

# High Court refuses to intervene in conduct of SFO investigation

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In *Soma Oil & Gas Ltd (“Soma”) v The Director of the Serious Fraud Office [2016] EWHC 2471 (Admin)*, the High Court dismissed Soma's application for a mandatory order that the SFO bring an ongoing investigation to an end. The decision highlights the difficulties for companies and their directors and officers in seeking to challenge or fast-track regulatory investigations.

## Facts

Soma entered into contractual arrangements with the Somali government for the purposes of exploration of oil in Somalia. This included making capacity building payments (CBPs) to the Somali Ministry. In June 2015, the SFO commenced an investigation into whether Soma committed bribery and corruption offences under the Bribery Act 2010 in connection with its activities in Somalia.

While Soma cooperated extensively with the SFO, the investigation created problems for Soma's business including the risk of insolvency. In May 2016, the SFO indicated that a decision regarding the CBPs would be forthcoming within weeks but that other strands of investigation (which were unknown to Soma) were ongoing.

In August 2016, Soma commenced proceedings for judicial review. It argued that the SFO's failure to conclude its investigation into the CBPs was unlawful. Soma sought an order that the SFO: (a) terminate its investigation into the CBPs; and/or (b) take a decision whether to prosecute Soma by a specific date; and/or (c) disclose the nature of the other investigations the SFO was conducting.

In a "unique exception", the SFO subsequently confirmed to Soma that the investigation into the CBPs was to be closed but that other strands of inquiry were ongoing. While the SFO invited Soma to withdraw its application for judicial review, Soma refused as it sought a public decision.

## Judgment

Soma's application was dismissed with Soma ordered to pay 80% of the SFO's costs. The Court found that Soma could do "no better" than procure the letter from the SFO which it had permission to communicate to potential investors. The Court found that there had not been any delay by the SFO given the nature of the investigation and it would have been "remarkable" for the Court to order the termination of the investigation. There was no basis to go behind the SFO response and compel further disclosure regarding the investigation.

## Commentary

The judgment confirms that an applicant seeking to judicially review the SFO's discretion regarding its investigation faces a "very high hurdle". The Court's decision was unsurprising given the wide powers afforded to prosecutors and investigators.

It is notable that Soma's strategy resulted in the SFO confirming prior to the High Court hearing that the SFO would close its investigation into the CBPs aspects of its investigation. In December 2016, two months after the judgment was handed down, the SFO confirmed that it had closed its investigation into Soma due to insufficient evidence for a realistic prospect of conviction. While Soma's application was defeated, its novel strategy appears to have assisted in achieving its intended outcome. It would be mere speculation as to whether Soma's application led the SFO to discontinue its investigation earlier than it otherwise would have.

On a wider level, the case highlights the difficulties faced by companies and their directors and officers who are subject to regulatory investigation, which may adversely affect the reputations and business prospects of those under investigation. Where the directors and officers benefit from D&O insurance, Insurers are likely to be required to pay defence costs until the conclusion of the investigation.

To read the judgment click [here](#).

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