SFO – NOT SERIOUS ABOUT FRAUD, NOT FIT FOR PURPOSE

& BEING KEPT THAT WAY

A recent Times article[1] described how the Serious Fraud Office (SFO) is not remotely addressing economic crime in the UK. Fraud is estimated to cost the UK economy almost £200bn per year[2] and its improved prosecution would be substantially cash generative. The only viable conclusion is that successive Governments do not want anything done because it would uncover too many unpleasant truths and further undermine the public's respect for Government. This represents not merely bad government and the entirely wrongful exercise of authority. It is government with a deeply improper agenda because it knowingly exposes the many victims of economic crime to substantial and often life-changing harm. The serious problems at the SFO are symptomatic of the rot at the core of the British state, with the UK now regarded by countries such as the US as "a high-risk jurisdiction", a polite term for a dirty little country. The continued failure to reform the SFO and prosecute economic crime adequately will only damage our reputation further.

Investigations dropped at a record rate

Since 2018, the SFO has dropped 30 investigations (an average of 10 per year), whereas in the preceding five years, it discontinued 13 (less than three annually). In October, it lapsed three enquiries over the space of two days. Together with the haemorrhaging of senior staff, this ought to have been ringing major alarm bells. In 2008, a report by a former New York City prosecutor concluded that US prosecutors obtained higher conviction rates in a shorter amount of time and with fewer resources than the SFO. She suggested operational reasons for the latter's underperformance included failures - to keep all court advocacy in-house, to assign each case to a single lawyer who managed it from start to finish, to interview witnesses at an early stage and to co-operate closely with the police. It is difficult to know to what extent these internal failures have been addressed. More fundamental however is the relationship with Government, which has long known of the problems but deliberately not remedied them.

SFO strongly controlled by HM Treasury

Government exercises strong control over the SFO and operates an entirely outdated funding model. The agency's core budget remained unchanged at around £34mn for a decade up to 2018 and only then was it increased to the current £52mn, still a pathetic sum[3]. This means that the SFO can be outgunned on costs and in turn, explains the agency's preference for deferred prosecution agreements (DPAs). The SFO has been starved of resources at a time when economic crime has risen sharply and the UK is considered a global centre of choice for laundering illicit money. The SFO is the principal enforcer of the Bribery Act 2010, which was designed to encourage good corporate governance and enhance the reputation of the City of London and the UK as a safe place to do business. It is conspicuously failing in its duty.

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[1] Times article (15th November) was based on research by the Bureau of Investigative Journalism https://www.thebureauinvestigates.com/stories/2021-11-15/city-law-firms-make-millions-while-top-corruption-cases-tumble

[2] [2] See also "High-Level Fraud" report by the former Police & Crime Commissioner for Thames Valley, Mr Anthony Stansfeld on www.lloydsassetfrauds.com.

[3] Last year, Eurasian Resources Group spent £63mn in legal fees including contesting an eight-year investigation by the SFO. This sum alone exceeds the SFO's annual core budget.

Mass exodus of senior staff in last three years

Since 2018 and coinciding with the lapsing of investigations at a record rate, the SFO has lost more than three quarters of its departmental heads and senior leaders and during two of these years, Sir Geoffrey Cox QC, MP was the Attorney General overseeing the agency. The loss of critical staff on such a scale points to major structural problems within the organisation and will have substantially impacted its operational capability and effectiveness. The explanation most often advanced is that private sector law firms can lure away senior SFO officers at much higher salaries[4]. That former public prosecutors are able to join these firms and go on to defend their clients against allegations of economic crime represents a fundamental flaw in our system. However, the second reason for the exodus is likely to have been disastrously low morale resulting from the clearly inadequate attitude of Government over many years towards dealing with economic crime.

The UK's failure over economic crime

There has been a continued absence of political will to address serious fraud and successive governments have opted for weaker enforcement:

Level of enforcement	Extent of capital inflows	Benefits / costs
Weaker	Higher, including dirty international money	+ greater overall benefit to UK economy and London in particular + professional classes including lawyers, accountants and company formation agents benefit - UK's international reputation suffers - damaging skeletons remain hidden
Stronger	Reduced inflows, perhaps significantly so, if enforcement returns to acceptable levels	- reduced overall benefit to UK economy and London in particular - professional classes lose out to greater degree + UK's reputation sustained + damaging skeletons finally addressed

While she was Home Secretary, Theresa May undertook repeated efforts to absorb the SFO within the National Crime Agency (NCA). This aim had nothing to do with improving the agency's capability and was entirely inappropriate, given the NCA's lack of expertise in investigating complex fraud. The objective was widely criticised and fortunately, was later abandoned.

Given its close connections with and control by Government, the SFO is wide open to political manipulation and this is precisely what has happened in relation to banking fraud. Each time the SFO requires additional resources for a large investigation, it has to go cap in hand to the Chancellor, who receives advance notification of all its planned investigations. The Bank of England was implicated in the manipulation of LIBOR[5], but in late 2019 under high level pressure, the agency dropped its seven year investigation conveniently two months before Andrew Bailey was announced as its next Governor. The SFO has also refused to investigate the extensive Bristol banking frauds. More recently, the agency co-operated with the NCA and FCA to ensure that overwhelming evidence of

[4] Examples being Sir David Green QC, SFO Director, who joined Slaughter & May (2018), and Ben Morgan and Camilla de Silva, co-heads of bribery and corruption at the SFO, who joined Freshfields Bruckhaus Deringer (2017) and Simmons & Simmons (2020) respectively.

[5] Confirmed by recording held by the BBC.

signature forgery by banks and their use of deliberately invalid legal documentation, including in court was not investigated. There could be no better justification for senior staff with integrity to leave than seeing the SFO, and with it the rule of law and proper administration of justice, being wilfully abused by higher authority in this way.

SFO failures fit in with a much broader pattern of official misconduct

The SFO haemorrhaging senior staff and dropping investigations in record numbers fits in with a much wider pattern of official misconduct and corrupt practice elsewhere:

- The NCA has refused for more than two years to investigate bank signature forgeries.
- The City of London Police and regional police authorities such as Avon & Somerset have declined to investigate banking fraud, refused to accept evidence and consistently tried to pretend that the alleged offences are civil, when frequently they are criminal.
- The Business Banking Resolution Service (BBRS) is deliberately dragging its feet over compensating the victims of banking fraud and has descended into an expensive farce.
- The Financial Reporting Council (FRC) has not been replaced, as the Kingman report recommended three years ago, thereby sheltering major accounting firms from charges of serious wrongdoing.
- The Financial Conduct Authority (FCA), especially under Andrew Bailey, has turned a blind eye to extensive banking fraud and is drastically limiting the compensation payable to victims of its own regulatory failure.
- The Solicitors Regulation Authority (SRA) has deliberately failed to prosecute, either adequately or at all, fraudulent solicitors, who have worked for the banks and is also trying to restrict compensation for the victims of such solicitors.

What needs to be done

The SFO should be established as a separate entity completely free from Government influence. Its funding arrangements need to be drastically overhauled and its budget increased many fold. However, this need not be at cost to the taxpayer since the agency can be financed through its fines, which currently go straight to HM Treasury. The scale of its operations should be greatly increased, so that it can take on many more investigations annually. Government should also make the prosecution of fraud considerably easier and much less costly. Those perpetrating economic crime should become fearful of doing so, which presently they are not.

Above all, we need the political will to address this major short-coming at the centre of our state.