

They can be Serious

The Serious Fraud Office is unique in the UK criminal justice system. **Sally Ramage** outlines the development of the body that investigates and brings to trial our biggest frauds

The Serious Fraud Office (SFO) was created under the Criminal Justice Act 1987 and came into being in April 1988. At the same time, all UK fraud squads became part of FIG, the Fraud Investigation Group, which works under the Crown Prosecution Service.

The impetus for the 1987 Act was the Fraud Trials Committee Report (Roskill Report), which savaged the system for bringing frauds to trial. It said: "The public no longer believes that the legal system in England and Wales is capable of bringing perpetrators of serious frauds... to book. The overwhelming weight of evidence laid before us suggests that the public is right. If the government cherishes the vision of an 'equity owning democracy', then it faces an inescapable duty to ensure that... markets are honestly managed."

The Report made more than 100 recommendations, only one of which has not so far been implemented – the proposal that a frauds trial tribunal replace trial by jury in cases of complex fraud (a very similar proposal was made in the Criminal Justice Bill of 2003 and remains controversial).

But the most important recommendation was for the formation of a single organisation responsible for detecting, investigating and prosecuting serious fraud. It said the advantage of such an organisation would be that fewer serious frauds could escape prosecution by slipping between the jurisdictions of the many bodies operating in this field (for example, the DTI, HM Customs & Excise).

The purpose of the ensuing Criminal Justice Act was to make further provision for the investigation of and trials for fraud. It established the SFO, but also set down the procedure for transferring a fraud case from the Magistrate's Court to the Crown Court. It gave judges very wide powers. Among other things, they could decide whether a case should be discharged, make orders for the production of a case statement from the prosecution and decide the admissibility of evidence.

These are the rules relating to the trials the SFO brings – it does not refer or defer to the Director of Public Prosecutions (DPP) and is only responsible to the Attorney General. Perhaps because of this, its status has from time to time been questioned.

In the early '90s, the Royal Commission on the Criminal Justice System did a feasibility study into a merger of the SFO and FIG, published in 1994 (Graham Report). It favoured keeping the SFO as a separate agency and recommended that in FIG (which does defer to the DPP), serious or complex cases should be merged with the SFO's caseload.

A little later, another committee was set up to examine whether the SFO should be preserved as an agency. It reported (Davie Report, 1995): "The SFO has developed a speciality which needs to be preserved... The mere fact that two organisations are involved in the prosecution of fraud in this area is not, of itself, a conclusive reason for change."

The Davie Report did identify one change that urgently needed to be made, which was to the *ad hoc* way in which cases were assigned between the SFO and the Crown Prosecution Service. If the SFO had a full workload, it would generally accept the biggest cases. Davie proposed a new approach, which included lowering the value threshold used when assessing cases from £5 million to £1 million.

So how does the SFO decide which cases to take? The key criterion is that the suspected fraud is such that the direction of the investigation should be in the hands of those responsible for the prosecution. Besides that, it is likely to take cases that:

- Involve monies at risk of at least £1 million
- Are likely to give rise to national publicity and widespread public concern
- Require highly specialised knowledge of stock exchange practices or regulated markets
- Have an international dimension
- Require legal, accountancy and investigative skills to be brought together and
- Are complex and in which the use of 'Section 2' powers (compulsory interviews of defendants) may be appropriate.

The SFO is unique in the UK criminal justice system in that it both investigates allegations and takes the decision to prosecute. It is a powerful weapon against complex, high-value crime.

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