

## Annex 1 – Terms of Reference

### **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.

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- (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.