

All Eyes On The SFO After LC&F Ponzi Scheme Ruling

By **Christopher Crosby**

Law360, London (November 20, 2024, 4:40 PM GMT) -- Damning findings in civil litigation that the directors of London Capital & Finance ran the bonds company as a Ponzi scheme could foreshadow the Serious Fraud Office's parallel criminal investigation into the failed £237 million (\$300 million) investment business, lawyers say.

Judge Robert Miles' judgment at the High Court on Nov. 14, when he found that the company's former executives had **defrauded investors** in the mini-bonds issuer, shines a light on conduct that is likely to be of interest to the anti-fraud prosecuting agency.

Alongside those civil proceedings, the SFO has been investigating individuals connected to the business since it collapsed in 2019. The agency has arrested five individuals but brought no charges.

The High Court case has offered a deep dive into the events under scrutiny, but lawyers caution that the extent to which the agency will benefit from the findings is questionable.

Here, Law360 looks at the significant takeaways from the 341-page judgment — and what it could mean for the SFO's investigation.

A Ponzi Scheme

London Capital & Finance PLC, buoyed up by flashy marketing and promises of bank-beating, steady returns, attracted more than 11,600 investors — the largest investment plan of its kind in the country at the time.

And it was all, in the words of Judge Miles, a Ponzi scheme.

LC&F's chief executive, Michael "Andy" Thomson, and so-called shadow director Spencer Golding, along with others in the company, committed fraud, the judge found. They ran the business "as a Ponzi scheme" by **using new money** from incoming investors to pay existing bondholders.

Those findings are likely to interest the SFO, which has said little about the direction of its investigation during the civil proceedings. Only once has the prosecutor publicly addressed the civil case, when it **secured a suspended sentence** for Thomson for breaching a restraint order limiting his spending.

But analysts of white-collar crime say that the basic narrative of events, **constructed by administrators** who tabulated the flow of payments into and out of the company, is likely to parallel that drawn up by the SFO.

"Although there have been some clues in the website updates issued by the SFO since its investigation commenced over five years ago, the civil judgment is likely to provide the biggest clue on the possible angle the agency will take/may already have taken in its own criminal pursuit," Iskander Fernandez, head of white-collar crime at Kennedys Law, said.

Prosecutors are likely to be interested in the company's promises in sales calls and marketing pitches that its money was being lent to hundreds of small and mid-sized businesses.

But Judge Miles described how LC&F's directors passed tens of millions of pounds through entities linked to themselves rather than to independent, vetted businesses. Those deals were "artificial," self-dealing transactions designed to justify and conceal the fact that the directors were not making arms-length loans, according to the judgment.

That financial picture means the SFO might already have a strong sense of its case, Dan Hudson of Seladore Legal said.

"Well-heeled commercial claimants, defendants and their lawyers have shown the SFO where to look and how to avoid any pitfalls," Hudson said. "Fundamentally, it's about showing that the money went where it shouldn't have, and that some people were lied to or deceived and others were lying.

"It's not rocket science," he added.

Crafting A Narrative

There is no definition in U.K. criminal law of a Ponzi scheme: fraud by deception is an offense under the Fraud Act 2006. But Judge Miles noted in his decision that the term was a "convenient" shorthand, and used the term 67 times in his judgment.

Prosecutors are also likely to find it a useful way to narrate events.

"You'd expect the administrators' work, findings and narrative would all be available to the SFO," Hudson said. "If they got their ducks in the row, it's almost a dry run for prosecutors to see how to put a successful case together."

Hudson said that the challenge for prosecutors will be to convince a lay jury, which will apply a higher standard of proof, rather than a well-educated commercial court judge with decades of experience.

"They need to come up with an easily understandable and cogent story using relatively simple language that won't bamboozle a jury," Hudson said. "They can't rely on civil findings — they might use the same evidence, but they have to prove the case, from start to finish."

How Big Is The Case?

The SFO has not said who it is investigating. Goulding, the driving force behind LC&F, was found to have obtained £43.4 million for himself from bondholders after he was debarred from defending himself against the claims for failing to disclose evidence.

Thomson, who had day-to-day **oversight of the business**, got at least £5.35 million from the company. Robert Sedgwick, a lawyer, earned almost £780,000, and John

Russell-Murphy, a bonds salesman, received at least £351,600 personally while a company he controlled was paid £2.33 million.

Each man "knowingly participated in the fraudulent conduct," Judge Miles found.

Golding's "right-hand man," Elten Barker, reached a settlement before trial. So did Simon Hume-Kendall, a former Tory MP and one time LC&F director, and his wife.

Paul Careless, the former director of a marketing company, Surge Financial, is the only suspect to publicly acknowledge that he had been arrested.

The judge found that Careless, who marketed the minibonds for LC&F in exchange for a 25% commission on all the funds it raised — resulting in him personally receiving at least £8.4 million — was not directly aware of the fraudulent scheme.

But he suspected it. Careless and others at Surge had deep concerns about the company from the beginning, according to the judgment. But they did little due diligence to ensure that their business partners were honest

They even once joked that Golding was like Bernie Madoff, the American financier who ran the largest known Ponzi scheme in history.

Those findings are likely to help the SFO's investigators as they think about what avenues they might pursue, lawyers say — but the agency will also be alive to the risks of relying too heavily on others' work. Events that look clear and compelling when laid out in a civil judgment could become fraught with complication when prison sentences are on the line.

"For a defense lawyer, a civil judgment before a criminal trial can be a complete headache, but I am not sure that it influences the SFO much in deciding what to investigate and ultimately charge," Zoe Osborne, a partner at Steptoe LLP, said.

Potentially of great relevance to the SFO is the Financial Conduct Authority's investigation into LC&F's collapse, which is still underway, Osborne said. The probes would apply similar standards of disclosure, use similar chains of custody of evidence and be similar in the thoroughness of their approach.

The SFO will also be able to draw from the first-hand accounts of investors after having surveyed thousands of mini-bond holders in its investigation.

Company accounts, bank statements, the WhatsApp accounts of witnesses — the crucial evidence that goes into building a successful civil fraud case — should be readily available to the SFO without much of a headache, Hudson of Seladore Legal said.

Much of it could come from the administrators themselves, although the SFO also has powerful tools to evidence and witness accounts, he said.

The real challenge facing investigators is the same as in any large, complex probe involving many defendants: who to charge and what offenses to consider.

Whether a prosecution gets off the ground at all will depend on the SFO being able to comply with the Code for Crown Prosecutors. That rulebook requires it to consider whether there is a reasonable prospect of conviction.

The facts mean that fraud is "highly likely" to feature on any potential indictment, Fernandez, Kennedys Law, said.

Bringing too big a case might consume too many of the SFO's resources and confuse a jury. But the SFO could expose itself to criticism that it has not pursued all reasonable lines of inquiry — a requirement for public prosecutors — if its case is too modest.

The agency "needs to hold" fraudsters to account — if there is sufficient evidence, Hudson said.

"If they're bang to rights and the case against them is good, in theory they should all be prosecuted together," Hudson said. "The question, then, is whether it's in the interests of justice to try everyone and try them together."

--Editing by Ed Harris.