

A Tired Proposal:

Should We Worry (Yet Again) About the Future of the UK's Serious Fraud Office?

Few topics have generated more commentary within the UK's white collar criminal defence community than the perceived precarious future of the Serious Fraud Office (SFO). And not without some reason, given the failed attempts in 2011 and 2014 by the then Home Secretary and current Prime Minister, Theresa May, to dismantle the SFO and apportion the constituent parts to the National Crime Agency (NCA) and the Crown Prosecution Service (CPS) respectively.

Published on May 18, 2017, the Conservative Party's general election manifesto breathed new life into an old topic with the inclusion of the following sentence: "We will strengthen Britain's response to white collar crime by incorporating the Serious Fraud Office into the National Crime Agency, improving intelligence sharing and bolstering the investigation of serious fraud, money laundering and financial crime."

Different Beasts

It is important to place this political commitment in context: the SFO and the NCA have little in common. The SFO focuses exclusively on serious or complex cases of fraud, bribery, and corruption. It operates under the integrated "Roskill model," both investigating *and* prosecuting offences. The NCA is restricted to investigating offences, handing prosecution over to the CPS and, unlike the SFO, has a broad remit focusing on serious and organized crime, which includes cybercrime, child sexual exploitation, drug and human trafficking, and the smuggling of illegal firearms.

While the NCA's Economic Crime Command and International Corruption

Unit (ICU) handles financial crimes such as money laundering and cross-border bribery, the NCA is a relative newcomer with little record of accomplishment in investigating complex bribery and corruption. As of March 2017, the NCA's ICU had no dedicated foreign bribery investigators and reported only one ongoing investigation with possible foreign bribery implications, according to the OECD's Phase 4 Report on the UK's implementation of the OECD Anti-Bribery Convention.

By contrast, the SFO has 400 permanent staff (including investigators, lawyers, forensic accountants, and digital forensic experts) and around 60 live criminal cases either under investigation or before the courts at any given time.

More Questions than Answers

The recent UK election result has added more questions to the growing list for those seeking to understand what the likely impact of the Conservative Party's manifesto commitment will be, namely:

- Why was the proposal not included in the Queen's Speech? The Queen delivers her speech during the state opening of Parliament. It is written by the government and contains an outline of the government's policies and proposed legislation for the new parliamentary session. Reform of the SFO was conspicuously absent. Does this suggest reforms are off the agenda? Clearly, the Director of the SFO is not sure as he was calling for the future of the SFO to be put beyond doubt in an economic crime conference some weeks later on July 6, 2017.

- What form would the “incorporation” of the SFO into the NCA take? Speaking at the International Bar Association’s anti-corruption conference on June 13, the Director of the SFO acknowledged the inherent ambiguity in the proposal, commenting that the proposed “incorporation” could “cover anything from loose association through to full merger.” In the short to medium term, however, it would seem highly unlikely, as some commentators have warned, that the SFO would simply be dismantled into its constituent parts with its investigators transferred to the NCA and its prosecutors to the CPS. That way lies almost certain operational paralysis, loss of focus and expertise, and a debilitating impact on current case load. The more realistic prospect is that the SFO would simply sit, largely as is, under the umbrella of the NCA, thereby (hopefully) retaining its staff, its focus, and its integrated approach to investigating and prosecuting offences of serious fraud, bribery, and corruption.
- What legislative amendments would accompany any such incorporation? What would happen to the Criminal Justice Act 1987 and the section 2 powers granted under it to the SFO?
- What of the Cabinet Office’s ongoing review (referred to by the Home Secretary in December last year) of the UK’s organizational framework, capabilities, powers, and resources to combat economic crime?
- Before any steps are taken to incorporate the SFO into the NCA, and particularly in light of the UK’s pending departure from the European Union, would a proper consultation be commissioned that considers the views of all relevant stakeholders and seeks to address the reporting lines, funding levels, and staffing options of the UK’s current multiplicity of economic crime fighters?

These crime fighters include the SFO, the NCA, the City of London Police (including its Economic Crime Directorate, Action Fraud, and the National Fraud Intelligence Bureau), UK police forces and regional Organised Crime, Asset Recovery and Fraud Teams, HM Revenue & Customs, and the Financial Conduct Authority.

- Even if the political will exists to make these reforms within the Conservative Party, how likely are they to remain high on the agenda of a minority government tasked with negotiating the UK’s exit from the European Union?
- Should the incorporation take effect, what measures will be put in place to protect against any improper political influence being exerted on the SFO’s decision making? The SFO is currently subject to the superintendence of the Attorney-General’s office. The NCA, however, is directly accountable to the Home Secretary, who has a legal duty to assist in determining its strategic priorities.
- Is the proposition of incorporating the SFO into the NCA so indelibly linked to Theresa May MP that the prospects of it taking place will likely mirror her own prospects as Prime Minister?

If recent political events have taught us anything, it is that we should be cautious to draw firm conclusions when facing uncertain outcomes. The future of the SFO under the current Government is one such uncertainty. It is a certain uncertainty. ■

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