



## **Government response to the recommendations of Sir David Calvert-Smith's Independent Review into the Serious Fraud Office's handling of the Unaoil Case – R v Akle & Anor, July 2022**

### Recommendation 1

**Accepting of course that some events cannot be predicted:**

- a. There should never be 'interregnum periods' between the departure of one DSFO and the arrival of the next;**
- b. An incoming DSFO – whatever their previous career experience – should have any identifiable gaps in their knowledge or experience filled by their superintending ministers and the Attorney General's Office (AGO);**
- c. Likewise, there should never be such periods between the departure of General Counsel and the arrival of a successor. On the contrary, there should always be a period when the incoming General Counsel is 'inducted' by the outgoing one in order to ensure the continuity of the role and to maintain the confidence of the staff and the public that there is such a person 'in charge' at all times.**

The Attorney General and the SFO accept these recommendations. All efforts will be made to ensure there are no 'interregnum periods' between future appointments of the Director of the SFO and General Counsel. The induction programme for future Directors will be designed by the SFO, with the oversight of the Law Officers and the AGO. It will be adapted to meet the particular needs and experience of each incoming Director. New Directors will continue to have access to the Cabinet Office induction programme for Director General-level civil servants.

### Recommendation 2

**The SFO and AGO should urgently develop a revised process to enable the superintendence of sensitive and high-risk cases. This should include:**

- a. A case list with sufficient detail to enable such superintendence – the list always to include the cases which may require or have already received the Attorney General's (AG's) consent – even if on a given occasion there is 'nothing to report';**

- b. Monthly (at least) conversations at official level before formal superintendence meetings with Law Officers to ensure that there can be effective scrutiny of cases on the list.**

The Attorney General agrees with the tenor of the recommendations. It is imperative that the Law Officers' superintendence of SFO cases does not impinge on their operational independence. The relationship between the Law Officers and the SFO is set out in the Framework Agreement which is agreed between the Attorney and the Director. The Framework Agreement is due to be reviewed over the next six months; that review will look at superintendence arrangements and the way they are documented in the Agreement and will also ensure that the importance of the independence of the SFO is properly reflected in the Agreement. Regular engagement with the SFO is undertaken by the Law Officers and AGO officials, including through Superintendence meetings, where a case list prepared by the SFO is reviewed. Changes were made to the case list in January 2019 following the commencement of the Framework Agreement meaning that current case lists are already largely consistent with this recommendation.

### Recommendation 3

**Because there will always be tensions between the desire of investigators to bring persons to justice whom they believe to have committed offences, and the need of prosecutors to conduct themselves in such a way as to ensure that those whom they charge have trials which are, and can be proved to be, fair:**

- a. The relationship between the two functions must be characterised by frankness; and**
- b. When, as there sometimes will be, there are tensions or disputes between them as to the proper way of dealing with a particular issue, they should take the advice of General Counsel – or, if necessary, because of the absence of General Counsel for any reason, from independent counsel – on the proper course of action.**
- c. Her Majesty's Crown Prosecution Service Inspectorate, in the course of its regular inspections of the SFO, should pay particular attention to the relationship between the investigative and prosecutorial arms of the service to ensure that the flow of information between them is being appropriately managed.**

The Attorney General and the SFO accept these recommendations. As part of the SFO's enhanced case assurance process — introduced from December 2021 — there are opportunities for any concerns to be dealt with as necessary. The SFO will work with HMCPSI to deliver this recommendation no later than the end of January 2023. An update on the SFO's progress will be provided to the AGO no later than the end of October 2022.

### Recommendation 4

**The SFO must immediately communicate – to investigators within guidance and to all staff – that in the event of any information concerning an ongoing investigation or prosecution coming to them from a defendant or suspect, or**

**any representative of either, it must be fully recorded and shared with the case team.**

The Attorney General and the SFO accept this recommendation. Steps have already been taken to fully meet this recommendation – the SFO introduced a written policy in March 2020 concerning contact with non-legal representatives. This formalised a verbal policy introduced in September 2019.

#### Recommendation 5

**Any record of direct contact with the DSFO concerning any current investigation or prosecution should immediately be passed to the case team or Head of Division with responsibility for the case, or a senior management team member as determined by DSFO or General Counsel. The DSFO’s Private Office should ensure that any such contact is immediately ‘rerouted’ and that no further direct access to the DSFO is allowed.**

The Attorney General and the SFO accept this recommendation and the SFO has taken steps to fully address this, through a formal policy that has been in place since March 2020.

#### Recommendation 6

**The SFO must emphasise and communicate to all members of staff the requirement to comply with all the casework assurance processes set out in the Handbook, with a specific focus on CPIA disclosure obligations. All current case assurance systems should be complied with within three months of the publication of this Review. A regular audit of compliance against these processes should be carried out by Heads of Division in association with General Counsel and the COO, and all SFO cases should be reviewed at least annually. Formal records of such assurance should be maintained by Case Controllers and Heads of Division and be provided to General Counsel as required and at least once a year for each case.**

The Attorney General and the SFO accept this recommendation. An internal communication campaign within the SFO will be launched by October 2022 to support adherence to the existing policies. The SFO will maintain an audit of compliance and will create formal records to provide assurances of the audit; the SFO will complete this process by the end of March 2023; the SFO will provide an update on progress to the Attorney General in October 2022.

#### Recommendation 7

**The Heads of Division, with oversight from General Counsel and the COO, should ensure that all cases have regular and effective disclosure strategy and management documents (in line with the requirements of the CPIA and in line with the SFO Operational Handbook). The Case Controller for each case should produce a quarterly update on ‘disclosure risks’ in line with the case strategy. These should be reviewed and approved by Heads of Division as part of the assurance process, with formal records maintained.**

The Attorney General and the SFO accept this recommendation. In line with the Attorney General's Disclosure Guidelines, all SFO case teams produce an investigation management document as well as a disclosure management document; these are reviewed regularly as part of the SFO's enhanced case assurance process operational policies.

#### Recommendation 8

**The SFO should work with the AGO to consider the requirements set out in the AG disclosure guidelines (reporting within six months of this Report) and, in particular, whether there should be a change in the current approach to the management of disclosure following the receipt of a section 8 CPIA application. The disclosure process, which is necessarily one which often dwarfs the actual gathering of directly relevant evidence, must be kept under constant review. When, as in this case, material which clearly should have been disclosed is only considered for disclosure following the receipt of a section 8 CPIA application, the result should be a much more generous interpretation of relevance than there had been before, instead of the gradual and apparently reluctant 'drip-feed' of disclosure which continued until the CACD hearing and resulted in the appeals of Akle and Bond being allowed. The fact that particular persons may be embarrassed by the disclosure of actions or decisions they may now regret should never stand in the way of proper performance of the CPIA disclosure regime.**

The Attorney General and the SFO accept this recommendation. The SFO has worked closely with the AGO over the past 12 months, providing feedback on the AGO Guidelines (both through the formal review process, and on an ad hoc basis). Building on the work already undertaken, the SFO will provide a formal report to the AGO by January 2023 for consideration when the guidelines are reviewed again in July 2023.

#### Recommendation 9

**The SFO must ensure it has an effective system to support and monitor resourcing across all cases. Individual case resources must be clearly determined and subject to regular review and assessment by Heads of Division and Case Controllers with oversight by General Counsel and the COO. Written detailed case resource plans must be linked to the initial case strategy and updated to accompany significant case developments with a clear understanding from Heads of Division how case priorities and developments may require more or less resource to be allocated during the life cycle of the case. The Chief Capability Officer (CCO) should work with General Counsel, COO and finance to determine the best approach to develop such a system and within 12 months have clear case resource plans on all current SFO casework.**

The Attorney General and the SFO accept this recommendation. The SFO regularly reviews the allocation of resources to cases, through formal governance structures. Going forward, resourcing requirements will be detailed and agreed at the point that the Director adopts a case. This will be implemented immediately following the publication of this review.

#### Recommendation 10

**With immediate effect the SFO must develop a clear route by which case staff (the case team) can raise concerns about cases. This route should be clearly set out in the Operational Handbook and supported by an independent process.**

The Attorney General and the SFO accept this recommendation. In June 2020, the SFO introduced an anonymous reporting tool for staff, which allows staff to raise reports directly with the Chief Operating Officer. By August 2022, the SFO will implement a process for raising case concerns through General Counsel's office and communicate this to staff. Should the concern relate to General Counsel, the process will allow staff to raise their concern with a nominated Non-Executive Director.

#### Recommendation 11

**The need for adherence to the Operational Handbook by all SFO staff needs to be clearly articulated and communicated to all staff. Within six months of the publication of this Review a communication campaign should be designed to deliver this message, the reasons for its importance and the consequences of non-compliance, in association with the Departmental Trade Unions and other staff networks, as well as with senior management and the Culture Change Programme. From April 2023 clear responsibility should be set out in annual objectives (for all case staff including Heads of Division, Case Controllers and case team members) to ensure that annual performance assessments can take account of their compliance with them and set out any apparent development needs.**

The Attorney General and the SFO accept this recommendation. The SFO will launch an internal communications campaign by October 2022 to support adherence to the existing policies. By October 2022, the SFO will introduce an assurance process to monitor staff adherence to and compliance with SFO operational policies.