



**CITY OF LONDON LAW SOCIETY – CORPORATE CRIME AND CORRUPTION
COMMITTEE**

THE FUTURE OF THE SERIOUS FRAUD OFFICE

APRIL 2023

Introduction

1. The views expressed in this paper are those of the City of London Law Society (“CLLS”), Corporate Crime and Corruption Committee (“Committee”).
2. The CLLS represents more than 18,000 solicitors through individual and corporate membership, including some of the largest law-firms in the world. The Committee is made up of senior, specialist practitioners, who have a particular focus on economic crime matters.
3. The views expressed by the Committee are not necessarily those of any individual member, or member-firm. Committee-members are selected on an individual basis, and it is entirely possible that individual members or firms may take positions which are distinct from one another or those of the Committee.
4. Nevertheless, the recommendations herein represent the considered views of the Committee membership and can be said to be the product of many decades of legal experience in the field of economic crime.

Background

5. The Serious Fraud Office (“SFO”) is the UK’s flagship agency for investigating and prosecuting serious economic crime. It has an international brand and name-recognition. The SFO’s stated mission is “*to reduce the harm caused by high level economic crime, and preserve and enhance the reputation of the UK as a safe place to do business*”¹. That goal is a **vital national interest** of the United Kingdom.
6. The issues identified within this note go far beyond the SFO alone. The main hindrance to the effective prosecution of serious fraud in this country has been the steady de-funding of counter-crime work since the financial crash in 2008. This has been compounded by a disparate, siloed investigation and prosecution infrastructure and cultural difficulties within the SFO itself.

¹ Framework Agreement between the Law Officers and the Director of the Serious Fraud Office

7. Left to its own devices for the first 20 years of its existence, the SFO was not inspected or subject to any external audit of its performance until 2008. In the first substantive inspection of the SFO in 2012, HM Courts Inspector made the following findings²:

“The SFO has some very capable operational staff, but the quality of casework handling, and the capability of the SFO to assure itself of this is significantly undermined by weakness in systems and processes... Recruitment, training and development need to be addressed, and given real impetus from the top... The SFO should review and update its disclosure guidance, design and mandate updated schedule templates, and ensure that all casework staff are trained accordingly”

8. The same conclusions would not surprise anyone familiar with the SFO if they were made today. There are many excellent staff whose valuable public service should be recognised. However, the organisation as a whole is not what it should be.
9. There have been many recent reviews of the SFO and the prosecution of fraud generally. Among these are:
 - a. *House of Lords Fraud Act 2006 and Digital Fraud Committee*, HL Paper 87, Report of Session 2022–23;
 - b. *Progress combatting fraud; Session 2022-23 15 November 2022*, HC 654;
 - c. *House of Commons Justice Committee, Fraud and the Justice System, Fourth Report of Session 2022–23*;
 - d. *Independent Review into the Serious Fraud Office’s handling of the Unaoil Case – R v Akle & Anor*, by Sir David Calvert-Smith, June 2022;
 - i. Attorney General’s response to the findings of the Independent Review into the SFO’s handling of the Unaoil case, Statement made on 21 July 2022;
 - ii. Government response to the recommendations of Sir David Calvert-Smith’s Independent Review into the Serious Fraud Office’s handling of the Unaoil Case – R v Akle & Anor, July 2022
 - e. *Report to the Serious Fraud Office: The Collapse of R v Woods & Marshall on 26 April 2021*, by Brian Altman QC and Rebecca Chalkley July 2022;
 - i. SFO’s Implementation Update: Altman Review, November 2022
 - f. *Turning the tide on Corporate Fraud: Report and Recommendations from The Shadow Attorney General’s Office*, September 2022
10. A conclusion which can be drawn from any and all of the above reviews/reports is that, for various reasons, the prosecution of serious economic crime in the UK is failing. Within the SFO itself there is significant dis-satisfaction among staff³.
11. The UK justice system has traditionally been a “jewel in the crown” of the UK’s reputation for economic stability and, one could argue, its identity on the international plane. If confidence in

² [SFO_Nov12_rpt.pdf \(justiceinspectors.gov.uk\)](#); page 8

³ This is clear from the [2021 Civil Service People Survey data](#) published by the Cabinet Office. The staff engagement scores for the SFO for 2021 shows a disconnect between staff and leadership team (e.g., a total engagement score of 62.5 (against a median of 65 across the civil service); 45% respondents feeling positive about ‘leadership and managing change’ (median 58%); 50% having confidence in decisions made by senior management (median 62%))

that system is to survive, it must be seen as being effective at achieving justice in relation to large-scale economic crime. A widespread perception that the UK system consistently fails in this area would damage confidence in every other part of the system. It would make the UK a lodestone for international bad actors, including organised criminals, terrorists and the unfriendly states which frequently make use of such networks. It is no exaggeration to say that a perception that the UK is incapable of prosecuting complex frauds could call into question the UK's reliability and capacity as a state. In our view, the effectiveness of economic crime enforcement is a vital interest of the UK both in respect of its economy and its national security⁴.

12. This paper argues for a focused reform of the SFO within the next three years as an urgent first step in preventing the perception above from taking hold.
13. Reform requires **resources**. There is a tremendous disparity between the proportion of all crime that fraud represents (c.40%) and the funding dedicated to tackling it (c.2%)⁵. Greater investment in fraud detection, and in the SFO in particular, can be expected to lead to medium-term financial benefits to the Treasury as well as longer-term benefits to the wider economy.
14. Reform also requires **political support**. As will be noted below, the CLLS recommends that a specific ministerial portfolio be allocated to economic crime. More generally, the success of the SFO is a cross-party issue which should be actively supported by responsible ministers such as the Attorney General, the Chancellor and the Justice Secretary, as well as their shadow equivalents.
15. The recommendations below stand **apart from the issue of corporate criminal liability** which is under consideration by Parliament at the time of writing. The CLLS has made contributions to the development of policy on this issue, most recently in its participation in the Law Commission consultation during 2021. Though the proposed reforms may well have some effects on prosecution / conviction rates as regards corporate entities, the view of the CLLS is that they will not be as consequential for the SFO's mission as would the practical reforms recommended in this paper. New laws are of little use if they cannot be effectively enforced.

Recommendations

16. Against this background, the Committee makes the following recommendations:

Immediate measures

Recommendation 1.

All recommendations as to the improvement of standards outlined in the Altman and Calvert-Smith Reviews must be implemented by year end 2023.

Budget and Governance

Recommendation 2.

The CLLS agrees with the House of Commons Justice Committee's Recommendation in the Fourth Report of 2022-23 that fraud and other

⁴ There is growing recognition of the threat which fraud presents to UK national security, see "*The Silent Threat: The Impact of Fraud on UK National Security*", RUSI January 2021.

⁵ *House of Commons Justice Committee, Fraud and the Justice System, Fourth Report of Session 2022-23, para 74.*

forms of economic crime should be allocated a dedicated ministerial portfolio based in the Home Office (but with competencies from other Ministries as needed), a Minister of State for Economic Crime that permits the postholder to:

- i) safeguard the independence and effectiveness of the relevant investigatory / prosecuting agencies, including by way of resource-provision;
- ii) unite the presently disparate expertise within government, law enforcement and the private sector in tackling fraud; and
- iii) ensure the proper oversight of the relevant agencies.

The Minister would report directly to the Home Secretary.

Recommendation 3.

The SFO budget must be increased, in line with its net contribution to the Treasury, by at least 50%, so as to ensure that staff remuneration, and investment in infrastructure can be increased to levels commensurate with a reasonable market rate and to retain key staff.

As mentioned, there is a self-evident economic case for step-change in investment in the SFO. As to funding, a larger share of what is recovered from corporate fines (including DPAs) and costs could be ring-fenced to fund the fight against economic crime generally, to include funding the SFO and other agencies. It is notable in this regard that the SFO's net contribution to central government, as a direct result of its activities, was recorded as £452m in 2019.

Recommendation 4.

The Director of the SFO should be remunerated commensurate with their responsibility, experience and expertise and benchmarked against the highest salary-grades in public service. We note that the Director's salary appears to have been lower than that offered to the SFO's COO. The Committee recommends that the balance is redressed as a matter of urgency.

Recommendation 5.

The appointment of the DSFO must be against transparent objective criteria and according to a transparent, objectively managed process akin to the judicial appointments commission processes.

Recommendation 6.

The objective criteria should, naturally, involve suitable management skills, but should also include substantial experience, in this jurisdiction, of leading/managing large-scale, serious and complex fraud and bribery cases. This could include a litigator as much as an advocate or even a recently retired senior judge. The DSFO must be appointed to act independently of all potential political and other extraneous influence.

Recommendation 7.

Consideration should be given to whether there is a case for reform of the governance of the SFO, in particular the appropriate balance between operational independence and accountability.

Investigations**Recommendation 8.**

The SFO should be focussed on the effective prosecution of serious economic crime. It should focus on those forms of crime which have the greatest potential to harm the economy, institutions or the rule of law, in particular bribery, money-laundering and corporate fraud. It should develop a specialised bribery, corporate fraud and asset recovery investigative arm, designed to maximise use of the SFO's significant statutory powers under the Criminal Justice Act 1987.

Recommendation 9.

Other investigations should be conducted by existing law enforcement agencies, which should also have dedicated fraud expertise, either singly or on a pooled basis (for smaller forces), with the support, where necessary, of the SFO, via NECC or other agencies. Agencies with whom the SFO has long established relationships include the City of London Police and the National Crime Agency.

Disclosure**Recommendation 10.**

There is no need to replace or substantially amend the CPIA regime for disclosure in SFO cases. It exists to protect the fairness of trials. The logistical problems which arise as a result of the proliferation of electronic communications are soluble by means of appropriate technology and training, the resources for which should be funded in part by the recommended increase in budgetary provision.

Recommendation 11.

Disclosure should be placed at the heart of the SFO's processes. Employees ultimately responsible should be:

- i) in senior positions, and
- ii) Assisted by highly trained and dedicated staff and /or specialist counsel, and state-of-the-art IT resources.

Recommendation 12.

The Board of the SFO should have at all times a disclosure specialist from independent private practice (barrister or solicitor) with a remit to ensure the delivery of disclosure training programmes, as recommended in the review of Brian Altman KC.

Recommendation 13.

Active disclosure risk management should form the bedrock of SFO disclosure processes, with quarterly "disclosure risk reports" as recommended by Sir David Calvert-Smith.

Recommendation 14. The SFO should establish formal disclosure training, perhaps in partnership with members of the National Economic Crime Centre and the College of Policing for the purpose of sharing institutional learning between the most experienced prosecutors in the country.

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