Independent Review into the Serious Fraud Office's handling of the Unaoil Case – R v Akle & Anor

Sir David Calvert-Smith

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Contents

Chapter 1 – Introduction

1. On 10th December 2021 the Court of Appeal (Criminal Division) (CACD) delivered judgment in the case of Ziad Akle (ZA) and Paul Bond (PB) v The Crown.[1] It allowed ZA's appeal against conviction on two grounds and dismissed Bond's appeal against sentence.

2. In its judgment the CACD accepted the submissions of ZA on two grounds:

    a. That the Serious Fraud Office (SFO) failed to comply with its disclosure obligations and that the judge had wrongly refused to order further disclosure – in particular with regard to the extent of the SFO's contact with David Tinsley (DT), a 'non-legal representative' or 'fixer' hired by alleged co-conspirators of ZA who had been extradited to the USA and had entered into a plea arrangement with the US authorities.

    b. That the SFO's failure to comply with its disclosure obligations resulted in ZA being unable to adduce evidence to show that a co-accused, Basil Al Jarah, who had pleaded guilty to the two counts on which ZA was subsequently convicted and whose pleas of guilty were admitted in evidence by the trial judge after argument, was not in fact guilty and had/may have pleaded guilty after improper pressure had been exerted on him by DT.

3. The court echoed critical comments which had been made at trial by the judge concerning the contact between SFO personnel, from the Director of the SFO (the DSFO) downwards, and DT; and went on to criticise the way in which the SFO had handled its disclosure obligations in that respect under the Criminal Procedure and Investigations Act 1996 (CPIA). In giving his ruling at the trial the judge had suggested that following the trial

[1] [2021] EWCA Crim 1879

a review of the practice of dealing with ‘non-legal representatives’ or ‘fixers’ at the SFO should be carried out.

4. In October 2019 General Counsel for the SFO issued guidance effectively banning such contact in future and by May 2020 the SFO had issued a formal protocol to its staff effectively prohibiting such contact save with the express agreement of General Counsel for the SFO.

5. Following the CACD decision I was approached in late January 2022 and asked if I would conduct a review of the SFO under terms of reference derived from the findings of the CACD. In February 2022 Terms of Reference for my Review were finalised.

6. During the course of this Review the CACD heard and allowed an appeal by PB against his conviction. The CACD’s reasoning broadly echoed that set out above as it related to ZA. That judgment, though considered by the Review, did not change the Terms of Reference nor the evidence sought.

7. The immediate reaction to the announcement of a review of this kind following a decision of the CACD might be to wonder why – when the CACD has so clearly set out why the conduct of the SFO had been such as to require the quashing of ZA’s convictions – any further inquiry into the case was necessary. The Terms of Reference do however go considerably wider than the terms of the CACD decision – in particular asking the Review to consider other matters *“including as to the SFO’s policies, practices, procedures, and related culture”*.

8. It is right to emphasise at the outset that it is not the purpose of this Review to comment upon or reach conclusions upon the structure, conduct or culture within the SFO more broadly than that which is relevant to the Unaoil case, and the failures identified by the CACD in the conduct of that case.

9. In the conduct of this Review, I have been greatly assisted by both the Attorney General's Office (AGO) and the SFO in the provision of documents, in the facilitation of access to members of staff and in answering my questions. Both the AGO and the SFO have cooperated fully with this Review. I am also grateful to the individuals who gave up their time to provide me with written submissions or evidence.

The Review team

10. I have also been enormously assisted by Nikita McNeill of counsel and Anthony Rogers of the Crown Prosecution Service Inspectorate. Nikita McNeill is a barrister and member of the Attorney General's civil panel. She has practised in crime, including financial crime, and specialises in inquiry law. Anthony Rogers is the Deputy Chief Inspector of Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI). He has previously taken part in inspections of the SFO by HMCPSI and attended meetings of the Management Strategic Board (see Chapter 6 paragraph 7) between the DSFO and the Law Officers.

Evidence gathering

11. We asked for and received:

    a. All material available to and prepared for the CACD;

    b. The disclosure schedules prepared for trial;

    c. Notes of conferences with independent counsel, and advices received from them;

    d. Documents prepared for the trial and for the purpose of responding to defence applications for disclosure;

    e. Internal case documents and communications with the case team;

    f. 'Case Assurance' material;

g. The relevant policies and guidance issued by the SFO before, during and since the trial of ZA;

h. Written answers and documents from individuals within the AGO in relation to the appointment of Lisa Osofsky (LO) as the DSFO and the management of the AGO's superintendence functions, including from former Law Officers;

i. Written answers to questions asked of key personnel at, and counsel instructed by, the SFO, in particular concerning contact with DT and the recording and disclosure of that contact.

12. Detailed questions and the relevant documents required to answer them were sent to individuals whom we identified as relevant to the Terms of Reference. This included current and former SFO employees and individuals working within the AGO.

13. The Review was not able to obtain evidence from the former Director General of the AGO. She has since been appointed to the High Court Bench. As a result, and following consultation, she told the Review that she regretted that she was not *"now in a position to assist [the Review] with written answers as you have requested"*.

14. All written responses were carefully considered and, in some cases, further follow up questions sent until we were satisfied that we had all relevant information from that individual. Everyone to whom we wrote was also offered the opportunity to meet us in person to provide any further evidence they may have, but none chose to take up this opportunity. We did, however, meet and question the DSFO in person following the receipt of all the evidence and prior to the preparation of this report.

15. We also received correspondence from a number of individuals and organisations who believed that they had knowledge or material that would assist the Review. These included:

a. DT;

b. The former Unaoil Case Controller, Tom Martin (TM);

c. Paul Hastings LLP, solicitors who acted for ZA at his trial and appeal;

d. (Jointly) the SFO Departmental Trade Unions (DTUs).

16. It is important to note that it is not the purpose of this Review to comment upon the conduct of DT, or about the use of non-legal representatives in general. The Terms of Reference are clear that it is the SFO's response to, and management of, contact with DT which is the subject of this Review. For that reason, we did not consider it necessary to write to or meet DT. Nonetheless his submission, as with all potentially relevant submissions, was carefully considered.

17. Likewise, it is not the role of this Review to 'retry' the Employment Tribunal case brought against the SFO by Mr Martin, albeit that his involvement, and subsequent removal from, the role of Case Controller does feature in the summary of the events set out below. The letter from Paul Hastings helped to reinforce the conclusions reached by the CACD and followed by this Review. The DTUs' letter has contributed significantly to the findings and recommendations concerning 'culture'.

Chapter 2 – The Serious Fraud Office

1. The Serious Fraud Office (SFO) was created by the Criminal Justice Act 1987, itself a result of a report by Lord Roskill published in 1985. Its main difference from the Crown Prosecution Service (CPS) (then newly created by the Prosecution of Offences Act 1985 following a Report in 1981 and a White Paper in 1983) is that it combines the investigative and prosecutorial functions within a single organisation. In addition, the SFO was granted powers to require cooperation from potential witnesses in investigations of serious fraud, a power unavailable to the CPS. At any time, the SFO has roughly 140 open cases, including 'proceeds of crime' cases and the provision of international assistance. Their cases are divided roughly equally between fraud and bribery and corruption.

2. It is unnecessary to recite the various high-profile situations which have over the years since then caused the public, the press, the courts and parliament to review or question the operation and structures of the SFO either in general or in connexion with a particular case. These have often been the result of one or more of the following:

    a. The fact that the majority of its cases involve huge sums of money;

    b. The fact that those suspected of or charged with offences often have access to such sums and/or to influential supporters and/or sections of the media;

    c. The fact that its cases are often extremely complex and require the consideration of huge quantities of information, which must be trawled through to extract evidence which may implicate suspects as well as evidence which may assist suspects in their defences and thus require disclosure in the event of a prosecution.

3. In addition to fraud, pure and simple, the SFO has within its remit a subgroup of offences which can loosely be described as fraudulent since they involve attempts to gain or give an unfair advantage in the award of contracts or the like, namely offences under the

Prevention of Corruption Acts 1889, 1906 and 1916, replaced, since the events alleged in the Unaoil (PVT01) case and others, by the Bribery Act 2010.

4. One of the requirements of the regime in place before the enactment of the Bribery Act 2010 was that any prosecution under the 1889, 1906 and 1916 Acts required the consent of the Attorney General or Solicitor General (the Law Officers). Since the 2010 Act the consent requirement now lies with the DSFO or Director of Public Prosecutions as the case may be.

5. SFO officers can compel people and organisations to provide information in relation to a case. SFO officers can also use these powers at a 'pre-investigation' stage in suspected cases of international bribery and corruption.

6. The SFO is also one of only two agencies with the power to seek Deferred Prosecution Agreements, and one of five agencies in England and Wales and Northern Ireland with powers to undertake civil recovery in the High Court.

SFO governance structures

7. The SFO is headed by the DSFO. The DSFO is an Accounting Officer. The post carries personal responsibility for the efficient and effective management of the organisation, and for reporting to parliament. Internally the DSFO is responsible for the setting of the organisation's professional standards and for leading the effective discharge of its corporate functions. The DSFO works with, and is responsible for managing, the SFO senior team.

8. The senior staff structure of the SFO includes: General Counsel, the Chief Operating Officer (COO) and, since 2020, a Chief Capability Officer (CCO). There is a range of structures designed to support the governance of the SFO, including the SFO Board, the Executive Committee, and the Audit and Risk Committee.

9. General Counsel is responsible for the legal oversight of all the SFO's work. When Sara Lawson QC (SLQC) began as General Counsel in 2019 there was one Assistant General Counsel. She is now supported by three Assistant General Counsel, with the additional support having been recruited in June 2020 and November 2021.

10. The COO is responsible for the management of five operational divisions – three Casework Divisions, the Intelligence Division and the Proceeds of Crime & International Division.

11. The CCO is responsible for the management of four divisions – the Digital and IT Division including Digital Forensics and E-discovery teams, the Chief Investigator Division, Corporate Services including Commercial, Finance and HR, and the Strategy Group. Prior to the introduction of the post of CCO in August 2020, these responsibilities fell to the COO.

The role of the SFO investigator

12. SFO investigators have a broadly comparable role to that of a police officer or a National Crime Agency officer. Their role is to investigate a case, following its acceptance by the DSFO, pursuing all reasonable lines of enquiry, whether these point towards or away from guilt, with a view to developing the evidence necessary for a decision to charge and subsequently prosecute a suspect. They work closely with both investigative lawyers and prosecutors, as well as with partner law enforcement agencies, throughout the investigation and prosecution.

13. SFO investigators report through the line management chain on the case or cases they work on – ultimately to the Case Controller. The Chief Investigator acts as the head of profession for all investigators across the SFO and runs the trainee investigator programme.

14. SFO investigators do not have the same powers as a police officer or National Crime Agency officer. They do have access to powers under section 2 of the Criminal Justice Act 1987, to compel people and organisations to provide information. They do not, however, have the power of arrest under section 24 of the Police and Criminal Evidence Act 1984 and do not have access to the same surveillance powers as some law enforcement agencies. Where these powers are required the SFO works with police forces and/or the National Crime Agency so that they may execute such powers alongside SFO investigators.

15. The SFO also employs financial investigators, who use powers under the Proceeds of Crime Act 2002 to identify proceeds of crime with a view to recovering those proceeds either through post-conviction confiscation or civil recovery orders.

The role of the Case Controller

16. SFO case teams are 'multidisciplinary'. A case team is led by a Case Controller (who may be a senior lawyer or investigator) who oversees lawyers, investigators, forensic accountants and other specialists, as well as instructing counsel from the outset.

17. The Case Controller is accountable for the management of cases of serious fraud, bribery and corruption. The Case Controller has the principal case management role, including the oversight of cases with a multi-agency and/or an overseas law enforcement component. Case Controllers plan and define the strategy for investigation, prosecution and asset recovery (including civil asset recovery) at appropriate stages of the case with input from relevant others.

18. During this period Case Controllers were responsible, working with the Head of Division, for 'case strategy', including decisions on which cases should or should not be pursued. Case Controllers are responsible for liaising with their Head of Division to agree the resources required for their case workload – including any specialist or temporary support

– and for keeping case management plans under review to ensure that those resources are deployed to the best effect.

19. The Case Controller is also accountable for ensuring that the staff allocated to the case work together cohesively and professionally, providing them with regular feedback on performance, contributing to their staff appraisals and addressing their development needs.

Casework assurance

20. At the time, decisions on individual cases were taken by Case Controllers, supported, challenged and guided by their Head of Division and, where appropriate, General Counsel. To support this process there are a number of casework related committees and groups.

21. The Case Evaluation Board (CEB) is chaired by General Counsel and enables the DSFO to make an informed decision based on its recommendation to initiate or decline an investigation. It meets when necessary and reports to the DSFO. Its 'core members' are General Counsel, the COO, the Chief Investigator and the Chief Intelligence Officer. A number of early CEBs for the Unaoil (PVT01) case took place in 2016 and the case was formally accepted on 22nd March 2016. Once the case was accepted, CEBs cease and assurance meetings take the form of Case Review Panels.

22. The Case Review Panel (CRP) was chaired by General Counsel. The general purpose of the CRP was to ensure that sound judgment and appropriate investigative and legal expertise are being brought to bear on cases, and that they are progressing in an appropriate manner and complying with all relevant legal and operational guidance. Its core membership includes a wider range of key contributors than the CEB and incorporates those with legal and investigative expertise. Since May 2019, following the arrival of SLQC as General Counsel, there has been a refocus of case assurance. The

aim is that all cases will be scrutinised at least twice per calendar year but at a minimum once.

23. The Unaoil case was considered a case of some importance within the SFO. During the tenure of Sir David Green QC as the DSFO, there were, for a time, weekly meetings between the DSFO and the then Case Controller, although those had stopped before he left in April 2018. In addition, in its early days the case was subject to occasional CRPs, chaired by the then General Counsel, Alun Milford (AM). The SFO Operational Handbook sets out that CRPs are only required pre-charge. Thereafter case assurance was the responsibility of the Head of Division and Case Controller.

24. Within the Operational Handbook there are a number of assurance requirements which fall to the Head of Division. A core part of this process is the Casework Assurance Framework. The purpose of the framework is to ensure that, at regular intervals, the Head of Division is provided with assurance that the case is progressing well and that any strategic areas of concern (specifically those identified either by way of a peer review conducted by a member of staff not involved in the case or at the CRP) are being addressed.

25. Broadly stated, the aim of the process is to:

    a. Guard against investigative drift;

    b. Ensure that the investigation is proceeding at a suitable pace;

    c. Ensure that the gathering of evidence is ‘front-loaded’ as much as possible;

    d. Ensure that, as investigations progress and develop, they do so on the basis of informed hypothesis and admissible evidence;

    e. Ensure that appropriate behaviours are being demonstrated by those charged with the leadership of the case;

f. Ensure adherence to approved professional practice, the standards set out in the Operational Handbook, and any other relevant SFO policies.

26. This is to be achieved by the Head of Division (HoD) undertaking a series of 'gateway reviews' at regular intervals in the life cycle of an investigation. It is suggested that the HoD should undertake a 'gateway review' with the Case Controller at the following times: one month after 'case take-on'; three months after 'case take-on'; and quarterly thereafter (or at such other interval as agreed between them or as directed by the CRP).

27. The matters that should be considered at each review are set out in the Casework Assurance Framework Record.

"HoDs should themselves periodically examine / challenge the key documents e.g. the decision log / the disclosure strategy document."

28. In the Unaoil case, whilst the Review has seen evidence of regular, including up to daily, discussions between the Case Controllers and the Head of Division the notes kept are limited in their value and do not indicate a formal adherence to the expectations or requirements set out in the Casework Assurance Framework throughout. Having requested sight of formal (expected) documents as set out in the Operational Handbook it appears that casework assurance between the Case Controllers and Head of Division was informal as opposed to the formal expectation set out in the Operational Handbook.

29. Additionally, the SFO Operational Handbook also imposes the following requirements on Heads of Division for the management of disclosure in each case:

a. They must ensure that each investigation has an identifiable and sufficiently skilled prosecutor;

b. They must ensure that each investigation keeps proper records and an updated Disclosure Management Document; and

c. They should ensure that proper scheduling has taken place, including confirming that there are both sensitive and non-sensitive schedules of unused material.

30. In the Unaoil case we have found limited formal recording of decisions in line with the requirement set out in the Operational Handbook.

Chapter 3 – Background to the Unaoil Case (PVT01)

1. The SFO had seven cases that were known as PVT01-PVT07. This Review has focused upon PVT01, referred to by the Review as the Unaoil Case.

2. The Unaoil group of companies was owned and run by the Ahsani family. It was founded in 1991 to provide oil and gas services. At the relevant time those services centred on the Middle East, Central Asia and Africa.

3. The Chairman and founder of the Unaoil Group of companies was Ata Ahsani (AA). He sat on Unaoil's Board of Directors. He is Iranian but holds a British passport and was resident in Monaco.

4. Cyrus Ahsani (CA), AA's eldest son, was the Chief Executive Officer of Unaoil and a Board Member. He is Iranian but holds French and British passports. He was resident in Monaco.

5. Saman Ahsani (SA), AA's second son, was Unaoil's Commercial Director and its Chief Operating Officer. He, like his father and elder brother, was resident in Monaco. He is Iranian but holds a British passport.

6. The allegations are summarised at paragraphs 9-21 of the CACD judgment:

> *"In the years following the fall of Saddam Hussein in 2003, the Government of Iraq sought to rebuild the country's infrastructure. Increasing Iraq's crude oil exports was a key objective and included the Iraq Crude Oil Export Expansion Project ('ICOEEP'). Nine potential projects were conceived, with a value of $1.9 billion.*
>
> *"The first project ('the SPM project') involved the installation in the Persian Gulf of Single Point Moorings. These are floating buoys which allow tankers to load oil*

offshore. The second project ('the pipeline project') involved the installation and commissioning of two on-shore and off-shore pipelines. In respect of both projects, a competitive tendering process was used to select the companies to which contracts were to be awarded.

"The South Oil Company ('SOC'), an Iraqi state-run company which was responsible for oil in the south of Iraq, engaged Foster Wheeler ('FW'), a UK-based global engineering company, to compile a detailed specification for the tenders, evaluate the bids from interested companies on technical and commercial aspects, and then recommend the most technically and commercially compliant bid to SOC. That recommendation would then be passed to Iraq's Ministry of Oil for final approval. The prosecution case against all the accused was that they had been involved in bribing decision-makers in order to win ICOEEP contracts.

"Ata Ahsani and his sons Cyrus and Saman Ahsani owned and controlled the Unaoil group of companies. They held the offices of Chairman, Chief Executive Officer and Chief Operating Officer respectively. Both Akle and Whiteley were employed by Unaoil. BAJ, a friend of the Ahsanis, was Unaoil's Iraqi partner based in Iraq. It was alleged that Unaoil paid Oday a total of $608,000 for his personal benefit, in order to influence the terms and allocation of contracts to the advantage of Unaoil and its clients.

"Count 1 alleged that Akle, between June 2005 and May 2009, conspired with the Ahsanis, Basil Al Jarah (BAJ) and others, to give corrupt payments to Oday as inducements or rewards in relation to the affairs of the business of Oday's principal, the SOC, namely in obtaining confidential information regarding oil projects to be undertaken for the SOC. From April 2009 Oday was put on a monthly retainer – said to be a bribe – so that he could provide sensitive information about projects to the benefit of Unaoil.

"Count 2 concerned the manipulation of the tender process for the SPM project. It was alleged that between March 2009 and February 2010 Akle, Bond and Whiteley conspired with the Ahsanis, BAJ and others to give corrupt payments to Oday in relation to the recommendation and award of the contract for the SPM project to a company called Single Buoy Moorings Inc ('SBM'). Bond was an employee of SBM. BAJ was working to cement relationships and position Unaoil. By April 2009 SBM were expressing an interest in working with Unaoil and thereafter it was agreed that Unaoil would work on SBM's behalf to secure the project in return for a commission. Oday was deployed to obtain confidential information about FW's draft specification. Unaoil then used Oday to influence the specification in favour of their client, SBM. In January 2010 SBM were informed that FW would recommend them to SOC as the only technically and commercially compliant bidder.

"Count 4 concerned corruption at the Ministry of Oil in relation to the SPM project between March 2010 and August 2011. It was alleged that, having corruptly secured SOC's recommendation, SBM – through Bond – sought information from Unaoil as to the progress of the bid at the Ministry. Bribes were paid by Unaoil executives to senior officials in the Ministry of Oil in efforts to ensure that the Ministry approved the bid and that the contract was awarded to Unaoil's client SBM."

7. SA was arrested in Monaco by means of a European Arrest Warrant in March 2016. BAJ was arrested in Manchester in the same month. In October 2016 Ziad Akle and in March 2017 Paul Bond (PB) were arrested in the UK.

8. The CACD judgment sets out, at paragraph 20, what followed.

"The three Ahsanis were the subject of an SFO investigation. The SFO obtained first instance warrants against all three and sought to extradite Saman Ahsani from Monaco by means of a European Arrest Warrant. That investigation was however abandoned when the case against the Ahsanis was taken over by the US Department of Justice

('DOJ') following the extradition of Saman Ahsani from Italy by the US authorities. In due course, a deal was done between the Ahsanis and the DOJ. Ata Ahsani paid a penalty of $2.25 million and faced no further action. His sons Cyrus and Saman Ahsani negotiated plea agreements with the DOJ, under which it is expected they will serve no more than five years' imprisonment. By letter dated 26 April 2019, the SFO informed the lawyer acting for Cyrus and Saman Ahsani that the SFO would discontinue its investigation in respect of matters covered by the US plea agreements they had entered into on 25 March 2019. By letter dated 12 September 2019, the SFO informed the lawyer acting for Ata Ahsani that it was no longer in the public interest for the SFO to proceed with a prosecution of him in light of his agreement with the DOJ. On 15 July 2019 BAJ pleaded guilty to five counts of conspiracy to give corrupt payments. Other offences, involving bribery in relation to other contracts, were taken into consideration. He subsequently entered into an agreement with the SFO pursuant to the Serious Organised Crime and Police Act 2005 ('SOCPA'), and on 8 October 2020 was sentenced to a total term of imprisonment of three years six months, reduced from ten years by reason of his guilty pleas and co-operation."

9. The taking over of the investigation by the US Department of Justice (DoJ) described by the CACD above was not welcomed by the SFO, which had caused the arrests to be made and had anticipated the return of the Ahsanis to England for trial here. It led to a deterioration in the relationship between the respective law enforcement agencies.

10. Months prior to SA's extradition the SFO was aware that he was in discussions with the US DoJ, although formal cooperation only commenced once he arrived in the US. In September 2018 the SFO was informed that he may also be willing to cooperate with the SFO. In October 2018 the SFO was made aware that CA and AA would also be prepared to cooperate with the UK authorities.

11. In November 2018 the DoJ communicated to the SFO that, having interviewed all three Ahsanis, the DoJ would like to look at a 'global resolution' for AA, CA and SA.

12. In December 2018, following discussions between the SFO and the DoJ, the SFO confirmed that the DoJ should operate on the understanding that the SFO was content for all of the conduct committed by SA and CA to be wrapped up within its proceedings as long as:

    a. *"that is sufficient to cover off the broad conduct that we have included in our indictment; and*

    b. *"any plea agreement reached with the suspects includes an express term requiring them to co-operate with the SFO, including an agreement to testify here if that becomes necessary."*

13. On 25th March 2019 CA and SA entered into plea agreements with the DoJ which involved them admitting their guilt in respect of various matters, including those for which the Attorney General had given his consent for the SFO to prosecute here, and cooperating with US and foreign law enforcement. They await sentence in the US on a date to be fixed. The DoJ also entered into a non-prosecution agreement with AA, which included a financial penalty.

Chapter 4 – The SFO's relationship with the US Department of Justice

1. The conduct of the US Department of Justice (DoJ) during the Italian extradition proceedings summarised in Chapter 3 had caused serious tension between SFO officials and US Federal Bureau of Investigation (FBI) and DoJ officials. There were some within the SFO who felt that the Ahsanis should have faced justice within the UK and had been 'snatched away' by the US DoJ.

2. Tensions in the relationship between the SFO and the US DoJ during the course of the Unaoil investigation were also bound up with the alleged conduct of the first Case Controller Tom Martin (TM).

3. In June 2018 Mark Thompson (MT), who was the COO of the SFO and acting Director of the SFO (DSFO) following the departure of Sir David Green QC and prior to the appointment of Lisa Osofsky (LO), visited the US in part in an effort to reset and repair the relationship with the US DoJ.

4. Whilst he was there a senior DoJ official complained to him about an incident some two years earlier, in May 2016, in which it was alleged that TM had used insulting words towards an FBI official whilst having drinks with the US DoJ and the FBI. The allegation was first raised, informally, with the SFO some months afterwards but no formal complaint was made. TM denied that he had used the words alleged.

5. On 25th June 2018 a senior US official raised a complaint about the general level of cooperation between the SFO and the US DoJ but also specific issues about the alleged disrespectful conduct of TM.

6. On 17th July the same senior DoJ official sent an email to MT with an attachment from the Ahsani defence team, including a US Attorney called Rachel Talay (RT). The email attachment raised a number of allegations about TM. The following day, 18th July 2018, MT suspended TM and stated that the allegations were of serious misconduct. TM was subsequently dismissed. In due course he appealed against the decision and won his case. The SFO has been given leave to appeal (on all five of its grounds of appeal) and the appeal is due to be heard before the Employment Appeal Tribunal at the end of July 2022.

7. It is not the purpose of this Review to comment upon or make findings about the allegations against TM or his dismissal. The sequence of events serves only to demonstrate that at approximately the same time that LO was appointed and David Tinsley made his first contact with the SFO, senior managers in the SFO were anxious to find ways to work with the US authorities and to re-establish collaborative relationships with them.

Chapter 5 – The appointment of Lisa Osofsky as the new Director of the SFO

1. On 20th April 2018 the Director of the SFO (DSFO), Sir David Green QC, retired after six years in post. This was a fixed term appointment, which allowed for a campaign for the recruitment of a replacement to commence in good time. In line with usual practice the recruitment exercise was conducted by the Cabinet Office (under Civil Service Commission rules) in conjunction with the Attorney General's Office (AGO). The closing date for the recruitment campaign was 5th February 2018. The COO, Mark Thompson (MT), acted as interim DSFO from 23rd April 2018 to 24th August 2018.

2. Following the Civil Service Commission-led process, including an interview comprising Lord Justice Leveson, the Director General of the AGO and an independent Public Appointments Commissioner, LO was selected as the preferred candidate by the Attorney General (AG). An announcement published on 10th April 2018 set out that the preferred candidate was currently undertaking the final stages of the appointment process and managing their exit from their current position.

3. The formal announcement of the appointment of LO was made on 4th June 2018, with the announcement stating that the new DSFO would take up office on 3rd September for a five-year appointment. Ultimately, LO started a week earlier than had been announced, on 28th August 2018.

4. As part of the recruitment process, and in line with usual practice for senior roles and appointments within the Civil Service, there was a 'fireside chat' between the AG and the preferred candidate(s). This meeting is an opportunity for the Minister to assess the suitability of, and speak with, the candidates who have been assessed by the recruitment panel as suitable for appointment. The 'fireside chat' between the then AG, Jeremy Wright

QC (JWQC), and LO took place in February 2018. The Review was told that there was no discussion of specific casework and the Unaoil case was not raised or discussed by either party.

5. LO is a UK qualified barrister and a qualified US lawyer. Prior to her appointment as the DSFO she had over 30 years' experience of focusing on financial crime in both the UK and US, including as a federal prosecutor. She spent five years as Deputy General Counsel and Ethics Officer at the FBI, three years as Money Laundering Reporting Officer at Goldman Sachs International, and seven years in the Corporate Investigation Division of Control Risks. Immediately before her appointment LO was Regional Chair at Exiger, a global firm dealing with investigative, compliance and assurance activities which include assessing the money laundering and sanctions programmes of global financial institutions under orders imposed by prosecutors and regulators.

6. In light of the background to the Unaoil case and the concerns about the relationship between the SFO and the US authorities, the Review asked JWQC whether LO's status as a US qualified lawyer with previous experience of working at a high level in the FBI played a part in her appointment. JWQC said that while her US background was a relevant part of her application her appointment was simply on the basis that she was the best qualified candidate all round rather than a deliberate decision to begin the process of repairing the damaged relationship between the prosecution authorities of the two countries.

Chapter 6 – Superintendence of the SFO and Lisa Osofsky's start in post

Background

1. The DSFO is an Accounting Officer, which means that *"the post carries personal responsibilities to manage the organisation efficiently and effectively and to report to parliament accurately, meaningfully and without misleading"*.[2] Internally, the DSFO is responsible for the setting of professional standards for the SFO and for leading the effective discharge of the SFO's corporate functions.

2. Under section 1(2) of the Criminal Justice Act 1987, the DSFO discharges their functions under the *"superintendence of the Attorney General"*. There is no statutory definition of *"superintendence"*. In practice, superintendence should involve effective oversight of strategy, risks, performance, resources and reputation as well as the effective delivery of cases. The Law Officers hold the organisation to account, through the DSFO. They provide support and challenge on organisational and operational (casework) issues.

3. At the relevant time, the relationship between the DSFO and the Law Officers was governed by a protocol signed in 2009. In early 2018 the AGO embarked on a programme of work to consider what may be needed to reform superintendence arrangements. This work led in due course to revised individual framework agreements (including one between the AG and the DSFO). The new framework agreement was published in January 2019.

2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486677/AOs_survival_guide__Dec_2015_.pdf

4. While the SFO makes its own decisions whether to charge a person or company there are exceptions, in particular relating to cases where, by statute, such as the Prevention of Corruption Act 1906, the consent of the AG is required to commence a prosecution.

5. Paragraph 13 of the 2019 framework agreement sets out the position:

> *"The Director is responsible for deciding which criminal investigations the SFO should open and of those which should be prosecuted. The Director may from time to time promulgate guidance or principles about how cases are selected for investigation, in consultation with the Attorney General and other law enforcement agencies. The Director exercises independence in individual casework decisions (both investigation and prosecution), in accordance with this agreement."*

6. In line with the framework agreement there are now formal arrangements designed to carry out superintendence. There are also separate and distinct Ministerial Strategic Board (MSB) meetings.

7. MSB meetings take place three times a year. The first was on 21st January 2019. The Board's membership comprises the Law Officers, the DSFO, the Director General of the AGO, the COO and CCO and an appropriate non-executive director of the SFO. Her Majesty's Chief Inspector of the CPS attends by invitation, though in practice the Chief Inspector (or his deputy) has attended every meeting.

8. In summary the role of the MSB is to:

    a. Endorse and oversee the strategic direction of the SFO via an agreed *"multi-year"* strategy which aligns with wider government strategies;

    b. Agree the SFO's priorities for engaging with other government departments, law enforcement agencies, the wider criminal justice system and international partners;

c. Agree and support policy development where it impacts on wider government priorities;

d. Approve the SFO business plan, endorsing the DSFO's annual report and reviewing the budget and financial management, performance, efficiency, effectiveness and reputation of the SFO in year; and

e. Identify and monitor areas of strategic risk which may impact on the SFO's performance and support the SFO in managing them.

9. Superintendence meetings take place three times a year. They are attended by the Law Officers, the DSFO, the Director General of the AGO and the SFO's General Counsel. These meetings typically focus on the SFO's casework and provide an opportunity for a broader discussion of topical issues relating to the wider operation of the SFO's business. In each meeting, the SFO will:

a. Discuss, at a general level, casework – in particular, cases which are sensitive, potentially precedent-setting, or which reveal potentially systemic issues for the framework of the law or the criminal justice system; and

b. Provide assurance to the Law Officers that casework decisions have been properly made, in particular where there has been public or parliamentary scrutiny.

10. As well as the formal MSB and Superintendence meetings there are regular meetings held between the AGO and SFO at official level. These meetings cover day to day business. More informal arrangements operate to ensure that the machinery of government works effectively so that Ministers and officials can share information, that the operation of the SFO is supported, and that Ministers can be briefed and made aware, if necessary, of issues that may arise in the more formal settings of the MSB and Superintendence meetings.

Oversight of the Unaoil Case

11. We requested any papers that may have been shared at official level relating to the Unaoil case. Having seen the papers for MSB and Superintendence meetings conducted during the relevant period, it is clear that the meetings took place regularly and generally achieved the aims set out above. The Review accepts that Unaoil was one of many cases being dealt with by the SFO and that, given some of the other high profile and complex cases that the SFO was handling, it is not surprising that that it did not feature in specific discussion at all Superintendence meetings.

12. We have considered the case lists provided by the SFO to the AGO to support Superintendence meetings during the relevant period. The format for the case list was agreed between the SFO and the AGO. However, the Review found that the information included about the Unaoil case was limited and did not cover the issues which the Review has identified. For a number of Superintendence meetings between 2018 and early 2020, the text relating to the Unaoil case did not change even though there had been a number of significant case developments between the meetings.

13. The Review recognises that it is neither possible nor appropriate for the Law Officers to be aware of anything but the limited summaries of case details given the range of high profile and sensitive cases being dealt with at any one time. However, given the range of issues that the Unaoil case raised and the impact that the case had on US/UK relationships, it is somewhat surprising that the information provided was limited to:

> *"Criminal investigation. The Attorney General has given consent in relation to the first strand of the investigation and charges have been brought in relation to several individuals. Monaco recently informed us that they have refused our request to extradite one of our suspects. We are continuing to put together papers with a view to seeking Counsel's advice on a second strand on which consent will be sought thereafter."*

14. Such anodyne details were hardly helpful to allow for a meaningful degree of understanding and challenge.

15. The weaknesses within the contents of the case list summary were more pronounced prior to the arrival of the new General Counsel. Sara Lawson QC (SLQC) has established and developed more appropriate processes to support effective case handling and management of discussions with the Law Officers at Superintendence meetings.

16. Of course it is for the SFO to decide, subject to particular requests from the Law Officers, which cases, and how much information, it chooses to include on the list it shares with them, but this approach does bring with it a degree of risk. Having considered the Unaoil case in detail it strikes the Review that their superintendence role can provide a benefit in individual cases. In this case they were unable to provide any such benefit as a result of the level of detail set out above.

17. We are not recommending that this level of scrutiny should impinge on the independence of the casework decisions of the SFO, but it may be sensible for the AGO and SFO to discuss at official level how there can be more meaningful discussion of detail in cases in which there are obvious risks and issues, as in the Unaoil case. A short summary on a case list does not lend itself to any degree of effective challenge, nor is it likely to provide assurance to the Law Officers that casework decisions have been properly made, particularly where there is public or parliamentary scrutiny, which is one of the aims of Superintendence meetings. This applies with particular force to cases in which the AG's consent is required.

The arrival of Lisa Osofsky (LO)

18. Prior to taking up her post LO met the Director General of the AGO. During the conversation she was provided with a list of useful contacts. The list included a number of senior officials across government and other 'stakeholders' who would be able to provide useful insights

into the issues facing the SFO and views on key strategic matters. At the same meeting there was some discussion on matters such as risks and concerns that the AGO had about the SFO and from whom, within the SFO senior leadership team, it would be useful for LO to take advice. The interim DSFO, MT, remained in the organisation and had reverted to his role as COO. LO particularly recalled that he was commended to her as someone she could rely upon.

19. Whilst there was a degree of continuity of experience for the DSFO to call on, and the established Private Office and other members of the senior management team were all available for advice, the DSFO told the Review:

> "*A tailored induction upon arrival to support my understanding of the Civil Service generally and the policies and practices would have helped. Items as basic as the expectation that all meetings would be recorded in writing were not part of any training I received and would have been of great benefit. It would have been helpful to understand the Civil Service recruitment process better. A senior-level Civil Service mentor might have assisted but would not necessarily have had access to the sorts of facts and operational information that confronted me during my early weeks on the job … I am not sure how much assistance support from others outside the SFO would have offered. I did attempt to learn as much as possible about the role from former SFO Directors, a former Attorney General, a former Solicitor General, the then Cabinet Office Head of Propriety and Ethics, the then head of the Government Legal Department, experienced barristers, as well as the President of the Queen's Bench at the time. In retrospect, a senior-level civil servant available for monthly meetings for the first six months would have been a good source of information about joining the Civil Service for the first time."*

20. LO told the Review that there was nothing offered to her which could be viewed as induction and support for someone like her with no Civil Service experience.

21. The AGO indicated that as the DSFO role is a senior civil service position, being equivalent to the 'Director General level' in the core civil service the nature and level of induction and ongoing support that could reasonably be expected (and required) needed to be calibrated accordingly:

> *"…the SFO Director role is a Senior Civil Service position. It is equivalent to the Director General level in the core Civil Service hierarchy (i.e. SCS pay band 3). The nature and level of induction and ongoing support that could reasonably be expected (and required) has to be calibrated accordingly. Putting this another way, whatever their background, an official as senior as the SFO Director can be expected to operate more autonomously from day one than a recruit at a more junior level. As such, one would generally expect the AGO Director General to have a more 'hands off' role with the SFO Director than would be the case with a more junior official."*

22. LO was offered some support from Cabinet Office. This included a one-to-one conversation with the Cabinet Office talent team and also an invitation to take part in a Director General induction programme; the first such programme that was available for the DSFO to attend was in January 2019.

23. As set out elsewhere in this Review, within a few days of her arrival LO was faced with having to make some sensitive and serious decisions relating to the Unaoil case. On 31st August 2018 she was approached by a former US colleague who recommended a meeting with David Tinsley and soon afterwards she was faced with the decision concerning the dismissal of the former Case Controller.

24. It is clear that LO was faced with a difficult situation very early in her tenure and made a number of mistakes and misjudgments which, with the benefit of hindsight, she now accepts.

25. There is no doubt that LO's experience was extensive, including as it did senior positions in other organisations, and no doubt extremely valuable. However, in future, if an appointee does not have previous experience of working in the Civil Service or the public sector generally, there must be a clear 'personalised' programme of induction which goes beyond the expectations set out in the Civil Service Code or the Civil Service: Values and Standards of Behaviour.

Chapter 7 – David Tinsley's contact with the SFO

1. The Review has had access to a complete schedule of all contact between David Tinsley (DT) and SFO staff prepared for the Court of Appeal (Criminal Division) (CACD), as well as any underlying documents recording that contact. It is not the purpose of this chapter to list every single incidence of contact but to provide a picture of the frequency and the nature of discussions between DT and SFO staff.

Initial contact from David Tinsley (August-October 2018)

2. In late 2017 the Ahsanis engaged DT, a former US Drug Enforcement Agency (DEA) agent, to assist their negotiations with the DoJ and SFO. DT runs 5 Stones Intelligence, which is based in Florida and is described in its published material as *"a leading intelligence and investigative company"*. DT is not a lawyer but worked alongside US lawyer Rachel Talay (RT). DT told this Review that he objects to the description of his role as that of 'fixer' and that he was instructed to *"bring a fresh perspective to resolving the investigation and find a path by which the Ahsanis could cooperate with both the UK and US."*.

3. On 26th July 2018 LO, as the newly appointed DSFO, met the AG, JWQC, for an informal meeting. We have seen the briefing note prepared for the meeting by the AGO. There was no reference to the Unaoil case or to the problems in the DoJ/SFO relationship. JWQC remembers no discussion of individual cases at that meeting.

4. On 10th August 2018 the COO Mark Thompson (MT), who was about to go on leave for two weeks *"until the day you take up office"*, sent LO a File Note concerning the PVT cases. The note attached a peer review of all seven PVT cases (PVT01-PVT07) for which

Tom Martin was Case Controller. The peer review expressed serious concerns about the handling of some of the PVT cases thus far, though it had little focus on the PVT01 case.

5. LO started work on 28th August 2018. On 31st August 2018 a former FBI agent, known to the new DSFO from her previous employment in the UK, contacted LO and advised her to meet DT.

6. In view of the timing of this introduction to DT, the Review was anxious to discover whether the DSFO was aware that DT, or at least someone performing that role, would seek to approach her/the SFO in an attempt to 'sort out' the Unaoil case. The DSFO has assured the Review, both in writing and orally, that she had no such forewarning. She had no idea why her contact had advised her to meet DT and had – until she met him – no idea of what DT did for a living.

7. Before meeting with DT, the DSFO consulted MT and Kevin Davis (KD), Chief Investigator at the SFO, and her Chief of Staff. She was advised by all three that she should meet with him initially but then to hand any further contact over to KD. MT told the Review that the purpose of this first meeting was to hear what DT had to say *"in an open-minded fashion without any fixed ideas as to the outcome"*.

8. On 20th September 2018 DT contacted the DSFO's Chief of Staff and asked to meet the DSFO on the basis that there were *"potential collaboration opportunities"* and that such contact could be *"most beneficial for the SFO"*. The following day he sent a text to the DSFO on her personal telephone asking for a private meeting. She replied saying that she was *"super honoured that you are coming my way"*.

9. SFO policy is clear that individuals should not use their personal devices for official business. DT had, however, obtained the DSFO's personal telephone number from her former colleague. As the DSFO outlined to the CACD, it was usual for her in previous posts to have used a personal mobile on which all work would be conducted. It is therefore not

surprising that when she was contacted by text on 31st August on her personal mobile she answered.

10. The Review can understand why she used and continued to use her personal phone to communicate with DT. It is the view of the Review that there was no bad faith in the way that LO used her personal mobile but, as LO has acknowledged, it was unwise to do so. In this instance it no doubt enabled DT to tell his clients and perhaps others that he had a 'direct line' to the DSFO.

11. On 22nd September 2018 DT asked the DSFO if he could introduce her to RT, who was a lawyer representing the Ahsanis. The DSFO for her part wanted DT to meet KD, the SFO's Chief Investigator, who would be DT's future point of contact at the SFO.

12. A meeting was fixed for 25th September 2018. During the first half an hour the DSFO met with DT alone. They were then joined for half an hour by RT. Following this, DT and RT attended a meeting with KD and MT, without the DFSO.

13. No note was taken of the DSFO's meeting with DT alone or with DT and RT together. It should have been. Although the DSFO says that no reference was made to the Unaoil case and that the discussion was in general terms about the need to create better relations between the SFO and the US DoJ/FBI, the Review is nonetheless surprised that the DSFO's Private Office allowed an un-minuted meeting to take place with the DSFO.

14. The second part of the meeting, between DT, KD and MT, was recorded by MT in a file note dated 4th October 2018, which was shared with the Unaoil Case Controllers. It records that DT explained his background and experience and that he was currently working with Saman Ahsani (SA), with whom there was the potential for cooperation to open up *"very big cases of corruption"* should the SFO wish to engage with them.

15. It is of note that from this very first meeting, the case team, KD and MT were all aware that DT was acting on behalf of SA, who was at that time a defendant in an ongoing SFO

prosecution. In those circumstances, all contact with DT from this point onwards should have recognised that fact and should have:

a. Resulted in a significant level of caution around the nature of the contact; and

b. Kept in mind the CPIA disclosure obligations which would almost certainly arise.

16. The next day, 26th September 2018, DT texted the DSFO asking her to *"…Please look into merging the case into a global plea. (Redacted) are great people and I love working with them"*. He expressed himself to be *"humbled and thrilled"*. The DSFO replied. In her reply she asked: *"Did you see what I sent [former colleague]?"* (The Review has not seen this communication and the DSFO was not able to provide it but thought it was simply an expression of thanks for introducing her to DT.) She went on to say, *"We just need some legal issues tied down"*. The DSFO has explained to the Review that those legal issues related to the pleas and potential means of cooperation of the Ahsanis.

17. Following the initial meeting with DT, MT and KD contacted representatives of the DoJ and FBI in the US to enquire about their experience of DT. Both agencies endorsed DT.

18. The Court of Appeal judgment concerning this period reads:

> *"On 21 September 2018 Tinsley sent a text message to the DSFO in which he introduced himself as a friend of one of her former colleagues in her previous employment and asked to meet her 'privately first to provide some background and follow on with official meeting'. His request was granted: the DSFO replied that she was 'super honoured that you're coming my way' and arrangements were made for them to have "a solid hour together just us". No note was made of that meeting, which it seems was joined after a time by Ms Talay. Tinsley and Ms Talay thereafter met Davis. The DSFO, in response to a request made after directions were given on 1 July 2021, has explained that she knew Tinsley was a former agent of the US DEA and had lectured at the FBI training academy, and she was prepared to meet him because she*

understood he had evidence of crime in the UK of which the SFO may be unaware. She took no notes of their meeting because it was only a preliminary meeting, and she expected notes to be made when Tinsley subsequently met Davis and Thompson.

"The DSFO has also stated that apart from one brief telephone call, in which she told Tinsley that he should deal with Davis rather than her, and one 'courtesy meeting' with Tinsley on 17 January 2019, she had no further telephone contact or meeting with Tinsley."

19. As the judgment also records, that was not what DT would tell others – in particular the defendant Ziad Akle (ZA). As recorded in the CACD judgment at paragraph 74 he said, on 7th December 2018:

"I have probably had nine conversations with her and four meetings, one of which went three hours, and I am dealing now with her number 2 and 3 on some things. Collectively, I think it's going to benefit everyone…"

20. The Review has requested and considered all records of contact between the DSFO and DT, as did the Court of Appeal. The records do not show any more than two in-person meetings between the DSFO and DT. The records received do not show a meeting lasting three hours. The records show a telephone call and some text messages between the DSFO and DT, the most relevant of which are discussed from paragraph 22.

21. No doubt fortified by the reassurance both that the 'boss' and the US authorities had provided references in a sense for DT, contact began DT and the SFO developed, primarily through KD.

22. On 1st October 2018 DT texted the DSFO to say that she was his *"…new most favourite person. Could we speak later today or this evening for 5 mins"*. The DSFO responded with her office number and the two had a discussion, the content of which was not recorded. Again, it should have been. The DSFO's written evidence to the Court of Appeal said that

the conversation lasted 1-2 minutes during which DT was reminded to deal directly with KD. When DT tried to contact the DSFO again on 4th October 2018 by text she asked whether it was an issue that KD could not handle.

23. By 5th October 2018 KD and DT had clearly discussed the case in some detail. RT was pushing the idea that SA and possibly his brother Cyrus Ahsani (CA) would come to the UK and give evidence in the trials of defendants such as ZA and Basil Al Jarah (BAJ). DT had expressed the belief that he could *"bring in"* – i.e. obtain guilty pleas from – BAJ and ZA. KD stressed that the SFO intended to continue with charges against SA and explained the Serious Organised Crime and Police Act 2005 (SOCPA) procedure whereby a defendant such as SA could become a prosecution witness. KD is recorded as saying that *"we would only entertain a contract if he tells us the truth and he comes and pleads to the charges"*. In response, DT is recorded as saying: *"…if he could bring 'Z' and 'Basil' in ahead of time we were hoping it would show what he could do"*.

24. A file note to this effect was sent by the intelligence team to Matthew Wagstaff (MW), 'A' and 'B' of the case team on 9th October 2018.[3] This is the first occasion on which, so far as we are aware, DT discussed the other defendants in the case with KD or anyone at the SFO. It was, or should have been, clear to everyone that any approach by DT to co-defendants would be fraught with risk.

25. On 8th October 2018 KD spoke to DT and emailed the DSFO. The file note records that *"DT says he's looking to flip Peter Willimont. His attorney doesn't know this"*. The news that a non-legal representative was approaching defendants behind their lawyers' back should have provoked immediate action on behalf of KD, at the very least to escalate this concern to the case team. There is a clear risk, as was subsequently discussed at length

[3] Throughout this report, junior SFO officials' names are denoted with the letters 'A' to 'F'.

by the Court of Appeal, that leaving this unchallenged created at least an impression that the SFO encouraged, or acquiesced in, such a course of action.

26. The same day a plan was agreed for KD to travel to the US to 'debrief' SA. KD provided his opinion that the provisions of SOCPA could be circumvented by the use of such meetings as 'intelligence' meetings. The DSFO responded, *"you're a superstar. I really appreciate how you have been handling this. Well done!"*

27. On 9th October 2018 there was a meeting between members of the case team, the DSFO, MT and KD. The deterioration in relations with the US and the possible improvement in those relations following the Head of Division, MW's visit to Washington was discussed.

28. A note taken at the time recorded that:

> *"Everything is on the table, including the sacrificing of PVT01 to secure other convictions given the toxic record of the dealings with the family."*

29. The Case Controllers present expressed their concern about the proposed approach, namely:

> *"That action to interview / debrief SA before seeing whether he would plead in the UK led to potential disclosure implications, particularly if … SA refuses ever to come to the UK."*

30. According to the meeting note, the DSFO responded that the Case Controller *"was a good investigator but he needed 'to see the big picture'"*. The DSFO told the Review that she did not accept the accuracy of this note.

31. In mid-October conversations were recorded between KD, DT and 'C', a senior SFO investigator, concerning, among other topics, the attempts which DT could make to bring about a situation whereby all those alleged to have taken part in the alleged corruption within the Unaoil case might see their way to pleading guilty.

32. ‘A’ prepared a file note on 22nd November 2018 in which they recorded concerns held by the case team about the plan. They noted that:

“Communications with Five Stones Intelligence need to be fully documented and carefully reviewed for disclosure for the following reasons:

i. *“There is a risk that the withdrawal of the summons against Unaoil Monaco SAM may be erroneously linked to emails and discussions between Kevin Davis and David Tinsley of Five Stones Intelligence on 4 and 5 October 2018…*

ii. *“The suggestion by David Tinsley to Kevin Davis that ‘co-operation’ by Saman Ahsani might influence some of the charged defendants to reflect on their current status is potentially disclosable but likely wrong. Basil Al Jarah’s recent change of representation to a Legal Aid firm is inconsistent with David Tinsley’s insinuation that the defendants may plead guilty as a result of influence from Saman Ahsani”*

33. ‘A’ went on to note that:

“The SFO is aware of its initial disclosure obligations under s3 of CPIA and a record will need to be made (if it has not been already) of all communications between Kevin Davis and ‘C’ with David Tinsley of Five Stones Intelligence and will need to be made available to the Disclosure Officer in the PVT01 as well as the other PVT cases where there are charged defendants.”

34. MT responded on 23rd November 2018. In a case decision log he recorded that he had consulted the DSFO and KD and was of the view that the following actions should take place:

"Kevin Davis and 'C' to liaise with David Tinsley of Five Stones Intelligence, who represents Saman Ahsani in the US (but not in a legal capacity – this is performed by Rachel Talay of Redmon, Peyton and Braswell LLP).

"Kevin Davis and 'C' to conduct an intelligence debrief of Saman Ahsani in Washington DC."

35. In relation to the decision to task KD to conduct an intelligence debrief of SA, MT noted that:

"It was always understood at the time that this approach is not without some risk to the existing PVT01 investigation and pending trial … The potential value of the planned intelligence debrief to the SFO is sufficient in my view to accept the various risks that I have been asked to consider."

36. It is necessary to 'stop the action' at this point to consider the legal application of what had already happened before going on to consider the events which resulted in BAJ's decision to plead guilty and the SFO's decision to seek to rely on that plea in its prosecution of ZA.

37. In hindsight, in particular the hindsight provided by the CACD judgment, it may be too easy to say that the contact with DT was wholly wrong and should never have been entertained by the new DSFO or by the very senior colleagues whom she selected as the initial substantial contacts with him.

38. However, it is clear, even without the benefit of hindsight, that legal advice should have been sought on the propriety of engaging with DT, who did not represent, in the legal sense, any defendant in criminal proceedings in either the US or the UK. He was clearly working for the Ahsanis, SA in particular.

39. The SFO has for many years contained, as one of its most senior employees, a General Counsel. General Counsel would seem to have been the obvious 'port of call' for the

DSFO, or MT or KD, to go to for advice on whether, and if so how, to deal with DT. Unfortunately, the situation was at the relevant time unsatisfactory.

40. Alun Milford (AM) had been aware of the events which had led to the Ahsanis' extradition to the US after the SFO had obtained European Arrest Warrants in the hope that they would in due course be extradited to the UK and tried here. He had expressed strong disapproval of the actions taken by the US authorities. It may be that he was seen more as a potential hindrance than a help in view of his expressed disapproval of those actions. Additionally, he has said that he was, in general, over the last few months of his formal tenure, engaged in *"clearing up"* or *"finishing pieces of work outstanding"* from earlier in his tenure.

41. AM stepped down as General Counsel in November 2018. He told the Review categorically that he was never informed, let alone consulted, about the approach of, and subsequent contact with, DT. There is no sign within the material we have seen that he was. He has also told us that he would have advised strongly against such contact had he been asked.

42. The 'General Counsel issue' does not end there. AM's replacement, Sara Lawson QC (SLQC) did not start at the SFO until May 2019, more than six months after the events just described.

43. SLQC told the Review that she only really 'got her feet under the table' a few months later after the necessary induction into the SFO's structures and a 'tour de l'horizon' of the cases under investigation or prosecution at the moment of her arrival. There was thus a serious gap of a year or so in a key legal resource within the SFO, which should never, barring unavoidable circumstances, be allowed to reoccur. I shall return to this topic as the account develops to the end of 2018 and into 2019.

44. Whilst it is understandable that the DSFO agreed to act as the initial SFO point of contact for DT, in hindsight it was clearly regrettable and had a significant impact on what followed because it set the tone for the entirety of the SFO's contact with DT, which was always perceived as having the blessing of the DSFO. In future, it would clearly be good practice to ensure that the DSFO avoids, and is protected from, any direct contact with an individual linked to an ongoing case.

45. Once a decision had been made to engage with DT and to funnel all contact with him through KD there was an expectation, in fact a legal obligation, for all contact to be properly recorded and promptly shared with the case team to be reviewed for disclosure.

46. The way in which the SFO's relationship with DT developed from these very early communications, in particular discussions about *"bringing in"* other defendants, proved the case team's concerns about possible disclosure difficulties and the potential for conflicts of interest to arise to have been correct.

Contact with DT and the recording of that contact from October 2018 to October 2019

<u>The DSFO</u>

47. I have already described the initial contact between DT and the DSFO and the exchanges of text messages in late 2018 before and after she had directed him to contact MT and KD going forward.

48. In January 2019 there was what has been described as a 'courtesy meeting' between the DSFO and DT. DT was attending the SFO to meet with KD, who arranged through Private Office for the DSFO to see DT briefly while he was there *"as a gesture of organisational goodwill"*. The DSFO has said that this meeting lasted less than 20 minutes and was made up of *"pleasantries and kind words rather than discussing anything of substance"*. She told this Review that she agreed to the meeting because, in her previous experience, maintaining cordial relationships was important for the organisations she worked for.

49. The DSFO was not supposed to be personally involved in contact with DT. KD and/or the DSFO's Private Office should not have asked for or allowed this meeting to take place. Whilst we understand her previous experience, LO should not have agreed to this meeting. The effect of a further meeting with DT went to reinforce the view within the SFO and no doubt within DT's own mind, as he was to boast to others, that he enjoyed the endorsement and support of the DSFO.

50. On 4th February 2019 DT sent the DSFO an email with an article attached containing the words *"Mercy means valuing relationships over rules"*. On 18th February 2019 the DSFO's Chief of Staff arranged for any email addressed or copied to the DSFO from DT to be rerouted. The DSFO has told us she was unaware of this decision, clearly made to protect her.

51. On 21st February 2019 DT sent LO a text message to tell her he was soon visiting London and that he would *"love to catch up"*. The DSFO did not respond to this message.

52. On 25th February 2019 DT sent the DSFO another text message enquiring about the health of KD, who was at that time on leave. The DSFO responded to this message solely in relation to KD's health. The same day the DSFO's Chief of Staff spoke with DT to reiterate that there should be no communication with the DSFO on any channel. She noted that DT understood and was grateful for her candour.

53. The Review has not found any evidence of contact between the DSFO and DT after 25th February 2019.

<u>Mark Thompson (MT)</u>

54. MT had occupied senior positions at the SFO since 2012. Before he took over the role of Acting DSFO in April 2018 he had been the COO and reverted to this post on LO's arrival as DSFO. He is an accountant and investigator by background. It was to him that the DSFO turned for advice – in September 2018 – following the approach of a former

colleague on behalf of DT. He advised, and the DSFO agreed, that he and KD should handle any contact with him.

55. In April 2019 MT travelled to New York with the DSFO and 'D'. He and 'D' met DT at a café. DT raised the position of other defendants in the Unaoil case and 'D' advised him that they are charged in the UK and that the DoJ were not pushing for their cooperation as part of the US case.

56. The Review has not seen any other recorded contact between DT and MT. However, MT maintained contact with the Unaoil investigation and was present at relevant meetings up to the time in October 2019 when contact with DT was effectively banned.

Kevin Davis (KD)

57. Most of the contact between DT and the SFO was initially with KD. KD was the SFO's Chief Investigator. As Chief Investigator he was not assigned to any individual case but had a supervisory role in respect of all investigators/investigations. However, in this instance he retained ultimate control over contact with DT.

58. Following the meeting of 25th September 2018 discussed above at paragraphs 12-14, KD's first individual contact with DT (and RT) was on 2nd October 2018, by which time DT had been asked to deal directly with KD. DT said that the DoJ was aware that he was talking directly to the SFO and did not object. There was email correspondence the next day. RT introduced herself and DT as part of the legal team for the Ahsanis.

59. On 29th October 2018 a three-way call (involving another member of the Investigation Division) took place in which the possibility was raised by DT of *"ZA and BAJ coming over"*. DT explained that he expected them to plead guilty in the UK.

60. DT was beginning to discuss with KD the position of other defendants with alarming regularity. KD has accepted that no note of this call was shared with the case team at the time.

61. At the end of November 2018 KD travelled to Washington. There are records of contact with DT while he was there and texts between DT and the DSFO in which she congratulates DT on having KD as a new fan.

62. There were a number of calls between KD and DT in December 2018. A note made following one of them records that DT is hoping to *"flip"* another suspect.

63. KD has told us that in late 2018 or early 2019 he asked to speak privately to Michael Brompton QC (MBQC) and Gillian Jones QC (GJQC) who were instructed to prosecute the Unaoil case. He told them of a complaint made by DT, of whom they had never heard until then, of an alleged leak from the SFO. He gave them to understand that DT was a 'US representative' of the Ahsanis. They were not told anything else about him.

64. In January 2019, in addition to a face-to-face meeting at the SFO between KD and DT (preceded by the 'courtesy meeting' with the DSFO described at paragraph 48 above), there were two calls between them lasting some 15 minutes in total and one further un-noted contact.

65. On 19th January 2019 KD emailed colleagues at the FBI thanking DT for his introduction. At the end of that month KD had to go on leave for health reasons and did not return to work until late March or early April. In the meantime, he briefed 'D' to maintain the lines of communication with DT.

66. In April 2019 KD records two calls totalling 27 minutes with DT to discuss issues relating to the Ahsanis.

67. On 2nd May 2019 KD has a note to the effect that *"DT is trying to flip Willimont"*, another suspect in the case (see paragraph 25 above). On 20th May 2019 he records that DT had mentioned the possibility the previous day of ZA and BAJ pleading guilty.

68. By June 2019 the contact between the SFO and DT was principally with the case team, although there is a note of contact between KD and DT on 3rd June 2019. And on 8th June 2019 there is a note of a conversation between them in which DT says he believes that ZA will probably plead guilty. On 11th and 17th June 2019 there are notes of further contact between KD and DT but no indication of what the conversations were about.

69. In July 2019 there were four contacts by telephone between KD and DT. One was on the 15th, the day on which BAJ entered his pleas of guilty at the Crown Court. On 19th July 2019, DT attended the SFO in person. On 29th July 2019 there was a call between KD and DT lasting more than eight minutes.

70. In August 2019 there were three calls between KD and DT totalling just under an hour.

71. In September 2019 there were two calls lasting nearly 20 minutes in total between KD and DT. Following the last call on 23rd September 2019, on 24th September KD and DT and others had dinner together at a restaurant in Covent Garden. The next day the SFO received a section 8 CPIA application for disclosure from the defence (see Chapter 9) and the following day (26th September 2019) SLQC instructed that there should be no more contact with DT.

<u>'D'</u>

72. 'D' was an investigator at the SFO. At the end of January when KD was about to go on leave (see paragraph 65) he asked 'D' to take over from him as the principal contact with DT.

73. On 7th February 2019 DT outlined to 'D' a *"possible scenario with B, Z … who have indicated a willingness to plead in US"*.

74. At a meeting on 7th February 2019 attended by MT, the DSFO's Chief of Staff MW and the joint Case Controllers, the question of compliance with the SFO's disclosure obligations was raised by the case team. After the Case Controllers were asked to leave the meeting 'D' – rightly – raised the issue of the case team being left 'in the dark' about the dealings with DT/the Ahsanis.

75. On 15th February 2019 DT sent 'D' an email in which he claimed that the DSFO, KD and MT had agreed to the transfer of the Ahsanis to the US on the understanding that they would come to the UK to give evidence. The same email discussed the question of ZA and BAJ pleading guilty but indicated that this still required *"more work"*. The DSFO denies that she had agreed to any such thing.

76. Over the next few days DT asked 'D' if he could be introduced to the case team to *"keep my agreement with Lisa Kevin and yourself"*. 'D's reply was to put him off on the basis that DT was not *"law enforcement"*.

77. On 20th February 2019 there was contact by phone between 'D' and DT. During one conversation DT claimed friendship with a senior FBI official. 'D' kept detailed and near contemporaneous notes of his contact with DT. He would create a typed note and/or send an email soon afterwards.

78. Following a series of texts on 5th March 2019 from DT to 'D' DT requested to be allowed to contact the case team. On 7th March 2019 'D' told DT that the Case Controller 'E' would not talk to him.

79. 'D' recorded a conversation with DT on 27th March 2019 in which DT attempted to gain access to the case team and to discuss the position of BAJ and ZA. 'D' pushed back on both issues:

"DT asked again to speak directly with case team. I [sic] reiterated that case team content to deal directly with DoJ rather than DT/Rachael. DT queried why they wouldn't want to speak to them as L~ to attorneys in respect of other suspects. I advised Z and B represented by legal reps in UK and its [sic] proper that dealings with other charged suspects goes through them.

"DT flagged up previous conversations with SFO members that why not get other suspects to plea in U5. I said I assumed those discussions were being had between case team and DOJ. Reiterated they are charged in UK.

"DT concerned that if a trial in the UK may drag up TM issues and wanted DSFO to know he trying to mitigate any risks as well as build up cooperating suspects as promised."

It may be worth 'stopping the action' again at this point to reflect that the advice of 'D' in the first paragraph of this note, if followed, would have prevented the series of events which eventually resulted in the decision of the CACD in December 2021 and the subsequent decision to commission this Review.

80. On 10th April 2019 'D' was in the party which travelled to New York with MT and the DSFO. 'D' met DT at a café when DT raised the position of the other defendants in the UK. 'D' told him they were not *"up for grabs"*.

81. On 5th May 2019 DT emailed 'D' to arrange a call, which subsequently took place on 7th May 2019 and related to the position of the Ahsanis.

<u>Matthew Wagstaff (MW)</u>

82. MW, as Head of Division, was the line manager of all three Case Controllers in the Unaoil case during 2018 and 2019. He did not have any direct contact with DT.

83. He has told us that he was aware of DT's existence at least from 1st October 2018 but, as with the case team, he was not aware of the nature, regularity or content of KD's contact with DT in the months that followed. In retrospect at least that was an error and left the case team to *"fight its own corner"* with respect to their concerns about DT.

The case team

84. 'B' was involved in the Unaoil case from the outset, initially as its principal investigative lawyer and disclosure officer. From July to September 2018, following the suspension of Tom Martin (TM), she was acting Case Controller and took on the role of Prosecutor. In September 2018 'E' and 'A' were asked to take over as Case Controllers on all PVT cases, including PVT01. At first they both worked across all of the cases. 'B' was promoted to Case Controller on temporary promotion in July 2019 and took responsibility for PVT01 whilst 'A' focused on PVT02 and 'E' on PVT07.

85. 'B''s direct contact with DT was limited and almost entirely confined to being a copied recipient of emails or sitting in on calls which will be summarised below. 'B' shared the concerns of 'E', set out below, concerning the question of the DSFO's involvement – or not – with DT's role. 'E' has repeated what others have said – and the CACD noted in its judgment – that they were *"very uncomfortable"* with the SFO's direct contact with DT. Their reasons were as follows:

> *"i) we were aware that SA had UK representatives and we wanted to make sure they were informed and involved;*
>
> *"ii) we really did not want Senior Management to have anything to do with SA whom we thought should have been prosecuted here and whom we did not believe would provide the assistance it was claimed he could offer or ever be sufficiently credible to call as a witness;*

"iii) our counterpart in the DoJ FCPA [Foreign Corrupt Practices Act] unit had told us that the quasi-handler role being performed by DT was unusual;

"iv) at that time we were trying to deal with the Unaoil companies and were about to change our position in relation to prosecuting them, for legal reasons, and we did not want it thought that DT had anything to do with that;

"v) we did not want a third party to play off the two authorities (DoJ and SFO) which is precisely what happened; and

"vi) the case team had a real sense at the time that communication by senior management with DT and SA was an ill-advised course."

86. 'A' has told us that their understanding was that DT and RT were acting as *"authorised representatives"* of the Ahsani family and that 'A' was first aware of DT's existence on 1st October 2018. This is confirmed by an email they sent KD that day which read in part:

"…Do you know who from the Office, and when, met with Mr Tinsley and Ms Talay. A File Note of what was discussed, and who was present, would be extremely helpful given: (a) the potential disclosure obligations that follow from discussions with a representative of someone who may, eventually, be considered 'a co-operator'; and (b) given the case-specific history of relations with the DoJ, so when we speak the DoJ, or indeed Mr Ashani [sic], in future, there are no misunderstandings as to what has been said / agreed…"

87. On that day and the next there was an email from the DSFO which suggested that as the result of a phone call with *"DC"* – presumably Washington – a disclosure hearing now set for 15th October 2018 could be delayed. The next day 'A' has noted that they had been informed that DT and RT would now be in touch with the SFO through KD rather than the DSFO. The understanding within the legal team was that this contact was authorised by

the DSFO. Such authorisation would, in their opinion, have over-ridden any policy that may have existed to forbid such contact.

88. On 8th October 2018 'A' emailed fellow members of the Unaoil team concerning the *"material I have been made aware of in the … Saman Ashani [sic] – 5 Stones Investigations."* The same day, presciently, he emailed 'C' (a senior investigator), copied to MT and 'E'. The email contained the words: *"I imagine contact with Tinsley/Talay may well become an issue in subsequent proceedings against the corporate or any of the charged defendants in the UK, irrespective as to whether or not Saman ever comes back to the UK."*

89. 'A' was present at the meeting with the DSFO and others on 9th October 2018, summarised at paragraph 27, at which the plan with DT was set out. 'A' believes that the timing of the meeting was deliberately fixed to exclude MW who was away at a conference. 'A' was concerned at the *"potential risks to the [Unaoil] case in the strategy being proposed by the DSFO"*.

90. The introduction of DT was, as the CACD judgment makes clear, not welcome within the case team working on the case. The potential disclosure issues which might arise further down the line were clearly pointed out. However, the fact that DT's role had been expressly authorised by the DSFO, the COO and the Chief Investigator meant that the misgivings felt at the time and expressed since to me following correspondence with its members had to be put to one side.

91. On 15th and 19th February 2019 'E' spoke to an employee at the DoJ. He indicated that both ZA's and BAJ's lawyers had 'sounded out' the DoJ about the possibility of their entering guilty pleas in the US. The US had pushed back and told them that they must be tried in the UK. On 19th February 2019 after a call between the SFO and the DoJ, the same DoJ employee told 'B' and 'A' that he believed that DT had been *"back-channelling"* to the SFO via KD – and now 'D' – and wanted the case team to know that there was no

question of ZA and BAJ being dealt with in the US. Nonetheless, on 4th March 2019, advice from counsel was obtained about the strength of the case against the remaining defendants in the absence of the Ahsanis.

92. On 27th February 2019 there was an email from MW to 'E' concerning recent conversations between DT and 'D'.

93. Later in March there were calls between 'E' and the DoJ in which the DoJ made it clear that DT's wish for ZA and BAJ to be transferred to the US – no doubt as part of the 'deal' he was trying to obtain for his clients the Ahsanis – was not going to be fulfilled.

94. On 25th March 2019 the Ahsanis entered their pleas of guilty in the US.

95. In early April 2019, following his return to work, KD told the case team they could now deal directly with DT. Since DT would see anything sent to RT, the lawyer, there was no point in not doing so. The Case Controllers told the Review that they felt there was little choice but to begin to speak with DT and RT because, as a result of the Ahsanis' pleas in the US, they needed to make arrangements to interview them.

96. One would expect arrangements concerning the Ahsanis and the possibility of their assisting the SFO in the prosecution of ZA, BAJ and others to be made with those representing them in the UK. The Ahsanis' lawyers had made it clear to the SFO that DT formed part of that team and so it was right for the case team to discuss such arrangements with him. However, the case team's ignorance of DT's previous discussions about *"flipping"* other defendants, including ZA and BAJ, meant that they lacked the necessary background information to manage contact with DT properly.

97. 'E' also expressed an understandable concern that DT was talking to different people at the SFO and there was a danger of mixed messages.

98. ‘E’ took an *“unexpected”* call from DT on 16th April 2019. DT offered to help *“with the B and Z thing”* – most likely a reference to the possibility that BAJ and ZA might eventually plead guilty in either the UK and/or the US. ‘E’’s note does not record their response to this comment. However, in preparation for a call planned with DT the following day ‘E’ noted *“Z and B – represent?”* In a call on 17th April 2019, which primarily related to arrangements to be made for the Ahsanis, ‘E’ clarified and noted that DT and RT represented *“family only”*, clearly referring to the Ahsanis.

99. It is clear therefore that from this point on, any member of the case team speaking to DT should have been careful to keep in mind that DT did not and could not speak for ZA or BAJ, and that there was a clear potential conflict of interest if he attempted to do so.

100. On 9th May 2019 there is a record of a one-hour telephone call between DT, RT, ‘E’ and others. During the discussion DT referred to an alleged conversation with the DSFO concerning Ata Ahsani (AA) and the DSFO allegedly saying *“why are we messing with him?”* The DSFO denies ever having such a conversation. DT repeated his belief that the US was still interested in dealing with BAJ and ZA and the logistics of the SFO interviewing SA were discussed.

101. It is of note that the SFO records show that, in discussions between the case team and the US DOJ in February, March and April 2019, the DoJ had repeatedly stated that it was committed to a UK prosecution of ZA and BAJ.

102. On 21st May 2019 KD emailed ‘E’, ‘A’ and MW to say that DT had again mentioned to him the possibility that BAJ and ZA may plead guilty and how they *“may help us”*.

103. To their credit, ‘E’ responded that:

> *“The Z&B information is interesting, however we know that he does not represent them either here or in the US, so I don’t think that he can assist us particularly on that matter, and we need to exercise caution that we act properly with Z&B and that there are no*

actions that could look like an inducement to plead guilty, as you say a guilty plea is a matter for them."

104. On 22nd May 2019 there was another phone call between 'E' and DT/RT in which DT indicated that he had spoken to ZA and to BAJ, who were represented in the UK, and that there was the potential for both to cooperate. He said that *"hypothetically"* there was an 85-90% possibility that BAJ would change his legal team and approach the SFO on pleas. In those circumstances DT asked whether the SFO would consider *"sharing him over here"*. 'E' gave an *"initial comment"*, namely:

"If BAJ was to plead here of course there is scope for cooperation here and in US. There would be a lot of potential if he pleaded quickly we would actively promote a delay in his sentencing until that process has taken hold. Can't guarantee anything as it is up to the court, but we would support that."

105. DT replied that *"We think we can bring this to life. Give us a few days. I just wanted to make sure there was an opportunity for him to come here to cooperate."* The call concluded with 'E' telling DT that they *"look forward to hearing if progress can be made"*.

106. It was clearly unwise of 'E' to engage in the discussion set out above with DT, especially as they had clarified only the day before that DT did not represent and therefore could not speak for BAJ. 'E' told the Review that they did not place any reliance or credence on what DT was saying and took the approach to be polite and answer questions as factually as possible. 'E' told this Review that they did not set out to engage with DT for the purpose of or encouraging a change of plea from BAJ but recognises that lines *"became blurred"*.

107. 'F' was an SFO lawyer and the Unaoil disclosure officer from July 2018. 'F' was part of the calls with DT on 16th April, 9th May and 22nd May 2019. 'F' has told us that it never occurred to them then that DT was *"pulling the strings"* concerning BAJ and ZA. As a

lawyer unfamiliar with the existence or role of persons such as DT, 'F' would have been entitled to assume that decisions whether or not to plead guilty would be taken following discussions and advice from the lawyers representing them rather than anyone else.

108. On 28th May 2019 there was a call between 'E', 'B', 'A' and DT. Extensive notes of the call taken by 'B' and 'E' demonstrate that a number of matters were discussed during this call. This included DT telling them that he had spoken to BAJ and there was 95% chance that BAJ would plead guilty: *"I can get this done"*. He confirmed that he would see BAJ the following week and described BAJ's legal team as *"typical attorney telling him not to speak to anyone"*. 'E' explained that the guilty plea must come from BAJ and that they could not jeopardise the trial. 'B' added that *"we need pleas on both contracts"*. DT concluded the call by saying that he would "*see if we can get things moving w BAJ"*.

109. On 30th May 2019 a note of a telephone call between DT and 'E' recorded that:

> *"DT states that 90% chance he can get BAJ in and BAJ is thinking about pleading guilty, 'E' states any deal could potentially include a plea to the indictment and the SFO taking a view on other matters under investigation."*

110. On 31st May 2019 a telephone note reads:

> *"Note of telephone call dated 31/05/2019 between DT and 'E'. DT stated that BAJ wants to plead guilty and DT is arranging UK lawyers for him. DT says he doesn't want BAJ to be charged with other matters."*

111. Again, 'E' and 'B' were unwisely drawn into inappropriate discussions with DT about the pleas of other defendants. This is made worse by DT's own admission, noted above, that BAJ's legal team were not supporting his discussions with BAJ. Upon becoming aware of this 'E' and 'B' should have shut down these discussions and, arguably, reported this to BAJ's legal team.

112. ‘E’, in the very helpful and full submission to the Review, expressed deep regret at these calls and accepts that it took too long for the SFO to *“shut [DT] down”*. ‘E’ adds that DT would often call *“out of the blue”*. And when dealing with later calls ‘E’ expressed the same view but *“felt powerless in view of the pressure from above”*.

113. DT told this Review that he did not approach BAJ or ZA. He describes any statement that he operated without the knowledge of the legal teams of BAJ or ZA as “*false”*. He has said that ZA contacted him. He believed that ZA shared any discussions they had with his legal team. DT says he ‘joined’ BAJ’s legal team in June 2019, after the calls described thus far.

114. On 13th June there was a call between ‘E’, DT and RT. An email from ‘E’ to DT and RT that day read:

> *“The SFO would like to explore with BA the possibility of formal cooperation with the SFO. This is something we would not explore until approached by BA’s lawyers and a plea being formally entered because of the constraints that we are under given BA is charged and arraigned. The consequence of this would be that the SFO itself could be asking the judge for time to enable this to take place. The SFO has to ensure that it is not acting in any way that is or could look to be an inducement to BA to plead guilty. If John Milner was to contact the SFO we would of course communicate this message to him. It is now a matter for Mr Milner and his client to consider their options and how they would wish to proceed.”*

This was an entirely correct response.

115. On 2nd July 2019 there was a call between DT and ‘E’. He told ‘E’ *that “BAJ is now in my club”*. In this call ‘E’ – belatedly as they now concede – ‘pushed back’. DT’s attitude then changed from *“charm to anger and vitriol”*. By then ‘E’ had been contacted by the UK solicitor acting for BAJ and it became clear that he had not been kept ‘in the loop’ with

DT's attempts to influence his client. As above, DT told this Review that he did not contact any defendants without the knowledge of their legal teams and that by June 2019, he formed part of BAJ's team.

116. On 12th September 2019 (the day on which the SFO informed AA that the SFO would not pursue a prosecution of him on public interest grounds) there was another call between DT and the case team. DT claimed that he was:

> *"inches away from getting ZA to come in … and that he thinks Paul Bond and Steve Whitely will follow. 'E' says that we are not counting chickens just yet. DT says we are good at farming this chickens."*

117. 'B' has confirmed to the Review that they understood this to mean getting ZA to come in and plead guilty. 'B' realised that this meant that DT was speaking to ZA and suggesting to him that he should plead and potentially try to cooperate, even though 'B' knew that DT did not act for ZA and acted only for the Ahsanis, whose interests must have been his priority. 'B' now recognises that they should have said firmly to DT that they could not discuss and did not want to hear about matters relating to ZA. 'B' very much wished they had had the presence of mind to respond in a way that made it clear that they did not condone that approach.

118. In addition, 'B' should also have at least considered whether ZA's legal team should have been informed of these approaches and sought advice from trial counsel or General Counsel about what was clearly a very unorthodox position.

119. As already outlined, there were a number of problems with the management of DT. Many of them stem from the fact that all contact was, for most of the period, funnelled through KD only, with very limited involvement by the case team. During that period the nature of the discussions developed in a way which was wholly inappropriate, in so far as it related to other defendants and attempts by DT to contact and/or influence those

defendants, whom he did not work for and with whom there was a clear potential conflict of interest.

120. By the time contact began between the case team and DT, these discussions had been both frequent and unchallenged. As a result, the case team were faced with, and unprepared for, a very difficult situation. Nonetheless, as is clear from comments made above, the case team's response to DT's continued attempts to discuss and potentially to influence other defendants was at times inappropriate.

Chapter 8 – The disclosure process for the Unaoil Case (PVT01)

Disclosure policies and guidance

1. The Criminal Procedure and Investigations Act 1996 (CPIA) and the CPIA Code of Practice (March 2015) placed a positive duty upon investigators to:

    a. Retain and record material obtained in a criminal investigation which may be relevant to an investigation;

    b. Review the material obtained during the course of an investigation;

    c. Reveal to the prosecutor any unused material which may be disclosable to the defence.

2. 'Material' is widely defined by the CPIA Code of Practice and covers:

    a. Objects which come into the physical possession of a case team;

    b. Information of which they become aware;

    c. Material which they generate as a result of their investigation, including documents and information held or generated by other departments within the SFO.

3. The Attorney General's Guidelines on Disclosure (at the relevant time dated December 2013) emphasised that:

    "There will always be a number of participants in prosecutions and investigations: senior investigation officers, disclosure officers, investigation officers, reviewing prosecutors, leading counsel, junior counsel, and sometimes disclosure counsel. Communication within the 'prosecution team' is vital to ensure that all matters which

could have a bearing on disclosure issues are given sufficient attention by the right person."

4. At the relevant time the SFO's Operational Handbook reflected these responsibilities and provided clarity of responsibility. In particular:

    a. Investigators were responsible for the recording and retention of relevant information obtained, discovered or generated by them during the course of an investigation;

    b. Investigators were responsible for notifying the disclosure officer of the existence and whereabouts of material that had not been retained by them;

    c. Disclosure officers were responsible for examining material, revealing it to the prosecutor and disclosing it to the accused when appropriate;

    d. Case Controllers were responsible for ensuring that proper procedures were in place for the recording and retention of material obtained in the course of the investigation;

    e. Case Controllers were responsible for ensuring that material that may be relevant to an investigation was retained and recorded in a durable and retrievable form;

    f. Case Controllers were responsible for ensuring that all retained material was either made available to the disclosure officer or, in exceptional circumstances, revealed directly to the prosecutor;

    g. Case Controllers were responsible for ensuring that the unused material was properly scheduled as sensitive or non-sensitive material;

    h. Prosecutors were responsible for making proper disclosure in consultation with the disclosure officer;

i. The Head of Division was responsible for ensuring that proper records were kept and that the disclosure management document was up to date;

j. The Head of Division was to ensure that proper scheduling had taken place and that there were both ‘sensitive’ and ‘non-sensitive’ schedules at the appropriate stages of the case.

5. Any contact with any person, third party or not, should have been recorded and kept on the case file. All individuals working in an operational capacity for the SFO should have been aware of their obligation to record and retain material, not least because:

    a. The SFO provided (and continues to provide) disclosure training to staff when they join the organisation;

    b. The SFO’s Operational Handbook had (and continues to have) a chapter on disclosure which includes:

        i. The roles and responsibilities of investigators, specifically noting the responsibility to record and retain relevant information; and

        ii. The identification, retention and recording of material, with additional information on the duty to record and retain information as well as practical examples of the types of material which must be recorded and retained;

        iii. Guidance on the use of investigators’ notebooks and daybooks as well as a specific ‘desk instruction’ regarding notebook entries. Both of these specifically refer to the need to record material to comply with the CPIA and both contain the very direct instruction: “if in doubt, record everything”.

SFO arrangements for recording, retaining and reviewing material generated during an investigation

6. In order to comply with the above, each SFO case has at least one shared network drive which is accessible to case team members. This shared drive should be the primary location for the storage of all documents relevant to the case generated by those conducting the investigation. This includes:

    a. Documentation to do with the administration of the case, such as case opening documents, task lists, work logs, business cases and counsel's fee notes;

    b. Communications with third parties not conducted via email, such as letters, typed notes of meetings and typed notes of telephone calls;

    c. Decision logs;

    d. Documents created by investigators as part of their analyses of the evidence in the case, such as financial analyses, file notes and intelligence analyses;

    e. Material created for the prosecution of the case, such as witness statements, graphics and schedules of events;

    f. Working documents created by case team members; and

    g. Legal documents, such as charge sheets and indictments, warrants, skeleton arguments, written submissions and counsel's advice.

7. In addition, case teams use a shared email mailbox. If emails are 'sensitive', within the meaning of the CPIA, they may not be copied to the shared mailbox, but investigators remain under a duty to retain them either within their own inbox or within the case drive.

8. Where material is generated by other departments in the SFO it should be recorded either in emails, in documents saved on a shared drive, or in hardcopy notebooks. All

communications, in whatever form, which relate to the case should be recorded and considered for disclosure purposes.

a. Where the contact was via email this should be saved to the shared mailbox and/or in the mailbox of individuals from the SFO who sent/received/were copied into the email.

b. Where the contact was face to face or over the phone a note should be kept, whether typed or in hardcopy.

c. Any letters sent or received should be saved on the shared drive and/or in the shared mailbox.

9. A 'daybook' should be used to record case related information which is not duplicated elsewhere (e.g. in emails or file notes). As daybooks are case-specific they should be considered for disclosure purposes in every case. Where it is not possible to record information immediately in a daybook it should be recorded elsewhere and later added to the daybook and made available as part of the disclosure review.

10. Investigators involved in operational activity are provided with a centrally issued pocket notebook. Unlike the daybook, the pocket notebook is not case-specific and so any one notebook may contain information relevant to more than one case. Where an investigator has entries relevant to a particular case, they should make these known to the Disclosure Officer during the disclosure review. Typically, copies of the relevant sections of the notebook will be made with the individual being told to retain the original.

Record keeping in the Unaoil case (PVT01)

11. In the main, when they came to be gathered, records did exist of the contact between SFO staff and David Tinsley (DT), either by way of emails, meeting notes or handwritten notes.

However, they were not recorded or stored in a way which would later facilitate an effective disclosure review.

12. In particular, the records of DT's contact with Kevin Davis (KD) were incomplete. KD told the Review that his contact with DT was recorded in his daybook, either contemporaneously or shortly thereafter. There were *"odd occasions"* when he would make a note via email. His daybooks were stored in a locked cabinet at the SFO and the notes therein were *"not necessarily"* shared with anyone else in the SFO. KD said he communicated the contents of those notes to *"a variety of individuals as appropriate"* including 'D', Mark Thompson (MT) or Matthew Wagstaff (MW).

13. Any record made in KD's notebook about an ongoing case, and one which was at this time approaching trial, should have been promptly passed to the case team – in particular, any such record which discussed the position of a defendant in that ongoing case.

14. The case team was informed very early on, on 1st October 2018, of the fact of KD's ongoing contact with DT. Immediately afterwards one of the Case Controllers then in post (see Chapter 7) emailed KD and others to express concerns about the disclosure implications of contact with DT and emphasised that all contact should be recorded for disclosure.

15. The DSFO told this Review that when KD was identified as the main point of contact with DT in September 2018, it was her expectation that he would be keeping the case team informed of anything relevant that arose from that contact.

16. The case team's request for accurate records was repeated on 3rd October 2018 in an email from MW to KD, copying in both the DSFO and MT:

> *"can I ask that any communications include 'A' and 'E' as the assigned case controllers? It is obviously important that they remain sighted on all developments, not*

least from a disclosure perspective but also to ensure that they are able to make properly informed decisions on the case."

17. On 17th January 2019 'A' again emailed KD to ask, *"can you please confirm you have a record of all contact / communications with 5 Stones, the DOJ and FBI, with regard to the Ahsanis or other individuals connected with our case, to ensure we can fulfil our CPIA disclosure obligations."* KD responded that *"There are appropriate notes in my possession."*

18. In fact, as the Court of Appeal found, KD did not make notes of many of his conversations with DT. The full and chronological schedule of contact between the SFO and DT prepared for the Court of Appeal includes approximately 27 such examples. Furthermore, such notes that KD did make were not shared with the case team until such time as they contacted him, in May 2019, expressly to request it. 'E' said they found it difficult to obtain material from KD and had to chase him on multiple occasions.

19. KD's explanation for the incomplete records was that the majority of his conversations with DT were *"a very unusual experience"* in that they were vague, repetitious or contained repeated exaggeration on all manner of topics. He said he would not make a note where the conversation included repetition of a previous conversation or included logistics *"or other innocuous matters"*. This is contrary to both the SFO policies and the spirit of CPIA. The need to make a record of every meeting, regardless of its worth, is to allow the disclosure officer and/or the defence to take a view about the value of the contact.

20. The absence of complete records of the contact between KD and DT was exacerbated by the loss of all data from KD's SFO telephone. On 16th July 2019 all the data was 'wiped' from it. As much of KD's contact with DT was conducted by telephone call or by text message, this represented a significant loss of potentially relevant and disclosable material. The Review team has not seen any evidence that the 'wiping' was deliberate. The loss would not have been so great, however, had proper notes and records of all

contacts with DT been retained in KD's daybook and shared with the case team at the time.

Disclosure management in the Unaoil case (PVT01)

21. The SFO Operational Handbook was clear that every case should have a Disclosure Strategy Document (DSD), which is distinct from the Disclosure Management Documents (DMDs) produced for trial. The DSD should provide the framework in which the disclosure exercise will be conducted by identifying:

    a. The lines of enquiry to be pursued;

    b. How material would be retained and managed;

    c. The scope of the review of the material;

    d. The matters to be considered as part of that review.

22. The DSD should be drafted at the start of an investigation by the Case Controller in consultation with the disclosure officer. It is a living document and should reflect changes in the disclosure strategy during the lifetime of a case. The DSD should also endeavour to identify the disclosure issues that will arise in relation to the case and identify how those issues will be addressed.

23. A DSD for the Unaoil case was drafted on 1st August 2017 but was never updated. As a result, the DSD never made any mention of DT as a 'line of inquiry' which was being pursued. Nor did it highlight, as it should have done, the importance of ensuring that material generated as part of that line of inquiry was properly retained, recorded and reviewed; or how that would be achieved. Used properly, the DSD should not only have highlighted this issue but should also have been the means by which it was followed up at intervals with the case team and others.

24. A Disclosure Decision Log (DDL) was maintained for Unaoil and, in many instances, was very detailed. It noted on 21st December 2018 that there would be a need to review all case team emails for disclosure prior to trial. That exercise was to start in January 2019. SFO case team emails were extracted for review as of February 2019, including *"all internal communications as well as communications with external parties"*. The SFO case drive was reviewed at the initial disclosure stage and again on 10th May 2019 with relevant items disclosed. The intention was to do both exercises again *"shortly before trial"*. However, that review did not result in any information relating to contact with DT or with 5 Stones Intelligence being disclosed or entered on the schedule of unused material.

The process of collecting SFO records of contact with DT

25. In March 2019, the case team began the process of identifying who may have had contact or dealings with anyone relating to the issue of the Ahsanis and their US pleas and asked for all material to be passed to the case team. This exercise continued throughout May to July 2019.

26. On 10th May 2019 the case drive was frozen and disclosure counsel was asked to review it. In the same month the case team contacted KD and others to ask them for all material relating to contacts with DT and 5 Stones Intelligence. On 11th July 2019 'E' contacted KD again to ask specifically for any relevant material which would be needed for consideration for disclosure. In July 2019 the case team also requested such material from Private Office.

27. This exercise still did not provide records of all contacts with DT, perhaps because the initial request made to Private Office – for records of contact with the DSFO or her Chief of Staff, MT or Alun Milford (AM) – asked for *"all matters relating to liaison and negotiations with the US DoJ, 5 Stones Intelligence and any other agency"*. Search terms were agreed but those search terms did not include either the names David Tinsley or Rachel Talay.

28. Screenshots of text messages between the DSFO and DT were not provided until 15th October 2019.

29. The explanation proffered by the case team for the delay in identifying and reviewing records of all contact with DT was that, although the case team recognised the importance of this exercise, they were extremely busy dealing with other disclosure issues in the Unaoil case.

30. The trial was initially due to start in April 2019. It was adjourned, on the SFO's application, for eight months, in part as a result of the quantity of electronic material which still required disclosure review. Counsel advised on 23rd April 2019 and on 22nd May 2019 *"in the strongest terms"* of the urgent need to process disclosure *"immediately"* and urged the SFO to consider outsourcing the disclosure exercise. At that time there were:

    a. Over 8 million documents in the document library and 218,634 documents to review following the application of 'search terms';

    b. A further 1.6 million documents in Legal Privilege Protection (LPP) quarantine, and 207,831 to review following the application of 'search terms';

    c. 17 independent counsel who had been instructed to undertake LPP review;

    d. An additional 1,325,480 documents in bags awaiting processing. At the time no explanation was available to counsel for why that amount of material, in existence since December 2017, had not been processed.

31. The disclosure challenges were, in part, a result of the huge volume of material but also because the case did not, in the view of the disclosure officer, have sufficient staff to prepare for the prosecution. 'F' was also of the view that the case had been charged too soon, motivated in part by the desire to apply for a European Arrest Warrant whilst Saman Ahsani (SA) was in Monaco. By the time 'F' was appointed in August 2018 the progress

of the disclosure review had stalled. Further, the disclosure officer was also the principal investigative lawyer in the case, and so was tied up dealing with other complex legal issues.

32. Ziad Akle (ZA)'s Defence Statement served on 16th April 2019 sought disclosure of:

    a. An explanation for the absence of SA from the proceedings;

    b. Confirmation of whether an Italian order for SA's extradition was withdrawn at the request of or with the consent of the SFO, and on what basis;

    c. An explanation for the SFO's withdrawal of charges against Unaoil SAM and Unaoil Ltd.

33. No disclosure was made by the SFO, either before or after the receipt of the defence statement, of the SFO's contact with DT. The explanation now provided by 'E' and 'B' was that this contact was inextricably linked with the Ahsanis' US pleas, which remained under seal of the US court and could not be released without permission.

34. Permission was granted by the US courts to reveal the fact of the Ahsanis' guilty pleas on 6th August 2019, with permission to reveal their cooperation status granted on 13th September 2019. This was included within the DMD dated 20th September 2019. Yet still no mention was made by the SFO of any contact with DT. Again, although each member of the case team now accepts that *"in an ideal world"* they should have had the material scheduled and reviewed to allow them to manage disclosure at the same time, they were unable to do so as a result of resource limitations.

35. The DSFO accepted that the contact with DT should have been proactively included within the schedules of unused material prior to receipt of the defence section 8 request for disclosure in Autumn 2019. The DSFO had no role in the decision making for the

management of disclosure; that was a matter for the case team, supported by advice from trial counsel and the SFO General Counsel.

The defence section 8 application

36. In fact, the process of scheduling the records of contact with DT did not commence until 30th September 2019, after the receipt of an application on behalf of ZA under section 8 of the CPIA.

37. An application under section 8 is the means by which, after the service of a defence statement, the defence can apply to the prosecution for disclosure of material which they have reasonable cause to believe is in the possession of the prosecution and satisfies the disclosure test. Upon receipt of a section 8 application an SFO prosecutor, in consultation with the disclosure officer, should consider, whether afresh or for the first time, the material requested by the defence.

38. On 24th September 2019 ZA's defence team served a section 8 application which asserted that:

> *"It appears that DT has sought to influence and put pressure on defendants in this case, including Mr Al Jarah, and that Mr Al Jarah has entered his pleas as a result of this improper pressure and as a result of being misled. The conduct of DT is such that it renders Mr Al Jarah's plea unreliable evidence of the existence of a conspiracy to make a corrupt payment and its admission unfair."*

39. The section 8 application requested answers to a significant number of questions including:

    a. Whether DT had spoken to DSFO about the case;

    b. Whether DT had ever phoned, emailed or met with the DSFO directly during the case;

c. Whether DT had spoken to or emailed any person employed by the SFO or acting on its behalf in relation to this case;

d. Whether DT had ever spoken to any person employed by the SFO or acting on its behalf about ZA, Basil Al Jarah (BAJ), Stephen Whiteley (SW) or Paul Bond (PB);

e. Whether anyone at the SFO or the DoJ:

i. Knew of DT's intention to speak to BAJ, ZA, PB or SW;

ii. Knew of his intention to speak to them without the presence or knowledge of their lawyers and if so, when;

iii. Approved, encouraged or acquiesced in such an approach.

40. It was only at this point that trial counsel became aware that there was ongoing contact between DT and SFO employees. Their reaction when they became aware of the nature and extent of that contact has been generally described as *"unimpressed"*. They formed a poor opinion of DT's motives and trustworthiness. They were surprised that the SFO was prepared to deal with him at all.

41. The case team denied that they were trying to hide anything from counsel. It is clear from notes of conferences with counsel on 15th and 26th March 2019 that DT's name had been mentioned, as had the existence of material relating to *"correspondence with 5 Stones Intelligence (David Tinsley and Rachel Talay) and any other material whether matters regarding conversations with them are then discussed, e.g. with staff at the SFO"*. The case team believe that this was the stage at which trial counsel became aware of the SFO's contact with DT, though perhaps not the extent of that contact. For counsel the instances above were no more than a *"passing reference"* and not ones either Michael Brompton QC (MBQC) or Gillian Jones QC (GJQC) could recall.

42. Likewise, it was only upon receipt of the section 8 application that Sara Lawson QC (SLQC) appreciated who DT was, or that there had been contact between him and members of staff at the SFO. She considered it unfortunate that she was not made aware of the contact when she started at the SFO in May 2019. Had she known she would have advised against contact, or at least advised checking with those representing the defendants. She would certainly have advised that all meetings and material should be recorded and revealed on the sensitive schedule. She may have advised that disclosure should have happened earlier.

43. Contact with DT was an issue which, as each has made clear to us in their own way, troubled the lawyers in the case team. Even allowing for the need for the new General Counsel to 'settle in', and for the case team's understanding that the direction to deal with him had come 'from the top', it was clear that the previous General Counsel had not been involved in the decision to 'license' contact with him. It is in retrospect regrettable that SLQC was not informed earlier of the issue, before the receipt of the section 8 application. Likewise, it is regrettable that trial counsel were not better informed, or possibly asked for advice about the nature and extent of the ongoing contact with DT, in particular as soon as DT began to express an intention to speak to or on behalf of BAJ or ZA.

44. On 2nd October 2019 GJQC prepared a note on the approach to be taken in response to the section 8 application. This emphasised the need to ensure that *"a full and transparent disclosure process is undertaken"* and that all contact with DT was captured.

45. Until that point there was a single 'rolled up' entry on the sensitive schedule which related to communications with foreign law enforcement agencies and DT. All of this material was to be individually reviewed and scheduled in order to determine which entries should remain on the sensitive schedule and which should be transferred to the non-sensitive schedule. It was noted that this would result in the disclosure of the pertinent parts of the

documents on the schedule: "*this is particularly true of references in the DT correspondence to BAJ and ZA"*.

46. Counsel emphasised, correctly, that material may assist the case for the accused, not only where it could be used to explain the accused's actions or support his substantive case, but also where it might suggest or support submissions that could lead to the exclusion of evidence or a stay of proceedings.

47. At this time GJQC and junior counsel reviewed the material received to date and were of the view that none of the documents fell to be disclosed subject to proper scheduling of the material.

48. There was a conference on 8th October 2019 with all members of the counsel team, the case team and SLQC. The general approach to the section 8 application was set out by MBQC, namely that the requests made by the defence were not relevant to any issue in the case and should therefore be refused.

49. Though at that time they had not seen anything to support the contention that BAJ's pleas were involuntary or as a result of being misled, it was emphasised that the case team must also consider whether the material revealed a procedural irregularity or impropriety that may be capable of supporting an abuse of process argument. MBQC found the communications with DT *"surprising"*. Although he did not consider it inherently wrong for the SFO to discuss suspects in the case with an adviser, even if they were not an accredited lawyer, he would not expect that to extend to strategy or the treatment of persons that he does not represent, particularly where, as with BAJ, there was a potential conflict of interest. The advice from counsel at this time was clear that the case team must make sure that everything relevant was scheduled and then consider whether there was anything that needs to be disclosed.

50. During the course of that conference SLQC raised the question of whether or not they could avoid relying on the plea of BAJ. Counsel and SLQC both denied that doing so was an attempt to avoid making disclosure of the contact with DT, since much of the material would need to be particularised on the non-sensitive schedule in any event. Not relying on BAJ's plea might, however, have been 'tactically' simpler because there was a risk that the SFO's dealings with DT might have had a prejudicial effect on the minds of the jury and created a 'side show' in an otherwise evidentially strong case.

51. SLQC was noted as expressing the opinion that they *"they should be careful with wording of items on the sensitive schedule that include discussion between DT and LO"*. She has told this Review that this was not said in an attempt to protect the DSFO but rather that she wanted them to be careful to get the descriptions correct. In her view the information was being disclosed on the face of the schedule as opposed to the underlying documents.

Scheduling contact with DT

52. On 17th October 2019 the DDL recorded a decision to reveal DT matters on the non-sensitive schedule to the defence as 'relevant but not disclosable'. The note reads:

> *"The particular issue is whether the prosecution holds material casting doubt on the reliability of BAJ's plea. We do not. All matters related to DT must be considered as relevant in that context but are not disclosable. Out of caution we will ensure that the descriptions are sufficiently comprehensive that the defence is not misled as to the nature and of the material we hold and the overall tenor of the conversations with DT. Insert emails from the relevant period with SMT."*

53. It was not until 23rd October 2019 that the schedule of contacts with DT was reviewed by the disclosure officer, 'F' and the prosecutor, 'B'. This was the first time that 'F' became aware of the full extent of DT's contact with individuals at the SFO. It is startling that, until

that point, ‘F’ had been kept completely unaware of the nature and extent of the contact DT had had with the various members of the SFO’s senior management team (SMT).

54. Those entries considered to be relevant were extracted to create a *“potentially relevant Tinsley schedule”* and what were described as *“CPIA compliant descriptions”* were prepared for inclusion in an ‘MG6C’ schedule of non-sensitive material which would become known as “Tranche 5”.

55. A draft of the descriptions was shared with MBQC who agreed that the approach was *“entirely correct”*, though he made two suggestions:

    a. That it is important that there be detailed entries in respect of DT’s comments on ZA and BAJ and on the conduct of the prosecution case;

    b. He did not think it necessary to quote verbatim from the felicitations passing between DT and the DSFO which could be summarised by using phraseology such as *“expressions of appreciation/warm appreciation”*, etc.

56. As to the latter advice, ‘B’ took the view that this looked worse and looked as if they were trying to conceal something. It was their preference to keep the entries as full as possible and, when consulted, SLQC agreed. It is not normal practice, nor is it required under the CPIA or the SFO Guidance on its application in individual cases, for General Counsel to sign off a disclosure schedule. In fact, it is unusual for General Counsel to be involved in any case to this level of detail. In a very unusual step, the schedule was also shared with the DSFO for her review, although there is no suggestion that she requested any changes.

57. There was further consultation between ‘B’ and MBQC which included – prophetically as things turned out – that, *“we think we may well not hold the line on disclosure and so better to put some of the more embarrassing items out there, rather than risk being ordered to and then criticised for a schedule which fails to really give the full import [of the*

unprofessional texts between the DSFO and DT]". MBQC agreed on the basis that *"most of them are close calls"*.

58. MBQC confirmed that neither he nor GJQC saw the underlying material at the time that these schedules and the response to the section 8 application were prepared. They did not, therefore, compare these to the descriptions on the schedule but thought that the entries were very detailed and were impressed that they contained verbatim quotes from the underlying material. Counsel were repeatedly assured that the schedule contained everything of significance and everything that was potentially embarrassing to the SFO. The schedule and the underlying material were both reviewed by junior counsel Tom Daniel who had responsibility for disclosure.

59. Both 'B' and counsel were of the view that whether or not to disclose the underlying documents was *"a finely balanced decision"* and, at the time, they accepted there was a *"reasonable chance"* that they would lose the section 8 application. All those from the SFO involved in responding to the section 8 application have emphasised that they were, throughout, following the advice provided by trial counsel.

60. As a result, this Review heard from a number of sources, including trial counsel, SLQC, the DSFO and members of the case team, that in their opinion the schedules were made sufficiently comprehensive and detailed so as to be *"in all material respects"* akin to full CPIA disclosure. There was an effort to provide the *"essence of the communications"* to allow the defence to advance their section 8 arguments properly and to avoid later allegations of a 'cover up'.

61. The purpose of the non-sensitive schedule (known as an MG6C) is to reveal to the defence the existence of material created and obtained during an investigation, together with the disclosure decision. Therefore, the inclusion of a description of that document on the schedule cannot of itself amount to disclosure. No good reason has been provided as to

why, where so much time and effort was spent to include, in some cases though not all, a near-verbatim summary of the document, the underlying document was not disclosed.

62. The SFO and those involved in responding to the defence section 8 application have repeatedly stated that they were in no way trying to shield either themselves, the SFO or the DSFO from the clear potential for embarrassment that would arise from disclosure of all contact with DT. 'B' did accept that they was also concerned, at the time, with shielding the SFO and the case team from having to reveal internal disagreements and unflattering comments in the internal SFO and case team correspondence, which revealed unattractive tensions and at times direct conflict and a distinct lack of trust between the senior management of the SFO and the case team.

63. 'B' thought that the emails did not show the SFO or senior management in a good light and also revealed issues of both performance and culture within the case team. 'B' was concerned not to *"air the SFO's dirty laundry"* in public. Nonetheless they maintained that had the emails met the disclosure test, they would have been disclosed.

64. There was also, at the time, real concern about the position of the DSFO, in particular about the risk that she may be called to give evidence. On one occasion SLQC voiced the possibility that, should the DSFO be called as a witness, then the case would or may need to be stopped. SLQC denied that it would be her intention to stop the case in order to save the DSFO or the organisation from embarrassment; rather that she was under pressure from the DSFO's Chief of Staff that she not be called as a witness and, had she refused to give evidence, there would have been no choice but to drop the case. However, the DSFO and SLQC both maintained to us that if she had been required to give evidence the DSFO would have done so.

65. MBQC was clear in his view that the case could not be stopped for that reason. He explained that, having required the Attorney General's consent to institute proceedings,

they could not properly drop the case without his consent and, in any event, a case could not properly be dropped simply in order to avoid reputational damage.

66. The Court of Appeal judgment expressly stated at paragraph 97 that it did not suggest that any individual deliberately sought to cover anything up in this case. This Review has not seen any evidence to contradict that finding. However, what we have seen is an unfortunate focus on the effect that disclosure of the documents underlying the schedule might have on the DSFO, the SFO or other individuals. The writer, having once occupied a similar position to the DSFO, can well understand these concerns – in particular, the unease which would be felt by senior employees at the prospect of their 'boss' having to give evidence and be cross-examined on matters which, even if not 'damaging' to the case on trial, were 'embarrassing'. However, the SFO must be, and be seen to be, completely committed to the proper trials of those charged with criminal offences in respect of whom the evidence is sufficient to justify the charges. The embarrassment of a particular public servant, the organisation itself or any employee should never be considered as a justification for not proceeding 'in the public interest'.

Tranches 5, 5A and 6

67. Tranche 5 was served on the defence on 31st October 2019 and contained 175 entries setting out contact between members of the SFO and DT.

68. The SFO also served a response to the 'Tinsley' section of the defence section 8 application. The SFO's position was that none of the material gathered as part of this exercise, or held by the case team more generally, revealed that the plea of BAJ was in any way unreliable and therefore the material underlying Tranche 5 was not considered disclosable. Furthermore, rather than answer the questions posed by the defence directly, the SFO said no more than that *"the SFO was not a party to any such discussions DT has had with Mr Al Jarah"*.

69. The defence served a further, consolidated, section 8 application on 5th November 2019 for the purpose of oral argument. On 7th November 2019 an addendum Tranche 5A schedule was served with a further 25 entries covering case team emails relating to contact with DT and Rachel Talay (RT), which the SFO said had been inadvertently omitted from Tranche 5. On 8th November 2019 the trial judge heard oral argument on the section 8 application, which was refused:

> *"I have considered carefully the material disclosed by the SFO on the topic of contact between them and Mr. Tinsley. To some extent I am minded to agree that some of that contact might be considered to have been unwise, if not a matter of serious criticism, but none of it suggests to me any support for the proposition that BAJ, when he entered his plea, represented as he was and remains by UK solicitors and by very experienced counsel, did not understand what he was admitting to or was not making the admissions he did willingly and not for the proper reason that he was guilty of them. Moreover it is clearly the case that what BAJ has admitted to is consistent with the contents of innumerable emails which passed between him and others in this case; and it is not BAJ now making or even supporting (as far as I am presently aware) the claims ZA seeks to advance for him."*

70. An addendum defence statement dated 29th November 2019 asserted that:

    a. BAJ's guilty plea was procured as a consequence of improper pressure and improper inducement put upon BAJ;

    b. The SFO was aware of and either implicitly or explicitly encouraged the pressure and inducements directed at BAJ.

71. On 11th December 2019 the SFO disclosed the fact that BAJ had entered into an agreement under the Serious Organised Crime and Police Act 2005 (SOCPA) to assist the SFO with its investigation by providing information or giving evidence about the

criminal activities of others and had been interviewed on a number of occasions. Following this disclosure the unused schedule was revisited on 6th January 2020 by 'B' to determine whether there was anything further that should be added to the schedule now that BAJ's status was no longer 'sensitive'.

72. On 17th January 2020, Tranche 6 was served. This included a further 19 entries which touched upon the 'Tinsley' issues, including:

    a. Unredacted entries relating to BAJ's SOCPA status;

    b. Expanded descriptions which the prosecutor felt, on reflection, had been overly summarised, particularly in the light of the abuse of process application;

    c. Entries where the Excel cell had not captured the full wording of the description;

    d. Entries relating to contact with DT/RT regarding their representation of the Ahsanis.

73. A further version of Tranche 6 was provided on 24th January 2020 to make *"corrections"*.

74. Despite the service of multiple versions of the schedules, they were, as the Court of Appeal subsequently found, still neither complete nor wholly accurate. There were omissions from the schedules:

    a. Six meetings and calls between KD and DT which did not come to light until the Court of Appeal proceedings or had previously been placed on the sensitive schedule of unused material;

    b. A note of discussions with a member of SFO staff on 8th October 2019 describing attempts by DT and BAJ to approach ZA and try to convince him to plead guilty and cooperate. DT describes using BAJ to call ZA on an almost daily basis but that ZA was resisting. This note had been previously placed on the 'sensitive' schedule of unused material.

75. Furthermore, a number of the descriptions included within the schedules were incomplete and/or inaccurate.

    a. The summary of a telephone call on 28th May 2019 between the Case Controllers and DT was very short and did not include the detail of an express discussion of the possibility that BAJ may plead guilty in which DT said there was *"a 95% chance I can get this done"* to which 'B' stated that they would need *"pleas on both contracts"*.

    b. The summary of a telephone call on 31st May 2019 between DT and the Case Controller records that BAJ wanted to plead followed by *"DT says he doesn't want BAJ to be charged with other matters"*. In fact, the underlying note of that conversation says *"won't charge with other matters"*.

    c. The summary of emails between the Case Controller and DT dated 13th June 2019 did not show that the lengthy correspondence was with the express purpose of updating the SFO and the DoJ of BAJ's intention to plead guilty and the possibility and practicalities of his cooperating with the SFO.

    d. The summary of a telephone call on 12th September 2019 between the case team and DT did not name the members of the case team who were present and was extremely brief despite the fact that DT told them that he was *"inches from getting Ziad to come in, and that he thinks Paul Bond and Steve Whitely will follow"*. One of the Case Controllers responded *"that we are not counting chickens just yet"* to which DT responded that he was *"good at farming chickens"*.

76. The case team have denied that any of the errors and omissions were deliberate and have emphasised that comprehensive notes were taken of every discussion they had with DT and that all of the notes and emails were provided when requested. As stated above, neither this Review nor the Court of Appeal found evidence of deliberate concealment.

77. Though not deliberate, these omissions and errors are all the more significant given their relevance to the express question raised in the section 8 application, namely whether anyone at the SFO or the DoJ knew of DT's intention to speak to BAJ, ZA, PB or SW and whether they approved, encouraged or acquiesced in such an approach.

78. On 14th January 2020, the week before the trial was due to start, the defence served a skeleton argument indicating their intention to apply to stay the trial as an abuse of process. It was submitted – among other submissions – that *"the SFO acted together with DT in a way that has flouted all legal and regulatory safeguards and represents a substantial breach of a defendant's Article 6 right to a fair trial"*.

79. On 20th January 2020 the SFO responded to the abuse of process application, submitting that there was no substance to the proposition that BAJ's guilty pleas were anything other than a true acknowledgement of his guilt, which was supported by the documents disclosed and the admissions he had made.

80. 'B' has now accepted that, although they should have, the case team did not revisit the question of whether any of the items described in Tranches 5 and 6 now fell to be disclosed in light of the issues raised by the defence abuse of process application. The reason proffered is that they were extremely busy in the run up to the trial and did not take the time to stand back and ask themselves whether the receipt of the application should have changed their position on disclosure.

81. Oral argument on the abuse of process application was heard on 21st January 2020. Although the trial judge was provided with Tranches 5 and 6 and the descriptions therein, he was not provided with the underlying communications and was not in a position to assess either their completeness or their accuracy. Though the trial judge refused the application to stay the case as an abuse of process and granted the SFO's application pursuant to section 74 of the Police and Criminal Evidence Act 1984 (PACE) to put BAJ's guilty pleas before the jury, he observed that:

"[The SFO] should have had nothing to do with someone who had no official status, who was not employed by any US government agency, who was not the Ahsanis' lawyer (not a lawyer, at all), but a freelance agent who was patently acting only in the interests of the Ahsanis (whose interests could obviously potentially conflict with those of BAJ and ZA); and they should not have countenanced, let alone encouraged (if only tacitly) his contact with either BAJ or ZA, who were throughout under investigation by the SFO, represented by UK lawyers, and formal proceedings for the offences set out in this indictment had begun with requisitions issued on the 15th November 2017 which were followed by their first court appearance on the 7th December 2017.

"The SFO knew of the contact and of the fruits of Tinsley's efforts. The SFO should have been engaging only with the legal representatives of BAJ and Akle and should have had nothing to do with DT."

Disclosure in the Court of Appeal

82. The Court of Appeal gave directions requiring the SFO to:

a. Disclose the underlying material which was the source of the Tinsley entries in the Tranche 5, 5A and 6 schedules;

b. Make appropriate enquiries in relation to any contact between Tinsley and the SFO in respect of which there was an absence of documentary material; and

c. Provide a chronological schedule of contact with Tinsley.

83. Following those directions the SFO:

a. Obtained the itemised phone bills of KD's SFO mobile to extract all contact with DT's mobile phone;

b. Reviewed the visitor logs for Canada House (the SFO headquarters) from May 2019 and December 2019 to identify occasions on which DT visited the SFO to meet KD or others;

c. Obtained the IT service desk tickets raised by KD.

84. Only when these investigations had been carried out, and the full chronological schedule of contacts with DT prepared, did the full extent of a) the contact with DT and b) the missing records of that contact become apparent. Proper record keeping by KD and Lisa Osofsky (LO) or her Private Office would have allowed for a more structured and detailed investigation in response to the defence disclosure requests, and should have revealed this before the trial.

85. Furthermore, the defence had asked explicit questions about the loss of KD's phone. They had requested, and were denied, a witness statement from KD setting out the reason for the rebuild of his mobile, details of messages and meetings between him and DT, and his understanding of whether DT was communicating with defendants without the knowledge of their lawyers. The defence also requested an independent forensic analysis of KD's handset. All requests were refused and the schedule said no more than:

"…listing meeting dates for contact with DT and explaining unsuccessful efforts to recover his texts with DT prior to 29/07/2019. Further email in respect of same 21/10/2019. Phone rebuilt and data unobtainable from service provider."

86. The IT service desk tickets show that KD had a habit of incorrectly entering his password several times. The phone would 'wipe' after five incorrect entries. Users were asked to contact the IT service for assistance before the phones were wiped. KD did not follow this advice and as a result KD's phone had had to be rebuilt on two occasions – 8th October 2018 and 16th July 2019. In addition, a further six tickets were raised for access issues

with KD's laptop or iPad caused by him incorrectly entering passwords. KD's laptop had to be unlocked on four occasions in 2018 and his iPad had to be rebuilt in April 2019.

87. The SFO did not obtain or provide any of this further information at the time of the trial. Those involved say they were following counsel's advice. The CACD agreed with the defence submission that the circumstances in which KD's text message exchanges with DT are said to have been lost was obviously highly relevant to the contacts between DT and the SFO. As the CACD found, if proper disclosure had been made, the defence would have had a basis for requesting that KD be made available for cross-examination so that ZA's case could be presented in its best light.

88. Having been provided with the underlying documents which had been denied to the defence, the CACD found that:

    a. They were plainly highly relevant to the abuse of process argument and to the application to exclude BAJ's guilty plea;

    b. No justification was put forward by the SFO to justify its refusal to provide the underlying documents to the defence;

    c. The underlying documents should have been provided to the defence;

    d. The refusal to provide the underlying documents was a serious failure by the SFO to comply with its duty;

    e. The documents are capable of being viewed as showing an abrupt change from the previous recognition of the need for caution to a recognition that DT would be actively trying to persuade BAJ and ZA to plead guilty, and an acceptance of the advantage that guilty pleas by BAJ would give to the SFO's prosecution of ZA;

    f. The disclosed notes contain nothing to suggest any attempt to discourage DT from interfering in the cases of accused persons for whom he did not act: on the

contrary, Tinsley was certainly enabled, and arguably encouraged, to convey to BAJ – behind the backs of his legal representatives – an indication that if he pleaded guilty to the charges on the indictment the SFO might *"take a view"* about other potential charges.

89. The key lessons emerging from the disclosure process as it is managed in the SFO in general, and as it was applied in this case, can be summarised as follows.

    a. All material obtained during the course of an investigation should be contemporaneously recorded and promptly considered throughout the life of a case so that an informed decision can be made whether to charge a suspect and if so what with. (The SFO has the advantage that, since it combines the functions of investigation and prosecution in one organisation, it has, by definition, all such material within its possession.)

    b. The decision to charge will be made on the basis of all the available material, that which supports the evidence of guilt and that which may point away from it. At that stage, therefore, the latter material should already be being scheduled for disclosure if not part of the evidence served for trial.

    c. After charge the process of gathering or receiving material will continue. The scheduling process begun during the investigation phase must continue so that the process of preparing for the case to go to trial can be properly undertaken and any new material added to it.

    d. It should never be the case that the investigative arm of a prosecution body like the SFO has within its possession material which is potentially relevant and/or disclosable of which the case team is unaware and to which the case team does not have access. The CPIA places upon a prosecution body, including the SFO, a

proactive disclosure duty. The material within the SFO's possession should not first fall to be considered upon receipt of a request from the defence.

Chapter 9 – The SFO's culture and practices

The issues of culture, policies and practice

1. The circumstances in the Unaoil case are unique and the likelihood of similar issues (the dismissal of the Case Controller; a fractured relationship with international 'partners'; an interim, and then a new, Director with limited direct experience of the English and Welsh system; no General Counsel; a third party non-legal representative or 'fixer'; the 'toxic' relationship between the case team and senior management) coming together again in one case are remote. However, the case highlights a significant number of fundamental failures.

Quality assurance

2. No one working on the Unaoil case was in command of all of the moving parts in what was a large and complex case. No one person was able to understand the extent of the different aspects of the case and the risks that these posed. 'Ownership' and accountability were not clear and there was no effective challenge to, or understanding of, the issues.

3. This was exacerbated by the lack of a General Counsel in post but speaks to the point that, at the time of Unaoil case, there was no clear role for 'assurance' – no one person was asking the right questions and there was seemingly no challenge. This was a failure of casework quality assurance.

4. The advices provided by trial counsel in March and April 2019 set out the risk to the case from disclosure – this was of course due in part to the pressure of resources – and pointed to the need for stringent and effective 'assurance'.

5. The case team were working towards being ready for trial, whereas senior management's priority was fixing the damaged relationship with the US DoJ and developing new cases.

At no point, even during the response to the section 8 application, was there anyone with a full understanding of the issues. This lack of effective assurance or understanding led in the end to the CACD decision.

Resources

6. The case team was insufficiently staffed; many of those working on Unaoil had other cases to deal with. Pressure within the team resulted in the prioritisation of some areas to the detriment of others and meant that the case team came to the disclosure process late, resulting – in part – in the preparation of rushed and inadequate summaries. The effects of the early lack of resources became more apparent when dealing with the section 8 application before trial and the Court of Appeal hearing, when resources were more clearly committed and the case was more effectively managed.

7. Our review of the case gave us a clear picture of the level and degree of the resources allocated and of the pressures that resulted. It is noteworthy that many emails were sent and actions taken at hours late into the night, and that key players were working on the case while on annual leave or, in one case, while unwell.

8. All of this highlights the fact that the pressure the team was under required a degree of prioritisation. The extent of the work needed to keep the case on track also meant that the case team were having to work through major issues and deal with legal representations with limited resources.

9. Further pressure was added to the management and handling of the case on receipt of the section 8 application. Thus, the resources then needed to deal with the fallout of the SFO's engagement with DT exacerbated an already difficult situation.

A lack of guidance

10. The Operational Handbook and associated internal guidance did not, until May 2021, have any guidance which could have assisted SFO personnel as to how they should, or should not, deal with non-legal representatives. This meant that the case team could not counter DT's approach or highlight their concerns to senior managers by reference to any guidance or protocol.

11. The lack of such guidance exposed the SFO to the risk of exploitation. It is therefore somewhat surprising that there was no policy in place prior to DT engaging with the SFO. This gap has been closed and the guidance since produced by General Counsel deals clearly with the topic.

Compliance

12. Relevant policies were, however, in place in respect of most aspects of the case, including record keeping, disclosure and the responsibilities of individual employees. Compliance with them, in particular by senior managers, was far from complete or effective.

13. The extent of the policies set out in the SFO Operational Handbook, and the professional obligations which should be clearly understood by all those within the SFO, should not have given rise to what happened in the Unaoil case. There is a question whether, even with guidance, some key players saw themselves as being 'above the guidance'.

14. In this case we have seen:

    a. A DSFO using her personal mobile phone and failing to take contemporaneous notes of meetings and conversations;

    b. A Chief Investigator who failed to maintain complete and proper records of his contact with a third party non-legal representative and promptly share them with the case team;

c. A Head of Division who did not undertake formal case assurance processes;

d. A case team which did not maintain an up-to-date disclosure strategy document.

15. Again, this points to an ineffective assurance process and the fact that there was no one with the authority to challenge what was happening. It was not a lack of policy or guidance which caused the issues that came to the fore in this case, it was the fact that some individuals were willing and able to ignore it.

A lack of trust

16. There developed a damaging culture of distrust between the case team and senior managers. This developed, in part, as a result of the suspension and dismissal of the Case Controller, Tom Martin (TM), and the perception by some within the organisation of a willingness to allow the US DoJ to 'have' the Ahsanis.

17. Some in the case team felt that the DSFO had made the decision to remove TM to improve the relationship with the US; in their view this was not right, and action taken by senior managers was based not on evidence but on the need to be rid of a problem. This created a culture of distrust between the case team and the senior management team (SMT).

18. The contact and relationship between the DSFO, KD and DT clearly exacerbated this level of distrust in the mindset of the case team. There was a clear view from the DSFO, KD and Mark Thompson (MT) that the case team needed to see and understand the 'big picture'. The first engagement of the DSFO with the case team (9th October 2018) during which it is alleged (though denied by her) that the DSFO said to the Case Controller 'A', *"you may be a good investigator but you have to see the big picture"* was not well received by the case team.

19. The mistrust between the case team and SFO senior managers grew, and from what we have seen and been told was mutual:

"There was a strong growing feeling that the case team were not trusted or were in fact in the wrong for being diligent – being 'difficult'. There were a number of occasions (e.g. the decision for the US interviews of Saman in November 2018; the February 2019 request for Counsel's advice of evidential sufficiency;) where I and my colleagues were left questioning whether decision making by the senior management was in fact principled and justified and we were left with the distinct feeling that we were being perceived as difficult and problematic for checking rationale."

20. This 'disconnect' bred a degree of confusion about what was the best approach to the case strategy (which the case team thought should be focused on trying to secure the return of the Ahsanis to the UK for trial) and what senior managers were discussing and working towards in ensuring that the relationship with the US was mended and that the Ahsanis faced justice in the US but cooperated with the SFO.

21. The case team were unsupported when they raised their concerns. MT told the Review that he thought the case team showed *"a refusal to accept the reality of the position we then faced with respect to Mr Ahsani … The existing case team members were wedded to the idea that Mr Ahsani should be prosecuted by the SFO and would not have been well placed to make an objective initial assessment of his potential usefulness … The second and perhaps more fundamental issue was the inability to take a wider perspective on the interests of SFO at the time. From a purely pragmatic point of view, there was no prospect of Mr Ahsani returning to the UK to stand trial."*

22. This links to the lack of independence by senior managers, but also to the fact that there was a high level of distrust between the senior team and the case team.

"My concerns, which I believe were shared by the rest of the case team, remained. I felt, however, I had raised them at the most senior level in the Office but a decision had been made and the full rationale had not been explained."

23. At no point until the section 8 application was received does it appear that the case team were aware of what that 'bigger picture' might have involved.

> *"There was concern at the time that senior management (by which I mean LO, MT, KD) were not listening to the case team. It was later evident that they were dismissive of our concerns for the case and deemed the interests of a case, which had already been charged and was in court, to be secondary to the wider assistance that DT/SA could give. It was to become a regular topic of conversation in the team that we could not believe that senior management had been so ready to accept the promises offered by DT, who was so obviously given to both flattery and self-importance and that we found it almost inconceivable that they had been so willing to listen to and trust him. To be blunt, we thought that anyone with an ounce of investigative nous would have seen right through him. What I had not appreciated at the time was the very poor view that senior management had of the case team, largely arising as a result of the suspension of TM … LO, MT and KD were more willing to listen to the DoJ, SA and KD than they were to their own case team."*

24. The fact that the Head of Division, Matthew Wagstaff (MW) had a limited knowledge of the nature and extent of the contact between KD and DT highlights the extent of that distrust.

> *"To an extent, I did feel that my ability to support the case team was being undermined by decisions taken elsewhere. There was a sense that the case team were not entirely trusted, that they were too narrowly focused on the specific case (PVT01) and not on the 'bigger picture' and I suspect that I was viewed similarly. At no point did anyone within the SMT ever seek my views on Tinsley and I suspect that is because they did not want to hear my views. I found it deeply troubling that a mind-set had arisen whereby the views of one of the office's most senior and experienced prosecutors was deliberately not sought."*

25. The way that the Unaoil case developed highlights a structural issue potentially extending beyond the particular circumstances and timing of the Unaoil case, which was exacerbated by the fact that there was no level of assurance (made worse by the fact that key players were either 'in transition' or effectively missing).

The DSFO's endorsement of DT

26. DT was given, or was perceived by the case team to have been given, the 'seal of approval' of the DSFO and the whole senior management team.

27. The case team, early on, formed a negative opinion of DT personally and of the part he was playing in the Unaoil case. Nonetheless a Case Controller described feeling that they could not shut off conversations with him.

> *"His relationship with our senior managers (which we knew little about but built over time) was one of the causes of the pressure and expectation to engage with him and the inability to shut him down. The fact that was always looming over us was that it appeared that DT had an ear in KD, and that possibly meant to the Director. From what we could see there was a feeling that DT was speaking to KD a lot regarding the PVT01 (Unaoil) case, particularly before we had any direct contact, but also afterward. I can only describe it as an interference that we could not grip or control."*

28. The fact that DT had also managed to meet the Attorney General (AG) played into a perception that he had a large degree of influence.

29. The case team were clear at the outset that they should not be dealing with DT, as he was not a legal representative. The team set out their position to 'D' (covering for KD) in January 2019 that they thought any contact with DT by the case team was inappropriate, but ultimately the case team felt that they had no alternative but to deal with him. Due to the influence DT had over KD the case team felt that their dealings with him would be reported back and that there would be a degree of pressure applied to them from above.

30. There were no safeguards, and no one in the case team had the authority or seniority to 'call this out'. The fact that the senior team had all been involved in dealing with DT meant there was no one who could be seen as an ally. This changed when Sara Lawson QC, the new General Counsel, began to understand what was happening, but by this time it was effectively too late.

31. There was no independent level of scrutiny or control (all senior managers save MW had had dealings with DT). This made it difficult or impossible for anyone in a position of authority to question the approach being adopted or to carry out effective 'assurance'.

The future

32. There are a number of changes required to ensure that this degree of failure does not happen again.

    a. There must be effective case assurance processes.

    b. Clear routes by which the case team may raise concerns about cases must be established. Case teams and Heads of Division should be able to raise concerns without running the risk of being side-lined or excluded.

    c. Case resources need to be clearly determined and regular assessment of, or challenge to, case strategies and action needs to be embedded.

    d. Adherence to the Operational Handbook by all SFO staff needs to be clearly articulated. Any contact or interaction which could affect disclosure obligations must be recorded and shared with the case team. The obligation falls to all, not just those within case teams.

Chapter 10 – Conclusions

1. Our findings highlight a number of issues that must be addressed if the SFO is to move on and learn from the Unaoil case.

2. We have concluded that some of the events were beyond the control of the SFO or its superintending ministers. However, we also find that some events were caused by failings on the part of particular individuals and/or by 'cultural' issues within the SFO. There is also a category of decisions and events that, in hindsight, can be seen to have caused problems which should be clearly managed and not repeated in the future.

3. Before setting out our conclusions there are a number of recurrent themes within the Unaoil case. Some of these were in our view fundamental to the failures in the case and the decision of the CACD. Our findings are clearly outlined in detail in the preceding chapters, but it is worth repeating here the themes in short form.

    a. Record keeping within the organisation, by individuals and systemically within the senior team, was incompatible with the requirements of the CPIA 1996. There were too many occasions on which those involved in the case directly or indirectly should have promptly passed notes of conversations or other communications to the case team to enable it to consider its disclosure obligations.

    b. There was poor compliance with casework 'assurance'. Fundamental issues in case strategy and progress were not gripped or identified. This weakness resulted in general disclosure failings (backlogs not being addressed) and created unnecessary pressures on 'case progression'.

    c. Inadequate resourcing of the case meant that priorities were not always dealt with as they should have been. This became a major issue in connexion with the

management of disclosure and was partly responsible for the 'drip feed' of disclosure to the defence.

d. There was a lack of understanding between the case team and senior management about the priorities for the management and handling of the case. Senior management was intent on restoring the relationship with the US DoJ and working through cooperation agreements, whereas the case team, who were closer to the detail, were understandably progressing the case within the evidential bounds of the material to which they had access. This resulted in a 'disconnect' and a growing mutual distrust between them.

e. Dealing with a third party who, as the case team were given to understand, had the 'seal of approval' from the DSFO amplified the level of distrust between the case team and senior management. The fact that there was very limited sharing of notes regarding contact with David Tinsley (DT) hampered the ability of the case team to deal with matters relating to disclosure and created additional burdens for an already severely stretched case team.

4. We thought it helpful to categorise the events which led to the eventual decision of the CACD in the case, in an attempt to assist the SFO and its superintending ministers to consider how the mistakes which led to that decision may be avoided in the future.

a. Unavoidable events;

b. Events which, with the benefit of hindsight, should not be repeated, if possible;

c. Events which involved fault on the part of the SFO or particular individuals within it.

5. In summary these were:

   a. The significant deterioration in the relationship between the SFO and law enforcement authorities in the US. The SFO had clear grounds for wishing to secure the arrest and extradition to England of the Ahsani brothers. No doubt the US authorities did too. The SFO cannot be blamed for the decision of the US to institute its own extradition requests. *Unavoidable*.

   b. The period of four months or so from April to late August 2018 when the SFO was without a DSFO in office, with the Chief Operating Officer (COO) as acting DSFO. This period created something of a 'vacuum' at the top of the organisation (during which – see d. below – the Case Controller was removed from the case and new Case Controllers were appointed.) *An event which, with the benefit of hindsight, should not be repeated if possible.*

   c. The absence of General Counsel for a significant period between incumbents*. An event which, with the benefit of hindsight, should not be repeated if possible.*

   d. The removal in July 2018, from the Unaoil case, of the Case Controller. *Unavoidable.*

   e. The appointment of a new DSFO whose previous employment involved working for the same company as former senior officials of US law enforcement agencies. Clearly the best candidate had to be appointed. *Unavoidable.*

   f. More attention should have been paid to the particular needs of the new DSFO for support and guidance, with a 'tailored' induction process being put in place. *An event which, with the benefit of hindsight, should not be repeated if possible.*

   g. The introduction to the new DSFO within days of taking up her appointment, by one of her former colleagues, of DT. Clearly the Ahsanis and/or DT thought that

the new appointee might provide them with opportunities to reduce the 'damage' of the pending plea agreement in the US court and increase the opportunities for plea deals or similar to be struck in future. The new DSFO, aware of the damage recently done to DoJ or FBI/SFO relations, could hardly refuse at least an initial approach from a person recommended to her by a former respected colleague. *Unavoidable.*

h. The fact that shortly after she first met and corresponded with DT and set in motion the chain of events which followed, DT met, and the DSFO knew that he had met, her then superintending minister the Attorney General (AG), which no doubt, had she had any doubts about the propriety of contact with such a person, would have allayed those doubts. *Unavoidable.*

i. The decision of the then AG to meet someone of the type described above cannot be criticised. The AG cannot be expected to have known that DT was using his former contacts purely to advance the interests of his clients, the Ahsanis, let alone that in order to do so he planned to persuade co-defendants to plead guilty. *Unavoidable.*

j. The need to 'mend fences' with the US authorities. There was clearly such a need. *Unavoidable*.

k. The opportunity presented by the possibility that the Unaoil case could be 'wrapped up' with pleas from Basil Al Jarah (BAJ), Ziad Akle (ZA) and Paul Bond (PB) either in the US or in the UK without the need for costly trials and presented as a triumph for the new SFO regime, and the start of a new era of transatlantic cooperation with the assistance of DT. Such improvements in UK/US cooperation did not need, and should not have involved, the assistance of a third party 'fixer'. *Events which, with the benefit of hindsight, should not be repeated*.

l. The DSFO's decision not to consult beyond MT and Kevin Davis (KD) and her Private Office as to the wisdom of engaging with DT. While there may have been understandable reluctance on the part of the DSFO to consult General Counsel for various reasons, including his imminent departure, legal advice if taken then would undoubtedly have led to the stance taken a year later by the new General Counsel and counsel instructed in the case as well as the trial judge and the CACD. *Fault on the part of the SFO and the DSFO.*

m. KD should have realised that the idea of getting co-defendants to plead guilty, subsequently described by DT to others as *"farming chickens"*, had potential ramifications for the Unaoil case and for the SFO. KD should have both warned the DSFO, who had given him the responsibility of being the SFO contact with DT, and/or taken legal advice himself on the propriety of further contact with DT when he learned that he was in direct contact with other defendants in the Unaoil case. *Fault on the part of KD.*

n. The decision to confine contact with DT to KD and the exclusion of the relevant Head of Division from discussions concerning the handling of DT. It should have been understood that this would only exacerbate the feeling within the case team and the Head of Division that they were not trusted. *Fault on the part of the SFO or particular individuals within the SFO, in this instance the Senior Management Team.*

o. The fact that the case team, when it learned of the SFO's contact with DT, was clearly uncomfortable with the decision to maintain contact with him but, as a result of the DSFO's personal involvement, understood that the requirement to do so had come from 'the top' and only became aware of the nature and extent of that contact in October 2019 following the receipt of the section 8 CPIA application on behalf of Ziad Akle. All the case team lawyers have, in different ways, indicated that they

had reservations or objections to the contact in the first place. *Fault on the part of the SFO.*

p. At least from the moment that DT's efforts on behalf of his employers were clearly going to involve approaches to Ziad Akle and Basil Al Jarah and maybe others, the SFO case team should have disclosed its knowledge of this development and broken off any contact with DT, let alone indicated, as they did, that they were prepared to go along with the idea. *Fault on the part of the SFO or particular individuals within the case team.*

q. The fact that independent counsel instructed in the case only became aware of the role played by DT after the defendant Basil Al Jarah had entered his pleas of guilty, and even then only as the result of the section 8 CPIA disclosure application on behalf of ZA. It should have been clear to KD from the outset, to the case team when it began to have direct contact with DT, and certainly well in advance of July 2019 when BAJ pleaded guilty, that counsel who were in due course going to have to present the case in court should be aware of it. *Fault on the part of the SFO or particular individuals within the SFO, including KD.*

6. The events which the Review consider to have resulted from *'Fault on the part of the SFO or particular individuals within the SFO'* or were *'Events which, with the benefit of hindsight, should not be repeated if possible'* have given rise to the recommendations in Chapter 11.

7. The Review undertook a representations process. Where we were minded to include any implicit or significant criticism of individuals, groups of individuals whose members were identifiable, or organisations we sent a Warning Letter to afford them a reasonable opportunity to make written representations in response. We considered any such representations before concluding the Independent Review and finalising our Report.

Chapter 11 – Recommendations

1. Accepting of course that some events cannot be predicted:

    a. There should never be ‘interregnum periods’ between the departure of one DSFO and the arrival of the next;

    b. An incoming DSFO – whatever their previous career experience – should have any identifiable gaps in their knowledge or experience filled by their superintending ministers and the Attorney General’s Office (AGO);

    c. Likewise, there should never be such periods between the departure of General Counsel and the arrival of a successor. On the contrary, there should always be a period when the incoming General Counsel is ‘inducted’ by the outgoing one in order to ensure the continuity of the role and to maintain the confidence of the staff and the public that there is such a person ‘in charge’ at all times.

2. The SFO and AGO should urgently develop a revised process to enable the superintendence of sensitive and high-risk cases. This should include:

    a. A case list with sufficient detail to enable such superintendence – the list always to include the cases which may require or have already received the Attorney General’s (AG’s) consent – even if on a given occasion there is ‘nothing to report’;

    b. Monthly (at least) conversations at official level before formal superintendence meetings with Law Officers to ensure that there can be effective scrutiny of cases on the list.

3. Because there will always be tensions between the desire of investigators to bring persons to justice whom they believe to have committed offences, and the need of prosecutors to

conduct themselves in such a way as to ensure that those whom they charge have trials which are, and can be proved to be, fair:

a. The relationship between the two functions must be characterised by frankness; and

b. When, as there sometimes will be, there are tensions or disputes between them as to the proper way of dealing with a particular issue, they should take the advice of General Counsel – or, if necessary, because of the absence of General Counsel for any reason, from independent counsel – on the proper course of action.

c. Her Majesty's Crown Prosecution Service Inspectorate, in the course of its regular inspections of the SFO, should pay particular attention to the relationship between the investigative and prosecutorial arms of the service to ensure that the flow of information between them is being appropriately managed.

4. The SFO must immediately communicate – to investigators within guidance and to all staff – that in the event of any information concerning an ongoing investigation or prosecution coming to them from a defendant or suspect, or any representative of either, it must be fully recorded and shared with the case team.

5. Any record of direct contact with the DSFO concerning any current investigation or prosecution should immediately be passed to the case team or Head of Division with responsibility for the case, or a senior management team member as determined by DSFO or General Counsel. The DSFO's Private Office should ensure that any such contact is immediately 'rerouted' and that no further direct access to the DSFO is allowed.

6. The SFO must emphasise and communicate to all members of staff the requirement to comply with all the casework assurance processes set out in the Handbook, with a specific focus on CPIA disclosure obligations. All current case assurance systems should be complied with within three months of the publication of this Review. A regular audit of

compliance against these processes should be carried out by Heads of Division in association with General Counsel and the COO, and all SFO cases should be reviewed at least annually. Formal records of such assurance should be maintained by Case Controllers and Heads of Division and be provided to General Counsel as required and at least once a year for each case.

7. The Heads of Division, with oversight from General Counsel and the COO, should ensure that all cases have regular and effective disclosure strategy and management documents (in line with the requirements of the CPIA and in line with the SFO Operational Handbook). The Case Controller for each case should produce a quarterly update on 'disclosure risks' in line with the case strategy. These should be reviewed and approved by Heads of Division as part of the assurance process, with formal records maintained.

8. The SFO should work with the AGO to consider the requirements set out in the AG disclosure guidelines (reporting within six months of this Report) and, in particular, whether there should be a change in the current approach to the management of disclosure following the receipt of a section 8 CPIA application. The disclosure process, which is necessarily one which often dwarfs the actual gathering of directly relevant evidence, must be kept under constant review. When, as in this case, material which clearly should have been disclosed is only considered for disclosure following the receipt of a section 8 CPIA application, the result should be a much more generous interpretation of relevance than there had been before, instead of the gradual and apparently reluctant 'drip-feed' of disclosure which continued until the CACD hearing and resulted in the appeals of Akle and Bond being allowed. The fact that particular persons may be embarrassed by the disclosure of actions or decisions they may now regret should never stand in the way of proper performance of the CPIA disclosure regime.

9. The SFO must ensure it has an effective system to support and monitor resourcing across all cases. Individual case resources must be clearly determined and subject to regular

review and assessment by Heads of Division and Case Controllers with oversight by General Counsel and the COO. Written detailed case resource plans must be linked to the initial case strategy and updated to accompany significant case developments with a clear understanding from Heads of Division how case priorities and developments may require more or less resource to be allocated during the life cycle of the case. The Chief Capability Officer (CCO) should work with General Counsel, COO and finance to determine the best approach to develop such a system and within 12 months have clear case resource plans on all current SFO casework.

10. With immediate effect the SFO must develop a clear route by which case staff (the case team) can raise concerns about cases. This route should be clearly set out in the Operational Handbook and supported by an independent process.

11. The need for adherence to the Operational Handbook by all SFO staff needs to be clearly articulated and communicated to all staff. Within six months of the publication of this Review a communication campaign should be designed to deliver this message, the reasons for its importance and the consequences of non-compliance, in association with the Departmental Trade Unions and other staff networks, as well as with senior management and the Culture Change Programme. From April 2023 clear responsibility should be set out in annual objectives (for all case staff including Heads of Division, Case Controllers and case team members) to ensure that annual performance assessments can take account of their compliance with them and set out any apparent development needs.