



## Attorney General's Office

### **May 2023 update on the delivery the recommendations in Sir David Calvert-Smith's Independent Review into the Serious Fraud Office's handling of the Unaoil Case – *R v Akle & Anor***

#### Overview of progress

Following the Court of Appeal's judgment in the Unaoil case (*R. v Akle & Anor*) in December 2021, the then Attorney General commissioned Sir David Calvert-Smith to conduct an independent review into the Serious Fraud Office's (SFO) handling of the case.

Sir David's [full report](#) was published on 21 July 2022, alongside [a response](#) to his recommendations. Sir David made 11 recommendations; all were accepted. The recommendations covered a range of matters, including record keeping and case assurance, compliance with policies, and resourcing.

An [initial update](#) on the delivery of these recommendations was published by the Attorney General's Office (AGO) on 29 November 2022. This update showed substantial progress in delivering Sir David's recommendations, with the SFO having already taken significant action to implement nine of his 11 recommendations. For the two remaining recommendations, work had commenced to address Sir David's proposals.

At the same time, that update highlighted that while many of the changes recommended by Sir David could – and have been – made quickly, it would necessarily take time to embed the changes and assess their effectiveness.

As of May 2023, there continues to be good progress. Significant action has now been taken to deliver all 11 of Sir David's recommendations, with further activity planned in some instances. In addition, action to embed the changes that have been made and monitor their effectiveness is ongoing.

There is also some evidence that the actions taken so far are proving to be effective. On 4 May 2023, His Majesty's Crown Prosecution Service Inspectorate (HMCPSI) published [a follow-up inspection of case progression in the SFO](#). As part of the inspection, where issues raised in Sir David's review were within scope, HMCPSI used the evidence gathered to assess the progress made to address his recommendations. While highlighting some areas for further work, this assessment indicated positive progress on many recommendations.

It nonetheless remains the case that it will take time to fully embed Sir David's recommendations and assess whether the actions taken have been effective. To support this longer-term assessment, the Law Officers have asked the Chief Inspector of HMCPSI to consider an inspection of the recommendations' implementation as part the HMCPSI's inspection programme in 2024-25.

## 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.**

As previously reported, all efforts will be made to ensure there is no ‘interregnum’ between the departure of one Director of the Serious Fraud Office (DSFO) and the arrival of the next. In the November update, it was noted that the current Director had recently confirmed she would be leaving post at the end of her five-year contractual term in August 2023 and that the AGO has discussed with her the possibility of a short extension to avoid an “interregnum” and/or assist with the induction of the new Director. Since the November update, the AGO has taken the following steps:

- Launched the recruitment campaign for a new DSFO, which went live on 24 March 2023 and closed on 25 April 2022. This should allow sufficient time before the current DSFO’s departure to identify a preferred candidate, conduct pre-appointment checks, and formally appoint the new DSFO.
- Agreed with the SFO to expedite the preferred candidate’s pre-appointment checks.
- Confirmed with the current DSFO that she is willing to extend her contract for a short period of time if needed.

On induction for an incoming DSFO, it was previously confirmed that the induction programme for future Directors will be designed by the SFO, with the oversight of the Law Officers and the AGO. It was also noted that this will be tailored to each new DSFO and that new DSFOs will also continue to have access to the Cabinet Office’s induction programme for Directors General. Since the November update, the SFO has developed a provisional induction plan that will be tailored to the requirements of the new DSFO. The Law Officers will review this plan at the next SFO Ministerial Strategic Board on 12 June 2023.

The SFO, which manages the recruitment and appointment of its General Counsel role, will make all efforts to ensure there is no ‘interregnum’ between the departure of one General Counsel and the arrival of the next and continuity of the role.

This recommendation was out of scope of the HMCPSI case progression follow-up inspection.

## 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.**

In the November update, the AGO confirmed it would consider these proposals as part of its planned review of the Framework Agreement between the Law Officers and the Director of the SFO. The AGO completed this review in January 2023 and will be publishing an updated Framework Agreement following the appointment of the new DSFO.

In addition, the AGO and SFO have taken steps since November to address Sir David’s specific proposals. Since April 2023, case lists prepared for SFO superintendence meetings include all cases which may require or have required the Attorney General’s consent to prosecute – even if there is ‘nothing to report’ – and more explicitly signpost high-risk cases. In addition, the AGO has reviewed official-level meetings and can confirm that they occur in line with Sir David’s recommendation. These include a monthly meeting between the SFO General Counsel and the AGO Director, which is minuted.

This recommendation was out of scope of the HMCPSI case progression follow-up inspection.

### Recommendation 3

On the topic of investigators and prosecutors working together—part of the Roskill Model, which sees investigators, prosecutors, accountancy experts and now digital experts, work together—Sir David Calvert-Smith recommended that:

- 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.**

As previously reported, senior leaders in the SFO facilitate effective relationships between the investigation and prosecutorial sides of a case team, and action has been taken to further facilitate cooperation. The SFO introduced enhanced case assurance process in December 2021 that provide opportunities for any concerns within a team to be dealt with as necessary. HMCPSI were also made aware of this recommendation and, as appropriate, will be considering the relationship between the investigative and prosecutorial arms of the SFO in their regular inspections of the organisation.

HMCPSI considered progress against this recommendation in their case progression follow-up inspection. In all the cases examined as part of the inspection, HMCPSI found no evidence

of tensions between investigators and lawyers, and that information and evidence was being shared openly and effectively. HMCPSI also noted that the additional safeguards that the SFO has developed within its case assurance process protect from tensions developing.

#### 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.**

As previously reported, the SFO introduced a written policy in March 2020 concerning contact with non-legal representatives, which formalised a verbal policy introduced in September 2019. In August 2022, this policy was expanded to cover all third parties.

HMCPSI considered progress against this recommendation in their case progression follow-up inspection. Interviews with case teams indicated full awareness of the new policy. HMCPSI judged the recommendation to be met, while noting the requirement for ongoing monitoring to provide assurance of compliance.

#### 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.**

As confirmed in the November update, steps have been taken to address this recommendation. The SFO introduced a policy to 'reroute' contact with the Director in March 2020.

HMCPSI considered progress against this recommendation in their case progression follow-up inspection. While none of the cases examined as part of the inspection had direct involvement of the Director of the SFO, HMCPSI's interviews with staff found a clear understanding of the new policy.

#### 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.**

In the November update, the AGO confirmed that the SFO had taken the following steps to address this recommendation:

- Since the publication of Sir David's review, case review meetings address all of the specific issues raised in the recommendation.

- Heads of Division use case review meetings to assess adherence to case assurance processes. These take place regularly and have formal written records.
- The SFO implemented an internal communication campaign in October 2022 to promote adherence to the Operational Handbook, including casework assurance processes and CPIA obligations, as set out in the recommendation.

Further to these steps, the SFO has – and will continue to – highlight the importance of adherence to operational guidance through available fora. This includes all staff events, at case team meetings (including case review meetings) and through individual performance management conversations. In addition, regular Operational Handbook awareness sessions for new and existing staff are now taking place. These sessions support staff engagement with the Operational Handbook, underlining that compliance with the Handbook is mandatory.

HMCPsI considered progress against this recommendation in their case progression follow-up inspection. HMCPsI found that changes since 2019, including the development of case review panels and now case review meetings, have resulted in stronger and more effective case assurance processes. At the same time, HMCPsI noted the role of the COO in assurance processes needs to be clarified and that ongoing monitoring will be needed so that the SFO can provide assurance of compliance.

#### 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.**

As previously reported, the SFO has taken and continues to take action to address this recommendation. To confirm and further detail this activity:

- Heads of Division, with oversight from General Counsel and the COO, continue to ensure that all SFO cases have regularly updated, effective investigation management documents as well as disclosure management documents.
- In October 2022, the SFO updated the chapter on disclosure in its Operational Handbook.
- In October 2022, the SFO introduced disclosure review meetings between Heads of Division, or their nominated deputy, and case teams. Records of these meetings, which includes discussions of disclosure-related risks, are maintained.

The HMCPsI case progression inspection considered this recommendation, finding evidence to indicate that the SFO had made progress. It noted that, through measures such as disclosure review meetings, the SFO has more effective systems in place to assure disclosure. The inspection stated that further assessment would be required of whether revised systems have been effectively embedded and resulted in overall and consistent improvement.

Since the November update, HMCPsI also announced in its [Business Plan 2023-24](#) that it will be undertaking an inspection of the handling of disclosure at a detailed level in SFO cases. This will build on the findings of their recent case progression follow-up inspection and the implementation of the recommendations in Sir David’s review.

## 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.**

As previously reported, the SFO has and continues to take action to address this recommendation:

- The SFO works closely with AGO on disclosure policy, including feeding into the 2021 review of the Attorney General’s Guidelines on Disclosure.
- In November 2022, the SFO provided the SFO Ministerial Strategic Board, which is chaired by the Attorney General, with a submission on potential improvements to the disclosure regime. This included proposals relating to the Attorney General’s Guidelines on Disclosure and to Section 8 CPIA applications.
- The SFO continues to keep its internal disclosure processes under review.

Since the update in November, the AGO has established a working group for law enforcement – of which the SFO is a key contributor – to share operational insights on the current disclosure regime and develop a strong evidence-base for potential change. Consideration is also now being given to how the insights of this working group will feed into plans – announced in the [Government’s Fraud Strategy](#) published on 3 May 2023 – to conduct an independent review into the challenges of investigating and prosecuting fraud. Amongst other things, this review will be considering modernising the disclosure regime for cases with large volumes of digital evidence.

This recommendation was out of scope of the HMCPSI case progression follow-up inspection. However, and as noted above, HMCPSI announced in its [Business Plan 2023-24](#) that will be undertaking an inspection of the handling of disclosure at a detail level in SFO cases.

## 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.**

As previously reported, the SFO has taken action to address this recommendation through new systems to improve oversight of the overall resourcing picture. To confirm and further detail activity:

- In October 2021, a resourcing group – comprising General Counsel, the Chief Operating Officer, and Heads of Division – was established to distribute resources effectively across the organisation.
- Following the publication of Sir David's review, all potential cases must be accompanied by resourcing requirements in order for the Director to consider adopting them.
- After cases are formally accepted, detailed resourcing plans are now discussed at every case review meeting in accordance with the proposals in the recommendation.

HMCPsI considered progress against this recommendation in their case progression follow-up inspection. HMCPsI found that the changes the SFO has made to prioritise resources have been broadly positive, but noted that lower priority cases must be adequately resourced. HMCPsI found that the cases it examined as part of the inspection were mainly progressed effectively.

#### 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.**

As previously reported, the SFO has taken action to address this recommendation. The SFO introduced a new policy for staff to raise concerns in May 2022. This policy was updated to include details of an independent process, in accordance with the recommendation, and published on the SFO intranet in October 2022.

HMCPsI considered progress against this recommendation in their case progression follow-up inspection. HMCPsI judged the recommendation to be met, while noting that regular management reviews would be expected to assess the effectiveness of the process and to highlight any trends and risks which may require processes or systems to be amended.

#### 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.**

As set out in the November update, the SFO has taken action to address this recommendation. In October 2022, and in line with the recommendation, the SFO implemented an internal communications campaign to promote adherence to the Operational Handbook. SFO staff performance management includes consideration of compliance with SFO policies including the Operational Handbook.

In addition, the SFO has, and will continue, to highlight the importance of adherence to operational guidance regularly in different fora, including all staff events and case team meetings (including case review meetings).

HMCPST considered progress against this recommendation in their case progression follow-up inspection. HMCPST reported that while they had seen much more clarity about mandatory expectations, there is still some way to go for staff to understand the role of the handbook and accept the position it has in the organisation.

The SFO is developing a plan to deliver HMCPST's recommendations.