

## Annex 2 – Process Protocol

### GRM01 Independent Review – Process Protocol

#### A Introduction

1. Brian Altman QC and Rebecca Chalkley ('the Reviewers') have been appointed by the Serious Fraud Office ('SFO') to carry out an independent review of disclosure issues that arose in *R v Woods and Marshall* which led to that case's collapse on 26 April 2021 ('the Independent Review'). The purpose of the Independent Review is to determine what lessons may be learned from this and to make recommendations.
2. The scope of the Independent Review is set out in the Terms of Reference at Appendix 1 to this Process Protocol.

This Protocol has been agreed between Reviewers and the SFO. It sets out the procedures under which the Independent Review is to be carried out, bearing in mind the need for it to be conducted at all times in a way that ensures:

- (a) The independence of the Reviewers in determining how to undertake the work in order to discharge the Terms of Reference.
- (b) The thorough examination and consideration of the available evidence and the issues that the Reviewers consider relevant to the Terms of Reference.
- (c) The fair treatment of individuals connected with the subject matter of the Independent Review and all other parties whose interests are affected by its work.
- (d) The Independent Review reaches its conclusions with all due expedition in the light of need for the SFO to learn any lessons from the collapse of *R v Woods and Marshall* as soon as possible.

None of the provisions in this Process Protocol shall be read or applied in such a way as to derogate from or compromise these principles.

#### B Documents, other information and meetings

##### ***Documents: requests and production***

3. The Reviewers will send all requests for the production of relevant documents held by the SFO (to include documents and communications held both in hard copy and in electronic and digital form) to the Chief Operating Officer, John Carroll, at [John.Carroll@sfo.gov.uk.cjism.net](mailto:John.Carroll@sfo.gov.uk.cjism.net).
4. Provided the documents requested for production are within the SFO's power, custody or control, they will be provided to the Reviewers either in soft or hard copy form as soon as possible. No such documents will be withheld from the Reviewers. For the avoidance of doubt, the SFO shall provide the Reviewers with copies of documents only and not originals. Inspection of the original documents will be facilitated on reasonable notice to the SFO if the Reviewers consider that necessary.
5. Where documents are not within the SFO's possession, custody or control the Reviewers will contact the relevant person to request the document direct.

##### ***General information requests and general explanations***

6. Where the Reviewers require any other information and/or explanations from the SFO as to how it carries out its functions and such a request falls within the scope of the Terms of Reference, the Reviewers will send a request for this information to the email address referred to in paragraph B3 above.
7. The SFO will respond as soon as possible to any such request.
8. Where the Reviewers require any other information and/or explanations from any other person as to how the SFO carries out its activities and such a request falls within the scope of the Terms of Reference, the Reviewers may send a request to the person concerned, copying in John Carroll.

#### ***Written accounts***

9. Where the Reviewers wish to request a written account from any person currently employed by the SFO, they will write to that person via the contact point set out at paragraph B3 above setting out the issues that they request are covered in the account and giving a reasonable opportunity for the person concerned to respond.
10. Where the Reviewers wish to request a written account from any person not currently employed by the SFO, they will write to that person direct setting out the issues that they request are covered in the account and giving a reasonable opportunity for the person concerned to respond.
11. Where it is necessary for a person asked to provide a written account to the Independent Review to have access to contemporaneous documentation to respond to a request for a written account, the Reviewers will identify what documents should be provided to them and the SFO will make the documents available to the person concerned.
12. The Reviewers have no powers to compel the provision of a written account from any individual, and all written accounts shall be provided to the Reviewers voluntarily.

#### ***Meetings with individuals***

13. Where the Reviewers wish to meet with any individual currently or formerly employed by the SFO, they will notify the SFO of the individuals they wish to meet (through the person referred to in paragraph B3 above, attaching a letter for the SFO to pass on to that individual).
14. The SFO will endeavour to secure the attendance at a meeting of any identified individuals who are its current or former employees save that for the avoidance of doubt, the SFO has no powers to instruct attendance of its former employees and must be mindful of its duty of care as an employer.
15. Any meetings with individuals other than those mentioned in paragraphs 13 and 14 above will be arranged by the Reviewers themselves.
16. Attendance by an individual at a meeting with the Reviewers is voluntary in that the Reviewers have no power to compel their attendance.
17. The Reviewers cannot draw any adverse inferences from an individual failing to provide a written account or to attend an interview. It may nonetheless be open to them to draw adverse inferences against that individual from the interviews of others and the documents.
18. Meetings will, to the extent possible, be arranged at a mutually convenient time for the Reviewers and the individual concerned.
19. At least 5 days prior to meeting any individual, the Reviewers will give them a written outline of the topics which they wish to cover in the meeting and a list of the principal documents that s/he wishes

to make reference to during the meeting. Topic and document lists for current and former employees of the SFO should be sent to the person referred to in paragraph B3 above. The SFO will pass them on as quickly as possible to the individuals concerned. The Reviewers will send topic and documents lists for non-SFO interviewees to the individuals concerned direct.

20. The Reviewers will ask questions during such meetings. Questions will focus on the topics and documents circulated in advance, however may extend as well to those that arise from those topics and the interviewee's answers.
21. An SFO staff member not connected to the case will take a detailed note of the meeting. The Reviewers will ask each interviewee to agree the contents of such written note within 7 days of it being provided.
22. The Individual may be accompanied at the meeting by a single friend, union representative or SFO colleague who had no involvement in the subject matter of the Independent Review. The role of any such friend, colleague or representative will be to assist and support the individual, not to answer questions or make legal submissions.
23. If necessary, the Reviewers may request the attendance of any individual at a further meeting (or to provide a written account or a further written account) to answer any additional questions that arise.

#### **C Advice, support and legal representation**

24. The Reviewers have no power to determine the civil or criminal rights of any person and it is not necessary for those affected by its work to engage a legal representative. They may, however, do so if they wish although any legal representative's role will be to advise the individual concerned, not themselves to participate in the Independent Review process.

#### **D Escalation**

25. The SFO is committed to providing the Reviewers with assistance to facilitate their conduct of the Independent Review. However, if the Reviewers consider that the SFO is not providing them with the cooperation or information that they reasonably require to fulfil their responsibilities, they may escalate the matter to the SFO's General Counsel, Sara Lawson QC.

#### **E Legal Privilege and Data Protection**

##### ***Privilege***

26. It is likely to be necessary for the SFO to provide the Reviewers with information contained in contemporaneous records and documents that is subject to its legal privilege. The SFO will not withhold contemporaneous documents or records from the Reviewers on the grounds of legal privilege. For the avoidance of doubt, the provision of such material to the Reviewers is solely for the purposes of the Independent Review, and does not constitute a more general waiver of privilege for any other purpose and/or in respect of any other documents.
27. The Reviewers may refer to privileged documents in their Report. If it is necessary for the Report to be disseminated outside the SFO, for example to the Attorney General, then the SFO will be entitled to redact any information it contains which is subject to its legal privilege or provide such further waiver of privilege as it and the Reviewers agree is appropriate.

##### ***Data Protection***

28. The Reviewers will be responsible for collecting and exercising professional judgment over the processing of any documents that contain personal data during the course of the Independent Review. They will accordingly act as Data Controllers and are registered as such with the Information Commissioner's Office.
29. Where the SFO provides documents in its possession, custody or control to the Reviewers in accordance with paragraph 4 above, the SFO and the Reviewers will be joint data controllers in respect of the personal data that they contain. Both the SFO and the Reviewers will comply with their obligations in this respect under the General Data Protection Regulation and the Data Protection Act 2018. For the avoidance of doubt, the SFO considers the sharing of such personal data is necessary for the investigation and prosecution of criminal offences by the SFO as set out in the Criminal Justice Act 1987.

## **F Representations Process**

30. Where the Reviewers are minded to include any explicit or significant criticism of individuals, groups of individuals whose members are identifiable or organisations (including the SFO) in their Report, they will conduct a Representations Process.
31. This will involve the Reviewers writing to such individuals, groups and organisations setting out the proposed criticism and providing them with a reasonable opportunity to make written representations in response.
32. The Reviewers will consider any such Representations before concluding the Independent Review and finalising their Report.
33. The SFO will assist the Reviewers in ensuring that proposed criticisms are distributed in a timely fashion to any current or former employees and the Reviewers will send any correspondence seeking such representations to the person identified in paragraph B3 above in password protected format. The Reviewers will separately provide the password to the individual concerned or their legal representative if the individual requests this.
34. Where the Reviewers are minded to criticise any other individuals, organisations or groups, they will write to those persons direct.
35. All proposed criticisms that the Reviewers are minded to make, and Representations made in response, shall remain confidential as between the Reviewers and the person to whom they are addressed. The recipient of any proposed criticisms may, however, share them with their supporting friend, colleague or legal representative as long as they keep them confidential. If the recipient of any proposed criticisms wishes to share these with any other person, they must first obtain the express written consent of the Reviewers.

## **G Report**

36. At the conclusion of the Independent Review, the Reviewers will provide their Report to the SFO's Executive Committee and to the Attorney General's Office for the attention of the Law Officers.
37. The SFO will also make a copy of that part of the Report that relates to them available for inspection by:
  - a. Any individual who the Reviewers asked to provide a written account or attend an interview and who did so;
  - b. Any friend, colleague or legal representative appointed by such an individual.

The person referred to in paragraph 37(a) or 37(b) receiving the copy of a relevant part of the

Report will first be required to give a written undertaking to keep the Report's contents confidential and in the case of the person referred to in paragraph 37(b) not to share or discuss it with anyone other than the particular individual in respect of whom it has been provided by the SFO.

#### **H Interim Report**

38. Where the Reviewers consider it appropriate or necessary to issue an interim report, that Report will be subject to all aspects of this Protocol.

## **Appendix 1 - Terms of Reference**

### **AIM OF THE REVIEW**

To examine the circumstances, facts and matters which caused or contributed to the disclosure failures in *R v Woods and Marshall* before Mrs Justice Tipples at Southwark Crown Court, which resulted in the SFO offering no evidence against both defendants on 26 April 2021, including, but not limited to: -

#### **Roles, Responsibilities and Skills**

- (1) The roles, responsibilities of (and the skills required by) the case controller/prosecutor, the disclosure officer, leading and junior counsel, lead disclosure counsel and the disclosure reviewers at each Tier level.
- (2) Whether those roles and responsibilities were clearly articulated and whether there were any gaps in key roles, and, if so, why.
- (3) The adequacy and scope of the training of (and the case knowledge of) the case controller/prosecutor, the disclosure officer, leading and junior counsel, lead disclosure counsel and the disclosure reviewers at each Tier level.

#### **Compliance and Methodology**

- (4) Whether the documents created for the purpose of managing and implementing disclosure, including the Disclosure Management Document (DMD), the Disclosure Strategy Document (DSD), the SFO Operational Handbook, other policy and strategy documents, logs of checks/dip- samples of reviews, and the management of disclosure counsel and their reports, were compliant with the law and guidance on disclosure, namely, the Criminal Procedure and Investigations Act 1996, the Code made under the 1996 Act, and the Attorney General's Guidance etc., and whether, more generally, they and the process of disclosure review were fit for purpose.
- (5) The methodology of the disclosure review, including the use of the SFO's Material Management department (MM), the Electronic Source Form (EFS), the scheduling of unused material, the Autonomy Document Review System (DRS) and the DRS tagging panel system.
- (6) The approach to disclosure requests made by the defence.

#### **Failures in the Disclosure Review Process**

- (7) Whether the documents created for the purpose of managing and implementing disclosure were fully implemented, and, if they were not, why not.
- (8) The circumstances in which the reviewers tagged the undisclosed material in this case, in particular, whether the disclosure reviewers properly complied with the law and guidance on disclosure and the methodology of the disclosure review, and, if not, to what extent was their action or omission responsible for the failures in this case.
- (9) Whether the system of assurance and oversight of the disclosure review process failed, and, if so, how and why it failed.
- (10) Whether there were any technical or systemic failures in the disclosure review process as opposed, or in addition, to mere human error.

- (11) Identify the immediate cause(s) of the failures of disclosure in this case.

### **Wider Disclosure Issues**

- (12) Whether the Disclosure regime and associated legal obligations for prosecutors designed for an analogue/paper system are still proportionate in light of the exponentially increasing volumes and complexity of data gathered in serious or complex fraud investigations.
- (13) Whether the availability of suitably qualified and experienced disclosure counsel at the criminal Bar creates a barrier for the SFO to discharge its disclosure duties effectively and efficiently.

### **Conclusions**

- (14) What lessons can be learned from the failures identified in this case.
- (15) How should the SFO rectify and remedy the failures identified to prevent their repetition in future cases.
- (16) Whether the SFO should undertake an assurance process in relation to other cases.
- (17) Whether more could or should have been done to save the trial in this case.

## **METHOD OF REVIEW**

To review and examine all the material which is relevant to these Terms of Reference.

To interview any person, who can provide information relevant to the Review.

## **OUTCOME OF THE REVIEW**

To report findings to the SFO Executive Committee as soon as possible, to identify lessons learned and to make recommendations.

A copy of the Review report will be provided to the Attorney General's Office.

## **DATA SHARING PROTOCOL**

The SFO and the independent review team (Brian Altman QC and Rebecca Chalkley) are both Data Controllers in respect of any personal data shared pursuant to these terms of reference.

All personal data processed by the SFO in accordance with these terms of reference will be processed under Part 3 of the Data Protection Act 2018 ("DPA 2018"). Where the SFO provides documents in its possession, custody or control to the Reviewers, the SFO and the Reviewers will be joint data controllers in respect of the personal data that they contain. Both the SFO and the Reviewers will comply with their obligations in this respect under the General Data Protection Regulation and the Data Protection Act 2018. The SFO considers the sharing of such personal data is necessary for the investigation and prosecution of criminal offences by the SFO as set out in the Criminal Justice Act 1987.

Material provided by the SFO shall be necessary and relevant to the purposes described in these terms of reference. Any personal data will be shared, managed and otherwise processed by both parties in compliance with the applicable data protection principles.

Any material provided by the SFO must not be shared with third parties without the prior written agreement of the SFO. Any suspected or actual security breaches involving material shared by the SFO must be reported to the SFO Departmental Security Unit as soon as reasonably practical.

**OFFICIAL**

Any request made to the independent reviewers by a data subject in exercise of their rights under DPA 2018 must be referred to the SFO without delay.

At the end of the review all material provided by the SFO shall be returned and is subject to the SFO's Review, Retention and Disposal policy.



OFFICIAL