HOW THE SERIOUS FRAUD OFFICE'S AMBITIOUS FIVE-YEAR STRATEGY WILL IMPACT BUSINESSES

Date: 22 July 2024

UK Policy and Regulatory Alert

By: Courtney J. Hunter, Michael E. Ruck, Dylan G. Moses

The Serious Fraud Office (SFO) recently published its new five-year strategy for 2024-2029 (the Strategy), setting out its ambitious aspirations to become a "pre-eminent specialist, innovative and collaborative agency which leads the fight against serious and complex fraud, bribery and corruption." By 2029, the SFO hopes the Strategy will have enabled it to become more effective in delivering its mission, more influential on a global platform and a more attractive environment in which to work. Whilst it remains to be seen whether the new Labour government will back this ambitious vision and provide the funding to achieve it, we have set out below the key elements and the issues which firms need to consider.

To achieve the above ambitions, the Strategy focuses on four key outcomes:

1. Strengthening the workforce.
2. Harnessing new technology.
3. Focusing on intelligence, enforcement and preventative capabilities.
4. Becoming the partner of choice, both nationally and internationally.

Each of these priorities are explored below.

The core priorities laid down by the SFO in its Strategy suggest that, with the appropriate funding and government support, corporates and individuals will see an increase in the number of significant penalties and prosecutions brought by the SFO during the next five years. Our White Collar Defense and Investigations team is well equipped to advise on how best to prepare for the strategic measures on the horizon and how to navigate any potential issues your business may face. If you have any questions about the matters in this briefing, please do not hesitate to contact us.

STRATEGIC PRIORITIES

Strengthening the Workforce

Over the next five years, the SFO has stated its commitment to build upon its resources to ensure the production of a highly specialised, engaged and skilled workforce; a workforce composed of diverse and multi-disciplined teams.

To strengthen learning and create a culture of professional development, the SFO has also committed itself to establishing an in-house academy. The purpose is to promote the growth of talent from within and to create a tailored workforce that has in-depth knowledge of the day-to-day workings of the agency. To encourage longevity

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and to incentivise staff to remain at the agency for longer, the SFO has promised to provide additional support through the creation of a new employee value proposition and to develop its overall benefits package. Resource has long been a difficulty for the SFO, and many have called for it to be given increased financial backing over the years. Without such an increase in funding, a matter that is outside the SFO's control, it is hard to see how the agency will achieve its proposals within its Strategy. Whether the new Labour government backs any increases in funding under their “expanded fraud strategy” remains to be seen.

Harnessing New Technology

The SFO intends to use new technology and tools, including the potential for artificial intelligence (AI)-generative tools to make it easier to review evidence, contact witnesses and support victims. The SFO is also seeking to streamline its casework by adopting a new case management system.

Difficulties for the SFO include whether such technological solutions will open the SFO up to increased scrutiny and challenge by those subject to investigation, especially in relation to the reliability of such tools and how they have been implemented.

Intelligence, Enforcement and Prevention

The SFO has committed itself to combatting crime more effectively by using intelligence, enforcement and preventative capabilities. Amongst other measures, this will include: (a) making wider use of the covert powers the agency has available to it and trialing a pilot programme to this end; (b) developing ways to obtain evidence more quickly to increase the speed in which cases are built; and (c) becoming open-minded and pursuing alternatives to formal prosecution where appropriate.

On the case progression front, SFO Director Nick Ephgrave recently expanded upon this strategic objective in the evidence he gave to the parliamentary judiciary committee on 14 May 2024. Ephgrave is determined to see the reduction of case lifespans, and to this end supports the SFO's target of shortening the time it takes to reach charging decisions from the average four-and-a-half years to three years. This may still seem a lengthy period to many.

Ephgrave stated that he also wants cases to be reviewed at an early stage and regularly throughout. The purpose of this is to ensure staff remain live to the progression of their investigations and are aware that cases will be closed unless they have “some life in [them].” It appears somewhat surprising if such an approach was not previously in place.

The SFO also wishes to amend the existing disclosure regime. In his evidence, Ephgrave discussed the SFO's plans to implement a new process whereby everyone working on a given case will know what approach has been taken towards disclosure throughout the life of the investigation. This seeks to address one of the key areas for criticism of the SFO, as due to its turnover of staff and lack of resource, those handling its cases can change repeatedly during the lengthy period of investigation. This causes issues including a lack of continuity and a failure to retain knowledge within investigation teams. Ephgrave also repeated the SFO's call for a government-led review of the disclosure rules in fraud cases. Disclosure has been identified repeatedly over the years as both an area of challenge and failure for the SFO. Any review would have to ensure that the rights of those being investigated or prosecuted were not restricted or over-ruled simply to enable the SFO to ride roughshod over the criminal justice system. Whilst strengthening the disclosure regime is an attractive goal, a key issue that the

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Strategy does not address is the question of funding. To implement the new disclosure processes, the SFO will need to find ways to increase its core funding.

Finally, in the fight against financial crime, the SFO is strengthening its toolbox by exploring ways to increase incentives for whistleblowers. This objective aligns the SFO's priorities with those of the new Labour government, with whistleblower incentivisation also appearing to be a key priority for the party when tackling financial crime, something which Shadow Foreign Secretary David Lammy embellished upon in a recent speech on 21 May 2024. Lammy made it clear that Labour intends to incentivise whistleblowers with up to 25% of any fines handed down by the Office of Financial Sanctions Implementation. It is promising to see a harmonised approach between UK regulatory agencies and the government on this front. In addition, it's promising that our domestic proposals are keeping pace with international developments. By way of example, the SFO's plans mirror recent steps taken by the United States' Department of Justice, who announced in March 2024 the piloting of a new whistle-blower incentive programme (see our related article here).

Becoming the Partner of Choice, Both Nationally and Internationally

The SFO recognises that complex crime is a global threat and therefore it aspires to become a proactive, authoritative player not only domestically, but globally. This will be achieved by collaborating with partner authorities more widely, both within the UK and across borders, and by taking advantage of new ways to share information and intelligence. At the top of the SFO's international agenda is the fortification of international anti-bribery efforts, with a desire to build the agency's standing within the Organisation for Economic Co-operation and Development's working group on bribery.

The SFO also intends to formalise its specialist training and hopes to be able to share such formalised skills and expertise through the creation of a comprehensive secondment programme, which will function across enforcement agencies both at home and abroad. Finally, in order to strengthen its operations and become more authoritative on the global playing field, the SFO intends to increase its use of new powers, including the up-coming “failure to prevent fraud” offence under the Economic Corporate Crime and Transparency Act 2023 (see our related article here).

KEEPING THINGS IN CHECK

Importantly, the SFO has committed to reviewing the Strategy and periodically tracking its performance against the following indicators: (a) justice outcome; (b) operational delivery; (c) organisational strength and resilience; and (d) finance. The SFO will also conduct a formal review of the Strategy at its half-way mark in 2026/27, to ensure it's working in practice and the aims are being delivered.

WHAT THIS MEANS FOR YOU

The SFO's ambitious Strategy demonstrates an overarching commitment to clamp down on serious financial misconduct through the creation of a robust enforcement framework. The direction of travel set by the SFO and its key priorities for the years-ahead are not too dissimilar from those that other regulators, both at home and abroad, are pursuing. To this end, we envisage the upcoming years to be ripe with changes in the enforcement sphere.

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To begin with, given the SFO's noticeable recognition of the challenges posed by criminals operating within the technological sphere, we expect to see firms, particularly those with technology-driven assets and crypto-assets, facing more assertive supervision and enforcement going forward. Moreover, what is evident from the Strategy is that the harnessing of innovative technology and tools is seen as a key mechanism to support consumer protection and reduce financial harm. The SFO sees intelligence-gathering capabilities and analytics as the way forward in identifying, disrupting and mitigating financial crime, particularly complex fraud and corruption cases. Subject to the issue of funding, we expect to see the SFO investing a huge amount of its resources in the field of AI over the upcoming year with new tools potentially on the horizon.

As outlined above, the SFO has committed to exploring incentivisation options for whistleblowers. Before any incentives are implemented, there will likely be a period of market-wide consultation, with any finalised policies then requiring legislative change. Notwithstanding this, organisations can begin preparing for any potential upcoming changes now. In the first instance, companies should review their compliance policies and programs to ensure they are robust, effective, and up to date. This is an effective way for companies to mitigate risks of falling on the wrong side of the law, and thereby making any whistleblower action redundant. However, even with the best policies in place, compliance isn't always guaranteed. Given this, companies should also start reviewing their internal whistleblower programs and begin developing ways to encourage employees to utilise internal reporting mechanisms in the first instance. Encouraging timely internal reporting will allow companies to intervene at an earlier stage in any misconduct allegations and will allow organisations to properly assess the best road forward before external reports are made.

Finally, what is clear from the Strategy is that the SFO is determined to increase case progression. To this end, we expect certain cases, particularly those which resonate with the agency's overall enforcement objectives, to be prioritised. We also anticipate that the agency will start utilising its covert powers on a wider scale. Organisations must be live to this possibility and ensure appropriate policies, procedures and controls are in place at all levels to prevent concerns being raised from any covert investigations. Organisations should also consider whether they wish to cooperate more openly with the SFO, and respond quickly to any information requests, helping eliminate the need for any covert investigations in the first place. Over the next few years, we also expect to see the SFO becoming more creative in its prosecution arrangements, with a noticeable rise in the use of Deferred Prosecution Agreements (DPAs). Companies must ensure the terms of any DPAs are honoured, otherwise lengthy and costly trials will resume. Accordingly, awareness of the key terms and conditions must be known, understood, and observed at an entity-wide level. It is noteworthy that the new Labour government's manifesto proposed expanding DPAs to individuals in certain circumstances.

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KEY CONTACTS



COURTNEY J. HUNTER
ASSOCIATE

LONDON
+44.20.7360.6537
COURTNEY.HUNTER@KLGATES.COM



MICHAEL E. RUCK
PARTNER

LONDON
+44.20.7360.6424
MICHAEL.RUCK@KLGATES.COM



DYLAN G. MOSES
PARTNER

LONDON
+44.20.7360.8154
DYLAN.MOSES@KLGATES.COM

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