

Reference: 2024-064

Thank you for your email in which you requested the following information under the Freedom of Information Act 2000 (FOIA):

The SFO's powers are set out in the Criminal Justice Act 1987 (CJA 1987). Section 1(3) CJA 1987 provides that the Director may investigate any suspected offence which appears to him on reasonable grounds to involve "serious or complex fraud".

- 1. Could you please provide information about how the SFO interprets "fraud" for the purposes of determining whether the statutory criteria set out in section 1(3) CJA 1987 is met. i.e. information about the definition of "fraud" used by the SFO for these purposes.**
- 2. Please provide information about why "bribery" is said by the SFO to fall within the statutory criteria set out in section 1(3) CJA 1987 and how "bribery" is defined for these purposes.**
- 3. Please provide information about why "corruption" is said by the SFO to fall within the statutory criteria set out in section 1(3) CJA 1987 and how "corruption" is defined for these purposes.**
- 4. If the legal basis for the SFO to investigate bribery is something other than section 1(3) CJA 1987, please provide information about this.**
- 5. If the legal basis for the SFO to investigate corruption is something other than section 1(3) CJA 1987, please provide information about this.**

Response

Question 1

The Criminal Justice Act 1987 ("CJA 1987") gave effect to various recommendations made in the Fraud Trials Committee report of 1986 ("the Roskill report"), including creating the Serious Fraud Office ("SFO"). The definition of "fraud", wherever it appears within the CJA 1987, should therefore be understood with reference to how the concept was articulated in the Roskill report and in line with subsequent developments in case law and legislation.

Paragraph 3.2 of the Roskill report is particularly significant in this context, and states:

"Fraud' is not a defined term: there has never been any general offence of criminal fraud in English law. There are in fact several hundred criminal offences on the statute book, together with a few common law offences, which may form the basis of a charge of fraud, in that one of the main ingredients of what is generally understood to be fraud may be present, such as dishonest practice, deception, false disclosure, concealment of assets or other activities of that nature. The principal offences in the present armoury of the criminal law against fraud include obtaining property by deception, false accounting, fraudulent trading, theft and the common law offence of conspiracy to defraud."

As this passage makes clear, "fraud" was therefore used as a term to cover a wide spectrum of conduct, all of which the SFO has been able to investigate since its inception (provided of course the conduct in question is sufficiently serious or complex).

Since the Roskill report was published, parliament has legislated via the Fraud Act 2006 to create a new general offence of Fraud and to repeal some of the offences the Roskill report referred to (for example the deception offences in the Theft Acts of 1968 and 1978). However, these changes have not affected the scope of suspected criminal behaviour which the SFO can investigate.

A copy of the Roskill report can be found on the SFO's website ([SFO historical background and powers - Serious Fraud Office](#)).

Questions 2, 3, 4 & 5

As stated in response to question 1, the SFO's statutory remit should be understood by reference to the Roskill report.

Appendix F to the Roskill report shows that by the late 1980's, the payment of bribes and other favours with the intention of corrupting public servants was considered to be a type of fraud. Furthermore, the SFO was consciously modelled on the Fraud Investigation Group (paragraph 2.46 of the Roskill report), whose remit specifically included investigating frauds involving large scale corruption (paragraph 2.28 and Appendix H, paragraph 9 of the Roskill report).

At this time the only offences of corruption were those set out in the common law offence of bribery and the various statutory offences in the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts of 1906 and 1916. These were collectively referred to as 'corruption' offences, and the SFO was able to investigate these matters from its inception.

Confirmation that the SFO's remit included investigating these offences of bribery and corruption is evident in parliament's decision in 2008 to insert section 2A into the CJA 1987 (via section 59 of the Criminal Justice and Immigration Act 2008). The original version of section 2A provided the Director of the SFO's with a new ability to use his powers under section 2 CJA 1987 at the pre-investigation stage in relation to foreign bribery and corruption offences. In doing so section 2A (6) expressly referred to the common law offence of bribery, the offences under section 1 of the Public Bodies Corrupt Practices Act 1889 and the offences under section 1 of the Prevention of Corruption Act 1906 as "corruption offences". The original text of section 2A is available on the legislation.gov.uk website ([Criminal Justice Act 1987 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1987/53/section/2A)).

The Bribery Act 2010 subsequently repealed the common law offence of bribery and the offences set out in the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts. It also created new statutory offences of bribery (sections 1, 2, 6 and 7 Bribery Act 2010). The SFO's ability to investigate these new offences is evident from section 10 of the Bribery Act 2010 which expressly gives the Director of the Serious Fraud Office the power to consent to the prosecution of these offences (previously consent to prosecute offences of bribery or corruption required consent from the Attorney General).

The SFO's role to investigate and prosecute offences of bribery and corruption is also attested to in the framework agreement between the SFO and the Attorney General's Office (the most recent version of which is available via the Gov.UK website - [Framework agreement between the Law Officers and the Director of the Serious Fraud Office - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368222/Framework_Agreement_between_the_Law_Officers_and_the_Director_of_the_Serious_Fraud_Office_-_GOV.UK.pdf)) and in the joint prosecution guidance issued by the SFO and the Crown Prosecution Service in relation to the Bribery Act 2010 (available on the SFO's website - [Bribery Act guidance - Serious Fraud Office \(sfo.gov.uk\)](https://www.sfo.gov.uk/guidance/bribery-act-guidance)).