5. Case study

Versailles: how the bubble burst

For ten years Versailles plc gave every appearance of being a highly successful and innovative trade finance operation. Valued at over £½ billion and part of the FTSE 250, Versailles made its mark in the City and attracted much media attention. Institutional and private investors were drawn in, impressed by the rapid growth of turnover and profits. At the helm was Carlton Ellington Cushnie. Keeping the books was Frederick Clough. But behind the façade of respectability was little more than a fraud.

The two years prior to the 1999 collapse of Versailles plc was a time of very rapid growth and high profitability. Versailles was first floated, in 1995, at just 7.5p a share. At first its progress was unexceptional. But by October 1997, when Versailles graduated to a full stock market listing, turnover and profits had begun to accelerate sharply. During 1999 the company's value trebled to £600 million as the share price increased by 275% to reach 251p on 8 December. Towards the end of the year Versailles announced its third consecutive year of 50%-plus growth in pre-tax profits, taking them to £7.9 million.

Carl Cushnie still owned most of the company but was preparing to reduce his stake. On 9 November 1999 Versailles' broker sold a total of 16 million shares on behalf of Cushnie and two of his non-executive directors. Selling just a few percent of his enormous paper fortune realised £29 million for Cushnie. The share price ended the day up another 6p to a new high of 219.5p; a rise of 40% in not much more than a month. But within another month Versailles would have collapsed and the shares would be worthless.

What was Versailles?

On the face of it Versailles, trading through its operating company Versailles Trade Finance (VTF), was just another source of bridging finance for small companies with weak cash reserves but strong order books. But VTF was different. It claimed to make its lending judgements not on the strength of the client's balance sheet but on the strength of its order book. In effect VTF lent against the commercial strength of the client's end-customer, which would typically be a solid, blue-chip household name – or so Versailles claimed.

Most of VTF's business took the form of a rather convoluted type of invoice factoring called *'accelerated payment trading'* or APT. When a cash-poor manufacturer wins an order too big to finance out of its own resources it will normally seek some form of short-term bridging finance. Versailles' APT was just such a thing:

- First the manufacturer would sell the goods to VTF at the full price and, importantly, be paid 80% immediately, subject to a fee deducted by VTF.
- VTF then sold the goods at full price to the end-customer – probably a retailer – which took delivery direct from the manufacturer.
- Finally, some time later, when the retailer paid VTF in full, Versailles deducted the remainder of its fees and interest from the remaining 20% and remitted the balance to the manufacturer.

In 1998 Versailles extended the APT model to create an even more complex product, MP-APT, to provide funds with which the manufacturer could also purchase raw materials. Press coverage stimulated by Cushnie's share sale would mention the complexity of these APT and MP-APT transactions. As Jason Nisse later wrote in the

> After several years of exceptional performance Versailles must have appeared to be a first class investment

Independent on Sunday (12 December 1999): "*…the City does not understand these companies and how they make their pots of money. And if the experts are befuddled, what chance, you wonder, do ordinary investors have?*"

Nevertheless there was no shortage of intelligent and experienced investors waiting to buy Cushnie's shares on 9 November. After several years of exceptional performance Versailles must have appeared to be a first class investment. But the truth was quite different. In fact very nearly everything anyone knew, or thought they knew, about Versailles – the deals, the profits, the turnover, the assets – it was all a lie.

The unravelling

At 14.45pm on 8 December 1999 the stock exchange delivered a shock for Versailles shareholders: "*…the listing for [Versailles Group plc] has been temporarily suspended … at the request of the company pending an announcement*" said the newswire in the matter-of-fact tone traditionally used to prepare the way for bad news.

Cushnie explained to the press that management had discovered an inadvertent breach of the FRS5 financial reporting standard, and that they had acted quickly to bring in accountants to get to the bottom of a problem that was really just some accidental double-counting. Seeking to reassure investors – including those who had just bought £29 million of his personal stockholding at what had now become the top of the market – he went on to claim that profits were unaffected by the mistake. In this he spoke the truth; there never had been any profits to be affected. But the claim that Versailles had uncovered the accounting error for itself was a very long way from the truth.

The DTI investigates

The accounting problem had first come to light in April when a tip-off prompted the Department of Trade and Industry to begin a '447' investigation into Versailles' turnover calculations, which commenced in May. DTI enquiries under section 447 of the Companies Act are usually of fairly limited scope. The whole process is kept confidential so that suspicions of misconduct can be looked into without harming the company's standing.

Clough and Cushnie claimed that they thought the DTI was looking into the collapse of former Versailles clients Biltons and Telecom Sciences Ltd. But the questions the DTI was asking them related to much wider aspects of Versailles business, and so clearly the investigation, in reality, focused on Versailles itself. Section 447 enquiries are often completed within three months, but when Cushnie sold his shares six months later, on 9 November, Versailles' highly irregular accounting practices and failure to supply basic information were still making it impossible for the DTI inspectors to verify turnover, forcing them to share their by now acute concerns with regulators at the stock exchange.

Stock exchange officials had to move quickly. The collapse of a FTSE 250 company could have potentially damaging consequences for the City of London's reputation as a stable and well-regulated market. They needed to establish once and for all if the Versailles business was indeed legitimate. Versailles was immediately instructed to appoint a firm of independent accountants to audit the company's true financial position and to report its findings directly to the stock exchange. Baker Tilly were retained but had no more luck than the DTI. On 8 December the firm wrote to the stock exchange: "*We are not in a position to confirm the integrity of the company's accounting systems [or to] confirm the accuracy of the interim results for the period to 31 August 1999… matters [which] indicate accounting systems which are unsatisfactory for a listed public company.*" The stock exchange had no choice but to insist that Versailles suspend its listing.

The explanation of accidental double-counting of turnover in breach of FRS5 was both a lie and a red herring, as the SFO's senior investigative accountant Anne Dilks, the person who did most to assemble the forensic accounting case against Clough and Cushnie, explains: "*The DTI had made no reference to FRS5. Baker Tilly's letter of 8 December 1999, which triggered the share suspension, had made no mention of FRS5. The concerns of the DTI and the stock exchange were much more serious than that; they feared that the Versailles books might not, after all, represent bona fide transactions with real clients.*"

Meanwhile, the news that Cushnie had sold his shares while Versailles was still under DTI investigation was soon followed by the resignations of the company's stockbrokers, Teather & Greenwood and Raphael Zorn Helmsley.

The banks now instructed PriceWaterhouse Coopers (PwC) to audit Clough's balance sheet and profit calculations, and on 6 January Baker Tilly resumed work on behalf of the stock exchange. With two teams of accountants working side-by-side inside Versailles the immediate challenge for Cushnie and Clough was to prevent PwC from discovering both the true extent of the stock exchange's concerns (known to Baker Tilly) and the fact that Versailles Trade Finance was not, after all, totally independent of something called Trading Partners Ltd (TPL), a shadowy parallel trade finance operation ostensibly run by Cushnie and Clough and registered offshore in the British Virgin Islands.

Carl Cushnie, former CEO of Versailles plc

"*TPL was supposedly a mechanism by which wealthy individuals, known as 'traders', could invest in the funding of lucrative APT-style trade finance deals,*" explains Dilks. "*The business model was similar to VTF, but the banks had been repeatedly assured over the years that TPL played no part in the calculation of Versailles Group turnover and profit. This was a lie and always had been. The funds invested by traders had been intermingled with VTF funds, whilst (with one exception) there was no separate trading carried out by TPL or its predecessor VTL.*"

If PwC uncovered the truth, the banks would immediately realise that Versailles had borrowed £70 million from them on false pretences. Cushnie had always gone to great lengths to maintain the fiction of strict separation between VTF and TPL. But on the evening of 13 January, at a meeting with PwC and NatWest, he was finally forced to admit that published Group turnover did indeed include income from TPL.

Clough was by now having difficulties uniquely his own. PwC wanted to know more about a group of sham companies called Artagent, Discgift, Superhandy, Optel Technology and Premium Selections. These were all used, in one way or another, to defraud Versailles investors. On 18 January, at another meeting with PwC and the banks, Clough was asked in particular about payments he had authorised from Versailles to Optel. This was one of two companies that he alone had been using to divert Versailles money for his personal use, all without Cushnie's knowledge. Clough lied, telling the meeting that Optel was a Versailles supplier. At the end of the meeting the NatWest officials withdrew banking services from Versailles Group.

Later that same day Cushnie and representatives from the banks gathered to hear what PwC's auditing of the Versailles books had discovered so far. Cushnie heard for the first time that his finance director had stolen a very large, but as yet unspecified, sum of money. The final figure for Clough's solo theft would be £19 million.

At 8am the next day, 19 January, the Versailles board confronted Clough with the evidence of his theft. He said little but tried to offer his resignation. The board declined and Clough was escorted from the building. Clough's lone crime would soon be revealed as just a small part of all the fraudulent activity at Versailles. PwC now had access to Clough's locked cupboards and filing

The SFO had been watching developments closely at Versailles for some time


Marina Imperi/Telegraph

Fred Clough, former finance director of Versailles plc

cabinets. They found bags full of chequebook stubs and other documents. Working through the night they began to focus on the bank receipts and soon came to realise that there was a very large difference between the true trading position and the inflated turnover and profit figures published by Versailles. PwC had found a hole in the books so large that even Clough's extractions could not fill it. And so, on 20 January, the banks placed Versailles Group plc into the hands of PwC, now appointed as the receiver. An approximation of the true losses came nine days later when the receiver issued a writ against Clough for £50 million for "*breach of fiduciary duty, deceit and fraud*". But even this figure would, in turn, be dwarfed by the final reckoning of all losses at Versailles.

SFO called in

The SFO had been watching developments at Versailles closely for some time. Once SFO investigators met with the DTI on 18 January 2000 events began to move very quickly.

"*In circumstances like these, things that the receiver sees as assets – desk-top computers and servers for example – we are likely to think of as evidence, so there is always the potential for conflicting priorities between the two teams,*" says Dilks. "*But the PwC people were very helpful and we were able to inspect evidential material early and in situ, which is a great help to us in any investigation. Almost as soon as the receivers were called in we established an office inside Versailles and started sifting through everything, photocopying and printing-out as we went.*"

During the course of a long investigation many members of the SFO's staff will from time to time contribute to any particular case team, but there is always a core of specialists who will see the case through from start to finish. In the case of Versailles these included senior investigators Janet Caiger and Lew Tassell as well as junior investigators.

The SFO team now faced an enormous challenge in re-assembling and reconstructing accurate financial figures that could reveal the true state of the Versailles business and so the scale of the fraud. It would be some time before the SFO would be in a position to demonstrate clearly and simply to a jury of non-experts precisely how the fraud had worked and precisely who was guilty of what.

This kind of detailed, technical work requires painstaking care as well as an armoury of resources and skills that only the SFO can marshal, a point that former SFO case controller Roddy Gillanders, now with the Inland Revenue, is keen to emphasise: "*This was a classic case where the investigation needed to be in the hands of lawyers because of the many delicate legal issues that would arise. It was also one of those relatively rare cases that was pre-eminently provable by a technical accounting exercise – something that only the SFO can* *do – and so it could be led by an SFO accountant.*"

Unravelling the turnover scam

Throughout 2000 the team worked on, tracking individual transactions through a complicated trail of cash movements, in and out of the UK, dividing and recombining. Slowly the fog, so carefully generated by Clough, began to clear.

"*Once we had reconstructed a proper set of records we could see clearly that very many of the transactions which at first sight looked like real business were in fact just internal payments to and from Versailles and three sham companies called Superhandy, Discgift and Artagent,*" says Dilks.

Roddy Gillanders

In addition there were several offshore entities which had been used to divert company money for personal use. The use of offshore locations is not in itself an indication of suspicious dealings, but they are often chosen for their secrecy and so tracking transactions and achieving information disclosures is much more difficult when there are offshore locations in the flow of funds. With Versailles the SFO case team was dealing with Jersey, France, Switzerland, Nigeria, Ghana, Hong Kong, Mauritius, the Cayman Islands, the British Virgin Islands and the US.

Companies House revealed that Artagent, Superhandy and Discgift had never filed accounts and yet Dilks could now show that £1/2 billion had flowed to and fro between them and VTF: "*These companies existed to do nothing more than route and re-route this money. Afterwards the books were altered using false customer names to make the transactions look like real business deals. Versailles did do some real business, through what was called the client services department (CSD). But the CSD and the accounts department, where all the fake business was invented, were kept scrupulously separate by Clough.*" CSD staff had had no idea about the sham client companies Artagent, Superhandy and Discgift.

By the time Versailles collapsed the gap between fact and fiction surprised even Dilks and her fellow SFO investigators: "*In 1994 Versailles Trade Finance did just £75,000 of real business but published a turnover figure of £38 million. By 1999 published turnover had reached £232 million but the real figure was just £36 million. The figures for trade debtors (money owed to Versailles) had to be inflated as well, so in 1994, when the real value of trade debtors was just £63,000, the published accounts showed a figure of more than £12 million. By 1999 a real trade debtors figure of £5 million was being fraudulently inflated to £80 million in the published figures.*"

The importance of the inflated trade debtors figures should not be underestimated. As part of each deal VTF took ownership of the client's goods before selling them on to the end-customer. So the money owed to VTF by those end-customers was, in effect, the principal security for the money borrowed by VTF from the banks. In other words, the banks were happy to lend £70 million to VTF because they thought that VTF was, in turn, owed £80 million by a number of very large and well-established blue-chip companies. But no such security had ever existed. Overall Versailles had never had a positive net asset value. In 1999, when the published accounts claimed that Versailles' assets exceeded its liabilities (by £15 million), the reverse was true and the company had a net asset deficiency of at least £52 million. In other words, at the time of the share suspension the company was trading while deeply insolvent – and had been for almost a decade.

How could Versailles' long-standing auditors, the provincial firm Nunn Hayward of Gerrards Cross, have failed to notice such discrepancies? The Accountants Joint Disciplinary Scheme (JDS) subsequently investigated the firm. The partner responsible for the Versailles audit was fined £10,000 and expelled from the profession.

Interviews and searches

Decisions about the timing of searches of homes and businesses are important factors in the shaping of an investigation. There is an obvious argument in favour of searches being performed early in an investigation, if only to reduce the risk of potentially incriminating evidence being destroyed. On the other hand, the 'shape' of a prosecution case can change significantly as an investigation proceeds. The precise charges brought against each defendant, as well as the way in which those charges are framed (including the duration of the crime), can change significantly over the months and years needed to investigate a complex crime like serious fraud.

There were several business and residential properties to search, including a

"Here was a classic example of the real benefits of seeing evidence *in situ*"

location in France, and these searches proceeded with varying degrees of success.

Clough's main home, 'Great Danes', was large and private, but had been all-but abandoned by the time police officers visited in February 2000. Clough's flat in Kilburn, North London, turned out to have never been lived in. More promising was a bungalow in a quiet residential area of Chertsey in Surrey. This was both the registered bank address for one of the sham companies and the home of one of Clough's female friends. DS Jarvis and a colleague took away correspondence and bank statements.

Clough, Cushnie and Lorraine Jones (Clough's deputy in the accounts department) were questioned intensively by Anne Dilks and DS Jarvis between December 2000 and July 2001. It was a long and difficult process. "*Clough was business-like but co-operative,*" recalls Dilks. "*He answered almost everything we put to him except anything about where the money went.*" Cushnie, accompanied by two solicitors, was another matter. "*He was perfectly charming, always immaculately dressed, showed no emotion and he was very talkative when the tape recorder was turned off. But in five days of questioning he didn't answer a single question,*" recalls DS Jarvis.

Police searched Cushnie's principal residence, Ellington Lodge, in December 2000. "*It was a large property, over three floors and with a swimming pool in the basement,*" says DS Jarvis. "*Cushnie soon had several legal representatives present. I had a team of officers and we had taken independent legal counsel with us to rule on questions of professional legal privilege.*" Some photocopied cheques pointed to Cushnie's knowledge of transactions of which he had previously claimed ignorance. Investigators were at pains to tread carefully around matters of professional legal privilege: "*We wanted to seize Cushnie's laptop but when he claimed that it had been used to email his solicitors we were immediately required by law to assume that it might contain legally privileged material,*" explains DS Jarvis. "*This meant that each file had to be individually pre-examined by an independent lawyer – who was also responsible for storing the laptop securely overnight – with a Cushnie legal representative present at all times. There were thousands of files. It must have taken us two or three weeks to check them all. We had no choice but investigate the machine thoroughly, but in the end I doubt there had ever been anything significant on it.*"

Proving Cushnie's guilt

An important breakthrough for the investigation did come with the discovery of a series of high-level management reports revealingly labelled 'CEC dailies'. These were found on the personal computer of Lorraine Jones. "*Here was a classic example of the real benefits of seeing evidence in situ,*" explains Dilks. "*We knew exactly where these files had come from, as well as who they were for. The CEC dailies were comprehensive daily summaries of the banking situation, prepared for Cushnie by Jones and her team. They showed sales and purchases to date as well as the balances of all the bank accounts – including Versailles Traders and the sham companies Artagent, Superhandy and Discgift. Such detailed financial overviews, prepared so frequently and carrying Cushnie's initials, were to us a very clear indication that he had known exactly what was going on when Clough and his accounts team were inventing transactions to fake VTF turnover.*"

Another important discovery, made by Janet Caiger, was the large number of cheques for these fake transactions that had been signed by Cushnie himself. Among a sample of 1708 VTF cheques that carried Cushnie's signature, 962 were made payable to Artagent, Discgift or Superhandy. A second sample of 2213 TPL cheques, made out to either Discgift or Superhandy, included 681 carrying Cushnie's signature.

As for evidence of the benefits to Cushnie and his family, this was everywhere. Large amounts had been removed from company accounts to pay for personal transactions and then disguised in the Versailles books as commercial payments. Altogether, including the share sales, Cushnie and his family had benefited from the Versailles operation to the tune of £36.9 million, almost twice the amount stolen by Clough.

When Cushnie needed building work done at the family home the manner in which he paid the builder – a legitimate firm unconnected with Versailles – provides a case study in how company funds were misappropriated and falsely accounted for. Dilks again: "*Between October 1992 and February 1993 the builder received four separate payments totalling £85,997: three of these were paid by VTF; the fourth by VTL. Our analysis of the Versailles Group books revealed that the VTF payments had all been disguised as payments to clients.*"

And there were many other similar transactions. In February 1995 Cushnie purchased his Ellington Lodge home in Surrey for £1.1 million using £286,286 taken from Artagent, Superhandy, Discgift and Versailles Traders, and a mortgage for £800,000 repaid within six months out of the proceeds of a £1.8 million sale of Versailles shares (plus a further £34,482 from Superhandy). In 1998 he bought the Villa L'Ecossaise on the French Riviera for fifty million French francs (approximately £5 million). Part of the payment was a private loan of £600,000 from one of the Versailles traders, John Peter Williams, which Cushnie repaid within a month using money taken out of a VTF account. The payment was then recorded falsely in the VTF purchase ledger.

Versailles traders

As we have seen, the Versailles turnover fraud needed a supply of real money with which to create the fake internal transactions that were then used to justify overstated turnover figures. Most of this real money came from one of two sources: real business (done by VTF's client services department) or bank loans. But there was a third.

Cushnie had promoted a way of involving wealthy individuals in his schemes. Known in Versailles parlance as 'traders', they thought they were investing their money in funding and profiting from the same kind of APT-style deals that were making Versailles seem so very successful. Instead they were the victims of a version of the same fraud model being used by VTF to defraud the banks.

Cushnie created a separate company to contain the trader-related activity. Initially, from March 1992, this was called Versailles Traders Ltd (VTL). In March 1996 an offshore company, also called Versailles Traders Ltd, was registered in the British Virgin Islands (BVI) and the traders activity was moved to this company which was subsequently renamed Trading Partners Ltd (TPL). The traders each signed an agreement which entitled VTL/TPL to use their money to finance specific APT-style transactions. In return the traders received quarterly profit payments. The rates of return were good (13%-17%) and the risks were, allegedly, very low because the money was 'ring-fenced' from VTF, the deals were insured and, of course, VTL/TPL 'owned' the client's goods until payment in full was received from the 'blue-chip end-customer' of Versailles legend. Turnover had risen rapidly, from £3.15 million in 1993 to £102.42 million five years later, and so too had the traders' profits. Or so it seemed. In fact none of this was true.

Anthony Evans QC

As with VTF, so with VTL/TPL. Almost everything the traders thought they knew about VTL/TPL was a lie. In the year Cushnie moved VTL offshore the value of traders' funds at his disposal had more than doubled to £20.5 million. But in fact there had only ever been one, small deal concluded by VTL/TPL and that had made a loss. When Cushnie was not simply taking the money and using it for his own purposes, he was adding it to the general pot of funds used by VTF, something he had repeatedly promised would never happen and which the trader agreements expressly forbade. The promises of ring-fencing, reaffirmed personally by Cushnie at the traders' 1999 Christmas lunch, had been worthless. The quarterly income payments were in fact the traders' own fresh investments returned to them as fake profits. When Anne Dilks completed her analysis she could see that the traders had lost some £23 million. By July 2000, when a legal challenge by a group of traders convinced the BVI authorities to open up the TPL bank accounts, there was just £1.3 million left.

This time the evidence clearly pointed to Cushnie's guilt. He personally had run the traders operation: for many traders he *was* VTL/TPL, signing individual trader agreements and quarterly profit statements. Even after TPL was taken offshore all trader-related administration was still performed at the VTF offices, with Cushnie and Clough controlling all the bank accounts and signing all the cheques. In fact Cushnie *owned* VTL – from 1992 to 1995 through his private investment company Marrlist, and from 1 March 1995 directly – and his absolute power over the operation was exemplified by the high-handed way in which he had moved it offshore in 1996: neither of VTL's non-executive directors were consulted and nor were they invited to become directors of the new BVI-registered company, TPL. Clearly the traders operation had been Cushnie's 'baby' all along.

"It is a very difficult decision to call as a witness someone who has pleaded guilty to his part in a major fraud."

The charges

Cushnie, Clough and Lorraine Jones were finally charged at Charing Cross police station on the last day of July 2001: Cushnie and Clough with fraudulent trading contrary to s.458 of the Companies Act 1985; Lorraine Jones with aiding and abetting.

There can be a long time between defendants being charged and the start of any trial; investigations continue and the structure as well as the content of the case to be presented in court must be designed and prepared in meticulous detail. The facts, statements and evidence, including all of the tape-recorded interviews – indeed everything that will be presented to the jury by the prosecution – must be disclosed to the defence and as much as possible agreed beforehand. No effort is spared to avoid long (and therefore costly) disputes over points of law or admissibility of evidence emerging after the trial has begun.

In August 2001 the SFO was granted a five-month postponement to allow the investigation to be completed. A further deferral was granted on 10 January 2002. Then, on 11 February, the case was transferred to Southwark Crown Court, one of the courts specially equipped for the electronic presentation of evidence, and a firm trial date set for 14 January 2004. As well as the offences involving Versailles the indictment included a separate count (for Cushnie and Clough only) relating to the running of Normandy Marketing (NI) Ltd between 1989 and 1993.

As well as being a significant milestone in the development of the case, the transfer of an SFO case to the Crown Court is also a considerable administrative challenge for SFO staff. Once the trial had begun SFO law clerk David Wenham (in his role as the case secretary) would establish and run a satellite SFO office in the court building, supported by the prosecution's exhibits officer, keeping track of the judge's rulings, and shepherding sometimes bewildered witnesses. But first, at the time of the transfer to the Crown Court, he and his colleagues must deal with the mountain of paper evidence that will comprise the transfer 'bundle': "*The amount of evidential material in a transfer bundle is always substantial, but for Versailles it was huge. There were 144 lever arch files of documents and another 16 of witness statements, all carefully indexed, and these files did not contain all the bank statements and accounting records, which were transferred on CD.*" In all the SFO law clerks have to prepare and distribute simultaneously as many as a dozen duplicate copies of the evidence bundle; creating separate sets for the court, the police, the three defendants, their legal teams, and, of course, multiple sets for the SFO case team.

It is normal practice for the SFO's QC to be appointed early in an investigation. Lead counsel Anthony Evans QC had been contributing to the planning and structuring of the case since July 2000. But then when John McGuinness, who had only just taken over as Evans's junior, was made a 'silk', the SFO suddenly found itself with two QCs on its team. Anthony Evans explains the real benefits to a case of this unusual situation: "*The great advantage of having someone as good as John McGuinness doing the day-to-day work is that it frees the leader to concentrate on the advocacy side, which can take a huge amount of time, as well as to take a longer view of the case. For the prosecution the most difficult part of a complex case like Versailles, with all that technical financial information, is to make it comparatively simple for the jury. My chances of achieving that are greatly improved if I am free to focus on the key question of 'what do I want the jury to understand from this?'*" Completing the team of barristers was Shelley Webster, formerly an SFO investigator.

Computerised graphics played an important part in Evans's presentation, especially his opening speech, and so prosecuting counsel had for some time been working closely with Rosemary Joseph and Matthew Kettless in the SFO graphics unit. Together they prepared almost 100 separate graphics: from organisation charts and floor plans to spreadsheet tables and animated bar and pie charts.

Clough pleads

With just six months or so until the start of the trial, Anthony Evans received an unexpected call from Clough's legal team: Fred Clough wanted to plead guilty to all three counts and offer himself as a witness for the crown. (There were now three counts because it had been decided to allege separate offences relating to Versailles Group/VTF and VTL/TPL.)

Responding to Clough's decision was a huge undertaking; the investigators were still dealing with an indictment period that spanned more than a decade, from 1989 to 2000. Nor could the timing have been much worse. It is normal procedure for the judge to set a cut-off date by which time all evidence must have been submitted to the court. In the case of Versailles that deadline was 13 September, less than two months away. "*When Clough decided to plead in July we had just seven weeks in which to interview him, draft his statement and get it agreed. If we had missed the court deadline Clough's evidence could have been ruled inadmissible, as some of our overseas evidence was when it arrived late.*" recalls Anne Dilks.

Using Clough as a prosecution witness was a tricky decision. Helen Garlick, one of the SFO's most experienced lawyers, who had then only recently taken over as the Versailles

Helen Garlick (left) and Ann Dilks

case controller, explains: "*It is a very difficult decision to call as a witness someone who has pleaded guilty to his part in a major fraud. It is very risky and the arguments for and against are often very finely balanced. On the one hand if we hadn't called Clough we would have been vulnerable to criticism that we had not provided the jury with the one person who could tell them chapter and verse what really went on; similarly we could have been damaged by any negative inferences that the defence might have been able to plant in the minds of jurors. On the other, by calling him we were vulnerable, rather obviously, because we were inviting the jury to regard as a witness of truth somebody whom they knew full well had proved himself to be an expert liar over many years.*"

No doubt Clough had been advised by his legal advisors that he would get a reduced sentence by co-operating, and this presented the prosecution with another challenge. Garlick: "*Cushnie's defence team was bound to try and say that Clough was giving evidence only because he hoped to benefit. This meant that we had to take the most extreme care that all our dealings with Clough and his solicitors were documented, tape recorded and fully disclosed to the defence. We also had to be completely transparent about our pursuit of Clough's assets so that the defence could not claim that Clough was hoping not only for a reduced sentence but also to come out of prison a wealthy man.*"

Normandy is lost

By early November the trial was just weeks away. Three years of hard work would soon be tested in court, but first the SFO team had one last set-back to endure. On 7 November, in a pre-trial hearing, Mr Justice Rupert Jackson ruled that in the interests of keeping the proceedings as short as possible the Normandy count would not form part of the trial. Cushnie's defence team had been arguing strongly that to include the alleged Normandy fraud would add many months to the trial. Even though Clough had already pleaded guilty to all three frauds, including Normandy, the judge agreed. The defence also wanted to end the charges sooner, excluding the time of the bankruptcy and the evidence of the receiver, but Anthony Evans won that argument and the defence was denied.

The trial

When proceedings finally commenced on 14 January 2004 Cushnie stood trial on only two counts: the Versailles turnover fraud and the Versailles traders fraud.

Progress was brisk and the trial was further shortened when Cushnie decided not to give evidence in his own defence. He could not now be cross-examined and any chance of hearing his side of the story was lost.

Lorraine Jones, Clough's assistant at Versailles, had seen relatively little benefit from the turnover fraud. On 23 March 2004, after thoroughly reviewing the evidence, Anthony Evans asked Mr Justice Jackson to direct the jury to acquit her.

At the request of the prosecution Clough had not been sentenced before he gave evidence. This allowed the judge to take a measured view of both defendants at the end of the trial, but it also meant that Clough could be cross-examined by the defence. As expected, he was repeatedly accused of giving evidence purely to lessen his sentence. More damagingly, the defence had found more than a dozen points upon which Clough had lied, both to the court during his testimony and to the SFO during the investigation. As Clough left the witness box it was clear that the prosecution case had suffered a setback.

In his closing speech Cushnie's counsel, Alex Cameron QC, continued to make much of Clough's history as a liar. Here was a man, he said, who had admitted to stealing £19

On 19th July 2004, at Southwark Crown Court, Frederick Clough was ordered to pay £14.2 million by way of confiscation

million without Cushnie's knowledge, who had hidden a 12-month prison sentence for fraud in the 1960s, and who had lied about having been struck off as an accountant at much the same time. Now, Cameron claimed repeatedly, Clough was lying about Cushnie's guilt simply to save his own skin.

But the turnover fraud was not the only crime of which Cushnie was accused. The traders fraud depended much less on Clough's qualities as a prosecution witness. As well as the SFO's detailed analysis of the traders operation, the jury had heard extensive and eloquent testimony from some of the biggest individual victims: Richard Wright whose family lost £7.5 million; Brian Smith and his friends and family, £5.5 million; Neil Greig and his family, £3.8 million. Both Smith and Greig had been non-executive directors of Versailles Group. They had known Cushnie for many years and were used to dealing with him at close quarters. Their testimony would be very hard for the jury to ignore.

The verdict …

On 10 May the jury retired to consider its verdict. Two weeks later Mr Justice Jackson told jurors that he would accept the majority decision of at least ten of the 12. The very next day, Tuesday 25 May 2004, there was a verdict: Cushnie was not guilty of the Versailles turnover fraud, but guilty of conspiracy to defraud the traders.

Sentencing was fifteen days later, on Wednesday 8 June. Frederick Clough was sent to prison for six years and disqualified as a company director for 15 years. His sentence includes a 50% reduction for co-operating with the prosecution. (It was later reduced by a further year on appeal.)

Cushnie's legal team had been working hard in the fortnight since the verdict, urging Mr Justice Jackson in extensive submissions to impose some form of community punishment. But Clough's sentence of three years for the traders' fraud was a sign of what Cushnie could expect; Cushnie was disqualified as a company director for ten years and sent to prison for six.

The SFO team has praised the way Mr Justice Jackson handled the case. Anthony Evans: "*If the likes of Rupert Jackson were to try every fraud case there would be many fewer concerns about the time these cases take and what can sometimes seem like the quixotic outcomes.*" Garlick agrees: "*In the end it was a short trial – just a little over four months – and it was fairly and rigorously dealt with. A good example of how to control a complex fraud case.*"

…and beyond

When Versailles collapsed in November 1999, and a stock market valuation of almost £700 million disappeared completely, the banks lost £70 million and shareholders large and small saw paper investments totalling £300 million, for which they had paid well over £100 million, rendered absolutely worthless.

Increasingly in cases like Versailles the SFO seeks not only punishment for the fraudsters but also some measure of restitution for their victims.

Where there is a reasonable and cost-effective prospect of retrieving the proceeds of a fraud the SFO can serve notice on the defendant(s) and the court that it plans to seek confiscation. If a judge then decides that the case is worthy of such an order, the prosecution has a limited time in which to put the case for confiscation and to identify the target assets. This is exactly what has been done in the case of Clough and Cushnie.

On 19 July 2004, at Southwark Crown Court, Frederick Clough was ordered to pay £14.2 million by way of confiscation. He is thought to still have significant sums held abroad, perhaps especially in Ghana the home country of his common-law wife. Assets held abroad, especially bank deposits, can be very difficult to locate, never mind seize. Nonetheless, Clough has two years within which to satisfy the terms of the confiscation order; if he fails he will face an additional three years' imprisonment.

Cushnie's confiscation hearing, which was delayed while he appealed against his conviction, began on 27 June 2005.