



Attorney General's Office

November 2022 update on delivery of the recommendations in Sir David Calvert-Smith's Independent Review into the Serious Fraud Office's handling of the Unaoil Case – R v Akle & Anor

Overview of progress

Sir David Calvert-Smith's independent review of the Serious Fraud Office's (SFO) handling of the Unaoil case was published in July 2022. It made eleven recommendations, which were accepted. While many of the changes recommended by Sir David can be — and have been — made quickly, it will necessarily take longer to fully embed his recommendations and assess the effectiveness of changes made.

Within this context, significant progress has been made in delivering Sir David's recommendations. For nine of the eleven recommendations, the SFO has already implemented specific measures or steps to ensure their effective delivery. For the two remaining recommendations, work has commenced to make changes in response to Sir David's proposals.

Recommendation 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.**

All efforts will be made to ensure there is no "interregnum" between future appointments of the Director of the SFO and General Counsel. An induction programme for future Directors will be designed by the SFO, with oversight from the Law Officers and the AGO. This will be tailored to each new Director. Furthermore, new Directors will continue to have access to the Cabinet Office's induction for Directors General. The current Director recently confirmed that

she will leave post at the end of her five-year contractual period in August 2023. The AGO and SFO are taking steps to ensure the requirements of the recommendation are fully met with regards to the recruitment of her successor. For example, the AGO has discussed with the current Director the possibility of a short extension to her term if that is necessary to avoid an “interregnum” and/or assist with the induction of the new Director.

Recommendation 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.**

The AGO has begun to review the Framework Agreement in place between the Law Officers and the Director of the SFO, which documents the superintendence arrangements. The AGO aim to complete this review, which will take in to account the proposals in the recommendation, by the end of January 2023. The AGO would then seek to publish the revised Framework Agreement in Spring 2023.

Recommendation 3

On the topic of investigators and prosecutors working together—known as the Roskill Model, Sir David Calvert-Smith recommended that:

- 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.**

Senior leaders in the SFO already do, and will continue to, facilitate the cultivation of effective relationships between the investigation and prosecutorial sides of a case team. As part of enhanced case assurance process introduced in December 2021, there are opportunities for any concerns between the investigative and prosecutorial arms of a case team to be dealt

with as necessary, as identified in the recommendation. HMCPSI has been made aware of this recommendation and, as appropriate, will consider the relationship between the investigative and prosecutorial arms of the SFO in their regular inspections of the organisation. An inspection that commenced in October 2022 will include an examination of this relationship.

The measures to deliver this recommendation have been put in place. It will, however, be necessary for the SFO to assess the impact of the measures over a longer time period.

Recommendation 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.

The SFO introduced a written policy in March 2020 concerning contact with non-legal representatives, which formalised a verbal policy introduced in September 2019. In August 2022, this policy was expanded to cover all third parties. This policy addresses the specific proposals in the recommendation.

The measures to deliver this recommendation have been put in place. It will, however, be necessary for the SFO to ensure that this process has been effectively embedded over a longer time period.

Recommendation 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.

The SFO introduced a policy to 'reroute' contact with the Director in March 2020, which addresses the specific issues raised in the recommendation.

The measures to deliver this recommendation have been put in place. It will, however, be necessary for the SFO to assess the effectiveness of the measures over a longer time period.

Recommendation 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.

The SFO implemented an internal communication campaign in October 2022 to promote adherence to operational policies, including casework assurance processes and CPIA obligations, as set out in the recommendation. Adherence to case assurance processes is reviewed through case review meetings, which take place regularly and have formal written records. As of the date of publication of the review in July 2022, case review meetings address all of the specific issues raised in the recommendation.

The measures to deliver this recommendation have been put in place. It will, however, be necessary for the SFO to assess the impact of the measures over a longer time period.

Recommendation 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.

Heads of Division, with oversight from General Counsel and the COO, continue to ensure that all SFO cases have regular and effective investigation management documents as well as disclosure management documents. Investigation management documents are a requirement of the Attorney General’s Guidelines on Disclosure, and a disclosure management document is a requirement of the Code of Practice issued under section 23 of the CPIA. Since the publication of the review in July 2022, Heads of Division oversee, as part of their case assurance responsibilities, quarterly discussions of disclosure-related risks and maintain records of these discussions, as set out in the recommendation.

The measures to deliver this recommendation have been put in place. It will, however, be necessary for the SFO to assess the effectiveness of the measures over a longer time period.

Recommendation 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.

The SFO works closely with AGO officials on disclosure policy. The SFO fed into the 2021 review of the Guidelines, and in November 2022 the SFO provided the SFO Ministerial

Strategic Board, which is chaired by the Attorney General, with a submission on potential improvements to the disclosure regime. This included proposals relating to the Guidelines and to Section 8 CPIA applications. The SFO will continue to work with the AGO and other partners to ensure its operational experience shapes disclosure policy—as set out in the recommendation—and will continue to keep its internal disclosure processes under review.

The necessary steps to deliver this recommendation have commenced. The AGO will continue to ensure the Guidelines are effective, taking into consideration the views of the SFO, and the SFO will keep its disclosure processes under review.

Recommendation 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.

The SFO has established systems to improve oversight of the overall resourcing picture. Since publication of the review in July 2022, in order to be formally accepted by the Director as an SFO case, all potential cases must be accompanied by resourcing requirements. In addition, after cases are formally accepted, detailed resourcing plans will be discussed at every case review meeting in accordance with the proposals in the recommendation.

The measures to deliver this recommendation have been put in place. It will, however, be necessary for the SFO to assess the impact of the measures over a longer time period.

Recommendation 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.

The SFO introduced a new policy for staff to raise concerns in May 2022. This policy was updated to include details of an independent process, in accordance with the recommendation, and published on the SFO intranet in October 2022.

The necessary steps to deliver this recommendation have been put in place. It will, however, be necessary for the SFO to ensure this process has been effectively embedded over a longer time period.

Recommendation 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.

The SFO implemented an internal communication campaign in October 2022 to promote adherence to the Operational Handbook, in accordance with the proposals in the recommendation. Adherence is reviewed through line management processes, including annual objectives and reviews.

The measures to deliver this recommendation have been put in place. It will, however, be necessary for the SFO to assess the impact of the measures over a longer time period.