

Scoping Document

SFO Use of Counsel Inspection 2025

A. Introduction

We set out in the HMCPsi business plan 2025-26¹ 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 inspection² 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 inspection³ 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 inspection⁴ 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.

Counsel fees are one of the SFO's main costs⁵, 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.

¹ [HMCPsi Business Plan 2025-26](#)

² [Case progression in the Serious Fraud Office](#)

³ [Follow-up inspection of the Serious Fraud Office - case progression](#)

⁴ [Serious Fraud Office - Disclosure](#)

⁵ [SFO Annual Report 2024/25](#)

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