

Written evidence submitted by The Serious Fraud Office

The Serious Fraud Office (SFO) welcomes this opportunity to support the Home Affairs Select Committee's fraud inquiry.

About the SFO

The SFO fights complex financial crime, delivers justice for victims and protects the UK's reputation as a safe place to do business. The SFO does this by:

- Investigating and prosecuting the most serious or complex cases of fraud, bribery and corruption;
- Upholding the rule of law, delivering justice for victims and recovering the proceeds of financial crime;
- Deterring criminals and requiring offending companies to reform in order to protect the UK's economy and global reputation as a safe place to invest and do business; and finally,
- Collaborating with partners in the UK and overseas to ensure there is no safe haven for those who commit serious financial crime.

The SFO was created by the Criminal Justice Act 1987, with powers to investigate and prosecute serious or complex fraud, including bribery and corruption. The SFO takes on a small number of large economic crime cases and operates multidisciplinary case teams comprising lawyers, investigators, forensic accountants and other specialists working together through the lifetime of a case. This structure is known as the 'Roskill' model.

The acceptance of a case for investigation by the SFO is a statutory function carried out by the Director. In accordance with the Director's Statement of Principle, the SFO takes into account the actual or intended harm that may be caused to:

- The public, or the reputation and integrity of the UK as an international financial center,
- The economy and prosperity of the UK; and
- Whether the complexity and nature of the suspected offence warrants the application of the SFO's specialist skills, powers and capabilities to investigate and prosecute.

SFO cases take years to investigate, prosecute and conclude because of their complexity. They typically involve large volumes of material; and cover multiple jurisdictions. Most of SFOs current cases have an international dimension.

There is no 'typical' victim in a SFO case. A victim can be an individual; a public body; a private company; an overseas Government and its people or the UK economy.

Twenty of the SFO's live active criminal cases (approximately 35 criminal cases) are fraud cases. A significant proportion of these are investment fraud cases, which often have a high number of victims. For example:

- The London Capital & Finance Plc investigation has 11,500 investors.
- The Safe Hands Plans Limited and SHP Capital Holdings Limited investigation has 46,000 investors.

The average time taken to investigate a SFO case to charge, take no further action or commence negotiations for a Deferred Prosecution Agreement (DPA¹) is on average four years. Consequently it is SFO policy to notify victims through its website at least once every three months or following a noteworthy development in the case. There are also dedicated case pages for every publicised case on the SFO website which victims can access. In recognition that not all victims will have easy access to the internet, the SFO adopts alternative methods of communication where required. Victims identified as vulnerable and/or intimidated may be updated by phone call/letter, within one-working day as specified in the Victims Code.

On the 12 October 2023 the Home Office announced an Independent Review of Disclosure and Fraud Offences. The first part of the review will be focused on disclosure. The SFO has welcomed the review. Should the review produce significant changes to the disclosure framework, the SFO will be able to progress its investigations more speedily and victims may not have to wait as long for a criminal justice outcome.

The SFO's net resource budget for 2022/2023 was £78.6 million (including £20.8 million accessed via supplementary estimates). In the same year, the SFO recovered nearly £100 million in proceeds of crime² and secured a fine of over £180 million for Glencore, a commodity trading and mining company. The majority of this was transferred to the Consolidated Fund. Only a small proportion of the costs element (£1.9m) was retained by the SFO.

The Glencore fine was not only the largest ever fine for an SFO case but the highest ever ordered in a corporate criminal conviction.

Recent successful SFO prosecutions

¹ A DPA is an agreement reached between a prosecutor and an organisation which could be prosecuted, under the supervision of a judge. The agreement allows a prosecution to be suspended for a defined period provided the organisation meets certain specified conditions.

² The SFO participates in the Asset Recovery Incentivisation Scheme (ARIS), in which investigation and prosecution agencies receive back a portion of their asset recovery work. However the SFO has agreed to surrender all ARIS funds received to HMT in exchange for a guaranteed funding uplift to its baseline funding.

The SFO prosecuted nine cases in 2022–2023, securing convictions against eight individuals for fraud and bribery charges totalling more than £500 million. This included:

- The conviction of Andrew Nathaniel Skeene and Junie Conrad Omari Bowers on three counts of conspiracy to defraud and one count of misconduct in the course of winding up a company. They took in approximately £37 million of investments and deceived around 2,000 investors. In June 2022 Skeene and Omari Bowers were sentenced to 11 years imprisonment.
- The conviction of Timothy Schools who was convicted of five counts of fraudulent trading, fraud by abuse of position and money laundering. Schools secured over £100 million from approximately 500 investors. In August 2022 he was sentenced to 14 years in prison.
- The conviction of David Ames who was convicted of two counts of fraud by abuse of position. The £226 million fraud affected over 8,000 investors. In September 2022 Ames was jailed for 12 years.

In June 2023, the SFO charged three former directors of Ethical Forestry Ltd with two counts of conspiracy to commit fraud by false representation and one count of fraudulent trading. The fraud affected 3,500 UK investors

Last month, the SFO brought fraud charges against four individuals, including a former director, in relation to the collapse of Patisserie Valerie. The four suspects have been charged with conspiring to inflate the cash in Patisserie Holdings' balance sheets and annual reports from 2015 to 2018, including by providing false documentation to the company's auditors. The collapse of Patisserie Valerie resulted in the closure of 70 stores and the loss of over 900 jobs across the country.

Reporting, investigating and prosecuting fraud

As well as proactively developing intelligence in relation to suspected fraud, bribery and corruption, the SFO receives direct reports from the public (victims and interested parties) as well as referrals from solicitors' firms, regulators and other law enforcement bodies, both UK and overseas.

The SFO has strong operational and strategic relationships with other law enforcement agencies and regulators including the National Crime Agency, National Economic Crime Centre, policing (particularly the City of London Police and the Metropolitan Police Service) and the Financial Conduct Authority.

Multi-agency working is most impactful when all organisations have a shared understanding of each other's requirements and responsibilities, and when strong lines

of communication are in place. Each law enforcement agency and regulator has their own areas of expertise and capabilities. The SFO, for example, was established to specifically deal with serious and complex fraud, bribery and corruption cases. The SFO is also the only fraud law enforcement agency that operates a multi-disciplinary team model. This ensures that lawyers, financial and other experts are embedded into the investigation from the outset. The individual expertise of different agencies creates the opportunity for collaborative and joint working on complex cases which have multiple and varied operational demands. The SFO will continue to work alongside law enforcement partners in tackling serious and complex fraud and is keen to explore opportunities for strengthening these relationships further.

International cooperation

Most SFO cases have an international dimension, which means it is often necessary to obtain information, trial evidence or another form of legal assistance from overseas.

Where it is possible to do so, evidence can be obtained from an overseas authority voluntarily; where it is not, the SFO engages in the formal, judicial process of mutual legal assistance (MLA.) It can take many months, sometimes years for MLA requests to be answered by other jurisdictions in full. A wide range of factors can influence the time frame including the complexity of the request and the available resources to the overseas jurisdictions, their internal processes, their legal appeal procedures and relations with the requested state. Since the UK left the EU, the SFO now also utilises the MLA process with EU partners. The Trade and Cooperation Agreement has sought to mitigate some of the delays by introducing time limits for the execution of requests. The Agreement also made provision for the development of a standard form for MLA requests between the UK and EU Member States. As of 1 September 2023, all requests are made by the SFO using the form.

The MLA process can work more efficiently where a direct line of communication is opened between the SFO, the overseas authority and agency implementing the request. To support its work with international partners, the SFO invests heavily in its international relationships. On his first day in office, the Director of the SFO, Nick Ephgrave QM, attended the International Association of Prosecutors annual conference and met with Kathleen Roussel, Canadian Director of Public Prosecutions; Stephen Herron, Northern Ireland Director of Public Prosecutions; and Lucien Wong, Attorney-General of Singapore. The SFO also regularly hosts overseas partners to share expertise and learning. Over the last five years we have welcomed delegations from 39 different jurisdictions, and have hosted two secondees from the US Department of Justice for one year each.

Requests for electronic data held overseas by data providers can also take a considerable time to be answered. The SFO welcomes the US-UK Data Access

Agreement (enabling the use of Overseas Production Orders) which should speed up the process for obtaining data held by US Internet Service Providers. This agreement is currently in the process of a phased roll-out by the Home Office, with the SFO due to join in the next financial year.

Disclosure

The SFO has welcomed the Independent Review of Disclosure and Fraud Offences announced on the 12 October 2023.

Delivering disclosure obligations is increasingly challenging in data-heavy cases. The digital age has resulted in a profusion of data to process and review. Every SFO case can involve multiple phones, laptops and company servers with a storage capacity unconceivable even a decade ago. It takes considerable resources to process and examine that data. The data has to be accessed (i.e. taken from a device and uploaded to the SFO digital platforms), described, cross-referenced and considered for how it either supports or undermines the prosecution case, or supports the defence. Even the scheduling of unused material can be extremely time-consuming to create: the disclosure schedule in one SFO case included 200,000 items and took over six months to produce.

The current disclosure legislative framework was designed before the advent of mass digital data. Lord Justice Gross, noted in 2011³ that it *“is essential that the burden of disclosure should not render the prosecution of economic crime impractical,”* and yet, twelve years later, disclosure arguably creates ever increasing practical hurdles for law enforcement agencies investigating and prosecuting complex economic crime cases.

SFO case teams deal with significant volumes of digital material:

- The average size of SFO cases opened in 2010 was 2 million documents (350GB).
- The average size of SFO cases opened in 2017 was 6 million documents (850GB).
- To date, the largest case on the SFO system has 48 million documents (6.5TB or 6,500GB).

In the SFO’s experience, disclosure has become a tactic used by some defence teams to delay or prolong trials. The SFO would welcome a disclosure regime that encourages defence teams to engage more actively with the prosecution. The SFO wants the

³ Review of Disclosure in Criminal Proceedings, Gross LJ, September 2011: <http://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/disclosure-review-september-2011.pdf>

defence and prosecution teams to work together to narrow the range of relevant materials. This would reduce the volumes of materials that the prosecution must review, and would allow the defence to spend its time considering the material that matters most.

The SFO is committed to working with the Independent Reviewer and his team to improve the disclosure regime so that it ensures a fair trial for each defendant and reduces the unnecessary burden on public agencies.

Fraud Strategy

In addition to the review of disclosure, the SFO welcomed the Fraud Strategy commitments to:

- Examine ways to incentivise those involved in offending to give evidence against those more culpable;
- Make use of civil orders and penalties in appropriate cases;
- Embed the use of the UK-US Data Access Agreement; and
- Explore opportunities for increasing recovery of victims' money through civil powers.

The SFO investigation of Abdallah Ali Jammal exemplifies the SFO commitment to recover victims' money using civil powers. Jammal fled the country before the SFO could charge him for an advanced fee fraud. The SFO intercepted and froze £400,000 of Jammal's money and opened a civil recovery investigation. That investigation is ongoing. Earlier this year, the High Court issued a summary judgment approving the SFO's approach to securing the recovered funds for victims. The SFO used a novel technique (only used once before), and will submit claims on behalf of known victims during the civil recovery proceedings. As there is no facility for compensating victims in the civil recovery regime, this technique will ensure that known victims can get some of their money back.

Economic Crime and Corporate Transparency Bill

Pre-investigation Powers

The SFO welcomes the expansion of its investigative powers in the Economic Crime and Corporate Transparency (ECCT) Bill.

The SFO has a unique set of investigative powers, provided for by section 2 of the Criminal Justice Act 1987—the same Act that created the organisation—which officers can use to compel individuals or companies to provide information (albeit not information that would result in self-incrimination). These powers can only be used

following the Director of the SFO's decision to commence an investigation; alternative means must be used to gather information in advance of that decision.

2008 saw the extension of SFO officers' section 2 powers to include the "pre-investigation" stage due to the organization's inability to get information about suspected cases of international bribery and corruption through alternate ways. This enables the organisation to effectively gather the required information to allow the Director to decide whether to take on a case (he may also decide to refer the case elsewhere). This legislative change has had a positive impact on the SFO's cases; in some cases it has allowed the organisation to more promptly determine whether a crime is likely to have taken place, and usually leads to the earliest stages of an investigation being delivered more quickly.

The ECCT Bill removes the limitations on the use of section 2 powers at 'pre-investigation' stage, so that they can be used in any SFO case within its remit.

Corporate Criminal Liability

The SFO welcomes the measures in the ECCT Bill to reform the corporate criminal liability regime, which will make it easier for the SFO (and others) to hold companies to account for committing fraud.

Under the identification doctrine, a company can only be held criminally liable for the acts of senior people who represent the so-called "directing mind and will" of the company. However, in complex multi-national corporations, it can be difficult to determine which senior person (or people) represents the "directing mind and will". This has created a perverse situation where some companies have no liability for misconduct and no incentive to prevent it. It also allows the main beneficiary of the conduct in question—the company—to escape liability, which has negative effects for the rest of the business community. The new measures will place the identification doctrine on a statutory footing for economic crimes, providing certainty that senior managers are in scope of attribution to a corporation. By effectively replacing the "directing mind and will" with "senior manager", the Bill will widen the range of people whose actions can be said to represent that of the company they work for.

There is a disparity between the tools available to tackle bribery and those to tackle fraud. The Bribery Act 2010 introduced a specific corporate offence: the 'failure to prevent' bribery offence. The SFO has had many successes in convicting (or agreeing DPAs with) companies with respect to bribery offences. The SFO has secured nine DPAs with respect to bribery offences (worth nearly £1.7 billion).

- In 2021 the SFO secured the conviction of Petrofac Limited for seven separate counts of failure to prevent bribery between 2011 and 2017. Petrofac Limited was

ordered to pay confiscation of nearly £23 million and was fined over £47 million and ordered to pay the SFO's costs of £7 million.

- In 2022 the SFO charged Glencore with seven counts of bribery, two of which were under the corporate failure to prevent bribery offence. Glencore was a small company with a flat hierarchy. This meant that for the first time the SFO was able to prosecute a company for a Section 1 offence. This underlines the need for reform to the identification doctrine.

The inclusion of a failure to prevent fraud offence in the ECCT Bill will level the playing field between bribery and fraud and incentivise the implementation of procedures to prevent fraud.

Strategic Lawsuits against Public Participation (SLAPPs)

The SFO welcomes the introduction of Strategic Lawsuits against Public Participation (SLAPPs) measures in the ECCT Bill. The new legislation will create a new early dismissal process within the court system which will allow SLAPPs about economic crime to be rapidly dismissed by judges. These new measures have the potential of deterring companies and individuals from commencing SLAPPs.

Serious Crime Prevention Orders

The SFO would welcome changes to Serious Crime Prevention Orders (SCPOs) which would enable a greater use of SCPOs following a corporate conviction.

SCPOs protect the public by preventing, restricting or disrupting a person's involvement in serious crime. While a company, following a conviction, may be content to be monitored, a convicted corporate is highly unlikely to be content to be deemed to meet the test that it is likely to commit serious crime and may actively fight an SCPO for reputational reasons. Law enforcement agencies can face an inequality of arms when prosecuting wealthy companies. In addition, the SCPO regime sets a higher barrier to applying for a monitor than the current DPA regime. By the time a SCPO reaches court, most companies will have improved their compliance processes as a result of law enforcement scrutiny and in preparation for sentence. It would be beneficial to monitor whether such reforms have been properly embedded, and importantly whether they continue to be maintained once the spotlight is off the companies.

Changes could incentivise good governance and improve compliance processes. Furthermore, a corporate SCPO is the only option for securing a monitor following a criminal conviction.

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