



# 'I LIKE SHOOTING THINGS'

Robert Wardle, head of the SFO, has had a number of cases in his sights during his time at the agency. But the collapse of the BAE probe has put him and his team in the line of fire, say Sylvia Pfeifer and Helen Power

**R**obert Wardle does not like being bossed around. The patience of the director of the Serious Fraud Office is being tested by the photographer, who is keen to get just the right shot. In an attempt to lighten the mood, he asks Wardle what he likes doing in his spare time. "I like shooting things," retorts Wardle.

In fact, Wardle regularly unwinds by doing nothing more harmful than rough shooting near his home in Cambridgeshire. But in recent months he has had plenty of reason to need to blow off steam.

The SFO has come in for a barrage of criticism ever since it dropped its long-running investigation into bribery allegations made against BAE Systems, Britain's largest defence contractor, over an arms contract with Saudi Arabia last December. Wardle took the decision on national security grounds after advice from Lord Goldsmith, then the attorney-general. BAE has denied all wrongdoing.

Nevertheless, critics have used the collapse of the inquiry as further proof of the SFO's lack of credibility. The agency has had some high-profile failures in its 19 years – including the failure to convict in the Robert Maxwell pension affair.

But the BAE case has also prompted wider questions over the UK's record on tackling corruption and fraud – questions that have become more persistent in the wake of America's Department of

Justice taking on the BAE case. Britain's record is in marked contrast to that of the US where there have been many more settlements, notably against companies.

Wardle admits that the row has perhaps damaged "the reputation of the UK as a place which is determined to stamp out corruption".

But what is crucial now, he says, are two things: that the UK shows it is prepared to pursue investigations where there are "allegations of corruption overseas and do that vigorously"; and that the antiquated laws dealing with bribery and corruption are "made suitable for modern conditions".

**'I don't wake up dreaming of Asil Nadir any more. He's unfinished business'**

Britain passed a law in 2001 which for the first time made it an offence to bribe foreign public officials, but it left unchanged many underlying rules, notably the 1906 Prevention of Corruption Act. A draft corruption Bill in 2003 was scrapped after being widely condemned for failing to address key issues. More recently, the Government has asked the Law Commission to review the bribery legislation and it is due to publish a consultation paper this autumn.

The scale of the problem Wardle and his colleagues are dealing with

every day is huge; figures published in March this year estimated that fraud costs the UK £20bn a year – the equivalent of around 6p on income tax. The report, which was commissioned by the Association of Police Officers, was the first major attempt to calculate revenues lost through fraud, but industry experts admit it is still just an estimate.

According to KPMG's Forensic Fraud Barometer, a surge in frauds perpetrated by organised crime gangs led to a record number of fraud cases last year – 277 came to court. Yet Adam Bates, the firm's global forensic chairman, admits the figure "must be a fraction of the totality".

The SFO's own credibility has suffered thanks to the dearth of high-profile permanent convictions. The SFO was set up by the Thatcher government in 1988 after a report on fraud trials by Lord Roskill, and the idea was to ring-fence resources specifically for the investigation and prosecution of fraud. However, its track record, which includes the failure to bring to trial Asil Nadir, the Polly Peck tycoon who fled to northern Cyprus in 1993 to avoid charges involving theft of £34m, is in marked contrast to the US, where the Foreign Corrupt Practices Act has been used with increasing frequency to curb bribery by companies.

Wardle, who worked on the Nadir case, defends the SFO's record: "We have been bringing investigations and prosecutions in cases that would never have been looked

at, let alone prosecuted," he says. The SFO has a conviction rate over the years of seven out of 10. "I think in these sort of cases that's pretty good," insists Wardle.

According to KPMG's Bates, people simply shouldn't "expect a 100 per cent track record from the SFO". If that were the expectation, he says, "they wouldn't take on any cases".

After nearly 20 years, the complex nature of the cases has not changed but the challenges have increased: it is no longer a question of searching through a filing cabinet. These days investigators have to sift through millions of electronic documents.

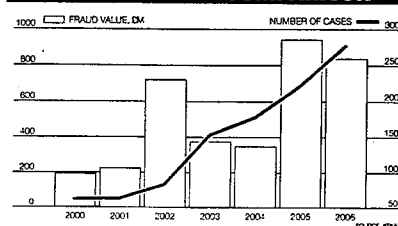
Among the bottlenecks are delays in taking witness statements and the long and costly trials. Supporters of the SFO argue that the agency has not been helped by the antiquated corruption laws.

"Unless we have more effective enforcement of corruption legislation here in the UK, we will soon find the Americans doing it for us – as they appear to be doing with BAE Systems," says Brian Stapleton, head of investigations for Kroll.

One of the reasons why the US does so much better is its plea-bargain system, under which most white-collar criminals plead guilty at an early stage in return for lighter sentences and informants often get off scot-free.

Philip Lewis, the SFO's assistant director, believes that is the way to go in the UK. "We have been developing a system quietly. There are now guidelines and principles,

## UK FRAUD ANNUAL COMPARISON



"which enable you to reach agreement with the defendants... and there are clear guidelines and principles which determine the length of sentence they get," he says.

In the ongoing case against an alleged cartel of companies producing generic drugs who are alleged to have conspired to fix the price of commonly prescribed NHS drugs, 14 potential defendants are instead giving evidence for the prosecution. Convictions in this case would be a huge feather in the cap of Lewis and his team.

"If you look at the criminal justice system as a whole there has been a widely recognised failure to get home against companies," admits Lewis. "If you simply charged the individuals [in the generics case] you would have perpetuated the situation whereby the company could simply throw up its

hands, deplore the conduct of the individuals and walk free."

He adds: "There is a view that that brings the criminal justice system into disrepute. If it fails to stand up to the companies, there is a view that the companies are too big and too difficult. Well, we'll see in this case. We expect to win against the companies."

The regulatory environment has also been changing. Thanks to the Government's Fraud Review, the results of which were published last summer, several working groups are now at work on its recommendations, including looking at a framework for plea negotiation. Among the other recommendations, Wardle highlights the one to set up a Financial Court jurisdiction so that the different proceedings arising from serious fraud cases can be brought together in one court.

Wardle's time as head of the SFO is due to come to an end next April. With items still on his to-do list, he is 'a middle-aged man in a hurry'.

"This is very important, having a court that can deal with all these issues, a single finding of fact so that you don't have the duplication. At the moment you can have the civil procedures, the liquidator, the criminal trial – an awful lot of money is spent on lawyers," says Wardle.

More changes to the way the SFO works will come from a review of its procedures set up by the attorney-general under former New York prosecutor Jessica de Garcia. The review had been rumoured to be looking at the absorption of the SFO into the Serious Organised Crime Agency but Wardle insists it is doing nothing of the sort. He is adamant that prosecution decisions should be made independently on the basis of the evidence and the public interest – a reason, he argues, to keep the SFO.

His own term is due to end next April, by which time the 55-year-old will have been in the director's office for five years. There are several things left on his to-do list and he jokingly describes himself as "a middle-aged man in a hurry". But above all, he would like the uncertainty around the SFO to end.

And what about Asil Nadir – does he still think about him? "I don't wake up dreaming about him any more," says Wardle, before adding: "He's unfinished business."