Press release: Former FTSE 250 oil chiefs disqualified for breach of duties

The court recently ordered that Osman Shahenshah (56), the former chief executive of Afren PLC, and Shahid Ullah (59), the former chief operating officer, each be disqualified from running companies for 14 years, effective from 2 April 2018.

Afren was a former FTSE 250 listed independent upstream oil and gas exploration and production company, with operations across Africa and the Middle East, before it went into administration in July 2015 with an estimated deficiency of $1,754,614,564.

Shahenshah and Ullah’s disqualifications focus on their failure to declare to the Afren board that they had a vested interest in a number of high-value transactions.

One transaction concerned payments totalling $300m by Afren to a joint venture partner that resulted in a 15% fee payable through an ‘Oilfield Development Optimisation Services Agreement’ with a British Virgin Islands company controlled by the two directors and their families.

But neither the agreement nor the $45m fee had been disclosed to Afren’s board. Shahenshah received $9.2m and Ullah received $7.9m, while $8.2m was paid to other Afren Group senior employees.

A second series of transactions worth $170m, with a different joint venture partner, was also looked at by investigators. Again, the two directors failed to declare to the board their interest as they were also negotiating a potential 30% ownership of that company after a management buy-out.

Both transactions took place after Afren’s shareholders had capped what they deemed as ‘excessive’ benefits packages for senior executives.

The disqualifications prevent Shahenshah and Ullah from directly or indirectly becoming involved, without the permission of the court, in the promotion, formation or management of a company for the duration of their bans.

David Brooks, Group Leader at the Insolvency Service, said:

> Afren PLC’s shareholders had expressed clear opposition for a number of years to benefits packages for senior executives in their company, which they viewed to be excessive. They capped such benefits shortly before the events in question.

> Shahenshah and Ullah have clearly then reacted to that decision by negotiating secret benefits for themselves. Their decision to agree an undisclosed contract via a BVI company, while receiving the funds via a Bermudan company of exactly the same name, best illustrates the cloak and dagger nature of their actions referred to in Chief Registrar Briggs' judgment.
>
> I welcome the long period of disqualification given by the court, which underlines the gravity of directors breaching their fiduciary duties to a company and its shareholders.

Afren PLC (CRO No. 05304498) was incorporated on 3 December 2004 and traded from Kinnaird House, 1 Pall Mall East, London SW1Y 5AU.

Osman Shahenshah's date of birth is in January 1962 and he has resided in recent years in London.

Shahid Ullah's date of birth is in February 1959 and he has resided in recent years in Texas, USA.

Court evidence

Osman Shahenshah and Shahid Ullah breached their duties to Afren PLC by failing to declare an interest in a proposed transaction, and a potential conflict of interests, prior to the transfer of $300M by Afren PLC to a joint venture partner from August to November 2013. As a result, again without disclosure to Afren PLC, benefits totalling $45M were charged to the joint venture partner by a company directly or indirectly controlled by Mr Shahenshah and Mr Ullah:

- On 4 July 2012, Afren PLC and the joint venture partner entered into a contract, effectively agreeing a $100M interest free advanced payment.
- On 23 August 2013 they entered into a second contract, by which $180M was paid by Afren PLC on 27 August 2013 and $120M on 1 November 2013.
- Afren PLC had received criticism from shareholders that its executive remuneration policies had led to excessive pay, and they had voted 80% against the proposed remuneration plan in 2013. A new remuneration policy was proposed in the 31 December 2013 annual report which capped executive bonuses to 200% of base salary for the CEO and 160% for other executive directors.
- Mr Shahenshah and Mr Ullah had been in negotiations with the joint venture partner from at least May 2013 that it would pay a fee to a British Virgin Islands ("BVI") registered Special Purpose Vehicle ("SPV") directly or indirectly controlled by Mr Shahenshah and Mr Ullah. An 'Oilfield Development Optimization Services Agreement' was entered into with the BVI SPV on 25 October 2013, including a 15% fee on net cashflows. Neither the negotiations nor the contract were disclosed to the Afren PLC board.
- On 8 December 2013 and 6 March 2014, the SPV invoiced the joint venture partner 15% fees based directly on the above payments from Afren PLC of

$180M and $120M. Payments of $27M on 19 January 2014 and $18M on 11 March 2014 were made to a Bermudan company, which had the same name as the BVI SPV. Subsequently $9.2M was paid from this account to Mr Shahenshah, $7.9M to Mr Ullah and $8.2M to other Afren Group senior employees. Neither the invoices nor the payments were disclosed to the Afren PLC board.

- An internal investigation into potential listings breaches led to discovery of these communications and transactions by the AFREN Board in July 2014. The subsequent reporting of the dismissal of Mr Shahenshah and Mr Ullah for gross misconduct was a contributory factor to Afren PLC’s insolvency and $8.1M is unpaid from a $20.1M settlement agreement between Afren PLC and Mr Shahenshah and Mr Ullah.

Mr Shahenshah and Mr Ullah breached their duties to Afren PLC by failing to declare an interest in a proposed transaction and a potential conflict of interests, both before and after agreements were made on 11-13 December 2013 with a project partner, by which Afren would pay $100M, and grant a bank guarantee of $70M. Mr Shahenshah and Mr Ullah failed to declare to the Afren PLC Board that they had been directly facilitating a management buy out within the project partner from at least May 2013, by which they would take a direct or indirect ownership interest of 30% in the purchasing SPV:

- On 11 December 2013, Afren PLC agreed an amended and restated production and technical services agreement with the project partner, as well as a resolution agreement, agreeing $100M as settlement for disputes over tax allowances. Afren PLC also agreed on 13 December 2013 to guarantee a bank loan to the project partner up to $70M.
- Afren PLC had received criticism from shareholders that its executive remuneration policies had led to excessive pay, and they had voted 80% against the proposed remuneration plan in 2013. A new remuneration policy was proposed in the 31 December 2013 annual report which capped executive bonuses to 200% of base salary for the CEO and 160% for other executive directors.
- Mr Shahenshah and Mr Ullah had been in negotiations with a director of the project partner from at least 29 May 2013, on which day a personal email proposed that they facilitate the director’s proposed management buy out of the project partner. This included Afren PLC paying $100M for a 20% interest in the new company, and a further $100M as a tax settlement, with an SPV to receive bonus equity of 10% linked to these payments. A further 25% interest in the new company was proposed for the SPV. These negotiations, which reduced the total SPV fee to 30%, and the directors’ subsequent personal involvement in the buy-out on 20 December 2013, were not disclosed to the Afren PLC Board prior to its above agreements with the project partner. On 23 September 2013, Mr Shahenshah sent an email to Mr Ullah with a draft of the proposed Board paper recommending the transactions, in which he additionally stated “I’m not sure about mentioning the buyout”.
- Planning for a 30% stake in the SPV continued after the management buy out and Mr Ullah received an email on 24 February 2014 attaching a proposed restructure for the project partner and its new owning SPV. This set out that 30% of the SPV would be owned itself by an “Offshore

corp". The proposed ultimate part-ownership of the project partner was not disclosed to the Afren PLC Board.
- An internal investigation into potential listings breaches led to discovery of these communications and transactions by the Afren PLC Board in July 2014. The subsequent reporting of the dismissal of Mr Shahenshah and Mr Ullah for gross misconduct was a contributory factor to Afren PLC's insolvency.

Case updates on the Serious Fraud Office's investigation into Afren PLC can be found here. The trial arising from the investigation is due to take place on 3 September at Southwark Crown Court.

About disqualifications

A disqualification order has the effect that without specific permission of a court, a person with a disqualification cannot:

- act as a director of a company
- take part, directly or indirectly, in the promotion, formation or management of a company or limited liability partnership
- be a receiver of a company's property

In addition that person cannot act as an insolvency practitioner and there are many other restrictions are placed on disqualified directors by other regulations.

Further information on director disqualifications and restrictions can be found here.

The Insolvency Service administers the insolvency regime, investigating all compulsory liquidations and individual insolvencies (bankruptcies) through the Official Receiver to establish why they became insolvent. It may also use powers under the Companies Act 1985 to conduct confidential fact-finding investigations into the activities of live limited companies in the UK. In addition, the agency authorises and regulates the insolvency profession, deals with disqualification of directors in corporate failures, assesses and pays statutory entitlement to redundancy payments when an employer cannot or will not pay employees, provides banking and investment services for bankruptcy and liquidation estate funds and advises ministers and other government departments on insolvency law and practice.

Further information about the work of the Insolvency Service, and how to complain about financial misconduct, is available.

Media enquiries for this press release – 020 7637 6498 or 020 7596 6187

You can also follow the Insolvency Service on:

News story: New funding for sports prosthetics for children with disabilities

Children with limb loss will benefit from a further £1.5 million investment into sports and activity prosthetics.

The announcement is the next stage of a government fund that has supported 220 disabled children since its launch in March 2016. It means more children who have suffered limb loss or who were born with a limb deficiency will benefit from prosthetics such as running blades. The fund will also support research and innovation to improve prosthetic technology.

Minister of State for Care, Caroline Dinenage, said:

> Sport and activity are so important to any child’s health, wellbeing and confidence, and today’s announcement should help many more disabled children to fulfil their sporting ambitions.
>
> Hundreds have already benefited from the fund, and this additional investment will now help us to open up even more possibilities for children with limb loss, and hopefully ignite in them a lifelong passion for sport.

Kiera Roche, chief executive of LimbPower, the national disability sports organisation for people with limb impairments, said:

> LimbPower is delighted with the incredible news that the Department of Health and Social Care will continue the fund for a further 2 years.
>
> The impact this has had on the 220 children who have so far received their activity limbs is immeasurable.
>
> Children just want to be able to join in and feel included, especially at school and in the community, and this means playing and taking part in P.E. and games.
>
> The overriding messages we have received from children and parents is that they can be included, join in, run and jump just like their friends. They can be children and not patients.

News story: CMA launches Trinity Mirror/Express merger investigation

Trinity Mirror plc took over part of Northern & Shell Media Group Limited, including the Express and Star newspapers, in February 2018.

The Competition and Markets Authority (CMA) will now assess whether this deal could significantly reduce competition within the UK media sector, in line with its merger guidance.

The deadline for the initial decision is 7 June 2018. Further details, including how interested parties can submit evidence, are available on the investigation case page.

News story: Dangerous diversion of Diazepam down by potentially more than 60%

Our efforts to crack down on the diversion of Prescription-Only Medicines (POM) onto the black market are working, as recent figures highlight a drop in large scale orders of prescription medicine.

The Medicines and Healthcare products Regulatory Agency (MHRA) analysed bulk orders of diverted medicines* between January – May 2017 compared to January – May 2016. The figures show:

- trading of Diazapam is down by 64%
    - trading of Nitrazepam is down by 24%
    - trading of top strength Temazepam is down by 20%
    - trading of Zolpidem is down by 14%.

We recently updated the public about the diversion of medicines onto the criminal market, said to be worth up to £200m. Our enforcement team is running 17 active investigations, and we are disrupting organised criminal networks diverting medicines from the legitimate supply chain onto the illegal market.

44 arrests have been made thus far, for offences such as possession with intent to supply a controlled drug, and offences under the Proceeds of Crime Act.

Last year, Mohammed Urfan pleaded guilty to charges of unlawful supply of class C controlled drugs contrary to section 4(3) a Misuse of Drugs Act 1971 and a suspended sentence of 18 months imprisonment was imposed on him, with a requirement that he carry out 260 hours of unpaid work.

Alastair Jeffrey, MHRA Head of Enforcement, said:

> It is a serious criminal offence to sell medicines outside of the regulated supply chain and the latest figures show our unabated efforts to identify and prosecute criminals are having an effect.
>
> The criminals involved are exploiting people to make money and have no concern about the health and wellbeing of people who buy the medicines.
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> We will work tirelessly to investigate and prosecute those breaking the law.
>
> Prescription only medicines are potent and should only be taken under medical supervision.

Press release: Charity Commission opens statutory inquiry into The Save the Children Fund

The Charity Commission, the charity regulator for England and Wales, has opened a statutory inquiry into The Save the Children Fund (registered number 213890) over concerns about the charity's handling, reporting and response to serious allegations of misconduct and harassment against senior staff members in 2012 and 2015.

The Commission was in regulatory engagement with The Save the Children Fund in 2015-16, after the charity reported a serious incident relating to allegations of misconduct and harassment against a senior staff member; the regulator also received an anonymous complaint about the charity's response to further allegations against senior staff members. At that time, the Commission met with the Chair and instructed the charity to provide it with the findings of its independent review. It received direct assurance from trustees that all of these recommendations had been accepted and were being urgently acted upon.

The Commission re-engaged with the charity in February 2018 when they were responding to further public scrutiny about the 2015 issues. At this time, the charity announced a new review into workplace culture at the charity, which amongst other things will assess whether recommendations from a previous review have been fully and effectively implemented.

As a result of that more recent engagement with the charity, alongside new information from other sources that has recently come into the regulator’s possession, the Commission is concerned about:

- whether the charity adequately reported the full extent and nature of allegations to the Commission in 2015/16
- how the charity handled various complaints in 2012 and 2015 and, as a result, the extent of any reviews conducted at the time by the trustees into the charity’s response to the allegations
- the charity’s decision making since February 2018 on its public position regarding these allegations

As a result, the Commission opened a statutory inquiry into the charity on 4 April 2018. The new investigation will examine, among other matters, whether trustees have:

- adequately discharged their duties in handling the allegations at the time, and in fulfilling their duty of care towards their employees
- ensured the charity has implemented measures about operating to appropriate standards of work place conduct and staff safeguarding – including testing staffing misconduct allegations, complaints or incidents received by the charity since 1 January 2016
- made decisions around public handling and reputation management on the historic allegations appropriately
- disclosed fully, frankly and accurately, serious incidents relating to staffing matters to the Commission

The inquiry is confined to the issues of safeguarding in the context of misconduct and harassment of the charity’s staff; it is not examining safeguarding in the context of The Save the Children Fund’s programme delivery for beneficiaries.

Michelle Russell, Director of Investigations and Enforcement at the Charity Commission said:

> This inquiry centres specifically on how the charity handled complaints in 2012 and 2015 about senior members of staff, and how the charity responded to and managed public and media scrutiny of those events in 2018.
>
> Opening a formal investigation does not necessarily mean that we have concluded that there has been wrongdoing by the trustees of The Save the Children Fund. However, we do have questions that must be answered, and we need to hold the charity formally accountable for providing them in a clear and timely manner.

It is the Commission’s policy, after it has concluded an inquiry, to publish a report detailing what issues the inquiry looked at, what actions were undertaken as part of the inquiry and what the outcomes were. Reports of previous inquiries by the Commission are available on GOV.UK.

Notes to editors

1. The Charity Commission is the independent regulator of charities in England and Wales. To find out more about our work, see the about us page on GOV.UK.
2. Search for charities on our check charity tool.
3. Section 46 of the Charities Act 2011 gives the Commission the power to institute inquiries. The opening of an inquiry gives the Commission access to a range of investigative, protective and remedial legal powers.
4. The Commission recently announced a new suite of measures on safeguarding including the establishment of a dedicated safeguarding task force.
5. The Commission will not seek to conduct work already commissioned by the charity in March 2018 in an Independent Review of Workplace Culture. The terms of reference of the Workplace Culture Review is wider, focused on understanding the current workplace cultures and levels of trust in the organisation. The Workplace Culture Review is however, looking at the implementation of the 2015 recommendations – considering the effectiveness of the implementation and actions identified in the 2015 review. The inquiry will expect to engage directly with the Independent Review of Workplace Culture on these aspects.