

## Will the SFO Become a Collaborator of Choice With Faster, More Focused Investigations?

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I attended Nick Ephgrave QPM's first public speech as director of the Serious Fraud Office (SFO) at the Royal United Services Institute (RUSI) last night. It was engaging and his ideas for modernisation should be viewed optimistically. The director presented his aspirations for the SFO and the key takeaways as I saw them are set out below.

### **Collaborator of Choice**

The director wants the SFO to be a collaborator of choice for agencies in the UK and the US. He provided examples of cross-agency investigations that have already taken place in the UK since he took up his post.

### **Introducing a Wider Range of Investigative Techniques**

Having set out the challenges of dealing with huge volumes of data prevalent in complex cases, Mr. Ephgrave signalled his intention to concentrate efforts on evidence gathering routes that would lead straight to the evidence and find "smoking guns". He views accessing "insider" human intelligence sources as key to that strategy. He advocated for the incentivisation of whistleblowers, noting that most of the SFO's deferred prosecution agreements (DPAs) have come from whistleblowing reports. He also mooted making greater use of the "Assisting Offenders" provisions under the Serious Organised Crime and Police Act 2005 (SOCPA), which should enable the SFO to offer deals to offenders who assist with their investigations. The director considered that the benefits of incentivisation outweigh the risks and pointed to over 700 UK nationals having gone to the US since 2012 because they did not feel that they had access to effective whistleblowing in the UK. RUSI is researching the topic of incentivisation currently.

### **Shorter, More Focused Investigations**

Mr. Ephgrave acknowledged that SFO investigations take too long. He is retaining his predecessor's target of progressing from investigation to prosecution in three years. He proposes to achieve this through a rigorous and intrusive review process for active cases to ensure that they remain focused on the central issues. He is not afraid to close cases that lack in evidence and considers this vital to redirecting resources to more meritorious cases.

He also spoke about the need for momentum on cases and was quick to reference having executed more dawn raids in the last three months than in the last three years. He believes in striking while the iron is hot – bringing people in for interview, asking them questions and searching their premises. He wants to utilise the SFO's new powers under the Economic Crime and Corporate Transparency Act 2023 (ECCTA).

### **Focus on Victims and Engaging With Corporates**

The director affirmed the SFO's commitment to investigating investment fraud and crimes with a high, direct victim impact. He said that he viewed those cases as equally important to corporate economic crime and international corruption. However, there did appear to be greater focus on UK-centric cases. He confirmed that he sees DPAs as an important tool for sanctioning corporate misbehaviour, but he is also interested in engaging with corporates to provide expectations of behaviour – even referencing the possibility of an SFO kitemark for companies that have complied with fraud prevention training.

### **Dealing With Disclosure**

The director recognised the significant burden that the disclosure regime places on the SFO. He was not advocating for wholesale change of the fundamental principles of disclosure, endorsing their necessity for a fair and just process. Although he did not dismiss the "keys to the warehouse" approach out of hand, he felt this changed the nature of the problem rather than resolving it. He highlighted how out of date the current legislation is, reliving his memory of how radical the change seemed when it came into force in 1996, when he was a serving Metropolitan police officer, but drawing the obvious distinction in technological advances since then. He would like to bring the legislation and guidance up to date, for example by revising the definition of "relevant material", considering how material is scheduled and finding more pragmatic ways to deal with data protection issues. He is a proponent of using artificial intelligence (AI) to deal with disclosure more cost effectively and referenced a pilot underway on a case currently.

## Cultural Change

Mr. Ephgrave views cultural change as crucial to recruit and retain skilled professionals. He set the right tone from the top, focusing on the strength and expertise of current staff; the need for recognition internally and publicly of their successes; and, importantly, how he ultimately underwrites the risks people in the organisation take providing they act in accordance with the law and the agency's ethical values.

## Conclusion

Mr. Ephgrave's vision for the SFO is that it will be bolder and more proactive. His ambition is to make the SFO a collaborator of choice for agencies within the UK and overseas.

In my view, to be a collaborator of choice for overseas agencies, the SFO will need to demonstrate a razor-sharp focus on the most significant, complex and pivotal international cases of fraud and corruption. This did not resonate through the director's address; it would be encouraging to see greater emphasis on communicating this element of the SFO's mission.

Overcoming the challenges posed by disclosure will be critical to accomplishing his objectives in this regard. The only widespread agreement about this issue among practitioners is that it is a tough problem to solve. As of yet, no compelling suggestions to overhaul the disclosure framework have been forthcoming from any source. We await the outcome of the Jonathan Fisher QC review in this regard.

More generally, if the director can successfully implement the changes he has articulated, particularly by introducing new investigative techniques that produce high-quality intel at an early stage of investigations and conducting more efficient, focused investigations, then we should be optimistic about the SFO's future. If the SFO demonstrates continued momentum by executing dawn raids, followed swiftly by suspect and witness interviews, corporates may need to adjust their approach to assessing both the likelihood that the SFO will investigate allegations of serious wrongdoing and how any investigation will play out.

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