



HMCPSI

HM Crown Prosecution
Service Inspectorate

An inspection of the use of counsel in the Serious Fraud Office at the pre-charge stage

April 2026

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Who we are

HM Crown Prosecution Service Inspectorate (HMCPsi) inspects prosecution services, providing evidence to make the prosecution process better and more accountable.

We have a statutory duty to inspect the work of the Crown Prosecution Service (CPS) and Serious Fraud Office (SFO). By special arrangement, we also share our expertise with other prosecution services in the UK and overseas.

We are independent of the organisations we inspect, and our methods of gathering evidence and reporting are open and transparent. We do not judge or enforce; we inform prosecution services' strategies and activities by presenting evidence of good practice and issues to address. Independent inspections like these help to maintain trust in the prosecution process.

Our vision

We are part of the solution to improving the Criminal Justice System through high quality inspection.

We have four priorities to enable us to deliver this vision:

- we hold the CPS and SFO to account for what they deliver (we make recommendations that drive improvement)
- victims will be at the heart of inspection (where we can, we will use victim experience in our inspection)
- using our 25 years of experience we will help public prosecutors improve (their legal casework)
- inspection will identify and spread best practice.

Our values

We act with **integrity**, creating a culture of **respect**, drive **innovation**, pursue **ambition**, and commit to **inclusivity** in everything we do.

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1. Chief Inspector's foreword

An inspection of the use of counsel in the pre-charge stage

The Serious Fraud Office (SFO) is a specialist investigating and prosecuting body tackling the top level of serious or complex fraud, bribery and corruption. The SFO's caseload is usually fewer than 100 cases, with around 35 live criminal cases at any one time. Its budgeted headcount is around 600 staff. The number of cases, however, does not reflect the scale and complexity. SFO cases can involve hundreds of victims, many millions of documents, and potential criminal activity from across the globe.

Counsel fees represent one of the SFO's most significant costs. In 2024/25 8.9% of their net expenditure was spent on counsel fees, amounting to £7.6 million. Given scale and complexity of the cases the SFO deals with it is no surprise that cases require advice from senior counsel and need to be prosecuted by independent counsel.

It is therefore essential that the use of counsel is both effective and efficient, with appropriate controls and assurance in place to guarantee value for money. Given the need to ensure that public money is spent wisely and delivers best value I determined that an inspection of SFO use of counsel should be included within my 2025-26 business plan. This report sets out our findings from this inspection.

Overall, our findings are that the SFO has fairly effective systems and processes in place to manage and control counsel spend. More recent changes have strengthened oversight of expenditure. Staff demonstrated a clear understanding of the importance of maintaining sound financial controls, and it is evident that financial discipline forms a key part of effective casework management.

Our inspection found that, in every case examined where counsel was instructed prior to charge, the decision was appropriate and represented a justified use of resources that contributed value for money. There was a clear rationale for why counsel's advice was required on each case. However, some instances were identified that counsel were instructed primarily to address short-term internal resource pressures. While this is understandable, it is an area that the SFO must continue to address through its ongoing recruitment and retention strategies. Using counsel to undertake tasks that could be completed using internal resources is not always cost-efficient.

I was pleased to note that in no instances did we see any abrogation of the SFO's responsibility for key decision-making and overall case management.

Whilst the overall reasons for instructing counsel on cases were clear and well explained, we found that a significant number of business cases were lacking in sufficient detail in terms of the specific tasks counsel would be asked to perform. In addition, the quality of subsequent instructions to counsel and how they were recorded often varied and were inconsistent between case teams. This hampers

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the SFO's ability to fully assure itself that decisions taken represented good value for money. Given the lack of detail in the business cases the SFO needs to develop and implement revised processes. We have recommended that the SFO takes urgent action to address this issue.

Overall, the inspection highlights a generally sound approach to the SFO use of counsel with no serious issues identified. However, the adoption of more rigorous oversight, greater consistency of practice and enhanced control mechanisms will be essential to drive further improvement. We make six recommendations that are intended to support these developments and to help the organisation address the matters highlighted in this report.



Anthony Rogers
HM Chief Inspector

2. Summary

Headlines

2.1. The Serious Fraud Office (SFO) spends a significant proportion of its annual budget on counsel fees, with a substantial share incurred at the pre-charge stage. This inspection examined why independent counsel are instructed during investigations prior to cases being charged, the value they add and whether the SFO deploy them effectively.

2.2. The SFO has a clear process for the engagement of counsel set out in their Operational Handbook and that was followed consistently on the cases we reviewed. The starting point of the process is the production by the case team of a business case that provides a clear rationale for the instruction of counsel. We found that business cases were very good at providing a general justification for instructing counsel but often inadequate in specifying the particular work counsel would be expected to undertake. This is something the SFO should address, as the lack of clarity creates a risk that counsel is requested by a case team to carry out tasks which would not have been envisaged by those approving the business case, especially given the resource gaps present in many case teams.

2.3. The appropriate level of counsel was requested in all the business cases we examined. Business cases are expected to name three potential counsel who could be instructed, and this was done in the majority of business cases we saw. However, the reality is that the case team's first choice of counsel is almost always selected and, in those circumstances, there is little value to be added by continuing with this practice.

2.4. There is no real system in place to ensure that a broad and diverse range of panel counsel are instructed by the SFO and the SFO needs to address this. The current position allows case teams to instruct the same, favoured counsel on a repeated basis.

2.5. We found in all of the cases we reviewed that the initial timings of the instruction of trial counsel were appropriate and the process whereby business cases require sign-off was completed correctly. However, this process of authorisation was somewhat convoluted and would be improved if the Head of Division (HOD) provided final authorisation to a case team to instruct counsel. This change would provide the final authorisation, where the accountability for the case and the expenditure rests. It would also free up time for others involved in the current authorisation process to be better served advising case teams on whether it was necessary to instruct counsel and to assist with counsel selection.

2.6. As well as requiring specific expertise, the SFO instructs counsel to fill internal legal resource gaps. The SFO is attempting to address this through an

ongoing recruitment campaign, however the reality is that this situation is unlikely to improve in the short-term. Case teams with limited legal resource mitigate the risk this creates and ensure that investigations progress by instructing counsel. Whilst this may not achieve best value for money from the use of counsel, it is difficult to see what other option the SFO has, given the recruitment challenges it faces.

2.7. Case teams often instruct counsel to provide legal advice, sometimes relating to a legal issue on which another case team may have sought advice previously. The SFO has recently introduced a repository of legal advices to reduce duplication and prevent paying for advice that has already been obtained. This is a positive development, which should improve the value for money the SFO obtain from instructing counsel.

2.8. In the cases we examined, we found that case teams had generally used counsel appropriately. However, we identified an inconsistency in the manner and quality of instructions to counsel which requires improvement. Some instructions were not always clearly set out in writing, and some were vague and lacked detail about what counsel was being asked to do. The SFO does not have a standard process or assurance system for the preparation of instruction of counsel and this needs to be addressed. We did find that case teams understood their responsibility for the conduct and key decisions in the cases they investigated and saw no departure from this remit in the cases we examined. Case teams also demonstrated a robustness in challenging counsel where appropriate.

2.9. The SFO's Finance team are responsible for paying counsel's fees, once the case team has approved counsel's invoice for payment. We found that they processed counsel invoices correctly and monitored overall spend against forecast budgets. However, they are currently hampered by not being provided with a copy of the business case once authorised. We recommend that the SFO changes its approach to give the Finance team the opportunity to provide more scrutiny. This change will assist them to complete their functions.

2.10. Counsel's performance is expected to be formally monitored only by exception, either when exceptionally poor or exceptionally good. We found no evidence of exceptionally good performance being reported, however poor performance was addressed, where required. The SFO does not maintain any central record of counsel performance to support future decisions to select counsel and we have recommended that this be undertaken.

Consistency across divisions

2.11. Our file examination identified inconsistencies in the approach of case teams to the use of counsel (for example, in the quality of instructions to counsel and in the way business cases were drafted). However, those inconsistencies were not specific to any casework division but were seen across case teams from all divisions. We were told that some divisions have more experienced Case Controllers (CCs) than others, but this is not something the SFO have brought about by design and was not something which impacted consistency across the divisions.

2.12. Broadly speaking, all three HODs demonstrated a consistent approach to the engagement of counsel. All three were very clearly determined to ensure that counsel was only used by case teams when absolutely necessary, reflecting the increase in fees and the need to control spending.

2.13. All HODs have a close working relationship with their CCs and discuss the use of counsel with them well in advance of the submission of a business case. All three HODs take a very similar approach to the approval of business cases. However, one of them routinely provides written comments on the business case, rather than just signing it. This is good practice which it would be sensible for the other divisions to adopt, since this provides a recorded rationale for why a business case was approved which otherwise would not exist; this makes clear what the HOD believed counsel would be used for and makes the assurance of approval decisions far simpler. This would remain beneficial after the completion of recommendation 2 when HODs should be providing the final approval of business cases.

2.14. All HODs carefully manage their divisional budgets and monitor overall counsel spend, identifying any counsel expenditure which is significantly different to that forecast. Where counsel expenditure is consistent with the forecast, none of the HODs conduct any review of counsel fees on an individual case or have any knowledge of the specific work included in any particular counsel invoice. This leaves accountability for spend difficult to assess.

2.15. All HODs expected instructions to counsel to be in writing, but all accepted that they did not have in place any divisional oversight of the contents or quality of instructions to counsel. There were some differences across divisions as to what the role of Associate General Counsel (AGC) should be. Some divisions more than others see them as more of a resource to advise on legal issues related to casework, and this is reflected with the AGC on some divisions working more closely with the HOD.

Our judgement

2.16. The inspection question was:

“Do the Serious Fraud Office (SFO) casework divisions use external counsel consistently, effectively and efficiently at the pre-charge stage of cases? Does their use of counsel represent value for money?”

2.17. In our judgement, the SFO used external counsel appropriately and in accordance with their own internal guidance in the pre-charge stage of the cases we examined. The evidence from our case file examination showed that the SFO used counsel in an efficient and effective manner that added value to the cases whilst maintaining the SFO’s responsibility for making key decisions and the overall conduct of cases. However, we found that some of the SFO’s internal processes, whilst generally followed, were insufficiently robust or detailed enough to provide the required consistency in approach. A lack of detail in terms of instructions and deliverables also affected the overall consistency and grip.

2.18. Business cases and their extensions for the use of external counsel last for one year. It is vital that the SFO has a strong process which specifies the detail required in those business cases and a clear line of authorisation which it can rely upon to assure itself that the use of counsel will continue to offer value for money. Some of the processes require strengthening so that the SFO can ensure case teams are instructing counsel appropriately and consistently. The guidance needs to be reinforced, detailing the required quality and consistency of instructions to counsel and an assurance process introduced outside of the case teams to ensure compliance. This will provide greater clarity for SFO case teams who select and instruct counsel and introduce more effective independent assurance.

2.19. We are making six recommendations to improve the consistency and grip that the SFO has on the use of counsel pre-charge.

Recommendations

Recommendation 1

By August 2026, the Serious Fraud Office (SFO) to issue guidance to staff confirming the specific detail to be included in business cases for the instruction of counsel. Such detail to include the provision of clear instructions on what advice counsel is requested to provide and/or what tasks counsel is expected to complete. [Paragraph 4.13]

Recommendation 2

By August 2026, the Serious Fraud Office (SFO) to amend their process for instructing counsel so that Heads of Division (HOD) provide the final authorisation of business cases and any extensions for the instruction of

counsel, and Associate General Counsel (AGC) provide case teams with advice prior to the submission of a business case, on both the necessity of instructing counsel and the selection of individual counsel. [Paragraph 4.31]

Recommendation 3

By October 2026, the Serious Fraud Office (SFO) to refresh and implement comprehensive and mandatory guidance detailing the process required for case teams when drafting instructions to counsel. The new process to be embedded by April 2027. [Paragraph 5.22]

Recommendation 4

By May 2026, the Serious Fraud Office (SFO) to ensure that all business cases for the instruction of counsel are provided to the Finance team once approved. [Paragraph 6.9]

Recommendation 5

By October 2026, the Serious Fraud Office (SFO) to introduce an assurance process, outside of the case team, to ensure that counsel instructions and fees are consistent with the approved business case for the use of counsel. [Paragraph 6.10]

Recommendation 6

By October 2026, the Serious Fraud Office (SFO) to maintain a register of all counsel who have been instructed, to include any performance issues that have arisen, which should be consulted prior to the completion of a business case for the instruction of counsel, to ensure that a wide range of counsel from their panel are instructed on their cases. [Paragraph 6.15]

Good practice

We found the following good practice.

A Head of Division (HOD) endorses business cases with written comments setting out the rationale when approving them.

3. Context and methodology

The Serious Fraud Office

3.1. The Serious Fraud Office (SFO) is a specialist investigative and prosecuting body tackling the top level of serious or complex fraud, bribery and corruption. When compared to other much larger criminal justice organisations, such as the Crown Prosecution Service (CPS), the SFO has a relatively small caseload, but the cases it deals with are large and complex. Cases can take years to investigate and reach a conclusion.

3.2. When deciding whether to take on an investigation, the Director of the SFO applies the Director's Statement of Principle. This considers a series of principles such as whether actual or intended harm would be caused to:

- the public
- the reputation and integrity of the UK as an international financial centre
- the economy and prosperity of the UK.

3.3. It also considers whether the complexity and nature of the suspected offence warrants the application of the SFO's specialist skills, powers and capabilities to investigate and prosecute.

3.4. The SFO's caseload is usually fewer than 100 cases, with around 35 live criminal cases at any one time. Its budgeted headcount is around 600 staff. The number of cases alone, however, does not reflect their scale and complexity. SFO cases can involve hundreds of victims, many millions of documents, and potential criminal activity and evidence from across the globe. As a result, most SFO cases take longer to investigate and prosecute than other types of criminal cases.

3.5. The Fraud Trials Committee report of 1986 recommended a method for investigating complex fraud whereby investigators and prosecutors would work side by side. This is known as the Roskill model. The report led to the creation of the SFO, which continues to operate this method. The SFO has the power to investigate and to prosecute cases, and its teams are multidisciplinary. A case team is led by a Case Controller (CC) who may be a senior lawyer or investigator. The Case Controller oversees lawyers, investigators, forensic accountants, and other specialists. They also oversee the instruction of counsel.

3.6. The SFO has five divisions; three of them are casework divisions (A, B and C), each handling fraud, bribery and corruption. Each casework division is led by a Head of Division (HOD), supported by a deputy. These divisions conduct the investigation and prosecution of all such cases dealt with by the SFO. There is also

a division dealing with proceeds of crime and international assistance as well as an intelligence division.

3.7. The SFO is atypical in its role and structure as it both investigates and prosecutes. This means direct comparisons with other prosecuting authorities, such as the CPS, can be unhelpful. The CPS has no investigative function, although it does provide early investigative advice to the police in serious and/or complex cases. In many ways, the SFO has a higher national profile due to the nature of its cases and well-resourced defendants involved in multi-million-pound allegations of fraud, bribery and corruption. The SFO has faced, and continues to face, substantial challenges, some of which derive from the complexity of its casework, and some from the frequent interest shown by Parliament, the national media and other commentators.

Context

3.8. In 2024/25, 8.9% of the SFO's net expenditure was on counsel fees, amounting to £7.6 million. This is one of its most significant costs. Given that the SFO investigates and prosecutes complex fraud, bribery and corruption cases, it is no surprise that those cases require advice from senior counsel and need to be prosecuted by a team of independent counsel. This is clearly not only appropriate but essential.

3.9. The Roskill model envisaged that counsel would be instructed from the outset of an investigation to provide expert legal advice and direction; this would be counsel who would then conduct any subsequent trial.

3.10. In its early days, this is what the SFO did. However, over time that has developed and they do not now tend to instruct counsel routinely at the commencement of an investigation. Instead, counsel are instructed when it is considered that they can add real value; often an investigation will have been running for over a year before counsel is instructed. Nevertheless, as investigations can last for years, independent trial counsel remains an integral part of an investigation.

3.11. In 2024/25 the three casework divisions spent a total of £931,960 on pre-charge counsel fees. This is a substantial sum and represents 12.3% of the total amount spent on counsel fees in 2024/25.

3.12. The role of independent counsel once a case has been charged and is being prosecuted at court is evident. The function of counsel at the pre-charge stage may appear less obvious. SFO case teams are specialists in the investigation and prosecution of serious fraud, bribery and corruption. There is a question as to why independent counsel is needed at the investigatory stage of a case, what value they

add to an investigation and whether the SFO are deploying them effectively. This inspection seeks to address those issues.

Methodology

3.13. In line with all inspections, at the outset of the process HM Crown Prosecution Service Inspectorate (HMCPSP) develops an initial scope and defines the inspection question and the inspection aim(s). We do this to ensure transparency, but also to allow us to engage with those we inspect and to provide interested parties with the opportunity to comment. We published the inspection scope on our website. The scope set out the inspection question:

“Do the Serious Fraud Office (SFO) casework divisions use external counsel consistently, effectively and efficiently at the pre-charge stage of cases? Does their use of counsel represent value for money?”

3.14. The aims of the inspection were to assess:

- whether case teams were submitting business cases for the instruction of counsel as required
- whether business cases were requesting the appropriate level of counsel and were being submitted at the right time in the stage of the investigation
- whether there was appropriate oversight of business cases
- whether extensions to counsel’s instructions were appropriate
- whether counsel was instructed to do appropriate tasks and whether those instructions were clear and specific
- whether there was evidence of duplication in instructions to counsel, particularly in relation to requests for advice on a final charging decision
- whether there were differences in approach to instructing counsel across case teams and divisions.

3.15. The inspection involved the examination of nine cases: three from each casework division. Seven of these cases were still at the pre-charge stage at the point of inspection. One was charged in early 2024 and the other in mid-2025. Given that none of the cases were yet finalised at the time of writing, we have not provided any specific or identifiable details of any of them in this report, to avoid any potential prejudice to an investigation or criminal proceedings.

3.16. We reviewed material from the SFO case drives for each of the cases we examined, including business cases, instructions to counsel, advice from counsel,

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minutes of case conferences and other relevant documentation. Inspectors interviewed the CC and the principal investigative lawyer from each of the nine case teams as well as two independent trial counsel, instructed on two of these cases.

3.17. We also interviewed the Heads (HODs) and Deputy Heads of each casework division, the Director of Legal Services who heads up General Counsel's Office, the three criminal Associate General Counsels (AGCs) who report to the Director of Legal Services, as well as the head of the Commercial Section and the Head of Finance. Finally, we reviewed a selection of recent business cases in addition to those on the nine cases we examined.

3.18. The inspection was supervised by senior legal inspector Colin Darroch and led by legal inspector Gavin Hernandez. The inspection team also comprised legal inspectors Joanne Milner, Mark Langan and Dan Richardson. The inspection was supported by a member of HMCPSI's business support team, Shauna Compton. Inspectors attended SFO offices to conduct the inspection and speak with staff during November and December 2025.

4. Process of engaging and instructing counsel

Business cases

4.1. The Serious Fraud Office (SFO) has a clear process for the engagement of counsel which is set out in their Operational Handbook. Before counsel is instructed, there must first be an assessment as to whether there are available internal resources which could be used for the tasks required or whether it is necessary to instruct counsel.

4.2. If a case team considers it necessary to instruct trial counsel,¹ they must complete a business case. There is a standard form on which a business case must be drafted. The business case must set out why the case team need to instruct counsel and why the level of counsel requested is necessary.

4.3. A case team should not seek to engage counsel who is already instructed on another SFO case. The SFO's Commercial Section maintains a list of currently engaged counsel and this should be consulted prior to the completion of a business case.

4.4. Case teams are expected to identify three available counsel from the relevant SFO panel. They should list these individuals in order of preference and explain their reasons. There is an expectation that case teams will have held a conversation with all counsel listed in the business case prior to its submission, to assess their suitability and availability.

4.5. Once the case team has completed the business case, the Case Controller (CC) must sign it and send it to their Head of Division (HOD) for approval. Once a HOD has approved a business case, the CC should submit it to the Commercial Section, who will then arrange for the business case to be reviewed by General Counsel's Office.

4.6. If General Counsel's Office approve the business case, the case team must check that the authorised counsel has security clearance with the SFO's Departmental Security Unit (if not counsel will need to make an application for security clearance). Once the security checks have been completed, the Commercial Section will issue counsel with a letter of engagement. It will then be up to the case team to issue counsel with specific instructions.

¹ As set out in Chapter 3, paragraphs 3.9 and 3.10 where counsel is instructed pre-charge it is anticipated that there will be continuity of counsel throughout the case and so best practice is, wherever possible, for the same counsel to conduct any trial in a case where they have provided pre-charge advice.

4.7. Business cases will be authorised for a maximum period of 12 months. After that time, they need to be renewed, following the same authorisation pathway as set out above.

4.8. In all the cases we examined, the correct process had been followed for the engagement of counsel; business cases had been prepared and authorised as required and the SFO's Commercial Section had issued the letter of engagement. Equally, all business cases had been properly extended.

4.9. Counsel fees are paid through the SFO's Finance team. They ensure that counsel fees are only paid if the process is correctly followed and a letter of engagement from the Commercial Section is in place. If it is not, then no counsel fees will be paid by the Finance team.

Quality of business cases

4.10. Every business case we examined justified why the case team wanted to instruct counsel. Business cases made it clear what the particular complexities of the investigation were which required the early input of external counsel; for example, the challenges presented by parallel proceedings with administrators, or the need to pursue a prosecution without the main suspect. In interviews with both case team members and senior figures across all three casework divisions, there was evidence of a clear focus on the need to justify the reasons for instructing counsel. We were repeatedly told during interviews that this awareness has increased significantly since the SFO increased the rates² paid to trial counsel.

4.11. However, it did not automatically follow that a business case which clearly expressed why there was a need for counsel would then go on to define the exact nature of the work required from counsel. Many of the business cases we reviewed were not specific about exactly what the case team would be instructing counsel to do. For example, we saw a business case which stated that counsel would "assess the criminality in this case". Another indicated that counsel's advice was needed on "a number of strategic decisions that will need to be made in the next few months" while another indicated that counsel would be instructed to advise on "legal strategy". There was no further explanation in these business cases for precisely what counsel would be asked to do.

4.12. In all of these examples, the business case had clearly explained why it was going to be necessary to instruct counsel. However, the lack of explicit detail about the instructions counsel was to be given, how much that was likely to cost or how

² The SFO has set rates for counsel fees, with an hourly rate, half-day rate and day rate, which depend on which panel counsel is on. On 1 September 2025, the SFO increased the rates it pays to all panel counsel by 25%. This was the first increase to trial counsel rates since 2007.

many hours it would take, made it virtually impossible for there to be any meaningful oversight of whether counsel's instructions or subsequent invoices were consistent with the business case.

4.13. We recognise that it will not always be possible for the case team to be precise about how long certain tasks will take counsel, and so adding hours to a business case may not be practicable. However, we consider that precision about the nature of intended instructions to counsel is not only possible, but an essential element of a business case. Without this, case teams can potentially instruct counsel to perform a far wider range of tasks than the HOD or General Counsel's Office would have anticipated when approving the business case. We should stress that we did not see any examples of this in the cases we examined; in all of these cases we found no evidence that counsel were instructed to carry out tasks inconsistent with the approved business cases (allowing for the fact that some of those business cases gave the case teams wide discretion on how counsel would be instructed). Nonetheless, the current process contains the risk that counsel may be asked to perform a broader range of tasks than originally envisaged, resulting in an increase in costs.

Recommendation 1

By August 2026, the Serious Fraud Office (SFO) to issue guidance to staff confirming the specific detail to be included in business cases for the instruction of counsel. Such detail to include the provision of clear instructions on what advice counsel is requested to provide and/or what tasks counsel is expected to complete.

Selection of counsel

4.14. The SFO has five levels of trial counsel panels: King's Counsel (KC) over five years call, KC under five years call, Panel A, Panel B and Panel C. This structure mirrors the Attorney General's Civil Panel Counsel, with the panels reflecting typical length of advocacy experience; Panel A being generally over ten years, Panel B generally between five and ten years and Panel C generally between two and five years. The case team must assess the minimum level of experience and skills required for the role and select counsel from the lowest panel level that can meet those requirements.

4.15. In all the business cases we examined, we were satisfied that the appropriate level of counsel had been requested. We were consistently told in our interviews with SFO staff that there had long been a tendency for case teams to instruct counsel at too high a level, particularly in relation to instructing KCs at an early stage of an investigation. It is evident that there have been considerable recent efforts made, especially at HOD level, to tighten up on the level of counsel

instructed and to instruct the appropriate, more junior counsel, especially at an earlier stage of an investigation. In the cases we examined, we found many examples of junior counsel being the first to be instructed.

4.16. A KC had already been instructed on all the cases we examined which had reached the charging decision stage. It would be extremely rare for this not to be the position on any SFO case, as the decision to charge and the selection of those charges is a crucial point in the life of a case. Whilst Panel A counsel will be very experienced and capable, it must be remembered that SFO cases are extremely complex and very high-profile; any trial will be lengthy, challenging and almost inevitably defended by multiple KCs. In this context it is not only natural and sensible, but essential, for the SFO to ensure that they investigate their cases and conduct the litigation of them with the benefit of the advice and court expertise of the most senior and experienced advocates.

4.17. The business case is expected to name three counsel. The case team can select any counsel on the appropriate panel they wish, provided they are not already instructed on an SFO case.

4.18. The majority of the business cases we saw provided the names of three counsel, although there was some inconsistency in approach.

4.19. Sometimes, only one of the names provided would be available to take on the work. Some business cases made it clear that the case team had attempted to name three counsel but that only one was available. For example, one business case named three additional counsel who had been spoken to, who were on the SFO's panel with the requisite experience, but who were all either already engaged on an SFO case or did not have availability. The business case went on to say that others had been contacted and had either responded negatively or not at all. Some business cases deliberately only provided the name of one counsel where specific expertise was being sought; for example, in a case in which a cryptocurrency specialism was required and counsel with that specialism had been identified. In such a case it would have made no sense to put forward any other names.

4.20. In addition, the Operational Handbook asserts that it is "strongly recommended" that case teams arrange a meeting with prospective counsel to help assess their suitability for the role in advance of the submission of the business case. Many of the business cases which named three counsel made it clear that the case team had spoken to all three, but this was not consistent. Some business cases were silent about whether there had been any contact with counsel. There were also notable differences between case teams as to whether the conversation with counsel would be an interview of the type clearly envisaged by the Operational Handbook to assess their suitability, or simply a discussion

about availability. However, where full interviews did take place, the SFO recorded the outcomes and used them in future counsel selection exercises.

4.21. It is clear from our review of more recent business cases and discussions with SFO staff that currently the case team will almost always be authorised to instruct their first choice of trial counsel, unless they are already instructed on another SFO case. Seldom do the discussions with counsel influence the case team's choice of counsel; inevitably, they already have a first choice in advance of these. It is therefore unsurprising that many of the SFO staff we spoke to did not see any particular benefit to having discussions with all three counsel. In these circumstances, we consider the requirement to name and interview three counsel is somewhat artificial and an inefficient use of the case team's time. We would therefore suggest that this requirement is removed.

Approval of business cases

4.22. The HODs must decide whether to approve the business cases submitted to them. We interviewed the HODs from all three casework divisions and each of them confirmed that it would be very unusual for a business case to ever be a surprise to them; they would likely already have discussed the case team's request to instruct counsel with the CC, agreed that it was appropriate and discussed the identity of counsel with the CC. If they had disagreed, the CC would not then submit a business case. This is not to suggest that HODs simply agree with case teams whenever they want counsel. It is evident from our interviews that HODs do challenge CCs and are determined to ensure that counsel are only instructed when appropriate.

4.23. All three HODs were acutely aware that the SFO had recently raised the fees they pay to counsel. This step did not come with any additional funding and so it is more important than ever for the SFO to only instruct counsel when necessary. It is evident that this is a focus for all of the HODs and is something they discuss extensively with CCs. Inevitably, many of these conversations between HODs and CCs are not formally recorded meetings and so there are no minutes of them on the case drives. Nonetheless, we were satisfied from the interviews we conducted across the SFO and from the approved business cases we saw that HODs approve business cases appropriately.

4.24. The business case form does not contain a comments box for the HODs (or General Counsel's Office). Instead, it simply provides boxes in which they enter their name, role, approval decision and date. One of the HODs has developed the practice of writing comments on approved business cases to explain why they have given approval. We consider this to be very beneficial, as there is otherwise no explanation for the rationale behind the approval of the business case. This is good practice which we consider should be adopted across all casework divisions.

Good Practice

A Head of Division (HOD) endorses business cases with written comments setting out the rationale when approving them.

4.25. General Counsel’s Office is headed up by the Director of Legal Services. Previously, the role was titled General Counsel. Within General Counsel’s Office there are three criminal Associate General Counsel (AGCs) who are each attached to one of the casework divisions. The AGC role is at the same level in the structure as a CC. The role of General Counsel’s Office in giving final approval to business cases for the instruction of trial counsel dates back to the SFO’s previous General Counsel, who was personally sighted on the approval of each business case. Under the current regime, the AGCs now perform this function with far more autonomy.

4.26. The reason the previous General Counsel had such a level of involvement in the process was an attempt to ensure a wide range of counsel on the SFO’s panel were instructed. In the cases we examined, we saw a number of examples of the case team not being allowed to instruct their first choice of counsel by General Counsel’s Office. All these examples occurred under the previous General Counsel. We did not see any examples of this happening under the current regime and all three AGCs confirmed they would not challenge the case team’s first choice of trial counsel unless they were already instructed on another SFO case, which should already have been checked. It should be noted that the previous General Counsel had a lot of personal contact with independent counsel and was aware which of them had been instructed by the SFO in the past.

4.27. The current AGCs do not have this breadth of knowledge. They would be unable to perform a simple check to see whether counsel had been instructed in the past because the SFO do not keep such a record, certainly not in any kind of centralised format. They are only able to check which counsel are currently instructed on an SFO case. The SFO ought to have a mechanism to ensure a wide selection of counsel are instructed and we have addressed this within our wider recommendation for a register of all previously instructed counsel at paragraph 6.15.

4.28. It is rare for General Counsel’s Office to overrule a HOD’s authorisation of trial counsel. In the cases we examined, there was a single example of a request for a KC being refused. It was then approved on resubmission of a more detailed business case, which included the hours counsel would need to complete the required tasks.

4.29. We do not consider that the role of General Counsel’s Office in the current process of authorisation either adds any real value or has any particular, logical

purpose. HODs are more senior than an AGC, counsel fees are paid out of the HOD's budget for their division and, ultimately, they are accountable for the investigation and prosecution of a case. In addition, the SFO has moved many assurance mechanisms to the HODs in recent years. The most notable example being Case Review Meetings. These meetings, at which the progress of the investigation/prosecution is assessed, are led by the HOD with the case team and held on every case at least every six months. Formerly, these meetings were known as Case Review Panels, and they were led by General Counsel. We consider that the final approval of a business case for the instruction of trial counsel should rest with the HOD and not General Counsel's Office. Not only would this make logical sense, but it would also mirror the casework assurance process.

4.30. This does not mean, however, that we see no role for AGCs in the process. The role of AGCs within the SFO does not seem entirely clear at the moment. They were essentially introduced as an assurance mechanism; however, one division views them, and uses them very effectively, as a legal resource to assist case teams by providing in-house legal advice and support. The other divisions do not see this as AGC's role, but they do expect case teams to be having conversations with AGCs before instructing counsel. All case teams we spoke to view the AGCs as an extremely helpful port of call with whom to discuss legal issues.

4.31. We consider AGCs would add most value and help control expenditure on counsel fees, if, prior to submitting a business case, CCs were required to consult with their AGC about why they wanted to instruct counsel. If the AGC can help with a legal query or assist the case team in finding an appropriate answer in the SFO's newly introduced counsel advice library, this may obviate the need to instruct counsel at all. In addition, if the SFO introduce a register of all counsel previously instructed (see recommendation 6), AGCs could advise case teams on counsel selection to ensure that as wide a selection of panel counsel as possible are instructed by the SFO.

Recommendation 2

By August 2026, the Serious Fraud Office (SFO) to amend their process for instructing counsel so that Head of Divisions (HODs) provide the final authorisation of business cases and any extensions for the instruction of counsel, and Associate General Counsel (AGC) provide case teams with advice prior to the submission of a business case, on both the necessity of instructing counsel and the selection of individual counsel.

Timing of the instruction of counsel

4.32. The original Roskill model envisaged that counsel would be instructed from the start of an investigation. The SFO no longer instruct as early as this and will often not instruct counsel until an investigation has been running for over 12 months. In one case we examined, counsel was not instructed until over three years after the investigation began.

4.33. All SFO cases are complex and have significant amounts of evidence. Strategic decisions made at a relatively early stage of an investigation will likely have far reaching consequences. In this context the instruction of trial counsel to provide advice during an investigation, before actions are taken which will potentially limit either who the SFO can prosecute or what charges they can ultimately bring, clearly makes sense.

4.34. In the cases we examined, we considered the initial timing of the instruction of trial counsel as appropriate. We were told in many interviews that there used to be a tendency to instruct counsel too early, consequently incurring costs, but that efforts have been made, especially at HOD level, to prevent this. In one case we reviewed, a KC was engaged at a relatively early stage, effectively for the purpose of booking them for a later date; they were not issued with any instructions, and no costs were incurred for the SFO. It was considered important that this specific KC was instructed on the case; whilst it may seem to have been unnecessary to have engaged them so early, it was in this instance appropriate as it secured as far as possible their availability of that specific counsel at no cost to the SFO.

4.35. In the cases we examined, it was most common for the first instruction of counsel to be for the conduct of search warrant applications. This can occur at a very early stage of an investigation; for example, in one case this was done after two months and in another after four months. There were mixed views amongst those we interviewed as to whether it was necessary for counsel to be instructed to swear out a search warrant, as the process can be relatively simple and is something many SFO lawyers would be capable of doing. However, it must be remembered that SFO lawyers very rarely conduct any court hearings and that advocacy is far from their primary role. Furthermore, we note that sometimes the principal investigative lawyer will be required to give evidence during a search warrant application; it would be very undesirable if this were to occur when they were the court advocate. We therefore conclude that it makes sense for the SFO to instruct counsel to conduct search warrant applications.

4.36. It was clear from the cases we looked at that the SFO will not simply keep an advocate instructed after a search warrant application if there is no meaningful work for them to do. In a number of cases, we observed that the instructions to

counsel in these circumstances were allowed to lapse and when counsel was again required at a later date, a fresh business case was then prepared that was not always for the same counsel. Where a different counsel was instructed, this was for good reason; for example, a higher level of counsel may have been needed than was required for the search warrant, or, given the passage of time, the original counsel was not available.

Renewal of business cases

4.37. The maximum period a business case can last is 12 months. On all of the cases we reviewed, business cases were properly extended when it was necessary to do so. The approval process for the renewal of a business case is the same as the process for the approval of an initial business case, with AGCs having the final sign-off. The scrutiny given to the renewal of a business case is inevitably far more perfunctory than to that of an initial business case, because if counsel is already instructed on a case and there is more work for them to do, extending those instructions is a simple decision. We consider that there is no benefit in AGCs being involved in this process. However, given that counsel may already have completed the work set out in the original business case, we consider that renewed business cases should specify what tasks counsel will be asked to perform.

5. Appropriate and effective use of counsel

Appropriate use of counsel

5.1. The use of external counsel is a vital tool for the Serious Fraud Office (SFO) in both their investigations and prosecutions. At the investigation stage it is often extremely prudent to seek counsel's advice when making decisions that will likely have significant ramifications for the course of any future prosecutions. Counsel are advocacy and trial experts, and it makes sense for the SFO to utilise that expertise, particularly given the nature of an SFO lawyer's job function means it will be rare for them to appear in court as an advocate.

5.2. We set out in chapter 4 our findings that all the business cases we reviewed clearly justified why it was necessary to engage external counsel. However, it does not automatically follow that a case team then went on to use counsel appropriately; we have already highlighted that many business cases are vague about what counsel will be instructed to do.

5.3. In the interviews we conducted with staff, we were repeatedly told that case teams tend to over-rely on counsel. It is clear that all three Heads of Division (HODs) are alert to this risk and will not approve business cases where they consider the case team do not have appropriate tasks on which to instruct counsel. The fact that this tendency exists, however, underlines the importance of Recommendation 1 set out in chapter 4 at paragraph 4.13.

5.4. In the cases we examined, we found that case teams had generally used counsel appropriately. We also interviewed two external counsel who were instructed on two of those cases and they were confident that they had never been instructed to do anything that the SFO should have done internally. While we did come across examples of counsel being asked to conduct tasks that SFO lawyers would ordinarily undertake, there were specific reasons for these requests, in particular circumstances around staffing levels. For example, in one case counsel was instructed to draft international letters of request. This is a task we would expect an in-house SFO lawyer to complete and indeed those we interviewed at the SFO shared this view. There were extenuating circumstances which justified the use of counsel in this specific instance surrounding the lack of internal legal resource. Counsel was instructed only for this discrete task and their engagement ended once it was complete.

SFO legal staffing levels

5.5. We were repeatedly told in interviews by all levels of SFO staff that a lack of internal legal resourcing is a significant issue, which at times makes the instruction of counsel essential. The case example above is a classic example of this. In another case we examined, the Case Controller (CC) (a non-lawyer) was provided

with extremely limited legal resource with which to conduct the investigation involving company administrators. This made the instruction of counsel particularly crucial, because without a counsel team in place there would have been no way to respond to urgent legal issues which arose relating to the company's administration.

5.6. The SFO has a rolling recruitment campaign for lawyers but struggles to recruit sufficient numbers of legal staff. Therefore, a considerable number of vacancies remain. The lawyers it does recruit are often very inexperienced. There is no easy solution to this problem; despite the considerable effort the SFO invests in recruitment, the fact remains it pays less than defence firms and other bodies which investigate financial wrongdoing such as the Financial Conduct Authority (FCA). This inevitably makes attracting candidates in the numbers required, especially those with experience, particularly challenging. As the SFO manages to recruit, it should see some correlation in a reduction in the use of counsel.

Legal advice

5.7. Inevitably, one of the main reasons a case team will instruct counsel is to provide legal advice. There are essentially two categories of such legal advice. The first is advice which touches on case strategy, for example in respect of the most pertinent offences to investigate, or the nature of the evidential requirements which remain outstanding. The second is specific advice about a legal issue, for example the application of a particular statutory measure.

5.8. Whilst this second category of advice will naturally be applied to the specific facts of the case, there is a likelihood that the SFO will have sought similar advice in the past on a previous case. Until now, there has been no real way for a case team to establish if this has happened. This created the very real possibility of the SFO both paying for advice they have, in effect, already received as well as the risk that different counsel may provide divergent advice to that previously obtained.

5.9. During the course of our inspection the SFO took steps to address the issue, by introducing a repository of counsel advices in which all the second category advices should be stored. This was something for which many of those we interviewed had strongly advocated.

5.10. The aim of this is to ensure that the repository of advices is checked prior to the instruction of counsel and to ascertain whether similar advice to that required has been previously provided. Given the timing of the introduction of this repository, we were unable to observe its use in our file examination or to question those we interviewed about how helpful it is. Nonetheless, we consider its introduction to be an extremely positive step.

5.11. We found an inconsistent approach to the use of Associate General Counsel (AGCs) to provide case teams with legal advice. Each casework division has an AGC attached to it, and they were initially introduced to provide an assurance function. However, we found evidence that, over time, they have begun to provide case teams with advice on legal issues as well as general strategic investigative advice. This happens more in some divisions than others. All three AGCs are extremely experienced SFO lawyers, which contrasts with the make-up of some of the case teams who do not always have an abundance of experienced legal resources.

5.12. There is tension as to whether it is the role of the AGC to provide such advice to case teams, but we can see the benefit in this approach. On one of the cases we examined, there was evidence of a business case being authorised for junior counsel to provide legal advice; the SFO did not agree with the ultimate advice provided and the AGC set out the SFO's position on the issue. Given that the AGC had authorised the business case in the first place, it may have been more beneficial for them to have simply provided that advice to the case team themselves. We have already set out in Recommendation 2 in Paragraph 4.31 that we consider it would be preferable for the SFO to utilise AGCs to assist case teams prior to the submission of a business case for the instruction of counsel, thereby restricting the tasks counsel is instructed to advise upon to those that are essential.

Final charging advice

5.13. The SFO will not charge a case before counsel has provided a final charging advice. It would be exceptionally rare for such advice not to have been provided by a King's Counsel (KC). Given the complexity and high-profile nature of SFO cases as well as the likely length and cost of any trial, this is a prudent policy.

5.14. Many of the cases we examined were investigations which had not yet reached a stage of a final charging decision. On those that had, there were clear instructions requesting a final charging advice together with a detailed final charging advice from counsel which, in all cases, was a clear collaborative effort between the KC and junior counsel. In these cases, counsel had been instructed for a considerable period of time before this stage had been reached. We do not consider that there had been any duplication of work from earlier investigative advice provided by counsel in the provision of the final charging advice. We saw a clear distinction in the way in which counsel had helped guide the investigation and evidence gathering prior to providing the final advice on charge. Had counsel been brought in solely for the purpose of providing charging advice at what the SFO believed was the conclusion of the investigation, it seems highly likely that counsel would not have provided final charging advice, but instead an advice which

outlined a significant amount of further work which counsel considered to be necessary before the case was ready to be charged.

Challenging counsel's advice

5.15. It is important to outline that we saw a number of examples in the cases we examined of case teams challenging counsel's advice. This included one case in which the SFO did not agree with the offences counsel proposed to charge and asked them to reconsider and provide another advice. There were also several cases in which the scope of evidence counsel wanted the SFO to gather was challenged by the SFO, who did not consider it to be proportionate. For example, obtaining additional witness statements from financial institutions.

5.16. It is positive that case teams do challenge counsel where appropriate which makes for a constructive working relationship. We found clear evidence that case teams are very conscious that they are the ultimate decision-makers on the case, not counsel. Whilst external counsel has legal and advocacy expertise which provides the SFO with vital guidance during an investigation, SFO case teams have extensive investigatory skills which counsel do not necessarily share. The best value for money is obtained when SFO case teams recognise that distinction.

Quality of instructions to counsel

5.17. Counsel can be instructed by the SFO at various and different stages in the life of a case. There are the initial instructions when they are first employed and there are then later instructions as the investigation and the case develop. These later instructions can happen on numerous different occasions as evidence is gathered and issues arise.

5.18. The SFO has an expectation that instructions to counsel will be in writing. The Operational Handbook makes it clear that once a letter of engagement has been issued to counsel by the Commercial Section, the case team must send either specific instructions and/or a brief to counsel, which must be sent via secure means such as a CJSM email address (i.e. this must therefore be a written document). The Operational Handbook goes on to say that the "instructions/brief" should provide clear information on what work is required from counsel, what the expectations of the case team are, the timeframe for the work required and the amount of time allocated for the work. The document should also include background information about the case and be accompanied by any necessary documentation.

5.19. In the cases we examined, we found the way in which counsel was instructed was inconsistent. Some were formal briefs, others were via email or conference notes, which is permitted by the Operational Handbook as it is not

prescriptive about what form instructions should take. Initial instructions on some of the cases we reviewed were very detailed and had been thoughtfully and carefully drafted. However, a number of instructions were missing important elements, such as exactly what work counsel was expected to produce or a timeframe for that work. On some cases, we were unable to find all instructions to counsel on the SFO case drive. This included, on one case, the initial instructions.

5.20. The manner in which counsel is instructed to do further work varied considerably between cases and was not always confirmed in writing. For example, where telephone conversations led to requests for counsel to carry out various tasks. We saw in one case that counsel had provided and billed for some specific advice, but there were no written instructions requesting that advice.

5.21. There is an understandable practice on some cases of instructing counsel to do a range of agreed tasks arising out of a case conference. However, on one case it was counsel who took the note of the conference, including actions for them to complete, which was not then signed off by anyone internally from the case team. This meant that effectively the audit trail was of counsel instructing themselves, which we do not consider acceptable. If counsel is to be instructed following discussions at a case conference, a member of the SFO must be the one who afterwards provides a written note of those instructions to counsel.

5.22. It is vital to the cost-effectiveness of the SFO's use of counsel that instructions to them are clear about exactly what counsel is being asked to do, how many hours have been allocated for the task(s) and the timeframe in which they are expected to provide the work. We were told of examples of counsel billing for activities that had not been specifically requested and of some case teams unnecessarily copying counsel into all manner of correspondence. This inevitably has cost implications, as counsel has to read and consider such correspondence once it is sent to them, for which they will then invoice the SFO. The SFO must ensure that counsel are clearly and effectively instructed by the case team, both initially and as the investigation progresses.

Recommendation 3

By October 2026, the Serious Fraud Office (SFO) to refresh and implement comprehensive and mandatory guidance detailing the process required for case teams when drafting instructions to counsel. The new process to be embedded by April 2027.

5.23. As we will set out in chapter 6, there is no real oversight at divisional level of what case teams are instructing counsel to do and exactly what work counsel fees cover. We consider this as a gap in the SFO's oversight of cases, especially given the inconsistency in instructions we have identified in this inspection.

6. Budget, payment and monitoring of counsel

Case budgets

6.1. Each casework division has its own annual budget controlled by the Head of Division (HOD). The HOD will allocate each case a budget at the start of the financial year for the following 12 months, after discussions with the Case Controller (CC). Any counsel fees are paid from the case budget. HODs challenge the CCs on all aspects of the case budget, including probing the proposed spend on counsel fees. This in no way prevents the CC from instructing counsel in a way that diverges from the expectation of the HOD; as long as counsel fees remain within budget, there is highly unlikely to be any challenge to this.

6.2. There is no set formula for how a CC should set a case budget. It would not be possible for the Serious Fraud Office (SFO) to be prescriptive, given that every investigation brings its own set of bespoke issues and complexities. It is not within the remit of this inspection to comment generally on either divisional or case level budgets.

6.3. The CC is responsible for managing the case budget and will decide how much of that budget needs to be allocated for counsel fees. Case teams forecast a likely budget and, once counsel is instructed, agree hours with them on a monthly basis.

6.4. The CC must anticipate if there is likely to be a need to instruct counsel over the year and budget in advance for counsel fees. A HOD will not approve a business case for the engagement of counsel if there is insufficient allowance in the budget for counsel fees. There is however a degree of flexibility to allow for essential unexpected expenditure on counsel fees (for example, if there were to be a judicial review). Furthermore, a business case can only last for a maximum period of 12 months before it must be renewed (as discussed in chapter 4), and again, for the business case to be renewed there must be an allowance for counsel fees in the case budget.

Counsel fees

6.5. The SFO has set rates for counsel fees, which were increased by 25% on 1 September 2025. We are aware that, in the past, the SFO has had to pay counsel above their set rates; this happened, for example, in both of the cases we examined as part of our 2024 SFO Disclosure Inspection³. We were told that it would now be exceptionally rare for enhanced rates to be paid, which was confirmed in our file examination in which no counsel on any case were paid above

³ [Serious Fraud Office – disclosure – HM Crown Prosecution Service Inspectorate published April 2024](#)

the set rates. Given the increase in set rates to a more competitive level – the first increase since 2007 – it should not be necessary for the SFO to pay any counsel enhanced rates.

6.6. The HOD of each casework division receives a divisional budget report from the SFO Finance team each quarter. This includes a breakdown of what has been spent on each case on counsel fees against the anticipated expenditure that was forecast. All the HODs confirmed that they review this report and would note and challenge any discrepancies in actual counsel fees against expected expenditure. However, other than this, there is no divisional oversight of counsel expenditure on individual cases.

6.7. The SFO’s Finance team scrutinises the money spent on counsel fees, as every counsel invoice is paid by them. Payment of an invoice requires a prior letter of engagement from the Commercial Section to have been issued and for counsel to have provided a work log to justify the time for the work they have invoiced. Furthermore, a member of the case team needs to approve counsel’s invoice for payment. We found that this process was followed in all of the cases we examined. The system is utilised uniformly across all three casework divisions.

6.8. The Finance team keeps detailed records on counsel spending, covering how much has been spent, the reasons for counsel use and why counsel has been instructed at a particular level. They hold monthly individual meetings with each CC to review counsel usage and fees, including what hours have been used and what counsel time is still required.

6.9. We found that this was a robust process which ensures that counsel fees are only paid to instructed counsel for work that has been done and with which the case team is satisfied. It also ensures that all future counsel expenditure is properly budgeted for in advance. However, the Finance team are not routinely provided with a copy of the approved business case, nor the renewal, used for the engagement of counsel. This means that it is not possible for them to assess whether the work counsel has been instructed to do is consistent with that business case. Even if they did have a copy of the business case, as we have commented earlier, some business cases remain vague about exactly what counsel will be instructed to do. This should be addressed by Recommendation 1.

Recommendation 4

By May 2026, the Serious Fraud Office (SFO) to ensure that all business cases for the instruction of counsel are provided to the Finance team once approved.

6.10. Once this issue has been addressed, there will remain no real oversight at divisional level of what CCs are instructing counsel to do and exactly what work

counsel fees cover. We consider that there ought to be some kind of assurance process in place so that HODs can be satisfied that the counsel fees being paid from their divisional budgets are consistent with approved business cases, and that case teams are not instructing counsel to conduct work which goes beyond this remit. Such a system would enable the HODs to ensure that counsel expenditure is providing the SFO with value for money.

Recommendation 5

By October 2026, the Serious Fraud Office (SFO) to introduce an assurance process, outside of the case team, to ensure that counsel instructions and fees are consistent with the approved business case for the use of counsel.

Performance monitoring

6.11. The SFO previously had a system whereby every counsel's performance was monitored twice a year via the mechanism of mandatory performance monitoring form completion. It was felt that this created unnecessary paperwork and led to many perfunctory assessments. The system was changed several years ago to one of performance monitoring by exception. A performance monitoring form on counsel should now only be completed by exception; either for exceptionally poor or exceptionally good performance.

6.12. We found a number of examples of performance management forms on the cases we reviewed, all of which covered poor performance by counsel. In two instances, the forms were the basis of a decision to remove instructions from counsel. This clearly demonstrates that poor performance is being robustly monitored and tackled.

6.13. We found no examples of exceptionally good performance being monitored and none of the staff we interviewed could ever recall having seen such forms. We consider that it is far more important that the SFO identify and address poor counsel performance than exceptionally good performance. The SFO may therefore wish to reconsider the concept of monitoring exceptionally good counsel performance.

6.14. The SFO does not keep any kind of centralised record of performance monitoring conducted on counsel. Nor does the SFO generally remove counsel from their panel after the submission of a performance monitoring form for exceptionally poor performance, even if counsel has then been removed from a case. Case teams rely on their own knowledge and advice from the HOD and Associate General Counsel (AGCs), as well as guidance from colleagues to be aware of any potential performance issues with counsel. This is unsatisfactory and the SFO ought to have a system of central recording for performance issues which

have arisen with counsel. We recognise that the SFO would not necessarily want to remove counsel from their panel, since a number of performance concerns relate to issues such as counsel having insufficient time to provide timely advice on a case which would not militate against them being instructed at a future time.

6.15. As we covered in chapter 5, the SFO does not maintain a central record of which counsel have previously been instructed by them, though they do have a record of which counsel are currently instructed on cases. It would be desirable for a record of previously instructed counsel to be maintained so that it could be consulted when a case team is addressing the question of which counsel to engage. This would help to ensure that the SFO instructs as wide a selection of panel counsel as possible. If such a record included previous performance issues, it would likely prove to be a very useful resource.

Recommendation 6

By October 2026, the Serious Fraud Office (SFO) to maintain a register of all counsel who have been instructed, to include any performance issues that have arisen, which should be consulted prior to the completion of a business case for the instruction of counsel, to ensure that a wide range of counsel from their panel are instructed on their cases.

Annex A

Inspection framework

Scoping Document

SFO Use of Counsel Inspection 2025

A. Introduction

We set out in the HMCPSI business plan 2025-26⁴ that we aimed to carry out an inspection into the SFO's use of external counsel.

SFO routinely instruct counsel from the outset of investigations to provide advice throughout this process, through charging and prosecution, advising on restraint and confiscation and advising on the strategy as regards disclosure of unused material and material potentially subject to Legal Professional Privilege (LPP). Previous inspections have considered the effectiveness of case progression, casework quality and the disclosure process but there has been no work with a specific focus on the use of independent counsel.

In our 2019 Case Progression in the Serious Fraud Office inspection⁵ we made a recommendation that "*The Serious Fraud Office should be clear about the use of independent counsel, including guidance for case controllers on their deployment and monitoring, and a mechanism for evaluating the value for money they provide.*" In our 2023 Follow-up inspection⁶ we assessed the SFO's use of independent counsel positively. In that inspection we assessed the 2019 recommendation as having been fully met by the SFO. We found that the SFO have clear and comprehensive guidance on the instruction of counsel, with proper consideration of business cases being signed off at the correct level. We also found that there was an assurance process in place to monitor and report on counsel's performance. However, this inspection did not involve a detailed analysis of either the timing or the nature of instructions to counsel. It also did not involve a comprehensive comparison of the use of counsel across cases and divisions.

In our 2024 Disclosure inspection⁷ we commented on counsel's relationship with the case team, in one case finding there had been an over reliance on counsel. In both cases we examined as part of this inspection the SFO paid counsel more than SFO standard rates.

⁴ [HMCPSI Business Plan 2025-26](#)

⁵ [Case Progression in the Serious Fraud Office - HM Crown Prosecution Service Inspectorate published October 2019](#)

⁶ [Follow-up inspection of the Serious Fraud Office – case progression – HM Crown Prosecution Service Inspectorate published May 2023](#)

⁷ [Serious Fraud Office – disclosure – HM Crown Prosecution Service Inspectorate published April 2024](#)

Counsel fees are one of the SFO's main costs⁸, amounting to £7.6 million in 2024/25 which represented 8.9% of net SFO core expenditure. It is evident that the SFO makes considerable use of counsel. Counsel's role post charge is clearly essential and likely to be consistent across cases and divisions given the court process. Counsel's role at the pre charge stage of a case is less obviously defined. SFO case teams are subject matter specialists and there is a question of whether they need to routinely instruct counsel so early on in investigations, what the benefit of doing so is and whether the timing of the instruction of counsel is consistent across case teams and divisions. There is clearly benefit in examining the relationship between case teams and independent counsel at the pre-charge stage to establish whether the SFO is making the best use of counsel it instructs, and whether that use is consistent across case teams and divisions.

SFO case teams must submit a business case to the Commercial Section before counsel can be instructed (and also to extend counsel's instructions). There is guidance in the Operational Handbook about what a business case should contain together with a template document. The business case should include a brief summary of the case, a detailed explanation of why counsel is needed, the budget, three potential counsel to be instructed and whether any are already instructed by the SFO. The process for instructing counsel also includes a system for monitoring counsel's performance. This process was introduced following our 2019 Case Progression inspection and we reviewed it favourably in 2023. This inspection would therefore not revisit the process but would look in detail at its operation and the ways in which case teams are making use of counsel.

B. Inspection Questions

Do the SFO casework divisions use external counsel consistently, effectively and efficiently at the pre-charge stage of cases? Does their use of counsel represent value for money?

C. Objective

To assess the consistency and effectiveness of SFO casework divisions use of counsel at pre charge stage of cases. We will assess whether there is any divergence between case teams and divisions in the use of counsel at the pre charge stage. We will assess whether instructing counsel so early on cases is reasonable and proportionate. We will assess whether case teams are routinely paying counsel over the SFO standard rates. We will assess any oversight that is

⁸ [SFO Annual Report 2024/25](#)

applied, the nature of business cases for the instruction of counsel and whether case teams are complying with them.

D. Inspection Criteria

The aim of the inspection is to answer the following questions:

1. Business Case
 - Are case teams submitting a business case for the instruction of counsel?
 - Was the appropriate type of counsel requested?
 - Are case teams submitting further business cases to extend counsel's instructions?
 - Do business cases depart from the SFO standard rates for counsel and is this justifiable?
 - Is there appropriate oversight of business cases?
2. Timing
 - Are counsel instructed at an appropriate time?
 - Are counsel routinely kept on a retainer and is that appropriate?
 - In what circumstances are counsel's instructions extended. Is it routine and justifiable?
3. Instructions
 - Was it appropriate to instruct counsel or should the case team have acted without counsel's advice?
 - Are instructions to counsel clear and specific?
 - Are case controllers or principal investigative lawyers responsible for developing the instructions to counsel?
 - Is there evidence of duplication in instructions to counsel, particularly in relation to requests for advice on a final charging decision?
4. Comparisons

An inspection of the use of counsel in the pre-charge stage

- What differences in approach to instructing counsel are observed across the cases examined?
- Are any differences case team or division specific?
- What differences are there across divisions in the monitoring of counsel performance?

E. Methodology

File Examination

The inspection will comprise an examination of files from each of the three casework divisions A, B and C. We will aim to examine three cases per casework division. In the event of difficulties identifying suitable cases, we will examine a minimum of two cases for a casework division and an additional case from another division. The cases will be pre-charge or recently charged cases. We foresee no risk in reviewing live cases because the inspection will not be considering either the quality of counsel's advice or considering whether case teams actions upon receipt of that advice were appropriate. Nor will we be in any way evaluating legal decision making.

Interviews

We will interview a selection of key members of the case teams for the files we examine (Case Controller, principal investigator, principal investigative lawyer, senior investigator) as part of the file examination, taking account of the information provided in making judgements on the file examination questions. We will also aim to interview counsel instructed in the pre charge stage.

We will conduct general interviews of HODs, deputy HODs, Director of Legal Services, and Associate General Counsel. We will interview key members of the Commercial Section who authorise engagement of counsel.

Interviews will take place face to face wherever possible at SFO offices.

Documents

We are unlikely to need to request many documents from the SFO as most documents we will need to consider should be on the case drives and within the operational handbook. However, we will request a breakdown of overall trial counsel costs for the SFO for the past two years. We will also request and review a selection of business cases submitted to the Commercial Section over the past two years for the instruction of counsel.

F. Proposed timescales

August 2025 – Scope finalised and shared with SFO

October 2025 – Commissioning letter to SFO

November 2025 – Inspection commences

Nov/Dec/Jan 2025/6 - File read and onsite (8 weeks)

Feb/Mar 2026 – Analysis and report writing

Spring 2026 – Publication of report

G. Any risks to the inspection

Examination of live files is a potential risk, however given that we will not be assessing the quality of counsel's advice, the appropriateness of case team actions in response to such advice or legal decision making the risk should be negligible. Furthermore, the final report will not include any case names, or details of any pre-charge case.

H. Equality Impact Assessment

A preliminary evaluation of the need for an equality impact assessment (EIA) has been undertaken. I have considered the effects that this inspection is likely to have on disadvantaged groups or individuals with a protected characteristics. In my opinion, taking into account the nature of the inspection and the methodology to be used for the inspection, there is no indication that any protected groups are likely to be impacted by the outcome of the inspection. As a consequence of no impacts being identified whilst screening this

inspection, it is not anticipated that a full EIA will be required. This will, of course, be kept under review throughout the course of the inspection.

I. Provisional Report Structure

1. Chief Inspector's Foreword
2. Summary
3. Introduction and background
4. Business cases
5. Timing of instructions to counsel

An inspection of the use of counsel in the pre-charge stage

6. Appropriate and effective use of counsel
7. Value for money
8. Consistency across SFO

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