 for the whole period. In respect of Pabon, Mr Allen QC identifies that he

was a party to the fraud for a period of about eight months and the figure for him must be significantly less than that.

14. In my judgment the actual loss or risk of loss does not realistically identify the harm caused by the criminal conduct in this case. I am left in no doubt that you were all, for varying amounts of time, involved in a deliberate plan to manipulate the rates for your benefit and that of Barclays as I have described.
15. To what extent you caused loss to others was dependent on factors outside your control. It depended largely on the Libor Rate submitted by the other 15 banks contributing to the setting of the Libor Rate and whether the rate put forward by Barclays was within the pack or at the extreme of the range where it could have most impact, together with the calculation by you, Johnson, and by you, Mathew, as to what rate you could submit without it being apparent that it was outside the range to such an extent that it might attract comment.
16. It follows that I have no doubt that on each occasion that you as Dollar traders asked the submitters to put in a particular rate, or indeed to keep it unchanged, it was done to cause you maximum benefit and, therefore, the counterparties maximum loss. Whether it did so, and to what extent, was largely in the hands of others.
17. I have concluded that the risk of loss can be judged to run into millions of pounds and, in accordance with the guidelines, falls within category 2 of Harm A. Harm B does not apply to this case and no adjustment needs to be made.
18. But in considering the appropriate sentence I need to have regard to any aggravating features. One that applies to you all is the undeniable evidence of community and wider impact. Whether or not it continued to be used after Libor rigging became common knowledge, the effect on confidence in and the integrity of a market rate which is relied upon globally is at the heart of your criminality.
19. In assessing what effect that has on sentence I note that, whereas other guidelines refer to factors increasing seriousness resulting in an adjustment to sentence within the range (or within the range or where appropriate outside the identified category range), these guidelines purposely state that I should identify whether any combination of these or any other relevant factors should result in "an upward or downward adjustment from the sentence arrived at so far". That flexibility is designed to cope with a case such as this where reputational damage may be greater than provable loss.

20. I have been asked to take into account that other traders have escaped criminal prosecution in this country and abroad and the way in which two traders have been treated by the American courts. I decline to do so. In my judgment I must sentence on the basis of the criminality proved against you and in accordance with the sentencing regime applicable in this country.
21. You are each of good character, not only in the sense of having no convictions but having positive good characters and I will take that into account in respect of each of you. In respect of those to whom it applies, I have taken into account what was said or written about you by the character witnesses who were called in the trial as well as the further references which I have been provided with. I will take all that material into account in passing sentence.
22. Although the period from charge to trial has been comparatively short I will, to some extent, take the time between the offences and the verdicts, being up to 11 years, into account.
23. I will now deal with each of you in turn. I intend to start with you, Jay Merchant. Because I accept the argument put forward on behalf of Johnson and Mathew, that, although they were responsible for the Libor submissions, it was only in response to the requests of the Dollar traders, I judge you, of all the defendants, to bear the greatest responsibility for what happened.
24. The evidence of the way in which manipulation of the rate began in earnest after you arrived in New York was compelling. I do not suggest that you were the originator of the scheme, and it may well be that you got the idea from Fred Gourtay who had arrived shortly before from another bank. It was under your leadership on the desk that the requests to the Libor submitters really took off.
25. On the evidence put before jury, I do not judge that there was any manipulation being carried out by traders on other desks before it began on the New York Dollar desk. Extensive searches of the unused material has failed to turn up any evidence of a pre-existing practice of manipulation. If there was, it must have been insignificant and Mathew, sitting at the cash desk was unaware of it.
26. In respect of culpability, your offending falls into Category A, "High Culpability". You played a leading rôle in that:
 - (a) You abused a position of power, trust and responsibility,

- (b) Although the part of your day taken up by making the request or getting others to make the request on your behalf may have been comparatively small, it required you to make careful calculations of what the rate should be and involved sophistication and planning.
 - (c) The offending was carried out over a significant period of time, and
 - (d) There was a large number of victims.
- 27. Together with my finding in respect of the harm and impact of your offending, that takes my sentence up to 8 years before considering any mitigating factors.
- 28. You are in your mid 40's. In addition to what I heard about you during the trial, and which included your charitable acts, I take into account the references I was provided with. I take into account that you may have to serve your sentence in this country because you do not have American citizenship and I will make a specific further reduction in your case to take that into account. This conviction may affect your ability to obtain citizenship hereafter, and I am mindful of that. I take into account all that has been said on your behalf and in particular the effect on your young family of your absence.
- 29. Peter Johnson; in terms of culpability, you fit squarely into the bracket of "High Culpability" in that:
 - (a) You played a leading rôle as the senior submitter for Dollar Libor
 - (b) I judge that you were responsible for involving Mathew, not through pressure applied on him, but by your influence over him as his mentor and senior.
 - (c) You abused your position of trust as the Libor submitter who should have put in a rate uninfluenced by the requests of the traders.
 - (d) Although the part of your day taken up by calculating how to respond to the requests made of you when submitting the Libor Rate may have been comparatively small, it required you to make careful calculations of what the rate should be and involved sophistication and planning.

- (e) The offending was carried out over a significant period of time, and
 - (f) There was a large number of victims.
- 30. Together with my finding in respect of the harm and impact of your offending, and acknowledging that yours was a pivotal rôle, that takes my sentence up to 7½ years before considering any mitigating factors.
- 31. You are 61 years old. I have read the many character references which attest to your good character and paint a picture of a caring family man, exceptionally generous with your time and with practical and emotional support to friends and those in need. You have made use of your time since leaving Barclays to give of your practical skills to the National Trust. I have also taken into account what has been said about you as a banker by Mark Dearlove. I take into account the effect that your plea of guilty has had on your personal and financial circumstances and all that has been said on your behalf.
- 32. In addition to the time that has passed since the start of your offending, I will also take into account the time you have spent awaiting sentence through no fault of your own. You have waited 20 months to know what sentence will be passed on you. That amounts to a sentence in itself and I shall give you a further significant reduction in addition to that which you will receive for your plea of guilty to reflect the trauma you have faced during that time.
- 33. Jonathan Mathew: in terms of culpability, you fit into the bracket of “High Culpability” in that:
 - (a) You abused your position of trust as the Libor submitter who should have put in a rate uninfluenced by the requests of the traders.
 - (b) Although the part of your day taken up by calculating how to respond to the requests made of you when submitting the Libor Rate may have been comparatively small, it required you to make careful calculations of what the rate should be and involved sophistication and planning.
 - (c) The offending was carried out over a significant period of time, and
 - (d) There was a large number of victims.

34. Together with my finding in respect of the harm and impact of your offending, but acknowledging your limited rôle standing in for Johnson when he was not in the office or assisting him when he was there, that the number of submissions you made was considerably less than those made by Johnson and that you were led into this offending, albeit voluntarily by Johnson, that takes my sentence to 5 years before considering any mitigating factors.
35. You are 35 years old. I take into account everything that your counsel has said on your behalf and in particular the consequences of this prosecution on you and your family financially and emotionally. I have read the additional letters of support from a friend and members of your family.
36. Alex Pabon: in terms of culpability, you fit into the bracket of “High Culpability” in that:
- (a) You abused your position of trust as a trader to influence the Libor Rate which was submitted.
 - (b) Although the part of your day taken up by making the request or getting others to make the request on your behalf may have been comparatively small, it required you to make careful calculations of what the rate should be and involved sophistication and planning.
 - (c) The offending was carried out over a significant period of time but I acknowledge that it was for a significantly shorter time than Merchant, and
 - (d) There was a large number of victims.
37. Together with my finding in respect of the harm and impact of your offending, but acknowledging your subordinate rôle and the short period over which you were a party to the conspiracy that takes my sentence to 4 years before considering any mitigating factors. In reaching that sentence I have had in mind that the reason that you left banking had nothing to do with any realisation on your part that you should not pursue this fraudulent and dishonest conduct.
38. You are now aged 37. I take into account everything that has been said on your behalf and in particular the effect on your family of losing the primary carer for your son, your father’s physical position, the overall effect on your family and you personally of this conviction. I shall make

a small extra reduction to reflect that you may serve part of your sentence in this country remote from your family.

39. You will serve one half of the sentences I am about to pass in custody. You will then be released on licence for the remainder of your sentence. While you are on licence you must comply with its conditions and commit no further offence or you will be liable to be recalled and you will then serve the remainder of your sentence in custody.
40. The surcharge provisions apply to this case and the orders will be drawn up accordingly.
41. The offence is so serious that only a custodial sentence can be justified and the least possible sentence I can impose having regard to the aggravating and mitigating factors of the case which I have set out together with everything that your counsel has said on your behalf are as follows:-

Peter Johnson: I reduce your sentence to reflect your personal circumstances, the period of time which has elapsed since your offending, and the time you have waited to be sentenced by 18 months to which I apply a one third reduction for your plea of guilty. You will go to prison for 4 years

Jonathan Mathew: you will go to prison for 4 years.

Jay Vijay Merchant: you will go to prison for 6½ years.

Alex Pabon: you will go to prison for 2 years and 9 months.

-ENDS-