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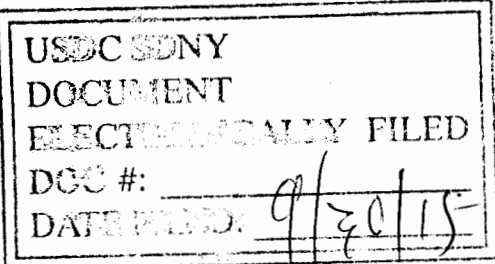
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The Honorable Jed S Rakoff  
United States - District Court (Southern District of New York)  
United States Courthouse  
500 Pearl Street  
New York NY 10007  
USA

UKCA Ref: 1681632US

Your Ref:  
~~S4~~-CR-272  
(JSR)



28 September 2015

Dear Judge Rakoff

14 cr 272 (JSR)

**LETTER OF REQUEST FOR LEGAL ASSISTANCE CASE NO S4-CR-272 (JSR)**

I write further to my letter of 14 August explaining that consideration was being given to your request for legal assistance and apologise for the delay in sending this substantive response.

The Serious Fraud Office (the SFO) is in possession of the evidence, having obtained it for the purpose of its own investigation and subsequent prosecutions. Your request for legal assistance was therefore referred to the SFO.

The SFO has given careful consideration to the request and the evidence that is being sought but has concluded that it is not currently possible to assist. A detailed explanation of their reasons for this is provided in the attached letter.

The Home Office does not have the power to override this decision as our domestic legislation, the Crime (International Co-operation) Act 2003, makes explicit that there are no powers to compel another government department to provide evidence.

To ensure that future trials in the UK are not prejudiced, reporting restrictions have been put in place by the trial judge. The SFO is concerned to maintain this position. Trials are taking place in October and January and there may be further trials after this. The SFO is not refusing to provide the evidence: the issue is whether it is possible, under US law, for media reporting to be put in place or for evidence to be heard "in camera" to prevent it becoming public.

Our understanding is that there is no such mechanism; however, if you believe that the evidence can be adduced and yet be protected to the satisfaction of the SFO, please could the defence attorneys contact me as soon as possible so that this can be considered at the earliest opportunity.

Yours sincerely



Sarah Dubs  
UK Central Authority  
*On behalf of the Secretary of State*

**SFO**serious  
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office2-4 Cockspur Street, London, SW1Y 5BS  
Director: David Green CB QCSarah Dubs  
United Kingdom Central Authority  
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18 September 2015

Dear Ms. Dubs

**Re: Letter Rogatory from the United States District Court for the Southern District of New York**

I am writing to explain the Serious Fraud Office's (the "SFO") position in relation to the above Letter Rogatory for assistance dated 22 July 2015 (the "Letter Rogatory"). We have given the matter very careful consideration.

The Letter Rogatory asks the SFO to provide a number of documents related to John Ewan, namely copies of his witness statements and the exhibits he produces together with the exhibits shown to him at Southwark Crown Court when giving evidence at the trial of Tom Hayes. We note that the Court considers that the evidence sought is "directly relevant to the issues in dispute" in the trial of Anthony Allen and Anthony Conti which is listed on 5 October 2015 in New York and that "[i]t has been demonstrated to [the] Court that justice cannot completely be done amongst the parties without the production of the Exhibits, which are available only in the United Kingdom".

The SFO has considered the request but has concluded that it is unable to provide the assistance required.

Mr Ewan was the BBA Libor Manager called by the Prosecution in the trial of Tom Hayes. Mr Ewan's witness statement and many of his exhibits were not referred to during that trial. During the Tom Hayes trial, only those parts of Mr Ewan's evidence which were relevant to that trial were heard in public (as recorded in the transcripts). Material which was of no relevance to the trial, or which may be prejudicial to future trials was controlled by the trial Judge.

The SFO currently has other prosecutions of LIBOR manipulation before the courts and listed for trial: a trial of co-conspirators linked to Tom Hayes due to start on 5 October 2015 (the same date as the New York trial) and a second, factually distinct, trial due to start in January 2016. In addition the SFO has other prosecutions in contemplation. Although it is not certain at this stage whether Mr. Ewan is to be called as a witness in the October trial, he remains a potential witness. It is clear however that Mr. Ewan is to be called as a witness in the January 2016 trial. The SFO is concerned that Mr. Ewan's

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Director: David Green CB QC

witness statements and exhibits should not be made public or referred to in media reporting in advance of these trials, or any other trials which may follow. To do so seriously risks tainting the prosecutions which the SFO is pursuing. At present the SFO, with the assistance of the court, is able to control how evidence is reported and publicised so that future trials are not prejudiced.

John Ewan's witness statements and exhibits deliberately cover a wide range of issues as the SFO decided to take a comprehensive statement which could address all matters which may be encountered in any one of the LIBOR investigations and prosecutions. Among other matters Mr. Ewan comments on the different types of behaviour which are potentially inconsistent with the definition of LIBOR, the effect of the credit crisis and UK Government action in response, communication between the BBA and market participants and the BBA's own response to concerns about how the LIBOR definition was to be applied during time of market stress. The relevance of these issues and other matters referred to by Mr. Ewan and within the exhibits he produces is strictly dependent upon the issues in each trial and the specific defences being run. As is demonstrated by his current status as a witness in the two pending SFO LIBOR trials, the evidence Mr. Ewan can give may be of some or even no relevance to those prosecutions. Further where Mr. Ewan's evidence is relevant but adverse to the defence it may be the subject of an argument as to its admissibility.

The SFO, through the direction of the trial Judge if appropriate, must ensure that only evidence which assists the jury in deciding the issues fairly is placed before it. Many of the exhibits produced by Mr. Ewan will not therefore be seen by the jury, just as they were not in the trial of Tom Hayes. Should Mr. Ewan's witness statements and exhibits be made public in full and/ or be the subject of uncontrolled media reporting, the jury may receive information that it should not be aware of and which the parties to the trial cannot properly address. This concern is more acute when trials in London and New York are being heard at the same time, or shortly afterwards.

The SFO is therefore unable to release the documents requested without there being appropriate measures to guarantee the protection of the integrity of the cases which it is prosecuting. Such guarantees might include restrictions on the reporting of any aspect of the documents or any evidence arising from them, or the documents or evidence being heard without the public being present or being made available to the public. Further the SFO understands that the procedure of filing documents under seal in the United States may be of limited assistance since the document may still be made public if referred to during the trial.

The SFO is mindful of its obligations towards international partners and remains willing to assist wherever possible. However on this occasion the SFO is unable to provide the assistance requested at this stage in order to ensure that its ability to prosecute the cases it already has listed for trial or which are in contemplation is not impaired.

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Director: David Green CB QC

Yours sincerely,

**Stuart Alford QC**  
Head of Fraud, Division E

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