

Jun. 5, 2024

U.K. Bribery Act

The SFO's Five-Year Strategy: Rebooted, Recharged and Ready to Rumble?

By [Patrick Rappo](#) and [Emma Shafton](#), *Reed Smith*

The SFO is at a critical juncture in its history. Following a tumultuous period under the directorship of Lisa Osofsky, during which it faced multiple high-profile struggles, the agency has a new director and has vowed to do things differently. In April 2024, as part of its reboot, it announced its five-year [strategy](#) for 2024 through 2029 and appended Business Plan for 2024 through 2029 (together, the Strategy). The Strategy sets out a high-level overview of the agency's aspirations, values and approach for the next five years.

In this article, we will discuss the Strategy against the backdrop of the recent struggles the agency has faced and assess its likelihood of success by providing a view on what needs to happen in order for the SFO to become a formidable enforcer of corporate criminal laws and act as a credible deterrent against criminal activity, and for public faith in it to be restored.

See [“Dealing With the SFO After Its ‘Fundamental Failures’”](#) (Sep. 28, 2022).

Recent History

In order to properly analyse the SFO's new Strategy, it is critical to understand the challenges it has faced over the past several years, as well as the areas in which it has found success.

The Osofsky Years

Osofsky became Director of the SFO in 2018 and, even though the agency achieved remarkable successes under her leadership, including the widely reported and highest value [€3.6-billion](#) deferred prosecution agreement (DPA), her tenure was also plagued by a series of botched investigations and trial collapses.

In particular, the SFO repeatedly struggled with disclosure issues, leading to failed prosecutions and damning reports into these investigations. The acquittal of Serco executives, which was compounded by the *Unaoil* case, saw the SFO sharply criticised by the Court of Appeal, which noted

that the defence had been “handicapped” by the SFO’s failure to comply with its disclosure obligations, resulting in three convictions from the bribery case being overturned and a damning report from Sir David Calvert-Smith KC.

Following those incidents, Osofsky indicated that the agency would conduct a detailed review into disclosure with a **review** by Brian Altman KC, publishing its recommendations in June 2022. In the wide-reaching review, Altman identified a number of key operational deficiencies within the SFO, such as resource pressures, inadequate training and inexperience within review teams.

The agency also came under fire with allegations of a toxic work culture. It was then announced in November 2022 that Osofsky would leave the SFO after completing her five-year stint at the agency.

See “**Osofsky’s American Dream for the SFO**” (Feb. 20, 2019).

A New Director

Enter Nicholas Ephgrave QPM – the first non-lawyer Director of the SFO. Ephgrave’s background is a key differentiator from his predecessors. As a former Assistant Commissioner of the Metropolitan Police Service, he led over 21,000 officers and staff in delivering frontline operational activity and has more than 30 years of law enforcement experience.

On Ephgrave’s appointment, Attorney General Victoria Prentis KC MP **stated**, “Nick’s years of experience as a leader in law enforcement and across the wider criminal justice system make him the ideal candidate to drive the SFO forward in continuing its fight against economic crime.”

Detractors may say that his experience will shift the SFO’s focus to the prevention, detection and investigation of crime rather than the intricacies of prosecuting it and pursuing convictions. Others may say that his appointment will lead to the SFO being folded into the National Crime Agency and/or the Crown Prosecution Service. The clear view, however, is that Ephgrave is a highly experienced and well-regarded individual, having successfully led numerous complex investigations, who is held in esteem by his colleagues. Bearing in mind the choppy waters the SFO now finds itself in, experience in investigating, preventing disclosure problems and improving toxic atmospheres are all skills that are needed to right the ship.

There have been early indications that Ephgrave is getting things back on track, including a significant uptick in dawn raids (in the first three months of his tenure, Ephgrave oversaw more dawn raids than the agency conducted in the previous three years). He has also been vocal about his commitment to explore options to incentivise whistleblowers. Ephgrave’s directorship also coincides with a host of new enforcement tools available to U.K. prosecutors, including the new “Senior Manager Offence” under the Economic Crime and Corporate Transparency Act 2023 (ECCTA), which drastically expands the scope of corporate criminal liability, the incoming failure to prevent fraud offence (also under ECCTA) and expanded powers under Section 2 of the Criminal Justice Act of 1987. Generally, Section 2 gives the SFO the power to compel individuals to provide information to the SFO, either by handing over material, or by answering questions (often) at a formal interview.

Failure to comply without reasonable excuse is a criminal offence, which can result in serious sanction, including imprisonment.

However, the same issues that dogged Osofsky's tenure remain, namely disclosure, budgetary constraints, the pace of investigations and the need for legislative change in order to permit new enforcement strategies (such as payments to whistleblowers).

How Ephgrave deals with each of these will determine not just his legacy, but also whether the SFO survives – and ultimately thrives – as an international law enforcement and prosecutorial agency.

Addressing Disclosure Challenges

The “d” word has haunted the agency and the U.K. criminal justice system more widely in recent years.

The statutory disclosure regime in the U.K. applies to investigators, prosecutors and the defence and broadly relates to the recording and exchange of material relevant to the case. Investigators must pursue all reasonable lines of inquiry and keep a record of all material relevant to the case in schedules (these can be hundreds of pages in length in complex matters). The prosecution reviews the schedules and underlying documents and has a duty to provide the defence with copies of, or access to, all prosecution material that is capable of undermining the prosecution's case and/or assisting the defence. The defence can also inspect the schedules and make disclosure requests of the prosecution, which, if contested, will be ruled on by a judge. Failure by the prosecution to comply with its disclosure obligations can prove fatal for a case, resulting in a dismissal of the charges or providing grounds to overturn a conviction.

Osofsky was quick to criticise the disclosure system in general, often arguing that due to the terabytes of data that are now commonly involved in the agencies' investigations, the SFO's obligations have become too onerous. Currently, the average SFO case has around five million documents. To date, the largest case on the SFO system has 48 million documents (6.5TB or 6,500GB). If printed, the average volume of material in an SFO case would stack considerably higher than the Shard, according to an ongoing independent review of disclosure and fraud offences being chaired by [Jonathan Fisher KC](#) (the Fisher Review).

It is of note, however, that many of the high-profile disclosure failings that led to numerous acquittals during Osofsky's tenure did not stem from the volume of material that the SFO was required to review in order to comply with its disclosure obligations. Rather, the failings arose from poor judgement calls by the SFO. In *Unaoil*, the SFO failed to disclose evidence of “wholly inappropriate” contact with a former U.S. Drug Enforcement Administration agent who acted on behalf of co-conspirators; in *Serco* it failed to disclose evidence that supported the defence case.

A recent news report details that there may be significant deficiencies with the Autonomy Introspect software that the SFO used to store and manage digital evidence on investigations opened between 2011 and 2018, which may have led to potential disclosure failings across multiple

cases. It is thought that the program's search engine is prone to overlook keywords and may have caused the agency to overlook potentially exculpatory documents. This has led to a review of all past and present affected cases, which was announced by Ephgrave on April 19, 2024. The worst-case scenario for the SFO is that the review could reveal several miscarriages of justice.

The Fisher Review published its **preliminary findings** on April 24, 2024, with final recommendations expected this summer. Fisher stated that he can see no compelling case for radical reform of the disclosure system. Rather, what is needed are better training and resources across all parts of the criminal justice system. He blamed poor culture around disclosure and insufficient value placed on the work in different parts of the system.

Interestingly, language similar to that used by Osofsky appears in the Strategy, which says the SFO will “continue to push for a disclosure regime that is fit for today's challenges . . .” rather than providing detail on how the SFO intends to apply the existing disclosure regime in practice and improve its culture surrounding disclosure. The Strategy vows to support the second stage of the Fisher review and to “respond to the changing disclosure environment.”

Additionally, a **report** by the HM Crown Prosecution Service Inspectorate (HMCPSI), published on April 30, 2024, found that the agency has made some progress in reforming its disclosure review process. HMCPSI chief inspector Anthony Rogers said, “I am pleased that SFO has already taken action to improve their disclosure regime,” and referred to the SFO promoting incentives to encourage staff to take on the role of disclosure officers. He has introduced changes to both its operational handbook and assurance processes. According to the report, “the SFO must be supported by more government funding,” and the state must develop a long-term funding strategy by October 2024 to help support the SFO in discharging its disclosure obligations.

How Ephgrave deals with disclosure will be a critical factor dictating the success of the agency under his leadership.

See “**Addressing the Apparent Asymmetry Between Corporate Criminal Enforcement Actions in the U.K. and the U.S.**” (Oct. 26, 2022).

Making Better Use of Prosecutorial Tools

The SFO promises a “strong, dynamic, confident and pragmatic organisation.” The first way the Strategy addresses this is through increasing use of prosecutorial tools that encourage both corporations and individuals to bring evidence of wrongdoing to the SFO's door.

Encouraging Corporate Self-Reporting

The Strategy indicates that the agency will make it easier for corporates to self-report and that the SFO should be more open and innovative in pursuing alternatives to formal prosecution (e.g., DPAs).

At a recent [conference](#), during a fireside chat, Sara Chouraqui, Joint Head of Bribery, Fraud and Corruption, indicated that the SFO would refresh its corporate guidance this year, which would include its guidance on corporate cooperation. The aim of this exercise will be to set out clearly what a corporate's options are when they go to speak to the SFO, what cooperation looks like and what an internal investigation should look like. She further indicated that the agency is considering holding a defence practitioner roundtable to be transparent when refreshing these policies. These developments will be welcomed by corporates and the defence bar.

Chouraqui additionally hinted that the SFO would issue guidance in relation to how it would enforce the new Senior Manager Offence under ECCTA. This will be welcomed by corporates/the defence bar as there is no requirement for the U.K. government to issue its own guidance in relation to the offence and, in many cases, there is likely to be uncertainty as to whether an individual falls within the definition of "senior manager."

See "[DOJ Incentivizes Self-Disclosure Once More With Guidance for U.S. Attorneys' Offices](#)" (Mar. 15, 2023).

Working With Assisting Offenders

The Strategy also refers to improving the SFO's ability to make use of assisting offenders. This is not a new concept as so-called "supergrass" evidence has been available to law enforcement in the U.K. since 2005 under the Serious Organised Crime and Police Act (SOCPA). Indeed, Osofsky called on white-collar criminals to "wear a wire, or face jail" at the start of her tenure, and there were botched efforts to engage with an assisting offender in the *Unaoil* case. However, these methods are rarely employed by the SFO.

In contrast, cooperating witnesses (as they are called in the U.S.) are a regular feature of U.S. law enforcement because significant prison sentences are regularly at stake and a substantial discount in exchange for cooperation can look attractive. Sentences for economic crimes tend to be far shorter in the U.K. (with the maximum sentence for a single offence of fraud or bribery being 10 years), which means there is less incentive for individuals to assist law enforcement. Defendants may choose to take their chances in the hope that the SFO may face a disclosure issue or fail before a jury.

The DOJ recently launched its own Pilot Program on Voluntary Self-Disclosures for Individuals, which is intended to incentivise culpable individuals to self-report their misconduct and to cooperate in DOJ investigations and prosecutions of other individuals and companies that have engaged in corporate wrongdoing. In exchange, DOJ prosecutors may offer non-prosecution agreements (NPAs) to individuals that meet all criteria for the program. NPAs, although not directly available in the U.K., are similar to immunity under Section 71 of SOCPA.

See "[DOJ's New VSD Program Offers NPAs to Individuals Who Can Help Catch Bigger Fish](#)" (May 8, 2024).

Incentivizing Whistleblowers

The Strategy refers to exploring incentivisation options for whistleblowers, a concept which has a considerable amount of traction at the moment in the U.K. and internationally. On March 7, 2024, U.S. Deputy Attorney General Lisa Monaco announced the intention to launch a significant new policy designed to create financial incentives for individuals who report misconduct to the Criminal Division. Several U.S. Attorneys' Offices have created similar whistleblower programs, all of which are inspired by the SEC's highly successful Dodd-Frank whistleblower program.

However, legislative change would be required in order to introduce a whistleblower reward program in the U.K. Thus, the SFO has little control over whether such a program is introduced, which is perhaps why little detail is given in the Strategy about how the SFO actually plans to implement this. Were this to become possible, it could have a dramatic impact on the SFO's prowess as an enforcement agency, or at least cause corporates to consider self-reporting – and self-reporting earlier – to preclude any potential whistleblower getting in the door first.

See the Anti-Corruption Report's two-part series on the DOJ's intention to launch a whistleblower program: "[What Will It Look Like?](#)" (Mar. 27, 2024), and "[What Does It Mean for Whistleblowers?](#)" (Apr. 10, 2024).

Establishing Itself As a Global Player

On the global stage, the SFO can point to many historic successes, most notably the Airbus DPA, which was the world's largest global resolution for bribery involving authorities in France and the U.S. The SFO clearly has deep ties with the U.S., demonstrated by the fact that it has a senior DOJ representative embedded within the agency as a secondee.

However, to solidify its role as an authoritative player in both the global and domestic justice systems, the SFO will need to harness its new powers in the form of the Senior Manager Offence and incoming failure to prevent fraud offence under ECCTA, both of which have extraterritorial reach, as well as deploy Overseas Production Orders in order to obtain data from abroad. It will also need to harness new technologies for more efficient investigations, address its issues bringing cases in a timely manner, and attract and retain top talent.

Harness Technology

It is easier to commit fraud now than ever before. We live in an age where it is possible to launder billions digitally via cryptoassets (gone are the days of big bags of dirty cash) or use an artificial intelligence (AI)-generated deep fake to bypass bank security measures. As part of the Strategy, the SFO has vowed to monitor and forecast developments in technology, working with experts in and outside the justice system.

The intention to stay ahead of technology sounds great on paper, but much of this will fall on the availability of resources to do so. In the Strategy, the SFO recognises that it must keep up with an increased change of pace to be effective. It states that it plans to use digital tools to assist with its investigations and casework by, for example, reviewing evidence using machine-learning and AI.

If the SFO is able to leverage technology properly, this is one area that could really assist the agency to improve efficiencies in its disclosure review process. However, as described above, a disclosure review is currently underway to assess potential deficiencies in one of its existing disclosure review tools.

Speed Things Up

Additionally, the SFO will also need to speed up its investigations. According to written evidence submitted by the SFO to the Home Affairs Select Committee's fraud inquiry in October 2023, the average time taken to investigate an SFO case, and then charge, take no further action or commence negotiations for a DPA is four years. By contrast, the DOJ's recent sensational prosecution of Sam Bankman-Fried – found guilty of defrauding crypto exchange FTX, reached trial within a year of his arrest and indictment.

The reasons for this stark contrast may include the fact that the DOJ had witness testimony from cooperators such as Bankman-Fried's girlfriend and co-founder, underscoring the value of working with cooperating witnesses. The DOJ is also not hampered by wider issues of chronic lack of funding in the criminal justice system, which the U.K. has grappled with for years and which is something outside of the SFO's control. The new City of London Law courts (intended to hear economic crime cases) are under construction but are not due to open until 2026, although when they do, this may assist the SFO somewhat in this regard.

It is also of note that the DOJ takes a different approach to disclosure/discovery than the SFO. The legal test of what should be disclosed is similar in both jurisdictions: in the U.K., material that undermines the prosecution's case or assists the defence's case; in the U.S., exculpatory and impeachment evidence that is material to guilt or punishment. However, in the U.S., the law requires the disclosure of such material as a constitutional obligation regardless of whether the defence makes a request for it. Therefore, in practice, prosecutors tend to take a broad view on materiality and err on the side of disclosure by having an "open file" or "keys to the warehouse approach," which means the review process undertaken by its U.K. counterpart is substantially reduced. By contrast, in the U.K., the SFO can spend years individually reviewing the universe of documents in an investigation and making judgment calls on which meet the test for disclosure. The U.S. approach to discovery allows for a more streamlined process, which ultimately leads to cases reaching trial faster.

Recruit and Retain

In the first line of his foreword to the Strategy, Ephgrave states that the agency must attract and retain the "brightest and best from a range of professions." The Strategy indicates that it will seek to

achieve this by “celebrating leadership and digital skills alongside the more traditional professions,” strengthening learning and development, and fostering an inclusive and supportive environment by, for example, developing its benefits package.

The SFO also plans to relocate to the Government Hub in Canary Wharf. Although not cited in the Strategy, elsewhere the SFO has explained the rationale for the move is to continue to attract the top calibre of lawyers, investigators, accountants, tech and other experts, and to remain close to the London courts and the city.

Whether the SFO will succeed with this ambition depends on whether it can compensate outside of strict civil service pay bands in order to lure the brightest and best away from private practice salaries and retain its current staff. Amidst the current economic turbulence, Ephgrave may not have the ability to increase the SFO’s bottom-line budget.

A secondment pilot programme was mentioned in the Strategy, but limited details are currently available. Although this will not assist with longer-term full-time recruits, it should place the SFO in a strong position to second individuals, at least on a temporary basis, to deal with any uptick in financial crime should economic worries deepen, thus giving the SFO a much needed “surge capacity.”

Looking Ahead

Changes to the SFO and the laws underpinning its powers could not come at a more crucial time. The [Global Economic Crime Survey 2022: UK findings](#) revealed that 64 percent of companies in the U.K. experienced some form of fraud or economic crime in the preceding year, with only South African businesses experiencing a higher level.

Whether we will now see the Age of the Investigator at the SFO or the eventual folding of the agency into others, it is clear that the appointment of Ephgrave signals a refocus of the agency onto the investigation of offences at a time when the SFO faces a true crisis of confidence. Ephgrave appears to have hit the ground running, and his appointment and the broad changes in the law that have arrived or are on the horizon are providing much-needed momentum. Whether this rebooting and recharging leads to a resurrection remains to be seen, but certainly the signs indicate that the SFO is ready to rumble.

Patrick Rappo is a partner in the London office of Reed Smith LLP. His practice focuses on corporate and white-collar crime - covering international bribery, corruption, money laundering, fraud, and sanctions - working across high-risk sectors and jurisdictions. Prior to moving into private practice, Rappo was Joint Head of the SFO’s Bribery and Corruption Divisions and helped introduce DPAs into the U.K.

Emma Shafton is a senior associate in the London office of Reed Smith LLP. Her practice focuses on corporate and white-collar crime and commercial litigation. Prior to moving into private practice,

Shafton spent eight years at the London Bar. As a junior barrister, she was seconded to the SFO for a year and was appointed to the CPS panel of advocates.