

The Serious Fraud Office

By Sally Ramage®



The Serious Fraud Office (SFO) came into being in April 1988. At the same time every fraud squad in the United Kingdom became part of what is now known as the Fraud Investigation Group (FIG) and the FIG works under the Crown Prosecution Service. These fraud squads are policed by policemen who have volunteered for the positions.

One of the findings of the Fraud Trials Committee Report (the Roskill Report) was that the system for bringing frauds to trial was poor. The opening section of the Roskill Report set out the scale of the problem.... “The public no longer believes that the legal system in England and Wales is capable of bringing perpetrators of serious frauds expeditiously and effectively to book. The overwhelming weight of evidence laid before us suggests that the public is right. In relation to such crimes and to the skilful and determined criminals who commit them, the present legal system is archaic, cumbersome and unreliable. At every stage during investigation, preparation, committal, pre-trial review and trial, the present arrangements offer an open invitation to blatant delay and abuse. While petty frauds, clumsily committed, are likely to be detected and punished, it is all too likely that the largest and cleverly executed crimes escape unpunished. The Government has encouraged and continues to encourage ordinary families to invest their savings in the equity markets, particularly in the equities of formerly state-owned enterprises. If the

Government cherishes the vision of an “equity owning democracy”, then it faces an inescapable duty to ensure that financial markets are honestly managed, and that transgressors in these markets are swiftly and effectively discovered, convicted and punished. Self-regulatory mechanisms designed to encourage honest practices are now coming into force. Where these mechanisms are abused, the law must deliver retribution, swift and sure.”

The Report then continued with over one hundred recommendations, only one of which has not so far been implemented – the proposal for a frauds trial tribunal to replace trial by jury in cases of complex fraud.

The most important recommendation of the Roskill Report was for a “formation of a single, unified organisation responsible for all the functions of detection, investigation and prosecution of serious fraud. It stated that the advantages of such an organisation would be that fewer serious frauds would be allowed to escape prosecution by slipping through the net of a series of independent organisations working in this field (for example, the Fraud Investigation Group, the Department of Trade and Industry, the Inland Revenue, HM Customs and Excise) and that this would help investigations to lead to more effective prosecutions.

After the Roskill Report there was the Criminal Justice Act 1987 which created the Serious Fraud Office. The purpose of the Criminal Justice Act was to make further provisions for the investigation of and trials for fraud and for connected purposes. It set down the procedure for transferring a fraud case from the Magistrate’s Court to the Crown Court. Under the Act, notice of transfer to the Crown Court has to be issued before the Magistrate’s hearing starts. Pre-trial reviews were now treated as part of the trial.

The judge now had very wide powers. He could decide whether a case should be discharged. He could now make orders for the production of a case statement from the prosecution and order defendants to produce statements setting out in broad terms the nature of their defence and where they take issue with the prosecution. He could now decide the admissibility of evidence and questions of law relating to the case. He could adjourn a preparatory hearing from time to time, order the production of charts and visual aids to help the jury in their comprehension of the case later on and he now has the power at trial to refer back to the cases disclosed at the preparatory hearing if those cases are suddenly altered so that the jury would be alerted that one or both sides had decided to take a different course.

These are the laid out rules relating to the trials of serious fraud cases which the SFO brings. The SFO does not refer or defer to the Director of Public Prosecutions and is only responsible to the Attorney General.

After operating for five years, there was a report , published in 1994, called the GRAHAM Report , which was carried out by the Royal Commission on the Criminal Justice System and included the SFO . The report was a feasibility study into the merger of the SFO and the FIG. The FIG had been established in 1985 under the aegis of the Director of Public Prosecutions. It was the FIG which began the use of a multi-disciplinary approach to fraud investigation used today by the SFO. The only difference between the two agencies is that the SFO has the use of section 2 , Criminal Justice Act, for compulsory interviews of defendants. The Report was in favour of the continuation of the SFO as a separate agency. It established that 40% of the FIG's work was not serious or complex fraud and recommended that in FIG cases of serious and

complex fraud should be merged with the SFO's caseload.

Later, a Committee was set up to examine whether the SFO should be preserved as an agency. This Committee reported (the DAVIE Report of 1995) ; it said”The SFO has developed a speciality which needs to be preserved and not diluted. 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. There have been a number of developments since the establishment of the SFO and indeed a number of improvements in both the Fraud Division and the SFO since the GRAHAM Report. The Committee believes there is scope for building on these and for introducing further changes in order to meet the requirements identified.”

The Report identified an urgent change needed which was the relatively unstructured 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. The DAVIE Report stated that this ad hoc approach was unsatisfactory and needed to be addressed quickly. It proposed a new set of criteria including the lowering from £5 million to £1 million of the SFO's financial threshold to be used when assessing if a case was suitable for the SFO.

It recommended that the SFO should continue. The Report was accepted on 31st March 1995 by Sir Nicholas Lyell on behalf of the government when he said

“...in its seven years in existence to date, the SFO has brought to trial one hundred and forty one major cases including three hundred and nine defendants of whom one hundred and ninety one have been convicted. In over 75% of cases brought to trial by the SFO, at least one person has been convicted, usually the principal defendant”.

How does the SFO decide which cases to take?

The statutory criteria for accepting cases came to be formalised in the light of criteria agreed by the law officers following the DAVIE Report on the merits and feasibility of merging all or part of the Fraud Divisions of the Crown Prosecution Service (CPS) and the SFO. The key criterion for deciding whether the SFO should accept a case is that the suspected fraud is such that the direction of the investigation should be in the hands of those responsible for the prosecution.

Factors taken into account are –

- cases where the monies at risk are at least one million pounds;

- cases likely to give rise to national publicity and widespread public concern;

- cases requiring highly specialised knowledge of stock exchange practices or regulated markets;

- cases with an international dimension;

- cases where legal, accountancy and investigative skills need to be brought together and

- cases which are complex and in which the use of Section 2 powers may be appropriate.

The Serious Fraud Office is unique in the criminal justice system. It investigates allegations of crime and it takes the decision to prosecute and pursue cases through the courts.