**Annex A**

**SFO Disclosure - inspection scope**

1. **Introduction**

We have a statutory duty to inspect the operation of the Serious Fraud Office, and to report annually to the Attorney General and Parliament. The purpose of inspection is to drive improvement and build public confidence in the investigation and prosecution process. This inspection will form part of our inspection programme for meeting these aims.

There has been significant media coverage of the SFO in the past few years, with some of it being negative as a result of adverse case results and some high-profile case failures. The SERCO and Unaoil case failures resulted in two reviews. The SFO itself commissioned a review of why SERCO failed, and the Attorney General commissioned an independent review of Unaoil and committed to updating Parliament on findings and progress. At the heart of the two reviews were issues relating to disclosure. The reviews were published in July 2022. Since the reviews, a further case (a linked case to SERCO) has been discontinued on public interest grounds. Whilst the decision to stop the case was because of on-going review against the Code (whether there was still a public interest in prosecuting the case) it was clear that there were several issues in the decision to stop the case linked to disclosure.

HMCPSI had in its 2023/24 business plan and inspection programme plans to inspect disclosure in the SFO. The proposal was that in the third quarter of the 2023/24 year that we would commence the inspection (leaving sometime between the publication of the SFO case progression follow-up inspection that we published in May 2022) and commencing the disclosure inspection. However, given the fact that a further recent case involving disclosure issues had failed the Attorney General requested that the planned inspection be brought forward and that HMCPSI conduct a short notice inspection of SFO disclosure.

Given the issues identified in the two reviews and the fact that some of the problems in the more recent case failure are of a similar nature the SFO also plan to review disclosure practice with an internal review. This work is likely to coincide with the HMCPSI disclosure inspection. During the development and the course of the inspection we will work with SFO to ensure that any overlap with our inspection is managed and appropriate.

The Government launched its Fraud Strategy in May 2023. It proposes to conduct a new independent review into the challenges of investigating and prosecuting fraud. This will include the proposal to modernise the disclosure regime for cases with large volumes of digital evidence. The fraud strategy accepts that due to the nature of fraud cases and the often-large volumes of complex evidence they generate, it can require significant time and resource to undertake a thorough investigation and bring a prosecution to court.

The strategy also recognises that there has not been an independent review of fraud since 1986 and as such, it indicates that the time is right to undertake an independent review into the challenges faced when investigating and prosecuting fraud. It is suggested that the first phase of the independent review will consider how the disclosure regime can be streamlined for cases with large volumes of digital material, reducing the significant burden on law enforcement and prosecutors. This will include looking at international comparators on disclosure for any lessons that can learnt. The report goes on to say that improving the disclosure regime will also reduce the risk of cases collapsing during trial and increase the chance of successful prosecution. As a result of the announcement of the Fraud Strategy review the scope of the inspection will not consider the matters relating to the current disclosure regime in any detail.

1. **Inspection Question**

Does the SFO have the necessary skills and infrastructure to effectively discharge its disclosure obligations?

1. **Objective**

To assess the effectiveness of the SFO disclosure handling of casework. Whether the SFO has the appropriate tools and culture to handle disclosure appropriately. Whether the SFO follow the law and guidance, adapting them to the unique circumstances of SFO practice, producing and maintaining effective internal guidance. Whether SFO disclosure assurance processes are robust. Whether there is effective engagement with key stakeholders (e.g. the defence and judiciary) to aid the disclosure process. Whether disclosure lessons are learnt from previous casework experience. Whether the findings from the Altman review have been adopted into current practice.

To provide findings and an evidence base to support the forthcoming independent review into the challenges faced when investigating and prosecuting fraud as part of the Government’s fraud strategy.

1. **Methodology**

The inspection will, through case examination, review the SFO practices relating to the handling of disclosure in its casework. The inspection will assess the application of the law and guidance by the SFO on their cases.

Detailed case examination will be key to the inspection and to augment the inspection team we intend to bring in some external expertise. Counsel with detailed knowledge of disclosure in ‘document heavy’ cases will be engaged as part of the inspection team.

Disclosure in casework will be examined at key stages within the cases. The scope of the inspection will include examination of cases from case acceptance to conclusion of the case. This will include amongst other things, disclosure decision making in terms of; setting a strategy; what material is to be obtained or not obtained; handling of case material; engagement with defence and court; and any disclosure learning taken from the case.

For the cases selected to be examined, the SFO will provide a member of the case team, preferably a disclosure officer who has worked on the case, to take inspectors through the case drives and provide an overview of the disclosure handling of the case when it was live. The SFO will provide user level training to all inspectors on the use and navigation of Autonomy and Axcelerate (the two SFO disclosure digital tools). Members of the case team that worked as part of the case team (that are still available, ie employed by the SFO) will be interviewed to provide further understanding and clarity for the case examination. Trial counsel and lead disclosure counsel for the prosecution case will also be interviewed.

A minimum of two cases will be examined, one successful and one unsuccessful. The unsuccessful case will be GRM02 (G4S). A decision on the selection of the successful case will be made by inspectors. The cases selected will be finalised cases. The size of the sample will mean that we will be unable to ensure a mix of both cases involving fraud or bribery and corruption and/or cases from different SFO casework divisions. Due to the size of cases, and the length of time to examine a case, file examination will be undertaken prior to and in parallel to interviews with case teams.

Inspectors will assess the effectiveness of Autonomy/Axcelerate as a tool to interrogate and manage disclosure in SFO cases. Other IT systems that are used to manage disclosure will also be examined. Automation and any other similar technology that is used by the SFO will also be assessed in relation to discharging disclosure obligations. Any other innovative practices utilised to discharge disclosure obligations will be examined to assess the impact on casework.

Documentation relating to disclosure will be requested and examined. The Operational Handbook disclosure sections will be examined, including previous versions, for a full assessment of SFO guidance and its effectiveness in guiding SFO staff and ensuring SFO disclosure obligations are properly discharged.

We will assess the handling of Legal Professional Privilege. We will assess SFO procedures for dealing with LPP material and examine the guidance produced by the SFO to assist practitioners.

Recruitment and training will be examined and how these impact on disclosure handling. We will assess how the SFO develops staff skills to be commensurate to the complexity of disclosure in SFO cases. The inspection will include an assessment of staff retention and support in relation to the management of disclosure.

General interviews with SFO staff and senior managers will be conducted to establish evidence regarding general disclosure handling. These will be face to face at the SFO offices. A framework of questions to be developed. Focus groups of staff not involved in the specific cases examined will also be utilised as a means to gather evidence against the framework questions. Staff surveys may also be used as a means to gather evidence.

As part of the inspection we will engage with others from across criminal justice, both national and international to provide a comparator and understand the challenges with disclosure across jurisdictions. Engagement with other stakeholders such as HMRC, FCA, NCA, DoJ and other foreign organisations will assist the understanding of handling of disclosure with stakeholder involvement and the challenges faced by those operating within the same and differing legislative system and frameworks. We will engage with the defence and judiciary as part of the inspection whilst avoiding any case specific discussions.

The Altman and Calvert-Smith reviews and only their recommendations relating specifically to matters of disclosure will be examined as part of the inspection. The effectiveness of actions taken since the reviews will be examined to ascertain the impact on GRM02 and current cases.

The Intelligence Unit, Deferred Prosecution Agreements, Proceeds of Crime and Appeals Division will be excluded from scope of the inspection.

1. **Resources required**

Five legal inspectors, two business inspectors, and two external independent counsel will form the inspection team. Securing experienced counsel will be priority and any delay may impact timescales or the scope of the inspection. Ideally counsel will have had some experience with SFO cases or experience working with ‘disclosure heavy’ cases and it would be beneficial is counsel had extensive knowledge of LPP and the SFO Autonomy/Axcelerate systems.

1. **Proposed timescales**

To commence in May 2023 (setting up) – with initial plans for publication of the final report by March 2024.

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| Draft high-level scope sent to SFO | 26/04/2023 |  |
| Draft high-level scope agreed | 28/04/2023 |  |
| Detailed scope and inspection framework developed | 18/05/2023 |  |
| Identify and engage external counsel | 19/05/2023 |  |
| Inspection team - planning | 02/05/2023 – 12/05/2023 |  |
| Inspection commissioning letter | 18/05/2023 |  |
| SFO Disclosure & Autonomy/Axcelerate familiarity/laptop set ups | 06/06/2023 – 09/06/2023 |  |
| Document reading /File reading | 06/06/2023 – 18/08/2023 |  |
| Stakeholder engagement/ Autonomy & Axcelerate interrogation | 21/08/2023 – 01/09/2023 |  |
| Case Team interviews | 04/09/2023 – 13/09/2023 |  |
| Case write ups | 18/09/2023 - 29/09/2023 |  |
| General interviews | 02/10/2023 – 13/10/2023 |  |
| Analyse of evidence | 16/10/2023 – 17/11/2023 |  |
| Finalise EENs | 20/11/2023 |  |
| Emerging Findings meeting | 23/11/2023 |  |
| Commence report writing | 04/12/2023 |  |
| Draft report to DCI | 12/01/2024 |  |
| Draft report to SFO | 01/02/2024 |  |
| Response to SFO comments | 23/02/2024 |  |
| Report to proof-readers | 26/02/2024 |  |
| Publication | 21/03/2024 |  |

1. **Other aspects to note**

This inspection is specifically designed to make it as low impact as possible on the SFO and partners by using finalised cases so not to cause any issues surrounding disclosure and case team abstraction. All inspectors including counsel will require full access to SFO laptops, specific case drives, SFO intranet and operational handbook.

1. **Equality Impact Assessment**

A preliminary evaluation of the need for an equality impact assessment (EIA) will be undertaken. It is not anticipated that a full EIA will be required.