

PRINCIPLES OF COOPERATION BETWEEN THE BANK OF ENGLAND AND THE SERIOUS FRAUD OFFICE

Introduction

1. From time to time the Serious Fraud Office (SFO) and the Bank of England (the Bank) may need to work together in relation to referrals, intelligence developments, investigations and prosecutions conducted by the SFO, as well as matters of common legal or policy interest.
2. This document sets out some high-level "Principles of Cooperation" which are intended to promote and facilitate this process.
3. The principles set out below take account of the distinct roles of the SFO as an investigatory and prosecutorial authority and the Bank as the United Kingdom's central bank, prudential regulatory authority and resolution authority. In particular, the Bank and the SFO mutually recognise their independence and the need to conduct matters in accordance with the ambit of their respective statutory powers and responsibilities.
4. In due course the Bank and SFO may seek to develop these principles into a more formal Memorandum of Understanding. Neither document is intended to be legally binding; rather their purpose is to provide a framework for helping to ensure an effective on-going relationship between the two organisations.

Communication Modes

5. Where matters of policy, principle, or other joint interest not relating to any specific investigation need to be raised, they will be discussed in the first instance between the General Counsel for the Bank or Head of the Enforcement & Litigation Division of the Bank and the Head of Strategy and Policy for the SFO.
6. Where the Bank wishes to make a referral or otherwise alert the SFO to suspected misconduct, the General Counsel for the Bank, or a suitable alternative, will contact the Chief Intelligence Officer at the SFO, copying correspondence to the Head of Strategy and Policy.
7. Where the SFO and the Bank wish to communicate in respect of ongoing matters regarding specific investigations or prosecutions, the contact at the SFO will be the relevant Head of Division and case controller. They will liaise directly with their Bank manager-level counterparts, with frequency dictated by the day-to-day activity.
8. Where the Bank has intelligence-gathering opportunities or experience which may be useful for the SFO, the two organisations may also establish arrangements for cooperation in such matters. In the first instance this will be for discussion between the Bank's Enforcement & Litigation Division's Head of Legal ("Head of Legal"), or a suitable alternative, and for the SFO the contact will be the Chief of Intelligence.
9. For strategic matters, the Head of Legal will seek to meet on a quarterly basis with the General Counsel and Head of Strategy and Policy at the SFO, to discuss on-going collaboration between the two organisations, including the status of any on-going SFO investigations as appropriate where the Bank is providing assistance or may be otherwise involved (and any particular issues arising).

10. An annual meeting between the Bank's General Counsel and the SFO's Director will take place to discuss and review the relationship between the two institutions more generally.
11. Up to date contact details are set out in Annex A. The SFO and the Bank will update each other in a timely manner if the identity of any person holding a role mentioned in paragraphs 6 to 11 changes.

Information sharing

12. The exchange of information is subject to a legal framework, which includes, but is not limited to, the provisions of:
 - a. the General Data Protection Regulation (GDPR), the Data Protection Act 2018 and any successor or analogous legislation;
 - b. Freedom of Information Act 2000 (FOIA) (except where information is held by the Bank for the purposes of its functions with respect to monetary policy, financial operations intended to support financial institutions for the purposes of maintaining stability, or the provision of private banking services and related services);
 - c. for information provided by the SFO, section 3(5) of the Criminal Justice Act 1987; and
 - d. for information provided by the Bank, sections 348 and 353A of the Financial Services and Markets Act 2000, section 246 of the Banking Act 2009 and provisions of European Union legislation which apply to the Bank in connection with the exercise of its functions (including, for the avoidance of doubt, its functions as the Prudential Regulation Authority).

Requests from the SFO

13. As part of its statutory remit to investigate (and where appropriate prosecute) the top tier of serious and complex fraud, including bribery and corruption, the SFO may from time to time request information and/or documentation from the Bank, for use as evidence or to comply with disclosure obligations under the Criminal Procedure and Investigations Act 1996 (CPIA).
14. To assist the Bank in responding to information requests as efficiently and effectively as possible, the SFO will (where appropriate):
 - a. ensure that formal requests are made in writing;
 - b. ensure that requests are drafted with sufficient clarity;
 - c. submit requests in draft form in advance where this would assist the process;
 - d. provide contextual information, to help clarify the scope and terms of the request;
 - e. consolidate similar requests; and
 - f. agree deadlines.
15. The Bank may approach the SFO case team for clarification where there is any apparent lack of certainty over the terms and scope of the request.
16. Before providing any materials to the SFO, the Bank will review those materials and consider whether they are potentially subject to legal privilege.
17. An SFO search request may capture items held by the Bank which attracts a higher level of classification than "Bank Confidential" under the Bank's own protective marking scheme. Any such material will be retained by the Bank and made available for inspection and scheduling by the SFO on the Bank's premises.
18. The SFO will adopt the following security procedures for all SFO-related persons (including IT staff) with access to material provided to the SFO by the Bank:

- a. The minimum level of security clearance for staff and counsel is Baseline Personnel Security Standard (BPSS);
 - b. Some staff will have a level of security clearance higher than BPSS;
 - c. All staff and counsel will have completed a declaration of interest form citing any banks and financial institutions in which they or a close relative or close friend have an interest; and
 - d. All staff and counsel will be signatories to the Official Secrets Act; and All staff and counsel will be aware of their duties and obligations not to discuss or disclose material outside those prescribed by legislation.
19. The SFO's disclosure obligations continue throughout the life of an investigation and prosecution. The SFO will, wherever possible and in a timely manner, keep the Bank informed of developments which concern material provided by, or relating to, the Bank throughout the process.
20. The SFO will make decisions on the retention, restoration and disposal of all materials provided by the Bank in accordance with its Review, Retention and Disposal policy. Where any material is not restored to the Bank on conclusion of the SFO's investigation and related prosecutions, confiscation proceedings or appeals, the SFO will, where reasonably practicable, notify the Bank of the decisions taken in respect of such material.
21. Where appropriate on any specific case, the SFO and the Bank will agree a specific detailed Terms of Reference to provide clarity and assist the process.

Requests from the Bank

22. It may be that the Bank needs to request information from the SFO. This may be, for example, because such information may assist the Bank in responding to an SFO information request or because such information is relevant for the Bank given its wider responsibilities (both as a regulator and the United Kingdom's central bank). In such cases, the Bank will submit requests in accordance with the principles outlined in paragraphs 5, 6, 7 and 9, above.

Timescales

23. The Bank will seek to meet reasonable deadlines for the delivery of information. Where the SFO is working to time limits set by external bodies, such as the Court, the SFO will provide the Bank with as much notice as possible of the relevant deadlines.
24. Investigations can by necessity extend over long periods of time. In order to help the Bank manage its internal and external stakeholders, and to ensure that appropriate resources are assigned to assist the SFO, the SFO will fix realistic timescales for the delivery of information. These timescales will take account, as far as reasonably practicable, of the time required for the Bank to review materials for privilege before providing them to the SFO.
25. The SFO will, where reasonably practicable, consult with the Bank in respect of deadlines, and the Bank will raise and explain issues around potential delay as early as possible. The SFO will, wherever possible, update the Bank in a timely manner of any significant changes to the timing of any anticipated key milestones in respect of any on-going SFO investigations where the Bank is providing assistance or may be otherwise involved. More broadly, the SFO will keep the Bank informed of the status of those investigations

The status of the Bank and its officials

26. The Bank may provide assistance in relation to SFO investigations into a range of circumstances.
27. Where the Bank is asked to provide information to the SFO in respect of ongoing SFO investigations, and neither the Bank nor the Bank officials are suspected of having involvement in the alleged wrong-doing, the Bank and those Bank officials who assist will be treated as potential witnesses. As such, they are entitled to be treated according to the SFO commitments set out in the document 'Victims and Witnesses: Our Commitment to you' (Annex B / <https://www.sfo.gov.uk/publications/information-victims-witnesses-whistleblowers/>).
28. Bank officials acting as potential witnesses in cases accepted for investigation by the SFO are also entitled to the standards of care set out in the Witness Charter.
29. These entitlements accrue whether the individual Bank official is assisting by providing factual information and/or assisting by the provision of their expertise.
30. Should the Bank or any Bank official become a suspect in an investigation, they will be notified as soon as appropriate in the circumstances of the case, in writing. The SFO will also inform the Bank as soon as appropriate should the status of the Bank or its officials change during the course of the investigation.

Communications with the Treasury Select Committee

31. As the UK's central bank, the Bank is held to account by Parliament via the Treasury Select Committee, and the Bank takes its responsibilities towards the Treasury Select Committee seriously. At the same time, the SFO must ensure that its investigations are not undermined in any way. The Bank and SFO will cooperate closely to strike an appropriate balance between these interests on a case by case basis.
32. Mindful of the convention that precedence should be given to criminal investigations/proceedings wherever possible, where the Bank is of the view that it is appropriate that the Treasury Select Committee be informed of assistance the Bank is providing to the SFO, the Bank will discuss this with the SFO in advance as far as reasonably practicable.
33. Depending on the circumstances, it may be appropriate for certain safeguards to be put in place to address the interests of the SFO. For example, that the Bank informs only the Chair of the Treasury Select Committee on a confidential basis and that the SFO (and/or the Attorney General) write to the Chair to outline the SFO's interest in the matter.

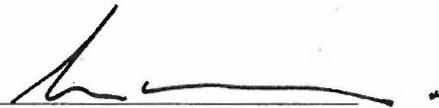
Public communications

34. The Bank and the SFO will seek to cooperate closely before making public communications about any SFO investigation where the Bank is providing assistance or may be otherwise involved. This includes dealing with requests for disclosure of information under FOIA. This is necessary to ensure that such communications are both as accurate and consistent as possible, whilst also recognising that it would generally be inappropriate for the Bank to provide a running commentary of any on-going SFO investigation.
35. In particular, wherever possible, the Bank and the SFO will seek to coordinate and agree their respective approaches and statements in advance before making any public communications.

In most cases, such coordination will be facilitated between the mutually agreed points of contact (in conjunction with Press Offices), but may be escalated as appropriate.

Costs

36. Where the Bank is assisting the SFO with an investigation, and vice-versa, both institutions must be mindful of the costs such assistance may impose on the public purse whilst at the same time acting in compliance with obligations under CPIA. Acting in accordance with these Principles of Cooperation, in particular those in relation to information requests and understanding key milestones, will assist in achieving that objective.

Signed by 

Sonya Branch, General Counsel
for and on behalf of the Bank of England

Signed by 

Sara Lawson QC, General Counsel
for and on behalf of the Serious Fraud Office

Dated 6 AUG 2019

