

Attorney General's observations in response

Introduction

*The PAC Report and the public interest in the record of Government action*

The PAC's recent report into the Serious Fraud Office redundancy and severance arrangements has comprehensively considered the circumstances in which payments were made to certain senior members of former SFO staff, and the detail of those payments. The PAC report also referred to a report commissioned by the Cabinet Secretary and carried out by Sir Alex Allan into other allegations affecting the SFO, including that the SFO arranged its dealings with consultants to avoid Cabinet Office requirements for approvals.

The following narrative sets out for the record the actions taken by the Attorney General and his office in relation to these, and other relevant, matters based on records held by the Attorney General's office. The SFO is independent and autonomous in the exercise of its statutory functions, subject to the statutory superintendence of prosecution functions by the Attorney General, and its Director is constituted in law as an independent public office holder. The Director is also constituted as a departmental Accounting Officer for the SFO for the purposes of answerability for the expenditure of public money and the supervisory functions of the National Audit Office. Between April 2008 and April 2012 the Director was Richard Alderman. The Director is now David Green CB QC.

The Attorney General is the Minister who speaks on behalf of the Government in Parliament on matters relating to the SFO. The events described in the PAC's report are a matter of profound concern. The Attorney General wishes to take the opportunity of the report's publication to set out for the record the history of his own concerns about and interventions in these events. He also wishes to take the opportunity to place in the public domain so far as it is possible to do so the relevant documentation held in his office, in recognition of the public interest in having a full understanding of what happened.

*Background relating to spending controls on certain contracts*

On 24 May 2010, the Chancellor of the Exchequer wrote to Cabinet colleagues setting out a new set of controls on departmental spending. On 26 May 2010, the Director, Public Spending, HM Treasury wrote to Whitehall Finance Directors with further details of these controls, including the following, with immediate effect:

- "Central government departments...must not sign any new ICT contracts, contract extensions/modifications above a value of £1m without specific agreement by the Treasury".

- “All new consultancy contracts in central government departments...over £20k in value must be signed off by a Departmental Minister and notified to [Cabinet Office and the Treasury]. Exceptions will be published online.”

On 27 May, the Attorney General’s Office (AGO) communicated this guidance to the other Law Officers’ Departments (LODs). At that time, these comprised: the Crown Prosecution Service, HM Crown Prosecution Service Inspectorate, the National Fraud Authority, the Serious Fraud Office and the Treasury Solicitor’s Department.

## Narrative

### *The SFO’s IT contract with Sungard/Capita*

Sungard/Capita were and remain the IT providers to the SFO. On 2 June 2010, an AGO official emailed Josh Ellis, the Chief Information Officer (CIO) at the SFO, to say he understood that the SFO had been negotiating with Sungard on extending their IT support contract for a further three years. He was concerned that any such extension should comply with the guidance of 26 May. This action was followed by several exchanges between AGO, SFO and CPS officials (CPS had been asked to coordinate the LODs’ response to a review of all current or proposed ICT contracts) up to the end of July. The concern was repeatedly expressed that any proposal to extend the SFO’s Sungard contract would need to take account of the ICT moratorium. On 30 July, Josh Ellis emailed the Deputy Director, Finance and Strategy at AGO, with a submission on a separate and distinct ICT project, which he described as “the only ICT project at the SFO which falls within scope of the ICT Moratorium Return”.

On 9 August 2010, Josh Ellis wrote to the AGO, saying that he had, on 6 August, extended the SFO’s Sungard contract for a further three years, and explained the SFO’s reasons for doing so. Also on 9 August, Mr Ellis emailed the CPS official responsible for coordinating the ICT Moratorium Return for the LODs, to say that the contract had been extended. That official advised the Deputy Director, ICT Strategy and Policy, Cabinet Office, copied to AGO, who asked Mr Ellis whether Cabinet Office approval had been obtained for this extension. Mr Ellis responded that it had not been, but an application for retrospective approval was now being prepared.

The Cabinet Office agreed that a retrospective exception request would be processed. (The subsequent outcome was that retrospective approval was given, on conditions including that a peer review would subsequently be undertaken. That review was carried out by the end of December 2010.)

Following further exchanges between AGO and SFO officials about the contract renewal, on 3 September 2010, Richard Alderman wrote to the Attorney General “to explain what we did and why”. He stressed the savings that were expected to follow from renewing the contract a year before it expired, which he said made it unclear whether the ICT moratorium applied in this case. Richard Alderman concluded “I regret if any embarrassment is caused to you”. On 5 September, the Attorney replied, saying he was “very disappointed” that one of his Departments had been the first in Whitehall to breach the guidelines, which he considered to be straightforward, and asked Mr Alderman to explain the action he was taking to ensure this did not

happen again. On 18 October, Richard Alderman sent the Attorney, as he had requested, a more detailed summary of the circumstances of the contract extension, and repeated his apology. Mr Alderman explained why he thought an early renegotiation of the contract represented the best value for money, and said that the SFO had not thought it necessary to inform or seek agreement from Cabinet Office (or by implication AGO) in advance because: "it was not clear...that the Cabinet Office guidance covered cost saving negotiations"; and there was a "need for immediate action" if the SFO was to make savings and maintain business continuity.

*Payments by the SFO to PA Consulting and Corven.*

Between 7 May and 31 October 2010, the SFO awarded contracts to two management consultancy companies, Corven Consulting Ltd and PA Consulting, of total values given in the table below. (It was payments to these two companies that Sir Alex Allan's report subsequently focused on, as set out below.) Most of this expenditure was on consultancy, i.e. "the provision to management of objective advice relating to strategy, structure, management or operations of an organisation". A small proportion of it was subsequently assessed by AGO to be on interim support for 'business as usual activities'. A return which the SFO sent AGO in July 2010 did not disclose any continuing consultancy contracts over £20,000, and SFO did not send AGO any further report of consultancy expenditure until October. However, when AGO became aware of the expenditure relating to PA Consulting and Corven, it concluded that most of it should have been aggregated, taking it over the £20,000 ministerial supervision threshold in the HM Treasury guidance.

In September 2010, Ian Austin MP asked the Attorney General the following Parliamentary Question: "what the monetary value is of contracts the Law Officers' Departments have awarded to each (a) management consultancy and (b) IT company since 7 May 2010". (Mr Austin asked the same PQ to 19 other Ministers.) On 5 October, the SFO sent the AGO their contribution to the draft Answer and Background Note to this PQ. These referred to the Sungard IT contract renegotiation. On consultancy, the draft Answer said that "since 7 May, no management consultancy work has been commissioned", while the Background Note said the SFO had "support from the commercial sector for interim management/support and coaching/mentoring". Also on 5 October, Chris Bailes, then the SFO Chief Capability Officer told the AGO that the SFO's consultancy spend return for July to September was 'nil'.

On 6 October, an AGO official arranged a meeting with Phillippa Williamson, the Chief Executive of the SFO on 12 October, "to discuss issues around consultants and the PQ". In fact, the meeting was subsequently postponed until 19 October, and then it was Chris Bailes that the AGO official met with. The agreed actions from the meeting included the SFO giving the AGO further information to enable consideration of "whether the [consultancy] contracts may need to be aggregated and also whether any of them extend over longer than 3 months and thus require AG approval". The AGO also suggested that the proposed response to the PQ on consultancy needed to be reconsidered.

On 2 November, Chris Bailes sent the AGO the SFO's returns to the Office of Government Commerce (OGC) showing a detailed breakdown of 'contract work' commissioned between May and September, which the SFO 'did not consider to be

consultancy'. Responding, an AGO official queried how the payments to PA shown in these returns related to the 'nil return' sent to AGO on 5 October and the draft Answer to Ian Austin's PQ. In response, Mr Bailes reiterated that these payments to PA Consulting were for 'bespoke interim frontline delivery support', not management consultancy, and that this work was done under an existing, rather than a new, contract. He asked for a further sentence to be added to the draft PQ Answer: "The SFO has also engaged some limited assistance from the commercial sector for bespoke interim management support to assist in the frontline delivery of its core activities". Replying on 5 November, the AGO official said that the SFO's returns to OGC seemed to indicate that the SFO had entered into new consultancy contracts for expenditure in August and September; and that, in answering the PQ, 'management consultancy' must be interpreted as including all forms of consultancy reportable to the OGC.

On 9 November, a meeting was arranged between the Law Officers and senior SFO officials to discuss the response to the PQ. That morning, the SFO sent the AGO an amended extract from the SFO's OGC returns for May to September, reiterating the SFO's view that this expenditure was for separate activities, and should therefore not be aggregated for the purposes of the controls, and that the work paid for was 'contingent/interim labour' rather than management consultancy. An AGO official replied that there were inconsistencies between these returns and ones previously copied to AGO, and that information on expenditure since September was still needed to answer the PQ.

Following the meeting, on 10 November, Philippa Williamson sent a submission to the Attorney General. This set out further briefing on the SFO's interpretation of the OGC guidance on 'consultancy', and "background on the reasons why the SFO has engaged consultants and interim managers". The submission also attached "copies of all SFO invoices for expenditure with consultancy firms" from 24 May to 30 September and a 'consolidated' return to OGC.<sup>1</sup>

On 11 and 12 November there were further email exchanges between SFO and AGO officials, in the course of which AGO were provided with amended and additional information about the work done for SFO and the costs incurred.

Mr Austin's Question was answered on 16 November. The Answer insofar as it relates to the SFO and Corven, PA or Sungard was:

<i>Monetary value of contracts awarded by the SFO to management consultancy companies from 7 May 2010 to 31 October 2010</i>	
<i>Company</i>	<i>Value of contracts (£)</i>
Corven Consulting Ltd	<sup>(1)</sup> 173,792
PA Consulting	<sup>(2)</sup> 851,044
(Other)	

<sup>1</sup> NB the information in the invoices and that in the various SFO returns do not match as the latter cover a mixture of invoice and accruals information and the reporting information also covers overlapping periods.

Total		1,031,319	
(1)	Includes	£96,680	accrued
(2)	Includes £213,660 accrued		

Monetary value of contracts awarded by the SFO to IT companies from 7 May 2010 to 31 October 2010 included: Sungard Vivista, £3,142,000. This covered the period 2010/11 to 2014/15.

#### *Subsequent exchanges relating to spending on contracts*

On 17 November, the Attorney General had a meeting with Richard Alderman. They discussed SFO expenditure on consultancy, how that should be understood, and the difficulties that had arisen in answering the PQ. The Attorney stressed that it was essential for him to be provided with accurate information about expenditure to enable him to fulfil his public and Parliamentary functions in relation to the SFO. Mr Alderman said “we need to explore the meaning of [the Attorney’s] superintendence [of the SFO] and how it can be carried out in the right way”.

On 19 November, the Attorney wrote to Richard Alderman, setting out the topics he wanted to discuss when they met on the 24<sup>th</sup>, including consultancy and the Sungard contract renewal. On consultancy, the Attorney mentioned concerns about the time it had taken to answer the PQ, how the SFO classified and authorised consultancy expenditure, the need for him to be consulted about it, and the level of SFO expenditure on consultancy. On the SunGard contract, he said he was keen that all his Departments abided by Cabinet Office rules, and stressed that he had to account to Parliament and to other ministers when those rules were broken. He went on to say that he wanted to discuss the conditions attached to the retrospective approval.

Richard Alderman replied on 23 November. He summarised the SFO’s achievements since he became Director, in the face of continuing difficulties and challenges, and defended the SFO’s flexible resourcing model. He claimed that the SFO were not aware, until 11 November, that any information was still outstanding to enable the PQ to be answered. He recalled that he had written to AGO colleagues on 16 November, saying that the Answer was inaccurate. Mr Alderman said that other Departments also found the OGC guidance on consultancy unclear. He defended the need for and the cost-effectiveness of the SFO’s use of consultants, and referred to what they had achieved. He also referred briefly to the Sungard contract.

As far as the AGO can now establish, there was no substantive discussion of these issues at the further meeting between the Attorney and Mr Alderman on 24 November.

#### *Payments to senior staff and the commissioning of the Alex Allan report*

At the beginning of October 2011, following discussion between a Non-Executive Director of the SFO, the Treasury Solicitor and the Director General AGO, the

Cabinet Secretary asked Sir Alex Allan to investigate allegations of improper conduct within the SFO that had been made by a member of staff. He reported to the Cabinet Secretary on 21 November 2011.

Evidence provided by the Serious Fraud Office to the PAC shows that the following total payments were made to former senior staff of the SFO. A detailed breakdown of the amounts paid and what authorisations were obtained in relation to elements of the payments is contained in the Annex to the PAC's report.

Recipient	Role	Total severance package
Phillippa Williamson	Chief Executive Officer	£464,905
Chris Bailes	Chief Operating Officer (formerly Capability Officer)	£473,167
Ian McCall	Head of Technology and Specialist Services	£49,885

In January 2012 Richard Alderman advised officials in AGO that his contract of employment as Director of the SFO was due to expire four months before his 60<sup>th</sup> birthday and the day on which he expected to retire. AGO advised Ian McCall, who was dealing with this matter in SFO, to contact the Cabinet Office Pensions Team to discuss the options available. Further discussions took place between SFO, AGO and Cabinet Office, including consideration of whether Mr Alderman might be placed elsewhere in government until his retirement. As this option was not practical, in April 2012 the Cabinet Office approved a voluntary exit package of £44,179.59 to enable Richard Alderman to buy out the actuarial reduction in his pension caused by his leaving employment several months early, and to make up his pension pot to 40 years' service. These payments to Richard Alderman were within the rules of the Civil Service Compensation scheme and were fully authorised. On 20 April Richard Alderman's last day in office, Ian McCall obtained approval from the Cabinet Office for a payment of £112,000 but this was later revised again to return to the lower amount of £44,179.59.

On 20 April 2012 Richard Alderman left office on the expiration of his four year contract. He left a note at the SFO dated 20 April 2012. The note stated it was "intended to be used for the purposes of any discussion with NAO if they look at the agreements". The note sets out Mr Alderman's reasons for making ex gratia payments to Phillippa Williamson and Chris Bailes. It was not copied to AGO at the time it was written, nor was it sent to the NAO.

On 17 May 2012, the new Director SFO David Green QC advised the AGO by telephone that he had discovered that Richard Alderman had apparently agreed to a voluntary exit package for Phillippa Williamson on her departure from the SFO that may not have been authorised as required by the Cabinet Office. He also advised that Mr Alderman may have entered into agreements with other senior members of staff to make payments on their departure.

The Attorney General was immediately notified. AGO officials that day asked David Green to carry out a number of further inquiries in relation to the circumstances of

the payments, what authorisation was sought from the Cabinet Office, who authorised the payments within the SFO, and how it was proposed that the payments should be treated within the SFO's accounts.

AGO also suggested that Tim Hurdle, Finance Director at the Treasury Solicitor's Department, might assist the SFO as they did not at that time have a Finance Director at Senior Civil Service level. David Green subsequently asked Mr Hurdle to carry out an independent review of the circumstances in which the payments were made. The Treasury Solicitor, Sir Paul Jenkins QC, suggested a number of steps that the SFO might wish to take in order to explore whether there were any legal grounds to recover the money or to revoke the agreements.

From these actions it emerged that a compromise agreement was in place in respect of Phillippa Williamson and that the agreement contained a confidentiality clause under which both Ms Williamson and the SFO undertook not to disclose the circumstances relating to the termination of employment except where required by any governmental, regulatory or other competent authority or by a Court of law of HM Revenue and Customs or as required for any internal reporting purposes or enforcing the terms of the agreement.

On 23 May David Green sought an explanation from Richard Alderman on the making of the payments. Although Mr Alderman responded seeking further detail, Mr Alderman provided no explanation at that time. We understand that Mr Alderman did respond further to SFO but these responses were not forwarded to AGO.

On 21 June 2012 Tim Hurdle submitted a draft report to David Green, and then submitted a final report on 31 July. That report provided comprehensive detail on the process used, considerations given and authorisations obtained in relation to the exit packages for Phillippa Williamson, Chris Bailes and Ian McCall.

The Attorney General discussed the payments at routine business meetings with David Green on 2 July, 30 August, 24 October and 28 November 2012. On each of these occasions the substance of the discussions was: communication of the amount, recipient and circumstances of the payments made; the steps taken by the SFO to investigate the circumstances of the payments, and whether it would be possible to reclaim the money; and the treatment of the payments in the SFO accounts. The Attorney General confirmed that he had not been informed by Richard Alderman of his intention to make the payments.

On 21 August 2012, Cabinet Office wrote to the SFO, copied to AGO, reminding them of the need to submit the SFO's annual projection of workforce information. The SFO submitted the projections return later that day, copied to AGO. The return required information on outturn for 2011/12 and projections for 2012-15. One aspect of the return required the SFO to submit information on the number of voluntary paid exits in 2011/12, and the associated costs. The SFO return reported that there had been only one voluntary paid exit at a cost of £35,000. AGO queried why Phillippa Williamson's exit was not included in the workforce return for 2011/12. SFO responded that Ms Williamson's exit had been included as one of four voluntary paid exits in the projected return for 2012/13 as Ms Williamson left in April. AGO responded questioning whether the projected costs of voluntary exits for 2012/13 of £500,000 were therefore sufficient, given that it was known that there was also an exit agreement in place for Chris Bailes, and that the total figure would exceed

£500,000. SFO advised that there had been no final decision on whether Chris Bailes would leave SFO at that time.

On 6 September Tim Hurdle sought Richard Alderman's explanation as to why he had entered agreements to make exit payments to Phillippa Williamson and Chris Bailes. Richard Alderman replied on 28 September 2012, stating that Phillippa Williamson and Chris Bailes had been looking for other roles since the previous summer, as they had been told by AGO and Sir Paul Jenkins the Treasury Solicitor that they would be expected to leave their desks within a month or two of Richard Alderman's own departure, and David Green had made it clear that he saw no need for their roles. He, Richard Alderman had not briefed the AGO about Phillippa Williamson's departure because of its sensitivity and because he knew that there were channels of communication between AGO and members of the SFO. Thereafter Mr Hurdle sought the comments of Peter Fish of AGO and Sir Paul Jenkins on Mr Alderman's explanations. They made clear that they did not accept the truth of his assertions. On 19 October Mr Hurdle submitted a short draft addendum to his initial report.

*Publication of SFO Annual Report and Accounts 2011/12 and subsequent Parliamentary interest*

During September and October 2012 SFO worked closely with the National Audit Office on the disclosure of the payments in the SFO's Annual Report and Accounts. Some of the correspondence between SFO and NAO was copied to or forwarded to AGO. The AGO was involved in discussion as to the appropriate wording of aspects of the Annual Report and Accounts.

In advance of publication, the Attorney General wrote to the Chief Secretary to the Treasury and to the Shadow Attorney General to advise them of the imminent announcement.

On 1 November the SFO's Annual Report and Accounts were published. The NAO concluded that the payments to Phillippa Williamson were irregular and qualified the SFO's accounts. In the light of this conclusion, there was considerable Parliamentary interest in what other payments had been made by the former director SFO. AGO and SFO worked closely to ensure that the responses to Parliamentary questions and correspondence was complete and accurate. In doing so AGO sought the input of the Cabinet Office Workforce Reform directorate.

On 20 November 2012 the Shadow Attorney General asked the Attorney General in the course of Oral Parliamentary Questions about reports that the Chief Operating Officer (Chris Bailes) had agreed a confidential deal similar to that offered to Phillippa Williamson. Ms Thornberry asked about the scale of that payment, whether it could be stopped, who knew about both payments, and when. The Attorney General offered to write to her. He asked officials to check what the position was under the compromise agreement which he knew Richard Alderman had agreed to in relation to confidentiality of the agreement. The AGO official then sent an email to SFO officials for advice on the terms of the confidentiality agreement, and on whether the agreement would be breached by the Attorney General responding to the Shadow Attorney General in this way. The AGO official's email considered alternative options to permit the Attorney General to place the information requested



in the public domain without exposing the Attorney General to the risk of breaching the confidentiality clause.

On 4 December the Attorney General made a Written Ministerial Statement (WMS) about redundancy payments made by the former Director SFO. That WMS provided further detail about payments made to Phillippa Williamson. The WMS also indicated that the former director had entered into an agreement to make the post of the Chief Operating Officer Chris Bailes redundant, and that the current director had been obliged to seek and obtain retrospective authorisation of that agreement. The WMS noted that the cost would be noted in the annual accounts for 2012/13. The WMS also made clear that a payment had been made into the Civil Service pension scheme so as to allow Richard Alderman's pension to come into payment at the conclusion of his four year contract of employment. That payment was for £44,179. The WMS also referred to a payment of between £25,000 and £50,000 to a person who operated at SCS level for loss of office. Finally, the WMS referred to two other smaller redundancy payments to individuals below the Senior Civil Service.

#### Publication of the Alex Allan report

On 17 December the Shadow Attorney General asked a Parliamentary Question of the Attorney General about what investigations had been carried out into the SFO's use of consultants. The Attorney General replied advising that a review had been carried out by Sir Alex Allan in November 2011 into allegations made by members of SFO staff of irregular contractual practices; that he would like to publish the report in full and was considering whether there were any legal reasons not to do so.

In November 2012 the SFO sought to regularise the exit agreement made by Richard Alderman in respect of Chris Bailes. The SFO submitted a business case outlining the reasons for making a voluntary exit payment under the Civil Service Compensation Scheme to Mr Bailes. The business case was approved as being within the terms of the scheme and retrospective Cabinet Office approval was granted. A payment of £409,114 was made to the Principal Civil Service Pension Scheme to cover all additional costs arising from Mr Bailes' early departure and his pension coming into payment early, the amount being calculated under the rules of the Civil Service Compensation Scheme, based on Mr Bailes' salary and his length of service. In addition he received a payment under the Compensation Scheme in lieu of notice of £33,330, and he received an ex-gratia payment of £15,000. On 31 December 2012 Chris Bailes left the SFO under the terms of the agreement made with Richard Alderman.

On 9 January 2013 the Attorney General had a Routine Business Meeting with the Director. David Green advised that there was concern within SFO that the account of Phillippa Williamson's promotion in the Allan report differed from staff records within SFO, and that he would talk further to Paul Jenkins, the Treasury Solicitor, about this.

On 10 January David Green QC wrote to Sir Paul Jenkins QC, Treasury Solicitor, to bring that apparent discrepancy to his attention, as Sir Paul had been involved in the decision to appoint Sir Alex Allan to look into the allegations that had been made. Sir Paul forwarded the letter to Sir Alex Allan indicating that David Green would be

grateful for any light that he was able to shed on what he had been told. Sir Alex Allan responded that, while he was in Australia and unable to check any documents, it certainly appeared that he had been misled. A copy of that reply was forwarded from the Treasury Solicitor's Office to AGO, and then forwarded from AGO to SFO as relevant to the considerations of whether the Alex Allan report should be disclosed.

On 25 February the Shadow Attorney General asked when the Attorney General would publish the report commissioned by the Director SFO into the circumstances of the payments (the "Hurdle" report) and Sir Alex Allan's report. The Attorney General agreed that there was a clear public interest in the content of both reports being made fully available to Parliament as soon as possible, and that he was taking steps to enable him to do so.

On 4 March the Attorney General provided copies of the Tim Hurdle and Alex Allan reports to the PAC, and the SFO published the reports on its website.

On 7 March 2013 Richard Alderman and David Green QC gave evidence to the PAC.

SFO carried out an internal inquiry into SFO and HMRC records to clarify the circumstances of Phillippa Williamson's promotion. A note of the results of that inquiry was forwarded by SFO to AGO on 26 April 2013. The SFO inquiry indicates that the information recorded in Alex Allan's report on the circumstances of Phillippa Williamson's promotion was not correct.

Since Phillippa Williamson is no longer a civil servant, there are no grounds to consider taking any disciplinary action against her in relation to the potential misleading of Alex Allan. Separately, the Director SFO has written to Ms Williamson, as well as Chris Bailes and Ian McCall to invite them to consider returning the ex gratia payments to the SFO.

#### SFO Annual Report and Accounts 2012/13

On 13 June the SFO published its Annual Report and Accounts for 2012/13. The Accounts confirmed that the current Director had sought and obtained approval from the Cabinet Office for the payment of £409,114 to the Principal Civil Service Pension Scheme to cover all additional costs arising from Mr Bailes' early departure and his pension coming into payment early. However, the Treasury recognised that despite the absence of approval the SFO may have already made a contractual commitment and it may therefore be preferable to make the payment to Mr Bailes and avoid incurring further costs defending legal proceedings that would be bound to succeed – notwithstanding that a payment made in these circumstances would be irregular.