



Cabinet Office

# **2019 TAILORED REVIEW OF THE SECURITY VETTING APPEALS PANEL**

**August 2019**



# 2019 Tailored Review of the Security Vetting Appeals Panel

1. This 'light touch' review was undertaken by Jonathan Baume as part of the Cabinet Office's programme of tailored reviews of non-departmental public bodies, executive agencies and all non-ministerial departments (NMDs). The review was carried out by consulting the Chair and members of the Panel, the members of the Secretariat, and a range of stakeholders (list attached at Annex 1). Written background material was provided by the Secretariat. The Security Vetting Appeals Panel (SVAP) was previously subject to a Triennial Review undertaken by Sir Alex Allan, published in February 2014 (referred to below as TR2014) and this review does not seek to repeat those arguments which are still pertinent. It builds upon the evidence and findings of TR2014 and considers the continuing requirement for the Panel and its appropriate status, form and function, using the 'checklist' in the Cabinet Office guidance to assess this. Annex 2 describes how the recommendations of TR2014 have been implemented.

## Executive Summary

2. The SVAP is working very effectively, and no recommendations for change were proposed by stakeholders, although I have made one recommendation. There was consistent praise for the Secretariat, both for the process of hearings and for their advice to departments when guidance on the wider vetting process was sought. Hearings themselves were effectively chaired, Panel members were thoughtful and probing, and the outcomes 'felt fair'. The SVAP is also very efficient, costing on average around £76k annually and having handled thirty-nine cases since Sir Alex's report. The arguments set out by Sir Alex for retaining the judicial character of the Panel remain central and critical to the present objective of the Panel and were endorsed by organisations, and the Special Advocate system retains the confidence of organisations and the security authorities. No concerns were expressed about the role of SVAP by those responsible for vetting under the aegis of the devolved administrations, and a consistency of vetting policy and process across the UK was seen as beneficial and conducive to good governance. The Chair and Deputy Chair commenced their judicial experience a number of years ago, being appointed according to the criteria and availability of candidates at the time. That said, their skills and experience which make them appropriate for appointment to the Bench have been moulded by years of judicial experience. The skills and experience of senior judges are highly significant and essential to the effective running of Panel business. 'Lay' Panel members comprise four women and four men, and there was a strong and diverse field of applicants in the last recruitment exercise. Given the small size and budget of SVAP and its very specialised role, together with the high level of satisfaction amongst departments for its work, I suggest that careful consideration is given to a number of factors before any further review is required.

## Recommendations

3. I recommend that:
- a Framework Document is drawn up and agreed with the Cabinet Office (paragraph 27).

## Function

***- Are the functions still needed, are they being carried out effectively and contributing to core business of the body/department/government?***

4. The functions and history of the SVAP are described in TR2014, in particular in paragraphs 10 to 16. Nothing of significance has changed. Sir Alex then set out in paragraphs 23 to 42 his arguments to support his conclusion that *“the Security Vetting Appeals Panel should continue as a non-departmental public body under the aegis of the Cabinet Office. I am satisfied that it passes all three of the Government’s “three tests”:*

- *Hearing appeals on vetting decisions (and dealing with related legal challenges and questions) is a technical function which needs external expertise - in this case, judicial input.*
- *It is a function which needs to be, and be seen to be, delivered with absolute political impartiality.*
- *And it needs to be delivered independently of ministers to establish facts”.*

5. All of the stakeholders to whom I spoke upheld these conclusions, and I am satisfied that they have stood the test of the past five years. The SVAP has the confidence of departments, who are conscious that its ‘judicial’ framework and the quality of reasoning achieved by SVAP comes at a minimal cost, and with relative informality. It is also in general considerably more speedy than entering the Employment Tribunal (ET) system. The point was made that in the absence of any national database of who has been vetted or holds vetting, and in a fragmented system with (currently) each organisation largely making its own decisions, SVAP has the virtue of relative consistency and helps to strengthen the effectiveness of the vetting system. Further, SVAP is designed to be adaptable, without the potential constraints of statutory regulation.

6. Also, the underlying principle that SVAP only makes a recommendation to a department or other organisation, and thus on occasions suggests that an organisation may have been wrong in its judgment, is important in ensuring that an organisation always ‘owns’ the decision on vetting; it is for an organisation to make the ultimate assessment about the risk that an individual may pose.

## Delivery Model

### ***- Is the current delivery model suitable? Have alternative delivery models been explored?***

7. The SVAP’s current delivery model is ideally suited to operate within its ‘judicial’ framework, and neither stakeholders nor I can see any reason why Ministers would wish to consider an alternative model. TR2014 highlighted some views in organisations that internal appeals mechanisms in organisations were adequate, and that therefore SVAP was unnecessary. No such views were expressed during this review. Instead, there was unanimous support for the role played by SVAP and a recognition that the opportunity for an individual to take an appeal to SVAP was valuable both in offering an opportunity for an independent assessment of a case within a broadly ‘judicial’ framework at minimal cost to either the individual or organisation, and also in minimising the likelihood of an individual resorting to the Employment Tribunal system. It is also worth noting here that, whilst Employment Tribunals can pass judgment on unfair and discriminatory matters, they do not have the expertise to decide vetting issues.

8. The Supreme Court has upheld the role of SVAP in the context of human rights legislation which, significantly, protects both individuals and organisations; and the protection for organisations that the judicial approach of SVAP gives from claims to both ETs and for Judicial Reviews should not be underestimated. Annex 3 describes the ‘overlap’ between the roles of the Panel and the Employment Tribunal.

9. As noted above, Sir Alex explored alternative models in TR2014 in paragraphs 38 to 41, and I endorse his conclusions.

## Effectiveness, Efficiency & Relocation

- *Is the body effective? Does it provide value? Does the body meet its objectives?*
- *Are efficiency savings identified? Can the body provide better value for money?*
- *If appropriate, the review should look at the body's contribution to economic growth and include a cost-benefit analysis*
- *Has the review liaised with the Office of Government Property to consider the most efficient use of the body's estate?*
- *Has the review explored the option of moving out of London?*

10. The TR2014 outlined the costs incurred by SVAP in paragraph 19. Those costs have remained largely static, with only slight variations in the number of cases heard. SVAP has heard thirty-nine cases since 2014: five in 2014; three in 2015; seven in 2016; eight in 2017; twelve in 2018 and four so far in 2019. Of the cases heard: eleven were from the Ministry of Defence (including UK Security Vetting); five from the Home Office; three from the Foreign and Commonwealth Office; two each from the Metropolitan Police Service, National Crime Agency, Government Legal Department, Crown Prosecution Service, Department for Transport and Houses of Parliament; and one each from the City of London Police, Bank of England, Cabinet Office, Office for Nuclear Regulation, Department for Business, Energy and Industrial Strategy, Police Service Northern Ireland, West Midlands Police and Civil Aviation Authority. The average length of time between the Secretariat receiving a case and the Panel hearing was 7½ months; where delays occur these tend to be because of problems in arranging diary listings. This figure drops to 5¾ months for more straightforward cases not involving Special Advocate procedures.

11. The costs incurred by the Cabinet Office in supporting and administering SVAP were as follows:

2013/2014: £80k (including one trip to Belfast)  
2014/2015: £74k  
2015/2016: £70k  
2016/2017: £71k  
2017/2018: £86k (higher than normal due to the number of cases heard and some back-dated expenses)  
2018/2019: £75k (including one trip to Belfast)

12. Included within these totals are the Cabinet Office staff costs for SVAP which in 2018/19, as a guide, were about £52k. The Secretariat sits within the Government Security Group and comprises the equivalent of one full-time member of staff, with administrative support, who in turn reports to a Deputy Director, part of whose responsibilities involve SVAP. Departments pay their own costs in a case but concurred that their perception is that the costs associated with an appellant taking a case to SVAP were considerably smaller than a case being pursued in an ET, particularly as the latter almost always requires legal support.

13. Cases were generally heard in a meeting room within the Cabinet Office although when appropriate a Government office elsewhere in the UK could be utilised. That said, it has been suggested that the evident shortage of suitable meeting rooms available in the Cabinet Office may begin to contribute to delays in the process; further, security concerns may emerge if highly classified material has to be transported to other Government buildings for a hearing to be held in an available meeting room. The Secretariat and the Cabinet Office might wish to consider how best to mitigate these possible risks.

14. There are no dedicated office costs for SVAP, no estate implications and so long as the Cabinet Office Government Security Group is sited in London then no case for relocation.

15. There was universal praise from organisations for the support provided by the Secretariat, not only in the process surrounding an appeal but more generally in providing wide-ranging advice in the circumstances of internal organisational decision-making. Several organisations commented that advice from the Secretariat had helped prevent potential mistakes that could have led to appeals.

16. The process of an appeal to SVAP was felt to be reasonable throughout, and more generally timely and proportionate. Organisations commented that the communications from the Secretariat were helpful and comprehensive.

## Commercial Capabilities

***- Has the review explored how the body could collaborate with either public or private sector stakeholders to create/expand their commercial capability e.g. shared services?***

17. Security vetting is a critical process of risk analysis and assessment that is core to the successful operation of organisations within the remit of SVAP. The SVAP operates across all of the relevant organisations and therefore already collaborates widely. A 'shared service' model of clusters is being introduced for organisational vetting but that does not have a direct impact on the work of SVAP other than perhaps to provide greater consistency in vetting decisions and a greater number of appeals if vetting decisions are reviewed more frequently. There are no commercial capabilities.

## Digital

***- Can the body derive savings by complying with the Digital Service Standard? Has the review engaged with Government Digital Service? Has the body's technology infrastructure been explored?***

18. The SVAP utilises existing Cabinet Office technology and has a limited web presence on the GOV.UK site.

19. Notices of appeal from individuals are usually received via email to the generic SVAP Inbox or in hard copy through the post. Basic exchanges with the Panel and parties to an appeal (e.g. checking availability for hearings) can be done by email, but actual case papers (e.g. background information forms, statements of case, etc) are always circulated in hard copy by post. This is mainly due to the sensitivity of the material contained therein, which prohibits sending it electronically to non-secure addresses, and also because of its size and format. Where the Panel requires access to particularly sensitive material, they are required to come to read it at the Cabinet Office.

20. Panel hearings are based on material provided by the relevant parties which is referred to in hard copy by the parties, the Panel members and the Secretary at the hearing. Although organisations would welcome greater use of electronic copies, they recognise that the use of papers in hard copy is the only viable option, in the absence of a dedicated 'Iraq enquiry' type court room with a bespoke IT system. Given all this, there are no current plans for greater use of digital technology, and I am satisfied that this is in the best interests of individuals and organisations.

21. There is a case management system for SVAP cases and an electronic and paper file is opened for each one, with a distinct case reference number. The paper files contain all related material/correspondence, but the electronic files mainly comprise the outgoing material (i.e. the material generated by the Secretariat). This is because case papers received from appellants and organisations are often too bulky or in the wrong format to be scanned in to the system effectively.

## Devolution

***- Does the review explore the remit/reach of the body within each of the devolved territories?***

22. No concerns were expressed about the role of SVAP by those responsible for vetting under the aegis of the devolved administrations, and a consistency of vetting policy and process across the UK was seen as beneficial and conducive to good governance.

## UK EU Exit

***- Does the review consider the potential effect on the body's functions resultant from the UK's EU Exit?***

23. There are no direct implications for SVAP as a consequence of the UK's EU exit, although as a result of possible changes to wider security policy, and the employment of greater numbers of UK civil servants as a consequence of EU exit, there may be a small increase in the number of cases on appeal. However, it is not possible at this time to predict with any accuracy whether such an increase will materialise.

## Good Corporate Governance

***- Have governance arrangements been reviewed? Has the relationship with the sponsor department been examined? Existing controls, processes and safeguards to be assessed against the [code of good corporate governance](#).***

24. The SVAP is an ALB sponsored by the Cabinet Office and 'housed' within the Government Security Group. One issue of corporate governance emerged during the review.

25. The SVAP is supported by a small team from within the Government Security Group (GSG). This team forms both the sponsor team and Secretariat, reporting through its Deputy Director and Director to the Government Chief Security Officer, who in turn reports to the Chief Executive of the Civil Service and Cabinet Office Permanent Secretary. On occasions, the Chair of SVAP will discuss matters of importance directly with the Government Chief Security Officer.

26. The GSG team has different responsibilities, depending on whether it has the sponsor team or Secretariat 'hat' on. As the Secretariat, it deals specifically with appeals casework; as the sponsor team, it deals with non-casework issues such as management of the Panel, appointments, producing case studies, providing SVAP briefings to departments, attending sponsor meetings led by the Cabinet Office ALB Support Team, etc.

27. The SVAP itself has terms of reference, but does not have a framework document and is not audited. The Panel is subject to periodic review (i.e. Tailored Reviews) and is also required to feed in to data collections managed by the Cabinet Office ALB Support Team (e.g. on appointments, diversity, etc). However, I recommend that a Framework Document is drawn up and agreed with the Cabinet Office.

28. Panel members are made fully aware of, and sign up, to the 'Nolan' Principles at the time of their appointment, and the Seven Principles of Public Life are made available in the Candidate Information Pack with the advert at the outset of any recruitment campaign. Induction training includes a full briefing from the Secretariat and, separately, from the security authorities.

## Transparency and Diversity

***- Has the review examined the transparency of the body, including in relation to its corporate governance? Has the review examined how the body incorporates diversity and inclusion?***

29. The SVAP is an avowed body, but does not routinely release information about itself or its work. Section 23(1) of the Freedom of Information Act 2000 exempts, as a class, all information directly or indirectly supplied by, or relating to, certain bodies dealing with security matters. This provision confers absolute exemption for the purpose of Section 2 of the Act. The Panel is an exempt body for the purposes of the Act, appearing at Section 23(3)(i).

30. The TR2014 recommended that the Cabinet Office should resume publication of restricted and anonymised case summaries bringing out the key issues addressed by SVAP; a fourth booklet of case studies was issued in February 2015, and the intention is to issue a fifth booklet in 2019. The Panel hold a one-day event with organisations roughly every two years, which amongst other issues considers emerging themes in the vetting process, for example approaches to social conduct, attitudes to which inevitably change over time, or cultural norms and behaviours. These are well regarded by organisations, who welcomed any direction and clarity around the issues they should focus upon during the vetting process and the parameters they should apply.

31. 'Lay' Panel members comprise four women and four men, and there was a strong and diverse field of applicants in the last recruitment exercise. The Panel members were described, without exception, as thoughtful and considered, with a focus on the substance of the case rather than its presentation.

32. There has been discussion about whether or not it is necessary or appropriate for the Chair and Deputy Chair to be recruited from within the judiciary (in practice retired, for reasons of workload). Obviously, the pool of available former judges reflects the criteria then current for their appointment as judges. But these criteria have changed and the pool has become more diverse. The experience as advocates and judges they bring is highly significant to the confidence in the SVAP not only of organisations but also appellants and external stakeholders such as the ET system.

33. The Panel does not receive specific diversity training, but their 'diversity awareness' from other roles they have is taken into consideration in the appointments process. Part of the Secretariat's role is to keep abreast of any developments or changes in vetting policy and process, which may stem from diversity considerations, and this is shared with members as necessary. Cases are taken on their merits and the Panel members are flexible to the behaviours of individuals in relation to the process of vetting (e.g. changing attitudes to historic drug-taking and/or promiscuity, increased levels of manageable debt, greater use of social media, etc). All Panel members meet together on occasions to allow 'older hands' to share their experience of Panel work with their newer colleagues. Case studies are also shared as they are produced and Panel reports are copied to all members, for information, regardless of whether they heard the case; this keeps them abreast of trends and the Panel's approach to particular issues including diversity, which may come up again in other cases, to help enable consistency.



## Conclusion

34. In conclusion, given the small size and budget of SVAP and its very specialised role, together with the high level of satisfaction amongst departments for its work, I suggest that careful consideration is given to factors such as whether there have been significant amendments to the national security vetting process, wider legislative framework changes or a greater numbers of appeals before any further review is required.

**Jonathan Baume**

July 2019

**LIST OF THOSE CONSULTED DURING THE TAILORED REVIEW**

The Chair of SVAP  
Members of SVAP  
The SVAP Secretariat  
The Cabinet Office  
The Home Office  
The Ministry of Defence  
The Foreign and Commonwealth Office  
The Wales Office  
The Scottish Government  
The Northern Ireland Office  
The Police Service Northern Ireland  
UK Security Vetting  
The Office for Nuclear Regulation  
The Security and Intelligence Agencies  
The Government Legal Department  
Special Advocates Support Office  
Counsel representing departments

## IMPLEMENTATION OF THE RECOMMENDATIONS OF TR2014

### ***7a. Arrangements should be put in place to stagger the appointment periods for members of the Panel***

This was implemented at the point of the 2015 round of appointments, by replacing four of the eight lay members (for four years wef 1 July 2015). The other four lay members were then replaced in 2017 (for four years wef 1 April 2017). A new Deputy Chair was appointed for four years wef 1 April 2018, and a new Chair was appointed for four years wef 1 April 2019.

### ***7b. The Secretariat should review with the Chair the appropriate number of lay members of the Panel***

It was agreed that maintaining eight lay members provided SVAP with the flexibility and experience required. Reducing the number would impact the scheduling of hearings because of availability and having more lay members would limit their expertise through hearing fewer cases.

### ***7c. The Cabinet Office should consider, in consultation with the Chairman and the Lord Chief Justice, whether it would be more appropriate for one of the Deputy Chairs to be a retired, rather than a serving judge***

When SVAP's one serving judge retired from the Panel in 2014, because of his promotion to the Court of Appeal (he is now the Lord Chief Justice), the decision was made not to replace him. Subsequently, the Chair and remaining Deputy Chair (both retired) shared the case load. There are practical advantages to the operational running of the SVAP if these post-holders are retired rather than serving members of the judiciary. In recruiting the current Deputy Chair the advert stated a preference for a retired senior member of the judiciary, but one applicant questioned whether this was discriminatory. The Minister for Implementation agreed at the outset of the recruitment campaign for a new Chair that the selection criteria for the roles of Chair and Deputy Chair could remain tailored to members of the judiciary.

### ***7d. The Cabinet Office should discuss with SVAP the setting of specific targets for the length of time for the various stages of the process, and should report annually to the Deputy National Security Adviser on how far those targets have been met***

The Secretariat has always set deadlines for the return of casework (e.g. background information, statements of case, etc), but has found it necessary to remain flexible (within reason). However, as a result of a handful of more extreme delays, the following note (in April 2017) has been built into SVAP's 'Guidance Note for Appellants and Organisations':

***“PLEASE NOTE: At the various stages of the SVAP appeal process, the Secretariat will give a deadline for the return of submissions. It is important that these deadlines are met. In exceptional circumstances, an extension may be agreed with the Secretariat. In any case where a deadline is exceeded by more than two weeks, without prior agreement, the Chair will require a written explanation for this. Where a deadline is exceeded by a month or more, the Chair may require the relevant party to attend a meeting to set out their reasons in person.”***

The scheduling of individual hearings is dependent, to a large extent, on outside factors: the availability of the appellant, organisation and Panel Members, the Special Advocate and Counsel in certain cases, and also the availability of a suitable room in the Cabinet Office.

It has not been found necessary to report annually to the Deputy National Security Adviser and, as SVAP now falls outside the National Security Secretariat due to organisational changes, any future

reporting would be to the Government Chief Security Officer. This matter can be revisited if considered appropriate.

***7e. The Cabinet Office should resume publication of restricted and anonymised case summaries bringing out the key issues addressed by SVAP***

The fourth booklet of case studies was issued in February 2015, and a fifth booklet is intended to be issued in 2019.

***7f. The Cabinet Office should ensure that the Security Policy Framework (SPF) is updated regularly to take account of emerging recommendations from SVAP***

The SVAP Secretariat is co-located with the team responsible for national security vetting policy and related guidance in the SPF. The Secretariat speak with them routinely on vetting matters and alert them to issues arising from SVAP casework. The Secretariat have no control over the regularity and issue of SPF updates, which are managed by the wider Policy Team within the Government Security Group.

***7g. The Cabinet Office should consider arrangements for providing feedback to Panel members on departments' responses to Panel recommendations***

In cases where the Panel has made specific observations or recommendations (e.g. where procedures have failed or where the organisation has been invited to revisit their decision), the letter covering the case report will generally ask the organisation for a response. Such responses are rare, however, and are shared with the Panel if they are contentious (i.e. if the organisation disagrees with the Panel's observations/recommendations) or the organisation recognises and accepts comments by the Panel and has altered its processes or approach in some way.

## THE 'OVERLAP' BETWEEN THE ROLES OF SVAP AND THE EMPLOYMENT TRIBUNAL

Regarding the 'overlap' between the roles of the Panel and the Employment Tribunal, the Chair and Secretary of the SVAP met with Mr Justice Langstaff (President of the EAT) and Judge Doyle (President of the ET) on 23 November 2015 to clarify their respective roles. Although no formal arrangement has been put in place for this, they agreed it would be sensible for ET cases brought by individuals on the basis of a refusal or withdrawal of national security vetting clearance to be routinely heard by the SVAP in the first instance, and for the Panel's recommendations to be taken into account by the subsequent ET in judging whether a department had acted reasonably or proportionately. This was on the basis that the Panel were expert in considering vetting matters and should be straightforward where cases had already been the subject of an appeal to SVAP. Where this was not the case and an individual had by-passed the SVAP arrangements and gone straight to the ET, the SVAP had proposed: (a) that the ET should refer the case to SVAP for a recommendation on the security vetting decision in the first instance, before the ET went on to consider the action which was the subject of the ET claim; and (b) as a safeguard, where an organisation became aware that an individual was intending to take a case relating to an adverse vetting decision direct to the ET, without making an appeal to the SVAP, it should be open to the organisation to seek a separate view from the Panel on the vetting decision before the case could proceed before the ET.