



Attorney
General's
Office



SFO | serious
fraud
office

Framework agreement between the Law Officers and the Director of the Serious Fraud Office

21 January 2019

Overview

1. This framework agreement is made between the Attorney General and Solicitor General (the Law Officers) and the Director of the Serious Fraud Office (the Director). It replaces the protocol between the Attorney General and the Prosecuting Departments, including the Serious Fraud Office (SFO), signed in July 2009.
2. This agreement sets out the main points of the relationship which the Law Officers and the Director expect to conduct, in the discharge of their respective functions in relation to the SFO. This relationship is an essential component of the governance and therefore of the standing and success of the SFO. It is entered into in a spirit of mutual understanding, respect and support for the functions engaged on each part, and of commitment to the organisation, its work, and the contribution it is expected to make to justice, the rule of law, and economic wellbeing in England, Wales and Northern Ireland.
3. In particular this agreement sets out the understanding and expectations of the Law Officers and the Director about:
 - their respective roles and responsibilities, and the relationship between them;
 - the governance structures put in place to support those roles and responsibilities;
 - how the SFO's strategic direction and objectives are developed and set; and
 - the principles behind day-to-day ways of working they expect to see between officials in the SFO and the Attorney General's Office (AGO) in support of their relationship and functions.
4. This agreement is not intended to be an exhaustive statement of the relevant legal functions of the Law Officers or of the Director. Its operation will be reviewed by the Law Officers and the Director at intervals of not more than three years. It will also be reviewed following the appointment of any new Director or Attorney General.

The Serious Fraud Office

5. The SFO was created and given its functions and powers by the Criminal Justice Act 1987 (the Act); it exercises those functions on behalf of the Crown. It is a non-ministerial department (NMD) headed by the Director¹. It also forms one of

¹ Guidance on NMDs is set out in the Public Bodies Handbook: <https://www.gov.uk/government/publications/classification-of-public-bodies-information-and-guidance>; and the Arm's Length Body Code of Good Practice: <https://www.gov.uk/government/publications/partnerships-with-arms-length-bodies-code-of-good-practice>

the 'Law Officers' Departments², and as such constitutes a public arm's length body sponsored by the AGO.

6. The SFO is a specialist investigating and prosecuting authority tackling serious and complex fraud, bribery and corruption. It forms part of the UK criminal justice system, with a remit covering England, Wales and Northern Ireland. Its mission is to reduce the harm caused by high level economic crime, and preserve and enhance the reputation of the UK as a safe place to do business. It does that by taking on a selected number of large complex cases for investigation and, where appropriate, prosecution or judicially supervised disposal. It also pursues criminals for recovery of unlawful financial gains.

Appointments

7. The Director is appointed by the Attorney General as set out in s1(2) of the Act. The role is at Director General grade within the Civil Service and the process is subject to the relevant Civil Service appointment rules.
8. The AGO manages the appointments process in partnership with the Cabinet Office and Civil Service Commission. The SFO funds all costs in relation to the recruitment of the Director.
9. The Director is responsible for the appointment of SFO staff. The Director appoints senior staff in consultation with the Law Officers, including as to the process of appointment.
10. The Director is responsible for appointing a suitable number of (but at least three) SFO Non-Executive Directors (NEDs) with skills appropriate to the SFO's business needs through fair and transparent competition and in line with Civil Service rules and guidance on such appointments. Appointments are made in consultation with the Law Officers, including as to the processes of appointment. The Director-General or Director of the AGO will be included in the appointment panel.

Roles and Responsibilities

11. The Director is a statutory office holder operating within the provisions of the Act. The Director and all staff of the SFO are subject to the Civil Service Code.
12. The Director's statutory functions are exercised subject to the statutory superintendence of the Attorney General as set out in the Act. The Solicitor General may undertake functions of the Attorney General in accordance with the Law Officers Act 1997.

² The Crown Prosecution Service; Government Legal Department and HM Crown Prosecution Service Inspectorate

13. The Director is responsible for deciding which criminal investigations the SFO should open and of those which should be prosecuted. The Director may from time to time promulgate guidance or principles about how cases are selected for investigation, in consultation with the Attorney General and other law enforcement agencies. The Director exercises independence in individual casework decisions (both investigation and prosecution), in accordance with this agreement.
14. The Director of Public Prosecutions (DPP) is required by law to issue a Code for Crown Prosecutors, which is also applied by the Director. The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. The DPP issues the Code and consults the Attorney General and the Director of the SFO about any proposed changes to the Code. This is followed by wider consultation with other prosecutors, and by public consultation.
15. The Director is a civil servant and the Accounting Officer (AO) for the SFO.
16. The Law Officers, supported by the AGO, exercise their sponsorship and statutory superintendence functions as set out in this Framework and in accordance with government guidance. The Director-General of the AGO is the Senior AGO Sponsor for the SFO and has line management functions in relation to the Director.
17. The Attorney General supports and holds the Director to account for the running of the SFO and the discharge of the SFO's functions. The Director:
 - engages with the AGO on the preparation of the SFO's Corporate Plans in order to deliver the SFO's strategic aims and priorities;
 - keeps the AGO informed of progress in delivering those plans and the deployment of resources to do so;
 - provides the AGO with timely forecasts and management information relating to budgetary and other financial matters;
 - works with the AGO on the preparation for spending reviews; and
 - keeps the AGO informed about cases which are of significant public interest, may impact on wider government priorities, or have implications for the development of the law.
18. The Law Officers are accountable to Parliament for the exercise of their sponsorship and superintendence functions. This includes answering Parliamentary Questions, questions from Select Committees, and correspondence from Members of Parliament about the SFO. The Director ensures that the SFO supports the Law Officers in fulfilling this duty. Where a Parliamentary Select Committee or other Parliamentary Group seeks evidence directly from the Director, the Attorney General and the Director will consult one another about how best to meet the requirements of the Committee.
19. The Law Officers are responsible for safeguarding the independence of the SFO in taking individual investigation and prosecution decisions, in accordance with this agreement.

20. The Non-Executive Directors (NEDs) carry out an important advisory and challenge role both to the Director and to the Law Officers. They provide advice and bring an external perspective to the SFO's business by sitting on the departmental board. They may also provide feedback on the Director's performance to the Director General (AGO) and the Law Officers. The NEDs meet with the Law Officers regularly and at least twice a year. They do not have 'executive' decision-making powers.

Governance and Accountability

The Ministerial Strategic Board

21. The Attorney General and the Director will, with the other members of the Ministerial Strategic Board (MSB), endorse the strategic direction of the SFO. The MSB is chaired by the Attorney General or the Solicitor General. A secretariat is provided by the AGO. Its membership comprises:

- the Law Officers
- the Director of the Serious Fraud Office
- the Director-General
- the Chief Operating Officer of the SFO
- an appropriate NED of the SFO

22. The Chief Inspector of HM Crown Prosecution Service Inspectorate (HMCPISI) will attend by invitation as required. The Director of the AGO will undertake the role of Board Secretary.

23. The MSB's overarching aim is to oversee the strategic direction for the SFO and jointly hold the SFO to account for delivery of its strategic objectives.

24. The terms of reference of the MSB are set from time to time by the Law Officers for ratification by the MSB and must include responsibility for:

- supporting the roles and responsibilities of the Law Officers and the Director, and the work of the SFO and the AGO in supporting them;
- endorsing and overseeing the strategic direction of the SFO via an agreed multi-year Strategic Plan which will align with wider government strategies;
- providing context for the SFO about wider government and justice system policies and priorities;
- agreeing the SFO's priorities for engaging with other government departments, law enforcement agencies, the wider criminal justice system and international partners;
- agreeing and supporting policy development where it impacts on wider government priorities;
- agreeing and supporting an overarching strategy for the Director and the SFO on their approach to public and media engagement, and a

Memorandum of Understanding on ways of working between the SFO and AGO; and

- approving the SFO business plan, endorsing the Director's annual report (to be laid before parliament by the Attorney General), and reviewing the budget and financial management, performance, efficiency, effectiveness and reputation of the SFO in year.

25. The MSB meets three times a year.

The SFO Board

26. The SFO Board (the Board) is chaired by the Director and meets at least six times a year. Its membership includes the Chief Operating Officer and General Counsel and all NEDs of the SFO. The Director-General or Director of the AGO will normally be invited to observe meetings of the Board. Senior members of the SFO will be invited to attend meetings as and when required.

27. The membership and conduct of the Board are the responsibility of the Director. Members of the Board must comply at all times with the Code of Conduct for Board Members of Public Bodies and with the rules relating to the use of public funds and to conflicts of interest³.

28. The Board's overarching aim is to provide strategic leadership to the SFO, ensuring the effective delivery of the SFO's strategic and operational objectives; and to advise the MSB on strategic priorities. It plays a key role in ensuring that the SFO is equipped to provide a professional, efficient and high quality service.

Financial Accountability and Audit

29. The AGO negotiates the SFO's budget with HM Treasury, in partnership with the Director and SFO Chief Operating Officer, as part of the Spending Review process. The SFO will negotiate the annual Main and Supplementary Estimates process in consultation with the AGO. The SFO has its own estimate and the Director and the SFO Board determine the SFO's approach on corporate and financial matters, in accordance with applicable guidance and with the Director's responsibilities as AO.

30. The SFO is responsible for seeking Parliament's consent to spend or commit resources through the Estimates process. Any adjustments to the SFO's baseline will be settled through the standard Supplementary Estimates process (once annually). During the year, the SFO is expected to operate within the control totals framework for resource, capital, annual managed expenditure (AME) and for its net cash requirement. HM Treasury will monitor the SFO's in-year budget spend through its monthly Online System for Central Accounting and Reporting (OSCAR) returns. The AME pension budget sits with the SFO.

³ <https://www.gov.uk/government/publications/code-of-conduct-for-board-members-of-public-bodies>;
<https://www.gov.uk/government/publications/managing-public-money>

31. Any requests for budget exchange into the following financial year will be coordinated by the SFO in the discussions with HM Treasury, consulting with the AGO throughout the process.
32. As agreed between the SFO, AGO and HM Treasury, the SFO may apply for additional funding from the Reserve when the cost of an individual case exceeds 5% of the SFO's core budget. This funding is provided by HM Treasury directly to the SFO as part of its supplementary funding. Reserve funding is subject to ongoing monitoring and regular reporting to ensure value for money by the SFO to the AGO and HM Treasury.
33. As AO, the Director is personally responsible for safeguarding public funds; for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds; and for the day-to-day operations and management of the SFO. The Director ensures that SFO governance is at all times in accordance with Managing Public Money guidance. In particular, the Director must:
 - sign the accounts, and ensure proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Law Officers or by HM Treasury;
 - prepare and sign a governance statement covering corporate governance, risk management and oversight of any local responsibilities, for inclusion in the annual report and accounts; and
 - act in accordance with this agreement, Managing Public Money and other instructions and guidance issued from time to time by the AGO, HM Treasury or the Cabinet Office relating to financial management.
34. The Director is accountable to the parliamentary Public Accounts Committee for the SFO's stewardship of public funds.
35. Within the governance structures set out in this agreement, the Director must:
 - ensure that the Law Officers are able to review SFO spend in-year;
 - keep the AGO informed of all significant financial discussions with HM Treasury or Cabinet Office; and
 - ensure that the AGO are informed if the SFO plans to seek HM Treasury approval for payments which fall outside their delegated authorities; or raise novel or contentious issues; or could set a potentially expensive precedent or cause repercussions for other public sector organisations. Personal injury payments and payments associated with personnel matters may not be included for data protection reasons or reasons of confidentiality.
36. The SFO must establish and maintain arrangements for internal audit. The internal audit service must have a right of access to all documents, including in any cases where services are contracted out. The SFO will:
 - inform the AGO of its audit strategy, periodic audit plans and annual audit report;

- keep a written record of any fraud or theft suffered by the SFO, and produce an annual report on fraud and theft to be shared with the AGO; and
 - notify the Treasury and AGO of any unusual or major incidents as soon as possible.
37. The SFO publishes an annual report of its activities together with its audited accounts after the end of each financial year. The annual report and accounts must comply with all relevant legal obligations and any directions from the Law Officers, including the Treasury's *Financial Reporting Manual*⁴ (FreM); outline main activities and performance during the previous financial year and set out forward plans in summary form; and cover any corporate, subsidiary or joint ventures under its control. The SFO must provide the AGO its finalised (audited) accounts in a timely manner.
38. The Comptroller & Auditor General (C&AG) audits the SFO's annual accounts and lays them before Parliament, together with its report. The C&AG:
- consults the SFO on whether the National Audit Office (NAO) or a commercial auditor should undertake the audit on his behalf;
 - is entitled to obtain relevant documents and information, including any held by another person in receipt of payments or grants from the SFO; and
 - may provide government departments and other relevant bodies with Regulatory Compliance Reports and other reports relating to the SFO where these have been properly requested at the commencement of the audit.

The AGO

39. The AGO supports the performance of this agreement by:
- advising the Law Officers about their powers, duties and responsibilities in relation to the SFO and supporting the discharge of their relevant functions;
 - supporting the performance, accountability and independence of the Director, and advising the Director about the policy, strategic and legislative framework relevant to the SFO;
 - advising other government departments about SFO policy and objectives, and ensuring these are considered as part of wider policy development;
 - advising the Law Officers and other government departments on budgetary matters relating to the SFO; and
 - advising the Law Officers and the Director on media activities relevant to the SFO.

HM Crown Prosecution Service (HMCPSP)

40. The Attorney General may invite HMCPSP to support him in the discharge of his functions by undertaking inspections of the SFO in relation to any of its

⁴ <https://www.gov.uk/government/publications/government-financial-reporting-manual-2018-to-2019>

operational or corporate functions⁵. The commissioning of and response to HMCPSI reports on the SFO will be considered by the MSB

Ombudsman

41. The SFO receives and handles correspondence and complaints from members of the public in accordance with clear procedures which must be published on the SFO's website. This includes Victim's Right to Review Scheme procedures. Where the complainant is not satisfied with the SFO's response and the complaint relates to the Code of Practice for Victims of Crime, the complainant may complain to their MP who may refer the matter to the Parliamentary and Health Services Ombudsman. If the complaint concerns the personal conduct of the Director, complainants must be notified that they may be referred to the Attorney General. In those instances, the SFO ensures that the Attorney General is provided with all relevant information.

Casework

42. The SFO is independent in making decisions whether or not to open an investigation or to prosecute a case. Those decisions are the responsibility of the Director, who may delegate authority to appropriate staff within the SFO. The Attorney General is responsible for safeguarding the independent decision making of the SFO.

43. The decision whether or not to investigate and prosecute and, if so, for what offence, or whether to seek another measure (such as civil recovery of the proceeds of crime, a deferred prosecution agreement or out of court disposal), is a quasi-judicial function of the Director which requires evaluation of the strength of the evidence. It is also a judgment about whether an investigation and/or prosecution is in the public interest. The SFO must take such decisions in a fair and impartial way, acting at all times in accordance with the highest ethical and professional standards and in the best interests of justice. This is central to the maintenance of a just, democratic and fair society based on scrupulous adherence to the rule of law.

44. The SFO takes casework decisions and conducts individual cases applying the law, and the framework of principles set out in the Code for Crown Prosecutors, together with any relevant published guidance issued by the Director, or the Attorney General.

45. Other than as set out in this agreement, the Law Officers do not participate in SFO casework decisions.

⁵ HMCPSI have a statutory role as set out in the Crown Prosecution Service Inspectorate Act 2000 (as amended via s149 of the Anti-social Behaviour, Crime and Policing Act 2014), giving them the power to inspect the SFO.

Attorney General's consent to prosecute

46. For a small number of specific offences, Parliament has made statutory provision for the Attorney General's consent to be legally required before a prosecution is brought in individual cases.
47. It is a constitutional principle that when taking a decision whether to consent to a prosecution, the Attorney General acts quasi-judicially and independently of government, applying well established prosecution principles of evidential sufficiency and public interest. The Attorney General has regard to, but is not limited by, the public interest factors set out in the Code for Crown Prosecutors.
48. Where consent has been given and a prosecution is commenced, the prosecutor keeps the AGO informed of its progress. Where practicable, the prosecutor consults the Attorney General if the prosecutor is contemplating either dropping the case on public interest grounds, or accepting pleas. If the case can no longer proceed for evidential reasons which emerge after a prosecution is started, the prosecutor informs the Attorney General of the decision as soon as it is taken.

Attorney General's directions where necessary to safeguard national security

49. Exceptionally, and only where in the Attorney General's opinion it is necessary to do so for the purposes of safeguarding national security, the Attorney General will consider the exercise of their power to issue a direction that an investigation or a prosecution is not started or not continued.
50. The offences most likely to give rise to the exercise of this function are those which require the Attorney General's consent to prosecution in any event. If national security considerations emerge during such an investigation or prosecution, or in cases which do not require consent, the Director must inform the Attorney General as soon as this becomes evident.
51. The Attorney General consults the Director before contemplating issuing a direction.
52. The Attorney General reports any such direction to Parliament, in so far as that is itself compatible with the public interest in national security.

Representations on the Public Interest

53. The Code for Crown Prosecutors sets out the general public interest considerations which are relevant to prosecution decisions. In a few very exceptional cases the Director (or the Attorney in a consent case) may consider that it is desirable to be informed in doing so by consulting within government about the relevant public interest considerations as part of that decision making process. The Director may raise such a case with the Attorney General, and the Attorney General may advise on whether it is in the public interest to seek wider ministerial representations in a public interest consultation exercise⁶; in a consent

⁶ sometimes referred to as a Shawcross exercise

case, the Attorney General may decide to seek such representations of his own motion.

54. The purpose of the exercise is confined to identifying particular public interest considerations which may be relevant to the prosecution decision. The relevance and weight to be given to such considerations, and the eventual prosecution decision, are matters for the prosecutor.
55. The Attorney General ensures that these public interest consultation exercises are conducted with propriety; that consultees are informed that the decision is for the prosecutor alone; and that the wider Ministerial representations tending to any particular conclusion are probed appropriately.

Statutory superintendence

56. The Attorney General's responsibilities for superintendence and accountability to Parliament imply a limited engagement with individual SFO cases which do not require consent to prosecute. This is a function which the Law Officers exercise quasi-judicially and must carry out in the public interest.
57. The Director alerts the Law Officers to any case which:
 - he considers is particularly sensitive;
 - has potential precedent-setting implications for prosecution or criminal justice policy or practice; or
 - reveals systemic issues for the framework of the law, or the operation of the criminal justice system.
58. The Director may alert the Law Officers via senior officials within the AGO and/or through regular meetings with the Law Officers.
59. The Director may seek guidance from the AGO as to whether any case ought to be drawn to the attention of the Law Officers for these or any other reasons. The Law Officers may ask for information about the case, or to be kept informed of developments. The decisions in these cases remain for the Director.
60. The Attorney General may ask for information about any case in order to perform another Law Officer function, such as considering potential contempt of court, making references on a point of law, or deciding whether to refer an unduly lenient sentence. These do not involve consultation on any prosecution decision by the SFO.
61. The Director may raise any case with the Law Officers for advice or discussion to assist the Law Officers in providing public or parliamentary assurance that a decision has been carefully and properly taken.
62. The Attorney General may be called upon to help prosecutors to resolve cases where they have not reached agreement, for example where different prosecution agencies have overlapping remits over the same case or adopt

different approaches to the same legal question or where there is concurrent jurisdiction.

63. The Attorney General's assistance may be sought by the SFO in an individual case to ensure that processes of securing evidence or disclosure of material by another government department run smoothly, where such processes are in the interests of ensuring a fair trial.
64. Unless for any reason a decision is required from the Attorney General by law (such as in a consent case), the Law Officers will never be consulted or otherwise engaged on any case which:
 - relates to a Member of Parliament (including Peers) or minister;
 - relates to a political party or the conduct of elections; or
 - gives rise to any question of personal or professional conflict of interest for the Law Officer.
65. The AGO may assist the SFO in identifying such cases, and provide any relevant context or advice which is agreed to be proper. The AGO does not advise on prosecution decisions.

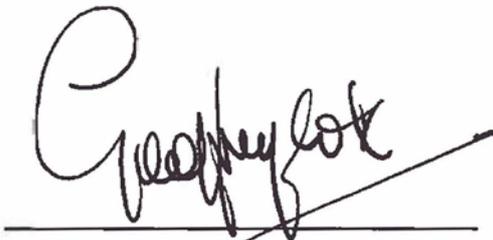
Wider collaboration

66. The SFO will collaborate with other law enforcement agencies, prosecutors and Departments on wider strategic and operational priorities. The Law Officers expect the SFO to work with the CPS, National Crime Agency, police, HM Revenue and Customs, wider criminal justice agencies and international networks where appropriate. These partnerships will be underpinned by agreements or Memoranda of Understanding. The AGO will be kept informed of these arrangements. Where operational activity (nationally and internationally) may impact on wider government policy, the SFO will consult the AGO and agree strategic engagement plans.

Prosecution Policy and Guidance

67. The Attorney General has ministerial responsibility at Cabinet level for government policy in relation to prosecution functions. The Law Officers' ministerial responsibilities include ensuring that the functions of the SFO are understood and taken account of in the development of government policy more generally.
68. The Director supports the Law Officers in the exercise of this function by providing information and advice, and ensuring that the knowledge and expertise of prosecutors are made available to those developing Government policy.
69. The Director ensures that, consistently with maintaining proper independence in taking prosecution decisions, policies and guidance adopted by the SFO are consistent with and give due effect to relevant government policy. The AGO supports this role.

70. The Director may promulgate guidance or principles about the selection of cases and the conduct of casework. These should be reviewed on the appointment of a new Director, or to reflect changes in government priorities for criminal justice, and at least every 3 years. The Director ensures that the Law Officers are asked for their views in a timely way about any proposed statement of prosecution policy or guidance which raises difficult or sensitive questions of law or public policy. The Director accords particular weight to the Attorney General's views where difficult questions arise in balancing competing public interest considerations in prosecution guidance.
71. The Director must consult the Attorney General about any guidance on matters in which the Law Officers exercise special public interest functions, for example in relation to contempt of court, public interest immunity, unduly lenient sentences, consent cases or victims' right to review.
72. The Attorney General may issue guidance on cross cutting legal issues, practice or policy to ensure consistency of approach across public prosecution or government legal functions. The Attorney General consults the Director before issuing any guidance affecting the SFO.



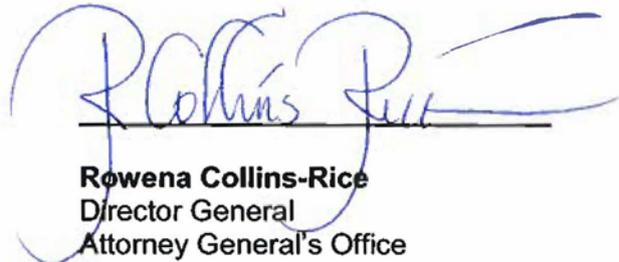
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