

## **SFO Response to the Review of *R v Woods & Marshall* by Brian Altman QC**

**Recommendation 1: the remuneration for disclosure reviewers is not reasonable remuneration for the work done, or expected to be done, and should be increased to bring it in line with other equivalent organisations.**

The SFO sought increases in counsel fees through our 2021 Spending Review bid.

The SFO will review counsel fees **within three months of publication**, but note that increased counsel fees will reduce the funding available for other operational priorities.

**Recommendation 2: the SFO must continue to consider the means by which it can adequately staff and resource case teams to ensure, so far as possible, that undue time and resource pressures minimise the risk of human error.**

**Recommendation 3: the SFO should consider the resourcing of its Document Review Systems and Evidence Handling Management Office to ensure the timeliness, efficiency and accuracy of the ingestion and processing of bags of evidence for review by case teams.**

The SFO has bid for additional funding to invest in technology in the last three Spending Reviews. We have changed some SFO systems and backlogs have reduced. However, volumes of data in SFO cases continue to increase: the average size of cases opened in 2010 was 2m documents (350GB). The average size of cases opened in 2017 was 6m documents (850GB).

Since summer 2021, the SFO has operated a formal prioritisation process for all live cases against which resources are allocated.

**Immediately following publication of the report** we will put in place a requirement that all cases must have formal documented resourcing plans (including resource requirements for forensic and document review systems) in order for the Director to consider adopting a case.

**Immediately following publication of the report** resourcing plans for cases will be discussed at the regular formal meetings between the case team and their Head of Division, and all resourcing decisions documented.

SFO cases are being transferred to a new e-discovery system with enhanced functionality which will improve the organisation's capacity for e-discovery. Recruitment of staff with specialist forensic and e discovery skills remains a priority for the SFO in a competitive market.

**Recommendation 4: the SFO should consider ways in which staff may be incentivised to take on the roles of Disclosure Officer and Deputy Disclosure Officer to increase the pool of able and experienced candidates and improve staff retention in those roles.**

**Recommendation 5: the SFO should increase the training and support available to Disclosure Officers by (a) deploying Disclosure Officers on non-charged cases to assist Disclosure Officers on charged cases, especially when the case is close to or at trial in order to augment the available resources where needed most (b) in addition to mandatory Advanced Disclosure training, provide Disclosure Officers with bespoke Disclosure Officer training, focusing upon the management of the**

**review and of reviewers (c) only appointing sufficiently trained and experienced Disclosure Officers and (d) appointing sufficiently trained and experienced Deputy Disclosure Officers, where appropriate.**

This year, a project has been established to review how the SFO hires (and assigns) and retains disclosure officers. The project's objectives include identifying options to incentivise staff to become disclosure officers, and how to best train disclosure officers and maintain that training. This project will conclude **by the end of the financial year (March 2023). We will ask HMCPSI to review project as part of their case progression inspection.**

**Recommendation 6: the SFO should revise the Operational Handbook to introduce standardised methodologies for the disclosure process, as well as introduce management, oversight and monitoring regimes to ensure that the disclosure process is conducted and audited to the same standard across all case teams.**

**Recommendation 7: the SFO should revise the Operational Handbook to include a standardised model for the conduct of Quality Assurance reviews, which ensures (a) that Quality Assurance reviews are compliant with the law and guidance on disclosure and (b) that Quality Assurance reviews are robust, reliable and proportionate.**

The SFO Operational Handbook is currently being updated, and all policies and guidance within amended to ensure they provide the best possible advice to staff. This project will be complete **by the end of September 2022.**

The SFO will review the new disclosure guidance in light of recommendation six, and consider whether further amendments are required **within two months of publication.**

Any new policies or guidance (including quality assurance) will be issued **by the end of December 2022.**

Policies and guidance within Operational Handbook will subsequently be reviewed **at least twice a year.**

**Recommendation 8: in modelling standardised Quality Assurance reviews, the SFO should introduce a system of regular and routine inspections and audits of the disclosure process on active cases at key milestones by someone not only sufficiently experienced in disclosure but also independent of the case.**

In December 2021, the SFO refreshed the roles and responsibility of all senior civil servants (General Counsel, Chief Operating Officer, Chief Capability Officer and Heads of Division). This clarified the roles of GC and the COO and HODs in decision-making and case assurance.

A dip sample of case assurance measures will be considered by HMCPSI in all future casework inspections, **starting immediately.**

**Recommendation 9: the SFO should invest (or continue to invest) in technology to ensure that document review and case management systems are obtained, designed and developed with a focus on the disclosure process.**

In the 2021 Spending Review, the SFO was allocated £4.4m over three years to invest in new technologies to modernise our ICT infrastructure. This will include procuring and implementing a case management system. The SFO continues to identify ways to use advanced technology, including artificial intelligence, in our cases to improve the efficiency and accuracy of disclosure. For more information, please see the SFO's written evidence for the House of Lords Justice and Home Affairs Committee's enquiry in to the use of technology in the application of the law:

"The Serious Fraud Office (SFO) does not yet use machine learning or natural language processing in its cases (except on an ad hoc basis) but intends invest in such technologies in the next financial year...

There is civil case law approving the use of predictive coding to identify relevant documents; the civil case law highlights the benefits of doing so. These cases contain guidance on how the technology should be used, and refer to case law in other jurisdictions (e.g. US, Ireland, Australia) where the use of such technology has also been approved."

Our evidence can be found here: <https://committees.parliament.uk/writtenevidence/38856/pdf/>

**Recommendation 10: the SFO should invest (or continue to invest) in technology that ensures that case teams can work and meet (and continue to work and meet) securely and remotely online, including adopting back-up/failsafe systems and procedures for exceptional working circumstances, such as those that existed during the imposition of Covid-19 restrictions.**

SR21 funding will be used to ensure our technology is fit for purpose, including for hybrid working. The SFO has implemented hybrid working to improve resilience.

**Recommendation 11: the SFO should ensure that it recruits case teams with sufficient technical skills, and, following initial training, provides continuing refresher training, which should be compulsory, in particular, in respect of its Document Review Systems, data management and disclosure law and guidance.**

The SFO's recruitment processes are designed to ensure that candidates have the skills required for any given role. All staff receive training in disclosure upon starting at the SFO as well as regular refresher courses.

The SFO is currently migrating cases from the Autonomy DRS to Axcelerate DRS. As this concludes, the organisation will review its Axcelerate training package to ensure it is sufficient for the number of staff who will be using it **by the end of the financial year (March 2023).**

**Recommendation 12: the SFO should consider providing Case Controllers, Disclosure Officers and Deputy Disclosure Officers with project management training and support in order to improve the management of case teams, time and resources.**

The SFO will provide targeted casework project management training as a pilot to 20 Case Controllers, Disclosure Officers and Deputy Disclosure Officers to gather evidence as to the effectiveness of the training. The training will be delivered **within six months of publication of the report.**

**Recommendation 13: the SFO should ensure mandatory compliance by case teams with performance monitoring of all instructed counsel to include (a) Periodic Performance Reviews and (b) the use of the Performance Monitoring Form, as required by the current Managing Counsel guidance.**

**Recommendation 14: the SFO should review and, if so advised, revise the Managing Counsel guidance and training for all those engaged in the instruction of counsel. In particular, the SFO should consider whether the Managing Counsel guidance should be revised so that direct responsibility sits (a) with the Disclosure Officer for the monitoring of the performance of disclosure review counsel and (b) with the Case Controller for the monitoring of the performance of trial counsel, while the Case Controller bears overall responsibility to ensure the holding of Periodic Performance Reviews and the completion of Performance Monitoring Forms.**

Since the arrival of Sara Lawson QC as General Counsel, case teams have been obligated to complete the counsel performance monitoring forms regularly and effectively—this was noted by Brian Altman QC in his review.

The improved case assurance process and the refreshed roles and responsibilities matrix will give Heads of Division greater oversight of counsel and counsel performance.

The roles and responsibilities of case controllers, prosecutors and disclosure officers will be refreshed **within three months of publication**, this will include a clarification of their obligations regarding counsel.

The roles and responsibilities of all other case staff will be refreshed **within twelve months of publication**.

**Recommendation 15: the SFO should consider redesigning the Performance Monitoring Form in particular as regards its applicability to disclosure review counsel, to include as additional key performance indicators (a) the nature and the volume of the work counsel has conducted monthly since the last performance monitoring round (b) the accuracy of all aspects of their review work and (c) the letter of engagement to counsel should be redesigned to include a section on Performance Monitoring.**

Since the arrival of Sara Lawson QC as General Counsel, case teams have been obligated to complete the counsel performance monitoring forms regularly and effectively—this was noted by Brian Altman QC in his review.

The SFO will redesign the performance monitoring system, taking in to account the recommendations relating to the performance monitoring form, **within six months of publication of the review**.

**Recommendation 16: the SFO should ensure that (a) its internal generic disclosure guidance documents are reviewed, simplified, rationalised, regularly revised and updated (b) they offer reviewers not merely technical but also real practical guidance (c) its case-specific disclosure guidance is regularly reviewed, revised and updated and focuses on the known and foreseeable issues in the case (d) the SFO employs a standard form of version control bearing the date and a**

**unique version number for all internal guidance documentation (e) each case team maintains an audit record of the detail of the guidance documentation provided to its disclosure review counsel (document version number, date and recipient) who should be invited to certify on a dedicated form what they have read, when they did so and that they have understood the guidance and (f) those certifications should be attached to the Disclosure Management Document and any amended Disclosure Management Document.**

There is a pro forma for document reviewers and review counsel undertaking tier 1 and tier 2 reviews which can be adapted for each case. This document sets out the roles of the individuals involved in the disclosure review, has a free text space for the facts of the case, and a section where examples of material that might meet the test for disclosure test can be listed. The document also sets out how material should be tagged and described, and states it should be updated during the course of the investigation. Document reviewers and review counsel are required to confirm electronically that they have read it.

The SFO will take on board the recommendation, and will include this guidance in the Operational Handbook **within six months of publication of the review.**

**Recommendation 17: the SFO should ensure that the representations made in the Disclosure Management Document about its approach, processes and intentions - whether past, current or future - are accurate and complied with. Where appropriate, the Disclosure Management Document should be updated (if need be, by way of a supplementary document) to reflect any changes and/or developments in the approach or process, as well as in the relevant and/or live issues in the case. It should operate as a living document, ensuring complete transparency and defence sign-up to approach and process. It should serve to gain and maintain the confidence of the court, the defence and the SFO itself in the disclosure process.**

Disclosure guidance in the Operational Handbook will be amended to require the Disclosure Management Document to be updated at significant points within a case (to be determined) and at least twice a year. This guidance will be issued **by the end of December 2022.**

In December 2021, the SFO refreshed the roles and responsibility of all senior civil servants. This clarified the roles of GC and the COO and HODs in decision-making and case assurance, including in ensuring DMDs are up to date.

**Recommendation 18: the SFO should ensure that it encourages and engages with the defence in the disclosure process. Disclosure should be treated as a two-way street, so that engagement identifies and focuses on the real issues in the case, in order to direct defence disclosure requests and prosecution reviews.**

The SFO fully recognises the importance of defence engagement in order to successfully undertake an effective disclosure exercise. We consistently use best endeavours to achieve this but note that this requires similar engagement from the defence. We recognise this, for example, in our written evidence for the Justice Select Committee's enquiry in to Fraud and the Criminal Justice System:

“early defence engagement and robust judicial management of disclosure are key to determining relevance and therefore to successful prosecutions. Until the details of a defence case are fully known by the SFO we must consider all materials that may be relevant for our investigations, of

which only a small amount may actually be significant to the issues at trial. The SFO has recommended to the Attorney General Office's that the Attorney General's Guidelines on Disclosure include specific recommendations relating to defence engagement and judicial management to support meaningful early engagement."

Our evidence can be found here: <https://committees.parliament.uk/writtenevidence/43038/pdf/>

The SFO Operational Handbook is currently being reviewed, and all policies and guidance within amended to ensure they are concise and clear. Disclosure guidance will clearly state the importance of defence engagement in disclosure. This project will be complete **by the end of September 2022**.

Policies and guidance within Operational Handbook will subsequently be reviewed **at least twice a year**.

Our December 2021 work on the roles and responsibility of senior civil servants made Heads of Division more clearly accountable for case assurance, and places an obligation on Heads of Division to hold at least two deep dives in to each of their cases every year; that deep dive must consider (among other things) defence engagement.

The roles and responsibilities of all case staff below SCS will be refreshed **within three months of publication**, to clarify the obligations of case controllers, disclosure officers and others regarding defence engagement.