

Tight Budgets Hinder UK's Economic Crime-Fighting Efforts

By **Paige Long**

Law360, London (March 7, 2019, 10:38 PM GMT) -- As the U.K government presses the agencies that investigate and prosecute white collar crime to produce results, it remains unclear whether their limited resources are up to the task.

Cyber and economic crimes, in particular, are straining agency budgets and increasing the need for more funding and greater enforcement powers. The Serious Fraud Office has frequently called for both, particularly in the fight against fraud.

Some agencies are suffering less than others. The National Crime Agency and City of London Police both won bonus funding last year to fight economic crime. And the SFO overhauled its funding mechanism to gain greater control over the cases it prioritizes.

But enforcement agencies have also tried to use technology more effectively to close the funding gap. They have turned, for example, to cross-branch task forces to share information at home and internationally.

"The costs start to spiral out of control when you're dealing with the sheer number of documents involved in highly complex cases," Ian Hargreaves, a partner at Covington & Burling LLP, said. "And so, if technology allows these documents to be collected, collated, reviewed and interrogated more thoroughly, then savings are to be expected — and potentially more successful prosecutions."

Channeling Changes At The SFO

After years of seeking blockbuster funding to cover the cost of complex cases, the SFO and its new chief Lisa Osofsky have seen a major change in the last year in the way the agency's budget works.

Instead of managing two funding streams — core appropriates as well as extra financing for blockbuster cases — the SFO's money is now combined. The overhaul was designed to help the agency manage its budget "more flexibly and efficiently" and allow it to move staff between cases.

Lawyers are watching how the shift will affect its caseload.

"With its changed funding arrangements I expect the SFO to be a little more fluid on cases, particularly because they won't have to rely so much on temporary staff as they have had to in the past," Eva Giles,

partner at Allen & Overy LLP, said.

But the agency is not necessarily getting more money out of the restructured funding arrangement, Giles noted. Figures released in July show the SFO's core funding for 2018-19 was £52.7 million (\$68 million). This compares with "core" funding of £35.7 million the year before, which was topped up with a blockbuster package of £22.9 million — or £58.6 million overall.

It can still apply to the Treasury for extra money to cover expenditure on cases exceeding £2.5 million, but the expectation is that it won't need to rely on such arrangements as much as in previous years.

Although the agency will have more freedom to decide where its money should go, Hargreaves warned that the SFO is still underfunded for the work it is expected to do.

"The SFO will only take a small number of highly complex fraud cases, which are high value or have a particular public interest," Hargreaves said. "And the many cases that it declines are left for local police forces and other agencies to investigate, which to be honest do not have the resources available to them."

As a result, the hit to its reputation is harder when a prosecution fails — such as when a London judge recently cleared three former senior executives at Tesco PLC of fraud and false accounting charges, even though the company itself had agreed to a deferred prosecution agreement with the SFO.

With a limited budget and so much on the line, the agency has embraced the potential of "machine learning" and created a new senior role to help boost its intelligence capabilities.

Giles thinks Osofsky will start funnelling the agency's resources toward money laundering, prosecutions and better use of analysis of suspicious activity reports in the coming years.

"She's talked openly about building up artificial intelligence, which is intended to help reduce the bottleneck of cases currently on the SFO's books. That could lead to the agency finishing cases sooner, particularly with her focus on getting speedier results," Giles said.

And, despite the Tesco setback, Osofsky could copy the U.S. authorities and attempt to become more self-financing by including larger financial penalties in the agency's DPAs, at least in its white-collar crime operations.

"It may not be as much as they like, but the chancellor gets a good return on his money when these agreements are made," said Neil Gerrard, a partner at Dechert LLP.

Using Technology To Fight New Offenses

Investment in technology by all the agencies with an economic crime mandate, including the NCA and City Police, is also expected to help speed cases through the system, which will allow them to open more investigations.

"There are several hundred thousand fraud offenses reported every year. This, though, represents the tip of the iceberg, because the vast majority of fraud events aren't actually reported," said Hargreaves.

The launch of the National Economic Crime Centre — designed to coordinate the U.K.'s national

response to fraud, cybercrime and unexplained wealth — could also bring significant savings. Lawyers say the plan to share documents between the agencies based at the new unit should minimize duplication of costs.

“You would hope that the sharing of information through a central repository would be far more beneficial from a costs perspective, as well as help on a purely investigative purpose,” Hargreaves said. “You would also hope that, if funds are left for investment into technology, that will result in a significant cost reduction going forward in investigating complex cases.”

Hargreaves said the U.K. government is also investing in understanding and investigating cybercrime and the threat it poses to the economy.

“I think the NCA has a terribly tough task, considering all the various issues it has to concentrate on,” he said. “But they are a largely competent agency where there has been investment in technology and specialist investigators, such as we’ve seen in the cyberspace.”

Experts also expect to see HM Revenue and Customs launch more investigations into large corporations in the next few years, a departure from its historical focus on individual taxpayers that will require much greater use of technology and complex data.

The government has extended the “failure to prevent” offense in the Bribery Act — which makes a company criminally liable for bribes paid anywhere in the world by an employee or an agent — to the tax sector. It will clamp down on evasion of domestic and foreign taxes.

Analysts have also noticed a focus on tax dodging in the government’s budget, unveiled by Treasury chief Philip Hammond in October.

“Following the chancellor’s statement, HMRC has a lot of work to do,” Richard Morley, a partner in BDO Global’s tax dispute resolution team, said. “Allegedly, they will raise a further £2 billion from tax evasion and avoidance, something that rings bells from the 2016 and 2017 budgets.”

Morley said the government plans to clamp down on overdue value-added-tax payments and directly tax offshore entities that realize intangible property income in low-tax jurisdictions.

“They are also looking to raise £35 million by making directors liable for business taxes owed, which is a piece consulted in 2018,” Morley said. “This is particularly interesting given how widely avoidance has been defined in legislation, and it remains to be seen how this works in practice.”

The result, said Dechert’s Gerrard, is that “pressure is building” on HMRC to step up its focus on corporations rather than individuals — where its spend is huge in comparison.

Fighting Money (Laundering) With Money

Most money-laundering enforcement outside the financial sector has typically been left to local and national police forces that have historically dedicated their resources to fighting domestic issues such as terrorist funding, child pornography and drug trafficking.

But that could change. Home Secretary Sajid Javid announced in August that the Home Office has approved up to £70 million in 2018-19 to boost the capacity of British enforcement agencies to deal with

serious and organized crime.

City of London Police secured £6.1 million from the pot to help improve its response to economic crimes such as fraud and money laundering. And the NCA was awarded more than £8 million from what the government called the police transformation fund to deal with serious threats to the economy, with some resources set to flow to the new economic crime center. Still, that funding came after the agency's latest budget shrank by £10 million.

Still, British prosecutors have yet to bring a single case under new anti-money laundering laws since their introduction in 2017.

Nonetheless, the enforcement agencies now have powers to issue unexplained wealth orders, which compel an individual suspected of wrongdoing to hand over information on assets worth a minimum of £50,000.

Gerrard said the NCA and other agencies, including the police, can pursue individuals involved in laundering dirty cash.

"I think the unexplained wealth orders will help the NCA enormously. They're difficult to defend, and I can see significantly more use of them in the foreseeable future," Gerrard said.

--Editing by Melissa Lipman and Ed Harris.