**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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| UNITED STATES OF AMERICA, | : | |
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| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| | : | No. 4:19-CR-147 |
| CYRUS ALLEN AHSANI, and | : | (Hon. Andrew S. Hanen) |
| SAMAN AHSANI, | : | |
| | : | |
| Defendants. | : | |
| | : | |

**DECLARATION OF KATIE TOWNSEND IN SUPPORT OF MOTION OF MEDIA INTERVENORS TO UNSEAL SENTENCING MEMORANDA (ECF NOS. 115, 116)**

I, Katie Townsend, declare as follows:

1. I am the Deputy Executive Director and Legal Director of the Reporters Committee for Freedom of the Press. I am counsel of record for Media Intervenors in the above-captioned case. I am a member in good standing of the bar of the District of Columbia and am admitted to practice before this Court. I make this declaration in support of the Motion of Media Intervenors to Unseal Sentencing Memoranda (ECF Nos. 115, 116). I have personal knowledge of the matters stated in this declaration.

2. Attached hereto as **Exhibit A** is a true and correct copy of the publicly available judgment of the U.K. Court of Appeal Criminal Division in *R. v. Akle* [2021] EWCA (Crim) 1879, obtained from https://www.bailii.org/ew/cases/EWCA/Crim/2021/1879.pdf, *archived at* https://perma.cc/5NV4-RVDF.

3. Attached hereto as **Exhibit B** is a true and correct copy of the following publicly available court document filed in the U.K. Court of Appeal Criminal Division: Applicant's Skeleton Argument, *Akle v. R.* (Sept. 30, 2021).

4. Attached hereto as **Exhibit C** is a true and correct copy of the following publicly available court document filed in the U.K. Crown Court at Southwark: Prosecution Response to Defence Application to Stay for an Abuse of Process, *R. v. Akle* (Jan. 19, 2020).

5. Attached hereto as **Exhibit D** is a true and correct copy of the following publicly available news article: *The Unaoil Bribery Scandal*, Spotlight on Corruption (Mar. 30, 2022), obtained from https://www.spotlightcorruption.org/the-unaoil-bribery-scandal, *archived at* https://perma.cc/KBY3-N4XK.

6. Attached hereto as **Exhibit E** is a true and correct copy of the following publicly available report prepared for the U.K. Attorney General's Office: Sir David Calvert-Smith, *Independent Review into the Serious Fraud Office's handling of the Unaoil Case – R v Akle & Anor*, Att'y Gen.'s Off. (July 21, 2022), obtained from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092872/DCS_report_-__FINAL_-_21_July_08.31_.pdf, *archived at* https://perma.cc/YF5U-EDLN.

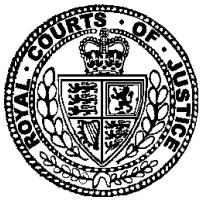
7. Attached hereto as **Exhibit F** is a true and correct copy of the following publicly available news article: Adam Dobrik, *Divisive, Zealous and Connected: The Investigator Behind the Ahsanis' US Deal*, Global Investigations Rev. (Nov. 12, 2021), obtained from https://globalinvestigationsreview.com/just-anti-corruption/article/divisive-zealous-and-connected-the-investigator-behind-the-ahsanis-us-deal, *archived at* https://perma.cc/TS9X-ANWX.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 24, 2023.

*/s/ Katie Townsend*
Katie Townsend

# Exhibit A




Neutral Citation Number: [2021] EWCA Crim 1879

Case Nos: 202001870 B1, 202002164 B1 and 20210745 B1

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**
**ON APPEAL FROM SOUTHWARK CROWN COURT**
**HHJ BEDDOE**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/12/2021

**Before:**

**LORD JUSTICE HOLROYDE**
**MR JUSTICE JEREMY BAKER**
and
**MR JUSTICE JAY**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

**ZIAD AKLE and PAUL BOND** — **Appellants**

**- and –**

**THE CROWN** — **Respondent**

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Adrian Darbishire QC, Mark Aldred and Duncan Jones** (instructed by **Paul Hastings**) for **Ziad Akle**
**Howard Godfrey QC** (acting *pro bono*) and **Robert Fitt** (assigned by **Registrar of Criminal Appeals**) for **Paul Bond**
**Michael Brompton QC, Gillian Jones QC and Faras Baloch** (instructed by **the SFO**) for **the Crown**

Hearing dates: 1st July, 20th and 21st October 2021

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# Approved Judgment

**Covid-19 Protocol**: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10 December 2021 at 11.00 a.m.

**LORD JUSTICE HOLROYDE:**

1. Ziad Akle and Paul Bond stood trial, together with Stephen Whiteley, on an indictment containing four counts alleging conspiracy to give corrupt payments, contrary to s. 1 of the Prevention of Corruption Act 1906. Count 1 (against Akle alone), count 2 (against all three accused) and count 3 (against Akle and Whiteley) alleged conspiracies to give corrupt payments to Oday Al Quoraishi ("Oday"), an agent of the South Oil Company ("SOC"). Count 4 (against Bond alone) alleged conspiracy to give corrupt payments to public officials. In each of the counts, the persons named as co-conspirators included Ata Ahsani, Cyrus Ahsani, Saman Ahsani (collectively, "the Ahsanis") and Basil Al Jarah ("BAJ"). The charges were brought against the accused by the Serious Fraud Office ("SFO").

2. On 19th June 2020, after a trial lasting sixty-six days in the Crown Court at Southwark, Akle was convicted of the offences charged in counts 1 and 2. The jury could not agree on count 3, which was left to lie on the file against him. On 23rd July 2020 he was sentenced to concurrent terms of five years' imprisonment.

3. Whiteley was convicted of the offence charged in count 2 and was subsequently sentenced to 3 years' imprisonment.

4. The jury could not agree on any verdicts in relation to Bond, and were discharged. On 24th February 2021, following a retrial, Bond was convicted of the offences charged in counts 2 and 4. On 1st March 2021 he was sentenced to concurrent terms of three years six months' imprisonment.

5. Akle applied for leave to appeal against conviction on a number of grounds. The single judge referred two of those grounds to the full court, but refused leave on the other grounds. The application in relation to one of the refused grounds has been renewed before us. Akle also appeals, with the leave of the single judge, against his total sentence.

6. Bond applied for leave to appeal against his total sentence. His application was referred to the full court by the Registrar.

7. We express at the outset our gratitude to all counsel for their detailed written and oral submissions. We will do no more than give brief summaries of their arguments, but we have considered all the many points made.

8. We shall first summarise the relevant facts and the proceedings at trial, and then address Akle's application for leave to appeal against conviction and appeal against sentence. Thereafter we shall address Bond's appeal against sentence. For convenience only, and intending no disrespect, we shall for the most part refer to persons by their surnames only, or by the initials and abbreviations which have been used during these proceedings.

***Summary of the key facts:***

9. In the years following the fall of Saddam Hussein in 2003, the Government of Iraq sought to rebuild the country's infrastructure. Increasing Iraq's crude oil exports was a

key objective and included the Iraq Crude Oil Export Expansion Project ("ICOEEP"). Nine potential projects were conceived, with a value of $1.9 billion.

10. The first project ("the SPM project") involved the installation in the Persian Gulf of Single Point Moorings. These are floating buoys which allow tankers to load oil offshore. The second project ("the pipeline project") involved the installation and commissioning of two on-shore and off-shore pipelines. In respect of both projects, a competitive tendering process was used to select the companies to which contracts were to be awarded.

11. The South Oil Company ("SOC"), an Iraqi state-run company which was responsible for oil in the south of Iraq, engaged Foster Wheeler ("FW"), a UK-based global engineering company, to compile a detailed specification for the tenders, evaluate the bids from interested companies on technical and commercial aspects, and then recommend the most technically and commercially compliant bid to SOC. That recommendation would then be passed to Iraq's Ministry of Oil for final approval. The prosecution case against all the accused was that they had been involved in bribing decision-makers in order to win ICOEEP contracts.

12. Ata Ahsani and his sons Cyrus and Saman Ahsani owned and controlled the Unaoil group of companies. They held the offices of Chairman, Chief Executive Officer and Chief Operating Officer respectively. Both Akle and Whiteley were employed by Unaoil. BAJ, a friend of the Ahsanis, was Unaoil's Iraqi partner based in Iraq. It was alleged that Unaoil paid Oday a total of $608,000 for his personal benefit, in order to influence the terms and allocation of contracts to the advantage of Unaoil and its clients.

13. Count 1 alleged that Akle, between June 2005 and May 2009, conspired with the Ahsanis, BAJ and others, to give corrupt payments to Oday as inducements or rewards in relation to the affairs of the business of Oday's principal, the SOC, namely in obtaining confidential information regarding oil projects to be undertaken for the SOC. From April 2009 Oday was put on a monthly retainer – said to be a bribe – so that he could provide sensitive information about projects to the benefit of Unaoil.

14. Count 2 concerned the manipulation of the tender process for the SPM project. It was alleged that between March 2009 and February 2010 Akle, Bond and Whiteley conspired with the Ahsanis, BAJ and others to give corrupt payments to Oday in relation to the recommendation and award of the contract for the SPM project to a company called Single Buoy Moorings Inc ("SBM"). Bond was an employee of SBM. BAJ was working to cement relationships and position Unaoil. By April 2009 SBM were expressing an interest in working with Unaoil and thereafter it was agreed that Unaoil would work on SBM's behalf to secure the project in return for a commission. Oday was deployed to obtain confidential information about FW's draft specification. Unaoil then used Oday to influence the specification in favour of their client, SBM. In January 2010 SBM were informed that FW would recommend them to SOC as the only technically and commercially compliant bidder.

15. Count 4 concerned corruption at the Ministry of Oil in relation to the SPM project between March 2010 and August 2011. It was alleged that, having corruptly secured SOC's recommendation, SBM – through Bond – sought information from Unaoil as to the progress of the bid at the Ministry. Bribes were paid by Unaoil executives to senior

officials in the Ministry of Oil in efforts to ensure that the Ministry approved the bid and that the contract was awarded to Unaoil's client SBM.

***Arrests and investigations:***

16. On 22 March 2016 BAJ was arrested in Manchester. When interviewed under caution, he denied any involvement in bribery or corruption. His home was subsequently searched and documents and digital devices seized.

17. On 29 March 2016 the three Ahsanis were arrested in Monaco by the Monegasque police. Their respective homes, and the office of Unaoil in Monaco, were searched and documents and electronic devices were seized.

18. On 5 October 2016 Akle was arrested at Heathrow airport. Digital devices were taken from him, and further devices were seized when his home was searched. When interviewed under caution he put forward a prepared statement explaining his role at Unaoil and thereafter made no comment. He was interviewed again in July 2017. He put forward a prepared statement denying any part in any agreement to make corrupt payments, and thereafter made no comment.

19. On 30 August 2017 Bond was arrested at Heathrow airport. Digital devices were seized from him. When interviewed under caution, he made no comment.

20. The three Ahsanis were the subject of an SFO investigation. The SFO obtained first instance warrants against all three, and sought to extradite Saman Ahsani from Monaco by means of a European Arrest Warrant. That investigation was however abandoned when the case against the Ahsanis was taken over by the US Department of Justice ("DOJ") following the extradition of Saman Ahsani from Italy by the US authorities. In due course, a deal was done between the Ahsanis and the DOJ. Ata Ahsani paid a penalty of $2.25 million and faced no further action. His sons Cyrus and Saman Ahsani negotiated plea agreements with the DOJ, under which it is expected they will serve no more than five years' imprisonment. By letter dated 26 April 2019, the SFO informed the lawyer acting for Cyrus and Saman Ahsani that the SFO would discontinue its investigation in respect of matters covered by the US plea agreements they had entered into on 25 March 2019. By letter dated 12 September 2019, the SFO informed the lawyer acting for Ata Ahsani that it was no longer in the public interest for the SFO to proceed with a prosecution of him in light of his agreement with the DOJ.

21. On 15 July 2019 BAJ pleaded guilty to five counts of conspiracy to give corrupt payments. Other offences, involving bribery in relation to other contracts, were taken into consideration. He subsequently entered into an agreement with the SFO pursuant to the Serious Organised Crime and Police Act 2005 ("SOCPA"), and on 8 October 2020 was sentenced to a total term of imprisonment of three years' six months, reduced from ten years by reason of his guilty pleas and co-operation. He has not applied for leave to appeal against sentence.

***Disclosure:***

22. The SFO carried out a substantial disclosure exercise, to which the provisions of the Criminal Procedure and Investigations Act 1996 ("CPIA") applied. A number of Disclosure Management Documents were served. Disclosure of unused material was

made in tranches, in the form of schedules summarising the nature and content of the items listed. Despite requests from Akle's legal representatives, the SFO declined to provide copies of any of the documents summarised in the schedules.

23. Some of the entries in the schedules referred to contacts between the SFO and David Tinsley. Tinsley, a US citizen, runs 5 Stones Intelligence, which is based in Florida and is described in its published material as "a leading intelligence and investigative company". He is not a lawyer, but he was actively involved in assisting the Ahsanis and their US attorney Rachel Talay.

24. The SFO indicated at an early stage that they would seek, at trial, to adduce evidence of BAJ's convictions. They relied in this regard on section 74 of the Police and Criminal Evidence Act 1984 ("PACE") which, so far as material for present purposes, provides:

> "**Conviction as evidence of commission of offence**
>
> (1) In any proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the United Kingdom …shall be admissible in evidence for the purpose of proving that that person committed that offence, where evidence of his having done so is admissible, whether or not any other evidence of his having committed that offence is given.
>
> (2) In any proceedings in which by virtue of this section a person other than the accused is proved to have been convicted of an offence by or before any court in the United Kingdom …, he shall be taken to have committed that offence unless the contrary is proved."

25. Akle indicated that he would oppose the introduction of such evidence. In this regard, he served, pursuant to section 8 of CPIA ("section 8"), a request for specific disclosure dated 24 September 2019. The request referred to the SFO's wish to adduce evidence of BAJ's guilty pleas. It said that the conduct of Tinsley had been such as to render BAJ's guilty pleas unreliable evidence of the existence of a conspiracy, and its admission unfair. It went on to say:

> "The defence will argue that the plea should not be admitted under section 74 of PACE because the plea was brought about through improper means and its admission will result in unfairness. Any material going to support this argument falls to be disclosed."

It was submitted that BAJ's plea, and possibly the decision by the SFO not to pursue any charges against the Ahsanis, appeared to have been improperly influenced and facilitated by Tinsley. Tinsley was described as "a 'fixer' seeking to negotiate between the Ahsanis, the US authorities and the UK authorities" and it was said that BAJ had entered his pleas as a result of being placed under improper pressure, and misled, by Tinsley.

26. In its response to that request, served on 31 October 2019, the SFO said that they were aware that Tinsley had acted, and continued to act, as an adviser to the Ahsanis; that he wished to encourage other defendants to plead guilty and to cooperate with the authorities; and that he had been in contact with BAJ. The SFO, however, "was not a party to any such discussions Mr Tinsley has had with Mr Al Jarah". The SFO said that they held no material capable of supporting the proposition that BAJ's pleas of guilty did not amount to a true acknowledgement of his guilt freely made with full understanding of the ingredients of the charges preferred against him or that, in relation to those pleas, he was misled by Tinsley or that his pleas were in any way unreliable as evidence of his guilt.

27. Also on 31 October 2019, the SFO served their Tranche 5 schedule of unused material. Most of the items listed referred to the activities of Tinsley. Some items were mistakenly omitted, an error which was corrected in an addendum schedule served on 7 November 2019. The entries in that addendum schedule again related principally to Tinsley.

28. On 5 November 2019 Akle served a further section 8 request for disclosure, and a skeleton argument relating to Tinsley and the admissibility of BAJ's pleas. The SFO responded with a skeleton argument two days later

29. On 8 November 2019 the judge heard oral argument on the section 8 application, which he refused.

30. On 3 December 2019 Akle served an "addendum defence statement" dated 29 November. In its reply dated 12 December 2019 the SFO said that this document merely repeated earlier requests and that there was nothing further to be disclosed.

31. The trial was listed to begin on 20 January 2020. As that date approached, Akle served a skeleton argument on 14 January indicating that he would apply to stay the prosecution on both the grounds under the familiar test for abuse of the process, namely that Akle could not have a fair trial ("limb 1") and that it was unfair to try him ("limb 2"). He contended that the SFO had acted with Tinsley in a way which flouted legal and regulatory safeguards and breached Akle's right to a fair trial. He again sought disclosure of all material that might reasonably be considered capable of assisting his argument.

32. On 17 January the SFO served their Tranche 6 schedule, which included expanded summaries of some of the items listed in the Tranche 5 schedule.

33. Also on 17 January, those representing Akle served a statement by a solicitor exhibiting transcripts of recordings of conversations on the following dates:

    i) 7 December 2018: Akle, Tinsley and Saman Ahsani;

    ii) 16 January 2019: Akle, Tinsley, Rachel Talay and her colleague Brown;

    iii) 1 February 2019: Akle and BAJ;

    iv) 6 March 2019: Akle and BAJ;

    v) 31 May 2019: Akle and BAJ.

34. On 20 January 2020, the first day of the trial, the SFO served its response to the abuse of process application. Oral argument on that application was heard on the following day, 21 January.

***The trial:***

35. We summarise first the broad nature of the cases for the prosecution and for Akle, and the issues which the jury had to decide in his trial. We then refer to applications which were made on Akle's behalf to the trial judge. It is unnecessary to refer to the case against Bond, who does not challenge his conviction.

36. The prosecution case against Akle was based primarily on documentary evidence. Over a period of nine days, the case officer read out a schedule of events, of which the jury had copies. The schedule listed approximately 1,600 emails and other documents, most of which came from Unaoil's servers.

37. In addition, a financial investigator read out various financial documents. An expert witness was called to explain the structure and mechanics of an oil industry tender process.

38. The prosecution adduced evidence of BAJ's guilty pleas to prove the existence of the conspiracies.

39. Akle's defence was that he did not admit that there were conspiracies as alleged, but if there were, he was not party to any of them. His evidence was that as far as he had been made aware by BAJ, any payments to Oday – and he was only aware of the first few – were made pursuant to an agreement with SOC. He understood them to be for personal protection for Oday, bearing in mind that Iraq was a very dangerous place. In support of this aspect of his case, and in relation to his state of mind at that time, he called an expert witness who gave evidence as to the political and economic situation in Iraq.

40. In addition, Akle asserted that payment had been made to Oday as compensation for his remaining in his job at SOC; to encourage Oday to go the extra mile; and because it was necessary to conceal Unaoil's role from FW in order to prevent it from becoming known to Deputy Minister Al-Shamma at the Ministry of Oil, which would have caused Oday to be removed from his position to the detriment of the ICOEEP. His case was that Al-Shamma had his own corrupt agenda which SOC sought to guard against; the relationship with Oday was authorised by the Director General of SOC, who had sought to work with Unaoil in SOC's interests; and SOC was suspicious of FW because FW was imposed on them to administer the tender.

41. The issues for the jury on each count against Akle were as follows:

(1) had the prosecution made them sure that there was a conspiracy, as set out in the count in question in the indictment? If so,

(2) had the prosecution made them sure that at some stage during the life of that conspiracy, Akle was a part of that conspiracy in the sense that (i) he knew of its existence, (ii) he played a deliberate and knowing part in it, and (iii) he intended thereby to promote some or all of its objectives? If the answer to all those questions

was yes, Akle would be guilty of the count in question. If the answer to any of them was no, he would be not guilty.

42. The jury were directed that they could consider whether to draw an adverse inference from Akle's failure to mention facts in interview which he relied on in evidence, and from alleged deficiencies in his defence statement.

***Rulings relevant to Akle's grounds of appeal: (1) abuse of process:***

43. The judge, as we have indicated, heard the application to stay the proceedings as an abuse of the process on 21 January 2020. He refused it. In order not to delay the trial, he gave his reasons in a written ruling at a later date.

44. The judge noted that most of Akle's complaints, about the way in which the SFO had dealt with the case, had focused on the activities of Tinsley. He referred to the fact that Tinsley, who had no official title or status but had acted as an agent or broker on the instructions of and in the interests of the Ahsanis, had had contact with Ms Osofsky, the Director of the SFO ("the DSFO"), though it was not clear how Tinsley had established that contact. He said that Tinsley had represented himself to be committed to "mending the relationship between the SFO and the FBI and build something great". He had exchanged messages with the DSFO which indicated that Tinsley "was much more schooled in the art of the deal rather than in a legal process that should concern itself not only with justice being done but being seen to be done". The judge added, in parenthesis:

> "[It is important that I acknowledge, however, that I do not [have] the whole picture, have not examined every communique or note and I am only dealing as best I can with the material I have. Nonetheless it seems to me that when this case is finally concluded a review of the contact with DT should be comprehensively reviewed to see what lessons can be learned from it.]"

45. The judge said that Tinsley had suggested to the DSFO and to others in the SFO that he would be able not only to secure the fullest cooperation of the Ahsanis but also to deliver pleas of guilty from BAJ and Akle, which he suggested would lead to consequential convictions of others. He said that the DSFO and others "took the bait". He continued:

> "They should have had nothing to do with someone who had no official status, who was not employed by any US government agency, who was not the Ahsanis' lawyer (not a lawyer, at all), but a freelance agent who was patently acting only in the interests of the Ahsanis (whose interests could obviously potentially conflict with those of BAJ and ZA); and they should not have countenanced, let alone encouraged (if only tacitly) his contact with either BAR or ZA, who were throughout under investigation by the SFO, represented by UK lawyers, and formal proceedings for the offences set out in this indictment had begun with requisitions issued on the 15th November 2017 which

> were followed by their first court appearance on the 7th December 2017."

46. The judge noted that prosecution counsel Mr Brompton QC had not sought to defend this contact, which had properly been called into question by others at the SFO when they became aware of it, though their advice was ignored. Tinsley indicated to the SFO that he had contacted BAJ and Akle and was "confident he could get them to plead", then later reported that BAJ was now minded to plead. The SFO knew of the contact and of the fruits of Tinsley's efforts. The SFO should have been engaging only with the legal representatives of BAJ and Akle and should have had nothing to do with DT.

47. The judge found, however, that there was no evidence that the SFO gave Tinsley any sensitive information and no evidence that Akle acted against his own interests as a result of his contact with Tinsley or acted to his own prejudice as a result of anything Tinsley said to him.

48. The defence had submitted that the SFO's involvement with Tinsley involved the flouting of all legal and regulatory safeguards; that Tinsley was perverting or attempting to pervert the course of justice and encouraged to do so by the SFO; that the SFO were using him as a covert human intelligence source ("CHIS") within the meaning of section 26 of the Regulation of Investigatory Powers Act 2000 ("RIPA") and related Codes; and that what was being undertaken and encouraged by the SFO was a plea negotiation in the absence of and behind the backs of BAJ's and Akle's lawyers, in breach of the relevant guidelines. These complaints were said to amount to egregious conduct circumventing the rules to secure an advantage over Akle (and BAJ) such that it was unconscionable to proceed.

49. The judge found that the "ill advised" contact did not engage the Attorney General's Guidance on "Plea Discussions in Cases of Serious or Complex Fraud" and he could find no sufficient support for the submission that Tinsley's actions had a tendency to, or that he intended to, pervert the course of justice. He was also unpersuaded by the submission that Tinsley could be described as a CHIS within the meaning of RIPA.

50. The judge concluded that, even if he had accepted all of the complaints advanced, he would not on the evidence have found that "limb 2" abuse of process was made out. Insofar as "limb 1" abuse of process had been put forward as a separate issue, he saw nothing to support the contention that Akle could not have a fair trial.

***Rulings relevant to Akle's grounds of appeal: (2) admissibility of BAJ's guilty pleas:***

51. Also on 21 January, the judge granted the SFO's application pursuant to section 74 of PACE to put BAJ's guilty pleas before the jury. He ruled that Akle had not satisfied the test under section 74(2), even on the balance of probabilities.

52. As to the alternative submission, that the evidence should be excluded on grounds of fairness pursuant to section 78 of PACE, the judge was satisfied that BAJ's guilty pleas were freely and properly entered into and were a true reflection of his guilt. BAJ had been represented by experienced counsel and his pleas were consistent with the evidence against him. There was no other basis for suggesting that BAJ was not guilty of the offences to which he had pleaded.

***Rulings relevant to Akle's grounds of appeal: (3) evidence relating to Tinsley:***

53. Later in the trial, counsel then representing Akle sought leave to introduce, by cross-examination of the officer in charge of the case, evidence of the involvement of Tinsley with the Ahsanis, the SFO, BAJ and Akle. The basis upon which he sought to do so was that the material was relevant to Akle's belief that BAJ's pleas to the conspiracy counts were not genuine pleas of guilty and had been secured by improper means. The evidence of the activities of Tinsley, and what he and others had recorded of what BAJ had variously said before entering his pleas of guilty, was said to be capable of supporting Akle's case concerning the unreliability of the evidence of BAJ's pleas.

54. The application was rejected by the judge on the following grounds. First, such evidence would not demonstrate or bolster Akle's claim to innocence; it was an entirely collateral matter which would give the jury no assistance as to whether he was involved in the corruption of which he was accused or not. Secondly, none of the material went anywhere near calling into question the validity of BAJ's pleas. Thirdly, the starting point for establishing the unreliability of a conviction of a person other than a defendant was evidence from the person concerned or at least some direct evidence demonstrating that he could not have committed the offence in question; it was impermissible to introduce hearsay evidence of conversations which demonstrated some (predictable) reluctance by someone to plead guilty before actually doing so, and to ask the jury to speculate as to whether BAJ really meant to admit what he had done. Fourthly, Akle's defence was a denial of his own complicity but did not seem to be a denial that there was or may have been corruption of Oday and others: his case was that he was aware that payments were being made to Oday but only for the purpose of ensuring his personal security. Attempting to raise an issue by the means identified had no real bearing or materiality on the issues as between the prosecution and defence.

55. For those reasons the judge refused to permit the proposed cross-examination, and insisted that any hearsay to be relied on by Akle in his case should be the subject of proper application under the hearsay provisions.

56. Those three rulings, and the associated issues of disclosure, are the subject of the three grounds of appeal against conviction which Mr Darbishire QC argued before us.

***Akle's grounds of appeal against conviction:***

57. Ground 1 is that the judge misdirected himself in law in rejecting the application to stay proceedings as an abuse of process. The basis of the application, which relied on the material which had been disclosed at that stage, was that the SFO were party to an improper and unlawful attempt by an unregulated operative, Tinsley, to approach defendants including Akle before trial in the absence of their lawyers and attempt to persuade them to change their pleas to guilty. His approaches were sanctioned and encouraged at the highest level of the SFO, against the advice of its own lawyers. The conduct of the SFO, as both investigator and prosecutor, amounted to "malpractice" so bad as to "undermine public confidence in the criminal justice system and bring it into disrepute" (see *R v Latif* [1996] UKHL 16; [1996] 2 Cr App R 92). This ground of appeal alleged that there had been improper communications between Tinsley and senior officials within the SFO, including the DSFO and the Chief Investigator Mr Kevin Davis, during the period September 2018 to July 2019. It was submitted that the SFO well knew that Tinsley was working in the interests of the Ahsanis and was seeking

to put improper pressure on Akle and BAJ to change their pleas. Tinsley had made numerous approaches to BAJ and to Akle, and ultimately BAJ did change his plea, succumbing (on Akle's case) to this improper pressure. It was submitted that the SFO had been guilty of conduct which threatened the integrity of the criminal justice process, and that the judge should have recognised it as such by holding that the prosecution was, therefore, an abuse of process: see *R v Latif; R v Horseferry Road Magistrates' Court, ex parte Bennett* [1994] 1 AC 42; *R v Paul Maxwell* [2011] 1 WLR 1837 and *Warren v AG for Jersey* [2012] 1 AC 22.

58. It may be noted that some elements of this proposition were not seriously disputed by the SFO, though the alleged impropriety was said to have been overstated, and it was not accepted that the SFO was aware that Tinsley would be putting *improper* pressure on his targets.

59. In the alternative, Ground 2 is that the prosecution failed fundamentally to comply with its disclosure obligations in relation to material capable of supporting the abuse of process application which is the subject of Ground 1. The judge erred in refusing to order further disclosure relating to the SFO's conduct and its dealings with Tinsley and in refusing to hold a *voir dire* on this issue. Compliant disclosure would have provided the court with evidence which should have led to a stay of proceedings.

60. Ground 3, in respect of which the application for leave to appeal is renewed, is that the judge admitted BAJ's guilty pleas to prove the existence of the conspiracies but erred in law by refusing to permit the defence to adduce evidence "*to prove the contrary*", i.e. evidence which might have proved that BAJ was not guilty. The judge, as we have said, had noted that the picture before him was incomplete. It was submitted that the SFO had failed to complete the picture, because they had merely summarised relevant material in a schedule of unused material and had not disclosed the underlying documentation. Akle had made detailed applications for further disclosure and further and better particulars, but the judge had accepted the SFO's assurance that there was nothing further to disclose. It was submitted that the judge should not have accepted that assurance when it was apparent from the schedules that there must be further unused material which should have been disclosed.

***Akle's grounds of appeal against sentence:***

61. Having heard the evidence at the trial, the judge in clear and detailed sentencing remarks stated that he had no doubt that the way Unaoil sought to position itself, which was by corruption, was something that Akle was aware of at an early stage. Counts 1 and 2 related to the joint efforts of Akle, BAJ and others to foster a relationship with Oday and to secure for Unaoil a dishonest advantage in respect of any contracts with which SOC might be concerned. It was clear from the emails that at an early stage Akle knew what was going on with Oday and was happily prepared to play his part in that. The judge had no doubt that Akle was as much a part of the inner circle at Unaoil as BAJ: in terms of culpability, they acted as partners and there was little to distinguish between them.

62. The Sentencing Council has published a definitive guideline relating to offences under the Bribery Act 2010 where the maximum penalty was 10 years' imprisonment. By contrast, the offences covered by counts 1 and 2 under predecessor legislation attracted a maximum penalty of seven years. However, it was agreed that the guideline was a

useful guide to the proper approach to sentencing in cases such as this. Applying the guideline, appropriately tailored, the judge found that the offending fell within category A for culpability and category 1 for harm on both counts. Akle had played a leading role in relation to the two conspiracies. Both conspiracies were sophisticated in nature, and both involved the direct and sustained corruption of a senior official performing a public function. The corruption seriously undermined the proper function of national business and public services.

63. The aggravating factors were that the offences were committed across borders, over a long period, and were utterly exploitative at a time when the political and economic situation in Iraq was fragile. They undermined the integrity of the tendering process for high value national infrastructure projects. The mitigating factors were Akle's previous good character and his health conditions.

64. The judge stated that his sentences would have been six years' imprisonment on each count concurrent but, because of issues relating to Akle's health and to the anxieties over Covid-19, he reduced them to five years concurrent.

65. The grounds of appeal against sentence are that the judge erred in applying too high a starting point, and in applying the Bribery Act guideline which was not appropriate for this offence; erred in his approach to assessing the seriousness of count 1; erred in his assessment of Akle's role, which was contrary to the evidence; gave insufficient reduction for Akle's positive good character and "exemplary conduct"; made insufficient reduction for Akle's poor health and vulnerability when being sentenced during the Covid-19 pandemic (see *R v Manning* [2020] EWCA Crim 592); and failed to reflect the conduct of the SFO or the sentences imposed on the Ahsanis, who were the principal beneficiaries of the offending.

***The initial appeal hearing:***

66. The appeal was listed to be heard on 1 July 2021. It did not, however, proceed on that date, because the court (differently constituted), having heard detailed argument on both sides, accepted the submission of Mr Darbishire that there had been inadequate disclosure of the underlying material relating to contact between Tinsley and the SFO.

67. The court gave directions requiring the SFO to disclose the underlying material which was the source of the Tinsley entries in the Tranche 5, 5A and 6 schedules, to make appropriate enquiries in relation to any contact between Tinsley and the SFO in respect of which there was an absence of documentary material, and to provide a chronological schedule of contact with Tinsley. As a result of those directions, copies of about 650 pages of documentation were for the first time provided by the SFO to Akle's representatives.

***The documents provided pursuant to the court's direction:***

68. At the hearing of the appeal on 20 and 21 October 2021, Mr Darbishire referred us in detail to much of this newly-provided material. It is unnecessary to refer to every feature to which he invited our attention, or to every detail of the SFO's response to the points made, but we mention the following.

69. On 21 September 2018 Tinsley sent a text message to the DSFO in which he introduced himself as a friend of one of her former colleagues in her previous employment and asked to meet her "privately first to provide some background and follow on with official meeting". His request was granted: the DSFO replied that she was "super honoured that you're coming my way" and arrangements were made for them to have "a solid hour together just us". No note was made of that meeting, which it seems was joined after a time by Ms Talay. Tinsley and Ms Talay thereafter met Davis. The DSFO, in response to a request made after directions were given on 1 July 2021, has explained that she knew Tinsley was a former agent of the US DEA and had lectured at the FBI training academy, and she was prepared to meet him because she understood he had evidence of crime in the UK of which the SFO may be unaware. She took no notes of their meeting because it was only a preliminary meeting, and she expected notes to be made when Tinsley subsequently met Davis and Thompson.

70. The DSFO has also stated that apart from one brief telephone call, in which she told Tinsley that he should deal with Davis rather than her, and one "courtesy meeting" with Tinsley on 17 January 2019, she had no further telephone contact or meeting with Tinsley. As will be seen, that is not what Tinsley told others.

71. Tinsley subsequently had a number of contacts with SFO officials, including Davis. Initially, the case team declined to have any contact with him, but that was to change.

72. From the start, Tinsley was asserting that the Ahsanis could do "proactive things" to help the SFO and that he believed they could "bring in" BAJ and Akle.

73. The SFO initially intended that the Ahsanis would if possible be prosecuted both in the UK and the US. However, a file note of a telephone conversation on 12 December 2018 records Tinsley saying that, as a result of his conversations with Davis, Marc Thompson (another SFO official) and the DSFO, he understood that the SFO were prepared to allow the DoJ to deal with the Ahsanis' conduct entirely, in return for assistance from Saman Ahsani and probably also Cyrus Ahsani.

74. On 7 December 2018 Tinsley had spoken on the phone to Akle and Saman Ahsani. He told them that he thought "we are in very good shape" and he thought they would "like the results" of his recent meetings with the DSFO. He enthused about how fair the DSFO was, and claimed

> "I have probably had nine conversations with her and four meetings, one of which went three hours, and I am dealing now with her number 2 and 3 on some things. Collectively, I think it's going to benefit everyone …"

75. On 16 January 2019, Akle had dinner with Tinsley, Ms Talay and her colleague Brown. Akle recorded the conversation. A redacted transcript of the recording was one of the documents served on the SFO on 17 January 2020. Tinsley and Ms Talay were clearly conscious that they did not act for Akle, and Tinsley more than once emphasised that they were only talking "theoretically". Tinsley spoke about the great success he and Ms Talay were having in dealing with the Ahsanis' cases. He said that he and Ms Talay were meeting the DSFO the next day, that they had constant conversations with her and a great relationship, and that she and the head investigator were "giving us everything

we've asked for". He said that BAJ wanted to arrange to take his case to the US and to get the UK to drop it, but this was "super confidential" because –

> "… officially we can't talk to him because he's represented by another attorney, you understand? And so I'm officially not talking to you about this, I'm telling you theoretically what we're looking at for Sami which I would like to try to get for you."

Akle pointed out that there was already a trial in the UK, to which Tinsley replied that there were ways to get round that: "we've done it before". He suggested he could meet the DSFO alone and ask hypothetically "if these guys came to the table in the US, can we get their cases dismissed here?"

76. On 6 February 2019 Tinsley emailed Thompson to say that the FBI had drafted a plea which required Cyrus and Saman Ahsani to cooperate and assist the SFO. In a further email to Thompson on 15 February, Tinsley said that the DSFO, Davis and Thompson had agreed to transfer the Ahsanis cases to the US with the understanding that they were available for case assistance and as prosecution witnesses in furtherance of SFO cases. He also said they had discussed BAJ and Akle "within the same package", which would "require more work to move [them]" but made sense and "in the long term benefits SFO". He said that the upside was that they could secure the movement of BAJ and Akle to the US and secure a US plea and cooperation with both the US and the UK. The downside was that if BAJ and Akle were tried in the UK, his intelligence was that they would raise the issue of Martin (formerly the SFO's case officer in the Unaoil investigation, who was pursuing a claim against the SFO in the Employment Tribunal) and would make an abuse of process claim in relation to Martin's behaviour which "could prove very embarrassing reputationally to SFO".

77. In order to see matters in their correct sequence, it should be noted that on 1 February and 6 March 2019 Akle spoke to BAJ by telephone. In the first of those conversations, BAJ reported that he had been told by Tinsley that the CPS had thrown a spanner in the works by saying that the trial (of Akle and BAJ) should be held in this country, not handed over to the DoJ. Tinsley was however taking steps to appoint "a lawyer for us" and was going to approach the DoJ "and ask for us to go over". Akle expressed concern and said he did not understand what was being proposed. In the second conversation, there was further discussion of BAJ's belief that he would be able to go to the US, speak to the authorities there, and then be free of any charges.

78. Tinsley made a further reference to Martin when he spoke on the phone to an SFO official Brown on 27 March 2019. Tinsley wanted to speak directly to the case team, but was told that they were content to deal directly with the DoJ. Brown rightly advised Tinsley that BAJ and Akle were represented in the UK and it was proper that dealings with other charged suspects should go through their legal representatives. Tinsley again professed concern that a trial in the UK may drag up issues relating to Martin, and he wanted the DSFO to know that he was "trying to mitigate any risks as well as build up cooperating suspects as promised".

79. On 9 May 2019 Tinsley and Ms Talay had a one-hour telephone conversation with Ms Isaac and two other SFO officials. Ms Isaac explained that because the Ahsani brothers had been charged in the US, the law relating to double jeopardy meant that the SFO could not prosecute them "even if we wanted to". Ata Ahsani, however, was in a

different position: he was not going to be prosecuted in the US, and double jeopardy was therefore not a bar to the SFO prosecuting him in the UK. Warrants had previously been authorised by the Attorney General on the basis that the SFO had decided there was sufficient evidence to charge Ata Ahsani. It would require the further consent of the Attorney General if the SFO were now to change their decision and say that prosecution of Ata Ahsani would no longer be in the public interest having regard to his age and poor health and to the fact that "there is an NPA and financial penalty, we are not able to prosecute his sons". Tinsley replied that "in the early days" he had spoken to the DSFO about Ata Ahsani and "she was very like 'why are we messing with him?' and 'we can make this work'". We observe that either that assertion was incorrect, or it was a reference to a relevant discussion in respect of which there has been no disclosure.

80. On 21 May 2019 Davis and Ms Isaac exchanged emails referring to the need to exercise caution that they acted properly with BAJ and Akle and did nothing that could look like an inducement to plead guilty.

81. On the very next day, however, Ms Isaac appeared to take a different approach. In a telephone conversation also involving Ms Talay and others, Tinsley said that the Ahsani brothers were "trying to get people to come" and had even sent a message to Akle. He said he was "trying to make it better for all of us" and he thought it was "a real possibility". Ms Issac's response was that she looked forward to "hearing if progress can be made". That response was not recorded in the summary at item J7188 in the Tranche 5 schedule. Nor was it recorded in the additional summary at item J7292 in the Tranche 6 schedule.

82. In a telephone call on 28 May 2019 Tinsley informed Ms Isaac and others that he was "interested in leveraging information with people especially [BAJ]". He said he had talked to BAJ and there was a 95% chance he could "get this done". He said that BAJ "hasn't had anyone talk to him in the spirit of cooperation properly": BAJ had a typical attorney who told him not to speak to anyone. He spoke of cutting a hypothetical deal with the SFO, to which Ms Isaac replied that any guilty plea would have to come from BAJ himself and the SFO could not jeopardise the trial. Tinsley observed that if BAJ were to plead, Akle would not have many options: Ms Collery (one of the case controllers) agreed that a guilty plea "would have an impact on us evidentially". A note of this conversation records that Tinsley also said that he would be with BAJ all week, and added "I'm controlling who he speaks to". There is nothing in the notes to suggest that any SFO official discouraged Tinsley from that course. It may be noted that the entry in the Tranche 5 schedule relating to this telephone call, J7191, was very short and did not indicate the date of the conversation. It was expanded in entry J7293 in the Tranche 6 schedule served on 17 January 2020, but still did not contain all that we have noted in this paragraph.

83. On 30 May 2019 Tinsley told Ms Isaac that there was a 90% chance he could "get [BAJ] in". Ms Issac made a note that she replied that "the deal with [BAJ] could potentially be about plea to indictment but then we may be able to take a view regarding other matters which we are investigating".

84. On the following day, 31 May, Tinsley rang to say that he had just spoken to BAJ, who wanted to plead and would help. The only note of this conversation ends with the words "won't charge with other matters". The relevant entry in the Tranche 5 schedule,

however, item J7196, ends with the words "DT says he doesn't want BAJ to be charged with other matters".

85. Also on 31 May, BAJ spoke to Akle on the phone. He reported that the Ahsani brothers were "out" and "free" and said he himself "might take that route with guarantees that they're not going to bother with me". Akle said that he could not admit something he had not done. BAJ said that Tinsley had "managed to get those brothers off", and that from what Tinsley said "they got more indictments coming. I don't know if its against me or who but they've got more coming". Akle warned BAJ that Tinsley was not BAJ's lawyer.

86. Davis has produced few notes of his contacts with Tinsley. He has explained that Tinsley was prone to exaggeration and vague about what he could do to help, and there was therefore little substance worth recording. In November 2018 a file note had been sent to Davis and the case team emphasising that full records of all contacts with 5 Stones Intelligence would need to be made. In May 2019 Ms Isaac had asked Davis and others for material relating to contacts with Tinsley and 5 Stones Intelligence. On 11 July 2019 Davis was specifically asked for any relevant material which would be needed for disclosure in these proceedings. On 16 July, however, Davis brought about the wiping of data from his SFO-issued mobile phone, as a result of which the SFO have said that the phone had to be rebuilt and they have been unable to recover any of the text messages it is accepted Davis exchanged with Tinsley. The explanation which has been put forward is that Davis repeatedly entered an incorrect code, which caused data to be wiped from his phone. If that explanation is correct, it appears to have been the second time in less than a year that Davis had caused a mobile phone to be wiped and in need of rebuilding. Moreover, it would have involved his not only entering the wrong password five times, but doing so despite a specific warning on the phone to contact the service desk. The relevant entry in the Tranche 5 schedule, J7228, refers to an email which Davis sent to the case team –

> "… listing meeting dates for contact with DT and explaining unsuccessful efforts to recover his texts with DT prior to 29/07/2019. Further email in respect of same 21/10/2019. Phone rebuilt and data unobtainable from service provider."

That entry was not added to or expanded upon in the Tranche 6 schedule, and so Akle's representatives were not informed of the circumstances in which the phone was rebuilt.

***The submissions on appeal:***

87. Mr Darbishire submits that the documents now available allow an understanding of what had previously been obscure. The SFO agreed to Tinsley's trade: intelligence from Saman Ahsani and pleas from BAJ and Akle, in return for the abandoning of any proceedings in the UK against the Ahsanis or their companies. Tinsley was unhappy when it was explained to him that the SOCPA process could only operate if Saman Ahsani came to the UK and pleaded guilty: he expressed the hope that by "bringing in" BAJ and Akle it would show what Saman Ahsani could do. The SFO's conduct was consistent with their agreeing to that plan, and in particular accepting that Tinsley would try to persuade defendants whom he did not represent, and with whom his clients were in conflict, to abandon their not guilty pleas. The discussions between SFO officials and Tinsley have not been fully or properly recorded: it is not alleged that was

the result of a deliberate policy, but rather an issue of neglect. Tinsley tried to use the senior management of the SFO to facilitate his having direct access to the case team, who were initially unwilling to meet him but who ultimately engaged with him in relation to the prospect of BAJ and Akle pleading guilty. Ms Isaac's comment on 22 May 2019[1], that she looked forward to hearing if progress can be made, was an explicit tasking of Tinsley to persuade BAJ and Akle to plead guilty: it is significant that that comment was not disclosed at all until the documents were provided in September 2021. Tinsley did secure guilty pleas by BAJ, having been told by the SFO that they would need pleas from BAJ in relation to both contracts: a message which the SFO empowered Tinsley to convey to BAJ behind the backs of BAJ's lawyers. In that way, the SFO obtained evidence which assisted their case against Akle. The documents underlying the entries in the Tranches 5 and 6 schedules were plainly highly relevant to the abuse argument, but the SFO resisted all requests and applications for disclosure of those documents. Nor did they reveal the circumstances in which data from Davis' phone, including the text messages he had exchanged with Tinsley, had been rendered irretrievable. The SFO deliberately did not disclose material which was embarrassing to them.

88. Mr Brompton accepts that some of the disclosure decisions "may not have been well-judged" and that the SFO was in error in not "shutting Tinsley down", but submits that there was no bad faith, no deliberate failure to make proper disclosure and no conduct which would have justified the judge granting the exceptional remedy of a stay of the criminal proceedings. Whatever Tinsley may have said or done, Akle was not persuaded to change his not guilty pleas. The strength of the evidence against BAJ was such that his change of pleas was in his own interests, and the material inducement for him to plead guilty was the reduction in his total sentence, not anything said by Tinsley. In those circumstances, the judge was correct to find that Akle had suffered no unfair prejudice. In the skeleton argument filed in support of Akle's application to exclude BAJ's guilty pleas, it was conceded that it would "realistically be impossible to get to the bottom of the circumstances of [BAJ's] plea and therefore for the defence to discharge the burden of proving that he was not guilty of the conspiracies alleged". That concession was "the death knell" of the application to exclude the evidence of BAJ's pleas and the associated disclosure application. The SFO's contacts with Tinsley were "little more than listening to him", and he was not actively encouraged to take any steps in relation to BAJ or Akle. Tinsley was not doing the SFO's bidding, and the SFO were not doing his. A defendant is entitled to discuss his case, and his intended pleas, with whomsoever he chooses, and Akle chose to discuss his case with Tinsley, knowing full well that Tinsley acted for the Ahsanis.

***Akle's appeal against conviction – discussion:***

89. We can deal briefly with the first ground of appeal. A stay of proceedings is always an exceptional remedy. On the evidence and information available to the judge at the time of the trial, we find it impossible to say that he erred in law in rejecting the application for a stay. For the reasons which he gave in his ruling, he was entitled to refuse the application.

[1] See [81] above

90. We see much greater force, however, in the second and third grounds of appeal. They are closely interlinked, and we consider them together.

91. As to disclosure, the relevant law is not in dispute between the parties. The SFO is bound by the provisions of the CPIA and the Code of Practice made under that Act. Investigators are required to pursue all reasonable lines of inquiry, whether they point towards or away from a suspect (see the Code, paragraph 3.5). They are required to retain and record all material (which includes not only documents but also information) which may be relevant to an investigation (see the Code, paragraphs 2.1 and 4-5). All non-sensitive relevant material retained by the prosecution must be described in a schedule of unused material (see the Code, paragraph 6.2) and must be reviewed for disclosure. By section 3 of CPIA, the disclosure test will be satisfied where material might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused. For the purposes of disclosure, "the parties' respective cases should not be restrictively analysed" (see *R v H and C* [2004] 2 AC 134 at paragraph 35 *per* Lord Bingham); and prosecutors should resolve any doubts in favour of disclosure.

92. Mr Brompton rightly accepts that the purpose of disclosure is to enable an accused person to present a tenable case in its best light. In *Gohil* [2018] 1 WLR 3967 this court, at paragraph 134, stated that disclosure should not be approached solely from the vantage point of the prosecutor: the fact that the prosecutor does not accept the defence case, or believes that it can rebut any inferences which might otherwise be drawn from material capable of undermining the prosecution case or assisting the defence case, does not mean that the test for disclosure has not been passed. That principle is particularly important in relation to Mr Brompton's submission that the disclosure was appropriate in response to the precise terms of the section 8 requests.

93. The SFO's Operational Handbook explains that

> "Disclosure refers to providing the defence with copies of, or access to, any material which might reasonably be considered capable of meeting the test for disclosure."

94. The Operational Handbook goes on to quote the following from the Attorney General's Guidelines on disclosure:

> "6. In deciding whether material satisfies the disclosure test, consideration should be given amongst other things to:
>
> (a) the use that might be made of it in cross-examination;
>
> (b) its capacity to support submissions that could lead to:
>
> (i) the exclusion of evidence;
>
> (ii) a stay of proceedings, where the material is required to allow a proper application to be made;
>
> (iii) a court or tribunal finding that any public authority had acted incompatibly with the accused's rights under the ECHR.

> …
>
> 7. It should also be borne in mind that while items of material viewed in isolation may not be reasonably considered to be capable of undermining the prosecution case or assisting the accused, several items together can have that effect."

95. It is important to note that there is in this case no issue as to whether any of the documents belatedly provided to the defence fell to be withheld from disclosure on public interest immunity grounds or on grounds of legal professional privilege. Nor does any issue arise from the fact that a number of the documents have been redacted by the SFO. Nor was there any substantial logistical or practical obstacle to making available to the defence copies of, or access to, the documents (redacted where necessary). In short, nothing has been put forward by the SFO to justify their refusal to provide the defence with copies of, or access to, the underlying documents.

96. Those documents are now accepted to have been relevant to the issue of abuse of process. In our view, they were also relevant to the issues relating to the admission or exclusion of evidence of BAJ's guilty pleas. When copies were requested by the defence, they should have been provided. The refusal to provide them was a serious failure by the SFO to comply with their duty. It cannot be justified by reference to the precise terms of the section 8 request when that request specifically raised Tinsley's conduct as the basis on which the admission of the evidence would be challenged.[2]

97. That failure was particularly regrettable given that some of the documents had a clear potential to embarrass the SFO in their prosecution of this case. We do not suggest that any individual official of the SFO deliberately sought to cover anything up. We are however entirely satisfied that the result of limiting disclosure to the summaries in the schedules was that neither the defence nor the judge had anything like the full picture which is now available to this court. We accept Mr Darbishire's submission that a reading of the underlying documents provides a clearer picture of what happened than can be gleaned from a perusal of the comparatively brief entries in the schedules.

98. We also accept that if the documents now available had been provided to the defence before or at the start of the trial, counsel then appearing for Akle would have had significantly stronger arguments available to him on the issues relating to BAJ's guilty pleas. In reaching that conclusion, we regard the following factors as important.

99. First, the underlying documents illustrate very clearly why it was wholly inappropriate for the SFO to have any dealings with Tinsley in relation to the pleas of BAJ and Akle, and why Mr Brompton's concession that the SFO should at a later stage have "shut Tinsley down" is insufficient. We can understand why the DSFO, acting upon the recommendation of a mutual friend, may have been willing to have an initial meeting with Tinsley; and Tinsley was at least entitled to speak to the SFO about the Ahsanis, though we would have expected the SFO to prefer to deal with the Ahsanis' lawyers rather than their "fixer". But Tinsley did not act for either BAJ or Akle, each of whom was legally represented in this country; and there was a clear conflict between their respective interests and the interests of the Ahsanis. The case team quite rightly declined, for a considerable time, to have any dealings with Tinsley in relation to the

[2] See [25] above.

cases against BAJ and Akle. We simply do not understand how any of their SFO colleagues could have thought it appropriate to take any other approach, or why the stance taken by the case team later changed. It is significant that, throughout the trial and appeal proceedings, Mr Brompton has rightly not sought to defend the SFO's conduct in dealing with Tinsley as they did. Why, then, did the SFO engage with Tinsley at all? For all his talk of wanting to achieve an outcome which would be beneficial to everyone, Tinsley was obviously focused on pursuing a course which was in the best interests of the Ahsanis, including by delivering a package of pleas from others which would encourage the SFO to abandon any thought of prosecuting any of the Ahsanis in this country. It was plainly never part of his plan that any of the Ahsanis would be prosecuted in the UK. Mr Brompton's submission, that the SFO had no choice but to concede jurisdiction to the US once the Ahsanis were in the US, might provide an explanation in the cases of the two brothers, but it cannot explain the decision not to prosecute Ata Ahsani, alleged to be not only the head of the family but also the head of the conspiracies.

100. We would add, in this regard, that the provision of copies of the underlying documents has also strengthened the defence case by revealing discrepancies which may well be innocent errors, but which are nonetheless capable of being significant. The most striking example is the contrast between the disclosed note, and the schedule entry, in relation to what was said on 31 May 2019 as to whether BAJ would be charged with other offences.[3] Mr Brompton's submission, that the note records what Tinsley said rather than what any SFO officer said, may or may not be correct. Even if it is correct, it raises the question of why the SFO would be countenancing Tinsley expressing a view as to whether or not BAJ should be charged. But be that as it may, the important point for present purposes is that there was an evident discrepancy between the original note and the summary in the schedule, and the defence were entitled to see it and to explore it as they thought appropriate

101. Secondly, the documents are clearly capable of lending significant force to the defence argument that the SFO went beyond the "tacit encouragement" to which the judge referred,[4] and far beyond the "little more than listening" to which Mr Brompton referred in his submissions to us. In this regard, the notes of the telephone conversations with Tinsley in late May 2019[5] are important. They are capable of being viewed as showing an abrupt change from the previous recognition of the need for caution to a recognition that Tinsley would be actively trying to persuade BAJ and Akle to plead guilty, and an acceptance of the advantage that guilty pleas by BAJ would give to the SFO's prosecution of Akle. The reasons for that change have not been recorded in any document disclosed by the SFO, and were not explained in the submissions to us. The disclosed notes contain nothing to suggest any attempt to discourage Tinsley from interfering in the cases of accused persons for whom he did not act: on the contrary, Tinsley was certainly enabled, and arguably encouraged, to convey to BAJ – behind the backs of his legal representatives - an indication that if he pleaded guilty to the charges on the indictment the SFO might "take a view" about other potential charges.

102. Armed with those documents, rather than the summaries contained in the schedules, the defence would have been able to present their case in its best light. We do not accept

[3] See [84] above.
[4] See [45] above.
[5] See [81]-[85] above.

that the rules of hearsay would have prevented them from making any meaningful use of the documents. The defence would at the very least have been entitled to request the attendance of the SFO officials concerned, so that they could be cross-examined about their conversations with Tinsley: not with a view to proving the truth of anything Tinsley said, but rather to seek a detailed account of the SFO's role in the events which led to BAJ pleading guilty to the indictment (and being allowed to have more serious charges taken into consideration), and the SFO thereby being enabled to rely on his convictions to prove a substantial part of their case against Akle. The defence would also have had a stronger basis on which to seek to adduce hearsay evidence of things said by BAJ.

103. Thirdly, Davis' recent explanation for not making notes of many of his conversations with Tinsley is that Tinsley was obviously prone to exaggeration and vague assertions as to what he could achieve. In the light of all that we have now read, that is not a surprising proposition. But it is capable of supporting the argument that Tinsley was the last person whom the SFO should have allowed, or caused, to undertake the role of trying to persuade BAJ and Akle to plead guilty (and thereby to benefit the Ahsanis in their dealings with the SFO). The same is true of the striking contrast between the DSFO's account of her limited contact with Tinsley and Tinsley's assertions to Akle about the extent and success of his dealings with her.[6] That contrast was evident to the SFO at latest when the transcripts were disclosed by the defence on 17 January 2020.[7] We think it strongly arguable that at that stage, if not before, the SFO's continuing duty of disclosure required them to disclose full details of the DSFO's contact with Tinsley.

104. Fourthly, we accept Mr Darbishire's submission that there was inadequate disclosure of the circumstances in which Davis' text message exchanges with Tinsley are said to have been lost. We have no doubt that entry J7228 in the Tranche 5 schedule[8] was insufficient to discharge the SFO's duty of disclosure in relation to an issue which was obviously highly relevant to the contacts between Tinsley and the SFO. It served to conceal the position now asserted by the SFO. If proper disclosure had been made, the defence would have had a basis for requesting that Davis be available for cross-examination so that Akle's case could be presented in its best light.

105. In summary, we are satisfied that there was a material failure of disclosure which significantly handicapped the defence in arguing that the evidence of BAJ's convictions should be excluded pursuant to section 78 of PACE. We think it striking that in resisting the application to exclude such evidence, the SFO relied on the fact that BAJ was legally represented when he decided to plead guilty to the charges against him, and on the concession by defence counsel [9] that it was not possible to discharge the burden imposed on the defence by section 74 of PACE. Had the documents been disclosed, neither of those arguments would have been available to the SFO: the documents would have shown, much more clearly than appeared from the summaries in the schedules, that the SFO knew that Tinsley was deliberately operating behind the backs of BAJ's lawyers, and that Tinsley wanted to control whom BAJ spoke to; and we think it wholly

[6] See [74], [75] above.
[7] See [33] above.
[8] See [86] above.
[9] See [88] above.

unlikely that the concession, which was made on the basis of the schedule entries alone, would have been made.

106. As we have noted[10], the judge expressly recorded that he did not have "the full picture"; and even without the full picture, he rightly held that the SFO should have had nothing to do with Tinsley.[11] If the documents which have belatedly been provided had been available to the defence at trial, both they and the judge would have had a much fuller picture. The defence would have been better equipped to submit that the SFO should not be permitted to rely on BAJ's guilty pleas to prove the existence of the precise conspiracies with which Akle was charged, and thereby to gain the evidential advantage which they had mentioned to Tinsley.[12] As it was, the defence were denied the stronger position to which they were entitled. In consequence, through no fault of the judge, Akle did not have a fair trial. We find it impossible to say that the judge, if addressed by counsel in possession of all relevant information, would inevitably have made the same decision on the application to exclude evidence of BAJ's guilty pleas.

107. Furthermore, even if the judge had permitted the SFO to rely on BAJ's convictions to prove the existence of the conspiracies, and BAJ's participation in them, the defence would have been in a significantly stronger position when applying to adduce evidence relevant to the reliability of those convictions as evidence that BAJ was guilty of the offences charged. Once BAJ's convictions were before the jury, Akle was entitled to seek to persuade the jury, on the balance of probabilities, that BAJ was not in fact guilty of the conspiracies which he admitted. As Mr Darbishire submitted, that would in practice involve the defence seeking to put before the jury an explanation why BAJ might have admitted crimes of which he was not guilty. The documents which have now been provided were the source of relevant evidence in that regard, but they were withheld from the defence. If trial counsel had had them, we are confident that he would have been able to make effective use of that evidence, in particular by cross-examination of the relevant SFO officers. We cannot accept Mr Brompton's submission that the evidence was irrelevant to BAJ's guilt and therefore inadmissible: evidence could have been placed before the jury which was relevant to BAJ's guilt, because it was capable of suggesting an alternative reason for him to have pleaded guilty, namely that his pleas were part of a package which freed him from the risk of prosecution for more serious offences.

108. For those reasons, we are satisfied that the convictions of Akle are not safe. He was prevented from presenting his case in its best light. We grant leave to appeal on grounds 2 and 3, and allow the appeal on those grounds. His convictions must therefore be quashed.

***Retrial?***

109. A draft of this judgment was provided to counsel so that they could assist the court by making written submissions on any consequential matters. We are grateful for the submissions which were made, which related to two issues: the SFO's application for an order that Akle be retried; and Akle's application for an order for costs. We are satisfied that the first of those issues can properly be determined on the basis of the

[10] See [44] above.
[11] See [45] above.
[12] See [82] above.

written submissions. In relation to the latter, we will hear oral submissions at a later date.

110. By section 7(1) of the Criminal Appeal Act 1968:

> "Where the Court of Appeal allow an appeal against conviction and it appears to the Court that the interests of justice so require, they may order the appellant to be retried."

111. In *R v Graham and others* [1997] 1 Cr App R 302 Lord Bingham CJ summarised the principles which this court should apply when considering whether to exercise that power:

> "It is apparent that the conditions which permit the court to order a retrial are twofold: the court must allow the appeal and consider that the interests of justice require a retrial. The first condition is either satisfied or it is not. The second requires an exercise of judgement, and will involve consideration of the public interest and the legitimate interests of the defendant. The public interest is generally served by the prosecution of those reasonably suspected on available evidence of serious crime, if such prosecution can be conducted without unfairness to or oppression of the defendant. The legitimate interests of the defendant will often call for consideration of the time which has passed since the alleged offence, and any penalty the defendant may already have paid before the quashing of the conviction."

112. A balance must therefore be struck between the public interest in favour of a retrial and Akle's legitimate interests. The SFO submit that the former should prevail, in particular having regard to the seriousness of the charges; the largely documentary nature of the prosecution's evidence, which means that the passage of further time will not have any adverse impact on the quality of the evidence; the fact that the strength of that evidence has been "largely unaffected" by this court's reasons for allowing the appeal; and the fact that part of the sentence (just under half of the expected time in custody) remains to be served. The SFO therefore invite the court to order a retrial and to admit Akle to bail, subject to conditions, pending that retrial.

113. On behalf of Akle it is submitted that there is a powerful combination of features militating against a retrial, including the fact that the convictions are being quashed because of the misconduct of the SFO, which it is submitted was knowing misconduct; the very long period of time which has already passed since the relevant events, which began in 2005 and ended (at latest) in early 2010; the burden of anxiety borne by Akle and his family in the years since his arrest in October 2016; the further anxieties suffered as a result of the outbreak of the Covid pandemic (to which he is vulnerable) during the proceedings; the ruinous legal costs which he has incurred; the very difficult time he has experienced in serving his sentence at a time when prisons are adversely affected by the pandemic; the serious deterioration in his health whilst in prison; and the prospect that any retrial would be unlikely to start for at least another year.

114. We have considered the competing arguments. We have well in mind the general public interest in the prosecution of what are undoubtedly serious allegations. We remind

ourselves that the discretion to order or refuse to order a retrial is to be exercised in the interests of justice and not to be used as a form of disciplinary sanction for any prosecutorial misconduct. We have nonetheless concluded that in the particular circumstances of this case the general public interest is outweighed by the legitimate interests of Akle. We accept the submission that the interests of justice do not require a retrial, having regard to the combination of features summarised above. The key considerations, in our view, are that the application for a retrial is made in the context of the appeal against conviction being allowed on grounds relating to fault on the part of the prosecutor, and that a retrial would inevitably involve substantial further delay for a man in poor health who has already spent a significant time in prison in unusually difficult circumstances. We think that the significance of the context of prosecutorial fault extends to the likely period of delay: it would be difficult, in the circumstances of this case, for the SFO to argue in favour of an expedited trial date, to the prejudice of other cases waiting to be heard. We therefore decline to order a retrial.

***Akle's appeal against sentence:***

115. In those circumstances the appeal against sentence falls away. We think it right, however, to record that we did not find the grounds of appeal against sentence persuasive. The judge was entitled to make the findings he did as to the seriousness of the offending. We do not accept that he adopted a wrong approach or fell into any error of principle. The total sentence was stiff, but it was not manifestly excessive. We would therefore have dismissed the appeal.

116. We turn finally to the application by Bond.

***Bond's Appeal against Sentence***

117. The prosecution case against Bond was that he was the Sales Manager for the Middle East for SBM. He had worked for the company in various roles between 1982 and 2015 whilst based at its Monaco office. SBM was one of three companies which were invited to tender for the SPM contract. SBM entered into an agency agreement with Unaoil under which Unaoil would seek to obtain the SPM contract for SBM.

118. On count 2, it was alleged that Bond was aware that the agency agreement between Unaoil and SBM was a front for a conspiracy to bribe an official at SOC to manipulate the tendering process to the advantage of SBM. Bond's role in the conspiracy was to provide technical data that promoted SBM's products and denigrated the buoys manufactured by the two rival companies. In particular, Oday provided internal SOC documents to Unaoil including the technical specification and basis of design documents for the buoys. These were sent to Bond who revised them so as to favour SBM's products and returned them, via Unaoil, to Oday. He was also involved in the preparation of a weighting table to be supplied to FW via the bribed SOC official to be used as the marking criteria for the bids from the three competitors. The table was drawn up in such a way as to give SBM a clear advantage in the tendering process.

119. On count 4, it was alleged that Bond was knowingly involved in negotiating an amendment to the agency agreement between Unaoil and SBM to provide a fund of $275,000 to be used to bribe officials at the Ministry of Oil to approve SOC's recommendation that the contract for the SPMs be awarded to SBM.

120. In his sentencing remarks, the judge said that Bond's offences would fall into category A culpability, and category I harm, of the guideline for offences under the Bribery Act 2010. Bond had played a leading role in the count 2 conspiracy: he had willingly fronted the corruption for SBM and was the almost exclusive contact for Unaoil. This count concerned the direct and sustained corruption of a senior official in the SOC which was to all intents and purposes a public institution. The offending was sophisticated in nature, involving coordination and planning and the coaching of Oday so that he knew what to say to FW. What was important was not the personal financial gain for Bond but the damage done to the people of Iraq by the offending.

121. Count 4 aggravated the picture because it involved the carefully thought out corruption of politicians or senior civil servants, although the role Bond played was much smaller.

122. The aggravating factors were that the offences were committed across borders and were utterly exploitative, at a time when the situation in Iraq was fragile.

123. Having heard him give evidence, the judge found that Bond tried his dishonest best to create a false narrative to answer the evidence against him. In terms of mitigation he had no previous convictions. Delay was not a mitigating factor as he could have admitted his wrongdoing back in August 2017 but chose not to. His age and health were also not mitigating factors. The best that could be said in his favour was that these offences were not of his making and he was not as culpable as Akle or BAJ. The judge approached sentencing on the basis that the two counts reflected a continuous course of offending. He would have imposed a total sentence of 4 years, 6 months' imprisonment; but taking into account the hardship caused by the Covid-19 pandemic and by the fact that the applicant's family lived in France, the sentences would be 3 years, 6 months' imprisonment on each count, concurrent.

***Bond's grounds of appeal against sentence:***

124. Bond's grounds of appeal against sentence are that the overall sentence was manifestly excessive, in particular because the judge: (1) sentenced by reference to the guidelines for offences under the Bribery Act 2010 (with its higher maximum sentence) and wrongly categorised both culpability and harm; (2) failed to sentence Bond for his own role in the conspiracies and to distinguish his input from the more serious involvement of his co-defendants; (3) failed properly to take into account Bond's personal mitigation – in particular his age, health and positive good character; (4) failed to take into consideration the toll that the delay and very lengthy proceedings had taken on him; (5) wrongly increased Paul Bond's sentence because of the manner in which he had contested the trial.

125. In support of those grounds of appeal, Mr Godfrey QC places emphasis on the submission that Bond made no personal profit from the bribery: he was selling a proper product at a proper price, and at worst used unlawful means to sell that product, whereas Unaoil was engaged in the business of corruption. Moreover, Bond acted on instructions from his superiors, some of whom were not charged with any offence. He had been with his employers since 1982, had previously been engaged in the writing of safety manuals, and was now engaged in his first sale to a new customer since being promoted to the sales department. Realistically, he had no choice but to obey the orders of others. It was wrong of the judge to sentence him on the basis that the monies paid out in bribes could instead have been used to assist an impoverished country.

126. Mr Godfrey further submits that the sentence on Bond was excessive when compared with that imposed on Whiteley, and that the judge wrongly increased the sentence because Bond had contested the trial.

127. No pre-sentence report was considered necessary before Bond was sentenced, and none is necessary now.

128. We have reflected on Mr Godfrey's submissions, but are unable to accept them. We are not persuaded that the judge fell into any error of principle. In particular, the judge was entitled to have regard to the guideline for sentencing offences under the Bribery Act 2010, and he rightly took into account the differing maximum sentences for those offences. As to the suggested failings, the insuperable obstacle which Mr Godfrey faces is that the judge had presided over a lengthy trial and was in the best position to assess the seriousness of the offending by Bond and others. Mr Godfrey's submissions amount in reality to a challenge to the judge's findings, but we can see no basis on which this court could go behind those findings. Nor is there any basis on which we could go behind his assessment of the weight to be given to the aggravating and mitigating factors. It was in the context of the weight (if any) to be given to the long period of time between arrest and conviction that the judge made the comments which are relied on as indicating that the sentence was increased because Bond had contested the trial. We do not accept that that is what the judge said or did: the relevant passage could, with respect, have been rather more clearly expressed, but the judge was in our view doing no more than making the point that the passage of time had to be seen in the context of the continuing denial of guilt and the consequent need for a trial.

129. We conclude that the sentence can fairly be regarded as stiff, but that there is no ground on which it could be said to be manifestly excessive. Grateful though we are to Mr Godfrey, the application for leave to appeal against sentence accordingly fails and is refused.

***Conclusion:***

130. For those reasons -

i) We grant Akle's application for leave to appeal against conviction on grounds 2 and 3. We allow the appeal on those grounds and quash the convictions.

ii) We decline to order a retrial.

iii) We adjourn Akle's application for costs. We direct that Akle must by 4pm on 7 January 2022 file further written submissions in the light of this judgment; the SFO must by 4pm on 21 January 2022 file further written submissions in response; and the parties must by 4pm on 28 January 2022 file an agreed bundle of any relevant documents and an agreed time estimate. Oral submissions on the issue of costs will be heard at the earliest convenient date after 28 January 2022.

iv) We refuse Bond's renewed application for leave to appeal against sentence.

# Exhibit B

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)** **202001870 B1 (c)**

**ON APPEAL FROM:**

**THE CROWN COURT SITTING AT SOUTHWARK**

**CASE NUMBER: T20177415**

**ZIAD AKLE (Applicant)**

**v**

**REGINAM (SFO)**

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**APPLICANT'S SKELETON ARGUMENT**

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## Introduction

1. The Court is invited to read this skeleton argument together with the Perfected Grounds of Appeal, which set out the facts and procedural history. The applicable law, which is not in dispute between the parties, is set out fully in that document.

2. This additional document has been prepared in the light of the disclosure made by the SFO on 3 September 2021 and 27 September 2021. Prior to this Court *ordering* the SFO to make disclosure,[1] no material relating to the SFO's relationship with, and use of, David Tinsley ("**Tinsley**" or "**DT**") had been disclosed. At trial, the Applicant and the Court were obliged to proceed by reference to two schedules of unused material,[2] which contained partial summaries of the scheduled underlying material. It is now clear that those schedules omitted entirely a number of very significant documents, which have since come to light.[3]

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[1] On 1 July 2021.
[2] The T5, T5A and T6 schedules [CACD Bundle Tab A12 – A15].
[3] The prosecution has disclosed three bundles of material for this appeal. References to page numbers in this skeleton argument refer to these bundles unless otherwise stated:
**B1**: 670-page bundle (provided to us in 12 parts) containing the underlying material for T5, T5A and T6.
**B2**: 189-page bundle called 'Tranche 13' – the newly disclosed material.
**B3**: 60-page bundle called 'Tranche 14' provided on 27 September 2021 in response to our disclosure requests.

3. The disclosed material has now been reviewed. It is now possible, for the first time, to gain a coherent picture of the role played by Tinsley; of the use made of him by the SFO and, to an important extent, of the SFO's reasons for acting as they did. An appreciation of that picture is essential to understand the arguments set out below. Accordingly, the Applicant has prepared a Narrative Chronology,[4] attached. Its purpose is to give the reader a good *feel* for the material now disclosed, together with references for the documents. It is selective and, to some extent, argumentative. But it is absolutely anchored in the material which was made available for the first time a few weeks ago.

4. The creation of such a narrative was *impossible* until the underlying material was provided. That, if nothing else, demonstrates the fundamental unfairness in the approach to disclosure adopted to this material at trial.

**Submission**

5. Having now considered the disclosure, the Applicant submits, **First**, that the underlying material reveals in detail a course of conduct unknown to and unregulated by English law. The conduct began with the Director of the SFO ("DSFO") and was executed by the Chief Investigator, COO and thereafter, the Case Team. At its heart, the SFO senior management agreed to work with Tinsley in service of his aim to end or avoid all English proceedings against his clients and their companies. In exchange, Tinsley offered co-operation and intelligence from Saman Ahsani ("**SA**") and thereafter, to work with the SFO and use his influence to secure guilty pleas from Basil Al-Jarah ("**BAJ**") and the Applicant, or failing that, from BAJ to be used as evidence against the Applicant.

6. At every level, that process was a collaborative one between the SFO on one side and Tinsley, acting for the Ahsanis on the other. The trial judge's observation in his Abuse Ruling on 19 February 2020 that the SFO encouraged *"if only tacitly"* in this regard can now be shown to have been wide of the mark.[5] Each side had their own specific objectives, to which at least English legal convention and proper practice took second place. The co-operation of SA was to occur in disregard of English statutory procedures under SOCPA.

[4] In two parts: Part A deals with Tinsley generally; Part B deals with the destruction of the SFO Chief Investigator Kevin Davis's mobile phone data.
[5] Abuse of Process Ruling §10 [CACD Bundle Tab A11].

The concerted pressure on the defendants was applied in wholesale disregard of lawful practice. And it is also now clear that the process, including the SFO Case Team's acquiescence and indeed support for Tinsley's approach, was driven by the most senior levels of the SFO.

7. **Second**, the Respondent, at a corporate level, took a decision that the legal requirements of the CPIA 1996 and associated guidance would not be followed in relation to the material revealing the above conduct. For reasons which have never been explained, the approach taken was an extraordinary and wholly unsatisfactory one, under which no disclosure was made of any underlying material. Instead, and apparently in an attempt to mitigate in some way the consequences of that stance (but without in fact providing any underlying material to the Applicant), schedules were prepared with *some* expanded descriptions of underlying material.

8. The process which led to that decision remains unclear, despite the extent to which it has been under scrutiny in these proceedings. Thus, the DMD which was served by the SFO in response to an order of this Court on 23 June 2021[6] gives no information as to how, when or by whom the decision to withhold all of the Tranche 6 material was reached. We have seen none of the required records of that decision nor any reference to them. We infer, but invite correction, that the decision was not taken by trial counsel and that, like the defence and the trial judge, trial counsel conducted the abuse argument without having the underlying material.

9. It is simple to state but nonetheless true: the approach adopted at trial was as unusual as it was non-compliant. But this was not an "error" in disclosure, in any normal sense. Rather, on the material we have seen, it was a deliberate and blanket decision that the disclosure required by law would not be made. For some reason, on this occasion and in relation to this material, the SFO did not play by the rules.

10. Again, we stress: the basis for that decision, those who were party to it, any records of it, has simply not been revealed. The approach adopted to this material at trial was without warrant or precedent; it was not 'disclosure' or even 'disclosure by schedule'. It was simply non-

[6] CACD Bundle Tab A17.

disclosure in the context of service of a detailed unused material schedule. The best that could be said is that, in certain instances, the schedules gave the defence a fuller picture of the material of which they were being deprived.

11. The disclosure failings at trial had a direct and predictable detrimental impact on the Applicant's ability to advance the argument that the proceedings should be stayed. It is unconscionable that a defendant's ability to advance his or her case should be hampered in this way by any prosecutor. To do so is to manipulate, unlawfully, the trial process.

12. **Third**, it is now clear that the SFO sought to exploit Tinsley's assistance to persuade BAJ to plead guilty in order to obtain evidence to use against the Applicant at trial. The way in which this was achieved, and the SFO's motives for acting as they did, are now clear. It follows that the history relating to BAJ's plea of guilty is also relevant to any assessment of the conduct of the SFO.

13. The trial judge noted in his ruling: "*To what extent Tinsley finally influenced BAJ to plead guilty as he did on 15 July last, I do not know. To some, I think there can be no doubt.*"[7] The resulting conviction was admitted in evidence.

14. The material now disclosed makes it clear that the extent to which the SFO was consciously seeking to push BAJ towards pleas to the counts which the Applicant also faced, in order that the SFO's evidential position at trial would be improved. Part of that process was to dangle before him, through Tinsley, the prospect that if he pleaded guilty to those counts, other more serious charges would not be pursued. That is indeed what occurred. Had it been made available, that documentary material would have been deployed by the Applicant to advance the argument (a) that the SFO had behaved in an unconscionable manner, (b) BAJ had been offered an inducement by the SFO which could encourage him to plead guilty to one or more counts of which he was not in fact guilty. Separately, that material would have been available the Applicant during the trial to challenge the reliability of BAJ's conviction on the indicted counts. Instead, the Applicant was shut off from advancing any such argument at trial.[8]

[7] Abuse of Process Ruling, §13, [CACD Bundle Tab A11].
[8] Ruling on the defence application to introduce evidence relating to the activities of Tinsley and others, 19 February 2020 [CACD Bundle Tab A10].

**Effect on Safety of Convictions**

15. The SFO was party to an improper and unlawful attempt to use Tinsley to persuade two defendants to change their not guilty pleas before the trial. Thereafter, the SFO tasked Tinsley to persuade BAJ to plead guilty, knowing that doing so was wrong, but motivated by the desire to obtain convictions which might be used against the Applicant in his trial, an enterprise which succeeded as contemplated. The conduct of the SFO in doing so, as both investigator and prosecutor, amounted to "malpractice". Given the nature of the conduct now revealed, and in particular the roles and responsibilities of those involved, it was indeed so bad as to *"undermine public confidence in the criminal justice system and bring it into disrepute"* (per Lord Steyn in Latif [1996] 1 WLR 104, 112). The conviction is accordingly unsafe.

16. Separately, the SFO took a policy decision to by-pass the mandatory CPIA disclosure process, and failed to make disclosure of the material to which the defence were entitled in advancing the argument above, and/or arguments in relation to the admissibility of BAJ's plea. The result was that the abuse argument itself took place on a false and flawed basis. While the defence were faced with the task, as in all abuse cases, of seeking to establish certain facts, they had no access to the documents which were directly capable of proving those facts, and no access to other information held by those involved. Such deliberate conduct by an authority in relation to disclosure genuinely undermines the integrity of the criminal justice process and merits a stay.

17. The admission of BAJ's convictions, given the circumstances in which they had been obtained and the lack of disclosure thereof, was unfair. Compliant disclosure would have enabled the Applicant to identify factors which rendered BAJ's pleas to the particular relevant counts on the indictment unreliable. The lack of disclosure in relation to the Tinsley process inevitably meant that the defence at trial had no access to any material upon which would have allowed such an argument to be based. It just could not get off the ground. The trial judge's refusal to allow the Applicant even to raise an issue about the admission of the convictions was wrong; but in any event, deprived of any of the relevant disclosure, it would have been extremely difficult, if not impossible, to have done so.

**I: ABUSE**

18. At trial, the abuse application was the nature and extent focused upon the way the SFO encouraged Tinsley to approach BAJ and the Applicant, behind the backs of their lawyers, with a view to persuading them to abandon their not guilty pleas. But at that stage, the picture was sketchy at best. The trial judge accepted that there may have been 'tacit' encouragement, but rejected the abuse application finding an absence of bad faith, an absence of complicity with Tinsley, a lack of state sponsored impropriety[9] and found that the relevant regulations were not breached. In doing so, he criticised the conduct of the SFO, while acknowledging that he (like the defence) did not have a full picture.

19. On the material now available, it can be seen that the actions of the SFO, in engaging Tinsley to approach defendants, in an attempt to persuade them to abandon not guilty pleas, behind the backs of their lawyers and during the trial process, amounted to an abuse of the process of the Court. The conduct went far beyond individual misconduct. The approaches were sanctioned and encouraged at the highest level of the SFO. It was against the advice of the SFO's own lawyers and was aimed at depriving a suspect of the advice of his lawyers and the regulatory protections in criminal proceedings. It was deliberate and considered, and involved complicity with an individual whose conduct amounted to perverting the course of justice, or something close to it.

**Perverting the Course of Justice & Improper Pressure**

20. The judge ruled that there was no evidence to support the contention that the conduct in question amounted to perverting the course of justice. For the reasons set out in the Applicant's Perfected Grounds of Appeal at §**51 – 53**, it is submitted that that analysis was flawed.

21. It is now clear that Tinsley offered the SFO a package, in return for the SFO dropping all proceedings against the three Ahsanis and their companies; withdrawing the EAW's against them, and permitting Ata Ahsani free passage to the UK, all of which occurred.[10] Tinsley

[9] Whereas there is clear evidence of state sponsored impropriety in material newly disclosed for this appeal. See Narrative Chronology A paragraphs 13 15 28 42 and 43

[10] Saman Ahsani and Cyrus Ahsani co-operated with the SFO, but wholly outside the SOCPA regime. As far as the father or the Unaoil companies are concerned, on the material the Applicant has seen there appears to have been no good legal reason *why* no proceedings were bought or (in respect of the companies) maintained against them.

offered to provide detailed intelligence about targets in the UK and also to culture and improve the relationship between the SFO and the US law enforcement agencies. Perhaps sensing that his offer might be insufficient, he sought to sweeten it by offering to obtain the guilty pleas of charged defendants, BAJ and the Applicant. He indicated that such pleas would avoid embarrassing the SFO through revelation of the details of the Tom Martin incident, something which had strained the UK - US relationship. It appears the SFO took that suggestion seriously; in any event, they were persuaded.

22. The Tinsley approaches, encouraged by the SFO, occurred, behind the backs of the lawyers, *while they were defendants* in the ongoing Crown Court proceedings. It has now been revealed that, in addition to the fact Tinsley was *unregulated*, not *legally qualified*, and representing co-accused with *strongly conflicting* interests, the SFO's Chief Investigator Kevin Davis ("KD") considered him to be "*prone to elaboration and exaggeration.*"[11] And yet this was the individual the SFO enlisted to seek to persuade the then-defendants to "flip."[12]

**SOCPA**

23. The case team saw the Ahsanis as "*all but charged*"[13] (EAWs had been issued in respect of SA). The case team (and *initially* KD) were all of the view that the only proper way to approach the Ahsanis' offer was by using the SOCPA process and them entering guilty pleas in London. In English proceedings SOCPA governs any co-operation between a suspect and the CPS or SFO. There are clear guidelines for the use of SOCPA, and in particular in respect of the grant of immunity. However, as KD and the case team would know well, they provide a high hurdle: SOCPA immunity has <u>never</u> been granted by the SFO[14]. The Attorney General, who had already authorised the prosecution, would certainly have had to be consulted and immunity justified according to the criteria. If somehow that had been achieved, such a step would have involved granting immunity to all who stood at the head of the conspiracy and who had benefited the most, against whom there was a powerful case, whilst prosecuting subordinates who acted upon their direction. SOCPA immunity would thus have tended to undermine any prosecution against BAJ and the Applicant. The reality

[11] B2, p.141.
[12] That the SFO did so explicitly, deliberately and for their own purposes is now clear: see Narrative Chronology A.
[13] B2, p.120.
[14] Since the Act came into force s.71 has never been used by the SFO. It has been granted once by the CPS in the last 10 years.

must have been, and the management of the SFO quite properly recognised, this was a case where SOCPA immunity would simply not have been a possibility. However, other co-operation provisions of SOCPA necessarily require guilty pleas, something that was unacceptable to the Ahsanis and Tinsley.

24. When confronted by this difficulty,[15] Tinsley enlisted the support of DSFO and, through her, KD. The management of the SFO saw things differently to the case team, perhaps with a more pragmatic eye, and regarded the SOCPA process as a "barrier."[16] The Attorney General's guidelines on plea negotiations, which require any negotiations to take place through a suspect's lawyer, also appear to have been viewed as a barrier. At any rate, their provisions in this regard were completely ignored, no doubt because adherence to them would have wholly frustrated the plan to use Tinsley as they did. The SFO management decided upon an approach that would circumvent these obstacles. A decision was taken, or approved by DFSO that SA would be spoken to in the United States and, thereafter, would co-operate with the SFO under the auspices of a DOJ plea agreement and achieve section 71 immunity in all but name in this jurisdiction.

25. Large gaps exist around management decisions relating to this aspect of the case, while conflicts within the material disclosed abound. For example, records have now been disclosed that conflict DSFO's account[17] (given in the form of a questionnaire for this appeal) that she did not take part in substantive discussions about the approach to the Ahsanis at her initial meeting with Tinsley.[18] Though the record of the official meeting that followed involving DSFO is anodyne and conveys little or no information.[19]

26. The SFO, having been told by DT as early as October 2018 that he could bring ZA and BAJ in ahead of time, were told by Tinsley in May 2019 that he intended to "*leverage*" BAJ who was "*shell shocked.*"[20] On being told of Tinsley's plan to approach BAJ excluding his lawyer and to persuade him to enter a guilty plea, the Case Controller should have warned him as to

[15] B1, p.53: DT to DSFO: "*Glad to run it past him [Kevin]- was concerned he may not see it as you see it.*"
[16] B1, pp.84-86.
[17] B2, pp.116-117.
[18] See Narrative Chronology A: Tinsley writes to DSFO after their first meeting, referring to the objective to merge the case into a global plea. The Unaoil case must have been discussed. Other evidence set out in Narrative Chronology A §5-11 demonstrates the true extent of discussion at that first meeting.
[19] B1, p.7.
[20] B1, pp.335-338.

his conduct and made it plain the SFO could not possibly be involved in such an enterprise. In fact, they continued to engage with him, suggesting to him that a plea from BAJ to indicted matters might allow them to "*take a view*" regarding other matters they were investigating. That fact was then not disclosed to the Applicant.[21] Three days after this exchange, further contact took place between Tinsley and the Case Controller. Contrary to the schedule entries, the disclosure shows it *was the SFO* that was telling Tinsley, in the event of a plea from BAJ, they "*wont charge with other matters.*"[22]

**SFO Party to Actions of Tinsley**

27. The judge ruled that there was no evidence that the SFO was a party to any acts of Tinsley in seeking improperly to persuade BAJ and the Applicant to abandon their not guilty pleas.[23] As set out in the Applicant's Perfected Grounds of Appeal[24] this finding is in conflict with his earlier finding that the SFO *"…should not have countenanced let alone encouraged (if only tacitly) his contact with either BAJ or with ZA…"* However, the encouragement was not tacit. Tinsley was tasked to obtain guilty pleas from BAJ and the Applicant, with the aim of strengthening the SFO's position in the forthcoming trial. Elizabeth Collery ("EC"), Case Controller, specifically told Tinsley that the SFO would need "*pleas on both contracts*" from BAJ, because "*[t]he fact he [pleads guilty] would have impact on us evidentially.*"[25] In other words, the SFO's case against the Applicant would be stronger as a result, assuming that those convictions were admitted in evidence. The disclosure also reveals another instance of *explicit* tasking of Tinsley by another case lawyer; in May 2019, Tinsley was reporting on the progress of his team's attempts to persuade the Applicant to plead guilty. Emma Isaac ("EI") is noted to have said in response: *"Look forward to hearing if progress can be made."*[26]

Covert Human Intelligence Source

28. The Judge rejected the argument that the conduct of DT fell within the definition of a Covert Human Intelligence Source. He found that Tinsley was not acting *covertly* because the defendants knew he was speaking to the SFO. It is contended that he was wrong to do so because the word *covert* may relate to the purpose of the interaction not merely the identity of the source. Tinsley was acting for a

[21] See Narrative Chronology A at §**42-55**
[22] B1, p.362
[23] Abuse of Process Ruling, §19 [CACD Bundle Tab A11]
[24] §**57-59**
[25] B1, p.337
[26] B1, pp.312

covert purpose, representing to the defendants that he was motivated to act in their interests out of altruism when in reality he was acting with the SFO in a manner wholly unknown to the Applicant.[27] In fact, the newly disclosed material reveals a file note in which DT informs the SFO that he and RT will *never* go against the Government.[28]

**Representations to Court**

29. The propriety of any relationship between Tinsley and the SFO was questioned by the defence in a CPIA section 8 application dated 24 September 2018.[29] The Prosecution written response said that "*the relationship between Mr Tinsley and the SFO has been terminated*"[30]. The Judge relied upon this assurance in rejecting the stay application on 19 February 2020, noting *"In fact, the contact did not cease until, I infer, that Mr Brompton and his team became aware of it – or at least the detail of it – in late October last year and put a stop to it."* [31]

30. The "*contact schedule*" created for the Court of Appeal reveals that in fact Tinsley was present with the case team, at the BAJ intelligence debrief the day before that ruling, on 18 February 2020. The material also reveals that Ms Isaac was also present and that she noted Tinsley there. EI emailed the Case Controller EC, who was in Court for the Applicant's trial, so that EC could consider it for disclosure purposes. Nevertheless, this ongoing contact with Tinsley was never disclosed to the defence or to the Court.[32]

## II: THE DISCLOSURE PROCESS

31. It is abundantly clear that the material now revealed should have been disclosed at trial. The SFO position at the initial hearing of this appeal appeared to be that the schedules were 'as good as' actual disclosure, or at least, good enough. If that were not self-evidently wrong, we set out below some of what comparison between the trial schedules and the actual material now reveals (much of which has been touched on above).

[27] See Narrative A para 13 15 25 28 42 and 43 are of this
[28] See Narrative A para 15.
[29] CACD Bundle Tab C1.
[30] Prosecution Preliminary Response to s8 Application, 7 November 201, §11 [CACD Bundle Tab B2]
[31] Ruling on Abuse §9
[32] B3, p.48.

32. The importance of the Tinsley material in CPIA terms, and the fact that it would be disclosable, was explicitly recognised at an early stage, though the fact of that recognition was not disclosed.[33] There is now a good evidential basis for finding that the approach to disclosure in this case was not only wrong and unlawful, but deliberately so. The approach taken to disclosure may have been primarily motivated by a desire to avoid embarrassment or corporate criticism. Whatever the motivation, it was inevitable that any departure from strict compliance with CPIA would bring, or risk, serious unfairness to the affected defendant. The process was adopted nonetheless.

33. We therefore invite the Court to consider the position now, if unpersuaded that the material disclosed would necessarily have merited a stay *had full disclosure been made at trial*. It is submitted that, given what has now been revealed, the evidence before this Court demonstrates a deliberate manipulation of the process of a most serious kind. This Court is regrettably familiar with prosecution errors in disclosure; sometimes, reckless or deliberate failures are revealed, usually affecting a few documents or an isolated source of material. However, a policy decision to depart from compliant disclosure, taken at a senior level of the prosecuting authority and in relation to the underlying factual basis of a live issue in the proceedings, would be unheard of. It is submitted that **if** a deliberate and unjustified departure from compliant disclosure is shown, at least as being more likely than not, that itself is sufficient to justify a stay. Indeed, it demands such a response. The point is not that the trial was unfair (though it was), it is that that unfairness was achieved by the policy adopted. Such conduct, if established, is offensive to the integrity of the criminal justice process, and merits a stay on that basis.

General

34. Although the process is always difficult to execute, the basic *structure* of a CPIA disclosure exercise is straightforward, extremely well understood and invariable. In respect of non-sensitive material, all "relevant" material, according to the meaning of that term in the CPIA, is gathered and scheduled, with descriptions of each item listed. Those schedules are reviewed. All listed material satisfying the statutory disclosure test is provided to the accused. Material may only be withheld if the prosecutor is satisfied that it may not

[33] B1, pp.124 – 126

reasonably be considered capable of assisting the case for the accused, with any doubt to be resolved in favour of disclosure.[34] All relevant disclosure decisions are recorded. Other than in the case of material which is properly to be regarded as "sensitive" within the strict definition of that term, the approach set out above is never departed from.[35] That was not, however, the approach adopted in this case. While the effect of the order of this Court was to remedy that error; the reasons for it have never been explained.

The Schedules & The Material

35. Following the order of this Court, the Applicant has been able to compare the underlying material with the schedules provided at trial. We here focus on certain aspects of that which is revealed. **First**, material has been disclosed which was in the hands of the SFO at the time of the trial; which was relevant; and which was *omitted from any schedule*. That includes documentary material as well as the knowledge and understanding of the relevant individuals not reduced into writing. **Second**, material relating to the destruction of data held on the Chief Investigator's mobile telephone has now been revealed. **Third**, it is now apparent that a number of significant *schedule* entries alter the sense of the underlying document. The alterations do not appear to be accidental. In certain important instances, the alteration might fairly be described as a *distortion* of the item. **Fourth**, it is now clear that the schedules were not prepared as conventional descriptions of individual underlying documents, and **Fifth**, wholly new material relating to the treatment of the Ahsanis generally and Ata Ahsani in particular.

**(i) New Material**

36. The importance of the new material can be discerned from Narratives A and B. Perhaps the most striking omission from the previous disclosure is the new material surrounding KD's role in the deletion of important material from his phone. All the material referred to in Narrative B is new material. Prior to that material being provided, the defence was left with the impression that the deletion of data was the unfortunate consequence of a rebuilding of the phone. It transpires that it was KD's act which deleted the data and that the act was performed in circumstances which, had the material been disclosed, were capable of painting a very different picture in relation to bad faith. The decision to withhold all of this

[34] A more detailed statement of the relevant principles and guidance is found at CACD Bundle Tab A7, pp.113-117.
[35] There are certain special cases, such as in relation to the records of experts, where additional rules apply.

information in the face of an abuse argument is striking. This material cannot be described as being of marginal relevance to the Applicant's abuse of process argument. The absence of any explanation is more striking still. One is driven towards the conclusion that it was deliberate.

37. In Narrative A, all the material referred to in paragraphs 1 and 2 concerning the informal way in which DSFO was first in contact with DT and the references to the purpose of that contact ("*potential collaboration opportunities*") was omitted from any schedule. Likewise the references to a "*private meeting*" and "*just us*" were similarly omitted from any description. The account of DSFO suggesting that the Ahsanis were not mentioned in that meeting, other than in passing, is entirely new, arising partly from a total lack of records of the interaction.[36] The material indicating that DT was at the SFO on 19 July 2019 for some four hours, of which three are unaccounted for, was also totally omitted from any disclosure. The contact schedule which summarises contact between DT and the SFO suggests that there were over 40 calls or meetings between senior management and DT of which there are no notes at all. Given the recognition by the SFO of the sensitivity of DT's interaction with the SFO and the importance for disclosure purposes of recording such interaction, such an omission is suggestive of a deliberate policy.

**(ii) Chief Investigator's Mobile Telephone**

38. Narrative Chronology B sets out the sequence of events surrounding the deletion of material from the phone of Kevin Davis, the Chief Investigator of the SFO. None of this material was disclosed prior to trial, though the material goes directly to both the Applicant's section 8 and abuse applications. The circumstances in which KD's phone came to be wiped are striking: it is now apparent that it was *his* action that deleted and wiped the material on his phone, not a rebuild. Moreover, he took that action in the full knowledge that his conduct would result in the deletion of the material having done it previously *and* having been warned against it. In addition, he took that action shortly after he had been chased for the material and the day after BAJ entered his guilty plea. His conduct erased all contemporaneous text records between KD and Tinsley over the period that Tinsley was persuading BAJ to plead guilty.

[36] That account is surprising in light of the newly disclosed materials, as set out at paras 6-12 of the Narrative Chronology A.

**(iii) Altered Entries**

39. There are a number of instances where the schedule entry has been altered from the underlying document. These instances betray the fact that this was no ordinary disclosure exercise. Considerable care appears to have been taken in both the composition of the schedule (see above) and in the composition of certain entries. We set out a few examples below.

40. **J7058** refers to the first meeting between Tinsley and DSFO on 25 September 2018. The schedule makes no reference to any 'private' or 'non-official' meeting.[37] Apparently quoting DSFO's text, it records "*LO states she is super honoured that Tinsley is coming our way*."[38] The texts now disclosed make clear that there are to be two meetings, the official meeting to take place "*all after you and I spend a solid hour together just us*" (to which Tinsley replies "*yes that is my desire*" [sic]). No notes were kept of this meeting, which appears to have lasted an hour and a half. Further, as set out in the Narrative Chronology A, it is clear that the Ahsanis were discussed at this meeting and the DSFO agreed in principle that the case should be a global plea which would result in AA escaping all proceedings.[39]

41. **J7064** and **J7065**: The schedule entry at J7064 simply refers to "emails" making arrangements for a call, with *no reference* to DSFO anywhere. In fact, Tinsley *begins* by telling KD and SB that he "*spoke briefly to Lisa this evening and would like to follow up with you tomorrow.*"[40] Similarly, the handwritten file notes scheduled at **J7063** and **J7065** both refer to DT's relationship with DSFO,[41] though reference to the Director was *omitted* from both of the schedule entries. In the typed record, the reference has been altered simply to refer to "the SFO".[42]

42. **J7077**. This is said to be a redacted file note of a call on 8 October 2018 with DT. The entry says nothing about contact with DSFO, the only reference being "*Tinsley has not sent anything to DSFO*." However, the file note actually begins "*KD said that following on from*

[37] The schedule simply says, "Text messages between David Tinsley and Lisa Osofsky between 21/09/2018 and 25/09/2018 in which Tinsley introduces himself and Tinsley and LO then arrange a meeting for 25/09/2018."
[38] The actual text records that LO said she was "*super honoured you're coming my way*."
[39] B1, pp.7, 9 and 10
[40] B1, pp.27-32
[41] See B1, pp.23 and 31
[42] B1, p.29

*Friday's telecon he'd had a conversation with DSFO. Notwithstanding the SOCPA process*[43] *it was important for the SFO to come over to the US and hear what SA has to say*." Again, this was a significant development, as by-passing the statutory SOCPA process was an essential step in ending any prospect of the SFO proceeding against the Ahsanis, whatever the views of the case team.

43. **J7149.** This entry summarises emails between Tinsley and MB, the then Interim Chief Investigator.[44] The entry omits <u>any</u> reference to ZA or BAJ. However, the document in fact records Tinsley telling MB that someone (redacted, but from the DOJ) has encouraged Tinsley to build rapport with the case team, and specifically that Tinsley "*should say hello to them re our requests for NFA on the dad & <u>potential transfer of Z & B</u>*."[45] MB appears himself to be trying to foster this contact, as the intelligence side of SFO work with DOJ, to try to ensure that the Ahsanis face no proceedings at all outside US.

44. This theme continues a few entries later. On 27 March 2019, Tinsley is badgering MB about getting to speak to Case Team about BAJ and ZA.[46] The expanded entry notes "*Tinsley flagged up previous conversations with SFO members that why not get other suspects to plea in US.*"[47] It seems clear that what Tinsley is actually referring to is conversations with the Director, and MB is emailing the Director's Assistance Ms Fosher, because he is "*flagging up this conversation as Tinsley may call you to relay a message [to DSFO]*."

45. **J7196** suggests that it was DT that requested BAJ not to be charged on other matters when in fact the file note reveals that it was EI who volunteered that the SFO "*wont charge with other matters*".[48]

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[43] In fact, as documents underlying other entries (**J7077**) <u>now</u> make clear, SOCPA was regarded as a "barrier" to dealing with the Ahsanis as Tinsley wished. At this point they were "all but charged" (**B1, p.120**). If SOCPA had been followed, they would have to have pleaded guilty or be provided with immunity in this jurisdiction. Immunity was unlikely, not least given that immunity has <u>never</u> been granted under SOCPA by SFO, and the AG's *fiat* had been given for the charges.

[44] The entry reads: "Text messages between David Tinsley and Marc Brown on 05/03/2019 and 06/03/2019 about David Tinsley's contact with SFO case team, a prospective meeting with Marc Brown and receipt of signed pleas for C Ahsani/S Ahsani."

[45] B1, p.230

[46] B1, p.241

[47] J7291; underlying document at B1, p.241

[48] Para 50-51 52 Narrative chronology A.

46. Other schedule entries reveal the imposition of what is (at best) 'purposive' reading of the documents. Thus for **J7174** the entry says:

> *"Telephone call dated 16/04/2019 from Tinsley to EI in which Tinsley said they will help re the B and Z thing (BAJ and ZA). He spoke to the DSFO originally. Don't want to expose the Ahsanis."*

47. The scheduler has created a note which shows that Tinsley was saying, having spoken to DSFO originally, he Tinsley does not want to expose his clients the Ahsanis. However, that is not what EI's note says. It reads:[49]

> *Will help re the B & Z thing*
> *Spoke to DSFO originally - have stuff* [redacted] *that we want to be careful &*
> *not want to expose & will support*

48. By this stage, the Ahsanis were not at risk of exposure. However, a favoured theme of Tinsley was that he could help the SFO to avoid the embarrassment that would flow from a trial of BAJ and ZA, because that would expose issues associated with Tom Martin, former SFO Case Controller.[50] On its face, the risk of exposure referred to in the document is to the SFO, not the Ahsanis.

49. It might be said that the note is incomplete or obscure, so either might be correct. That is true, but from a *disclosure* perspective that raises serious questions: The schedule entry *imposes* a particular reading on the document. For some reason, the SFO scheduler has decided what this document means, even if the words not contained within in it. Instead of leaving open the interpretations it might reasonably be considered capable of supporting, a single one has been imposed, by adding to the underlying text.

**(iv) Composite Entries**

50. In a number of cases, the schedules entries are *composite* summaries of more than one document. Nowhere was that fact revealed on the face of the schedule, indeed, the contrary is the case: for example, even where the schedule entry can now be seen to have related to

[49] B1, p.272
[50] CACD Bundle Tab B4b, p.278 (Transcript of conversations between DT and ZA on 16 January 2019). See also: B1, p.196; B3, pp.49-50. Exactly the line that TINSLEY had been peddling with MB, before he was able to get to the Case Team; see B1, p.241. See also B1, pp.275-6: "*Going to try & raise the ghost of TM*".

more than one document, the schedule itself refers to a single item. Such an approach to scheduling is to say the least extremely unusual and is obviously not compliant with the relevant guidance.[51] *Blending* multiple notes within a single entry and obscuring that fact, for example, is risky to say the least: it necessarily means that the single schedule entry will not be a neutral description of "the item", but an interpretative summary of more than one item, a fact of which the reader will necessarily be unaware.

51. It appears that, at least in some instances, these alterations must have been made by or in conjunction with others, in order to ensure that the schedule entry (which, as the Case Team knew, would be all the defence would have to go on) would be consistent with a particular interpretation of the underlying material. Again, such a process could only take place (or go undetected) because of the improper and unlawful decision to withhold all of the underlying material.[52]

52. There are many examples. It is unnecessary to list the instances here. Before addressing three examples, it is worth noting certain common features. First, in each case, the schedule entry is worded in such a way as to *obscure* the fact that the item comprises more than one note. Thus, for example, **J7073** is described as "*file note written by Sean Byrne*". In fact, the item is two notes, one apparently made at the time, one typed up after the event.[53] Precisely the same technique is adopted at **J7178**.[54] It is to say the least unorthodox to describe two separate notes of a call, made by two people, which vary significantly in length, as "Redacted note of Telephone Call."

53. At **J7191/J7293** the entry again is Redacted Note of a telephone call on 28 May 2019. The schedule entry appears to be a *blend* of the two documents, the first is a note (B1, p.335 believed to be in EI's hand). The second is note (B1, p.339 believed to be EC's hand). As will be seen, the detail of this note matters, because of the treatment of the inducement to BAJ.

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[51] For example, the CPS Disclosure Manual (revision 26 February 2018 at Chapter 7, page 21) provides "In the description column of every schedule**, each item should be individually described** and consecutively numbered. The schedule **must be a clear record of the nature of the item** and should contain sufficient detail to enable the prosecutor to decide whether they need to inspect the material before deciding whether or not it should be disclosed."

[52] This is a similar problem to the Gohil approach, where the disclosure decision was made on the basis of the prosecution's view of the meaning or value of the material, and not on the basis of the statutory test.

[53] B1, pp.62-63

[54] See EI's note at B1, p.278 and DH's note at B1, p.279.

54. These misdescriptions are important. The schedule has to be an accurate reflection of the underlying material, not least because the schedule is the list of the relevant unused material in the case. This is made worse by the practice adopted of deliberately obscuring the identities of the authors of notes and, frequently, those present at meetings. Thus, for example, **J7191** is described as "*Redacted Note of telephone call between case team, Tinsley and RT*". No author of the note is given, which in turn permits the fact that there are two notes by *different authors* to be obscured. Similarly, use of the term "case team" instead of listing those present must have been a *deliberate* decision not to reveal who was there. (The names are, after all, listed at the top of each of the notes.) The names must have been seen by the summariser, since they are set out at the top of the document, so at some stage a decision has been taken to omit what would appear to be essential basic information. This in turn leads to, or permits distortion in the sense of the entry. For example, the schedule entry above reads:

> "*EI says we would have to leave charges as they are. It is for B to come to us with an offer and we would consider it.* ***We would need something on both contracts***."

55. The natural reading of that is that it was EI who indicated that the SFO would need something on the two contracts on which ZA was indicted. In fact, the document reveals that it was someone else, EC (Case Controller), who said to Tinsley *"[we] would need pleas on both contracts*".[55] The document then reveals something which is omitted from the schedule entirely: that Ms Collery went on to note immediately afterwards why those pleas were so important to the SFO, "*The fact he PG [pleads guilty] would have impact on us evidentially.*"

56. There are many such examples, some identified in in the Narrative Chronology A. To an extent, some such distortions are an inevitable result of any scheduling process. But it is for precisely that reason that no experienced English criminal lawyer could ever consider that an MG6C unused schedule could be a fair or adequate substitute for compliant disclosure.

[55] B1, p.337

**(v) Treatment of the Ahsanis**

57. Fourthly, we invite the Court's attention to an entry relating to Ata Ahsani.[56] The relevant entry withholds the identities of those involved on the SFO side, and indeed omits any reference to the nature of the actual underlying material. It reads its entirety:

> *"Telephone call dated 09/05/2019 between case team and DT and RT. In the call DT states the US are interested in BAJ and ZA. DT also comments on ZA's closeness to SA but SA will do what he needs to do to co-operate"*

58. It can now be seen that this was in fact an important and wide-ranging telephone call, the underlying material being <u>two</u> detailed attendance notes, made by separate authors, in this case the Case Controllers EI and DH.[57] The documents reveal that the call addressed a question of real importance wholly omitted from the schedule description, namely the dropping of <u>all</u> proceedings against the three Ahsanis.

59. The note reveals that, in DT's account of his discussions with DSFO, he says that DSFO asked: "*why are we bothering with [AA]?"*[58] This question appears to have been posed as early as 25th September 2018 at a private meeting between DSFO DT and RT.[59] But by this stage (May 2019), it seems to be the case team's attitude to prosecuting AA too. The position at the time of this call was that Ata Ahsani, who was alleged to have been at the heart of Unaoil's corruption for decades and who retained vast profits from its activities, was not be prosecuted in the US. The sons were co-operating in the US, but had not then (and have not <u>now</u>) faced any punishment.

60. One striking feature is that the conversation proceeded on the basis that the Case Team clearly have no desire to prosecute AA, even though a decision has been taken to do so and there is no legal impediment to giving it effect. Instead, the problem is they need to find a way to dress up the decision not to prosecute so as to pass it through the AGO. As EI is noted to have said:[60]

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[56] See **J7185**
[57] The underlying documents can be seen at B1, pp.293-302.
[58] See B1, p.294.
[59] See Narrative Chronology A, para 9.
[60] B1, p.293

> "*The difficulty [sic] is that with the father his NPA doesn't cover his liability in this country so we have to re-look at our public interest test. To give you background: this office made a charging decision that there was sufficient evidence to charge AA, and because of the legislation the charges were under we had to go to the Attorney General ("AG"), who sits above the Director [of the SFO – "DGSFO"], and get his consent. We got that and then obtained warrants. What that means is whilst I can write a recommendation to DGSFO that it is not in the public interest to prosecute AA – which would include the fact there is an NPA and financial penalty, that we are not able to prosecute the sons, and his age and health – DGSFO, if she is content to make the decision not to prosecute cannot because she needs to consult with the AG and get his endorsement. Those are loops we cannot avoid as they are set out in our prosecutorial guidance and because of our relationship with the Attorney General's Office ["AGO"]. It was much easier with the brothers [CA and SA] because we had no legal grounds to prosecute.*"

61. Although we have no disclosure on the actual reasons, proceedings against AA were dropped, after which he was free to travel to and from London and to enjoy his enormous wealth without interference from the SFO. Interestingly, the notes also reveal (for the first time) that the SFO were under the impression that, because of the plea deal the sons had done in the US, "*there were no legal grounds to prosecute even if we wanted to – double jeopardy*." That was simply wrong in law, given that the sons had not then, and still have not now, faced any punishment for their admitted offending.[61]

## III: BAJ CONVICTIONS

62. The prosecution relied on the guilty pleas of BAJ as proof of the existence of the indicted conspiracies, pursuant to section 74(2) of the Police and Criminal Evidence Act 1984 (PACE):

> *"In any proceedings in which by virtue of this section a person other than the accused is proved to have been convicted of an offence by or before any court in the United Kingdom,...he shall be taken to have committed that offence unless the contrary is proved [emphasis added]"*

63. The defence applied to exclude evidence of BAJ's guilty pleas under section 78 of PACE. The basis of the application was that the evidence was unreliable. In particular, given what BAJ had said about pleading guilty, and in any event the misconduct which appeared to have

[61] USA v Ahsani et al, US District Court, SOUTHERN DISTRICT OF TEXAS (Houston): 4:19-cr-000147

led to his change in plea, made it unfair to admit that evidence. The judge refused the application on 21 January 2020.

64. The convictions having been admitted, the defence sought to "prove the contrary" pursuant to section 74(2) of PACE. In essence, the defence wished to put before the jury evidence which might show that BAJ was not guilty. Since he had pleaded guilty, that inevitably meant, evidence as to *why* he may have chosen to do so in respect of the relevant four counts on the indictment was highly relevant. The defence sought to adduce evidence that his pleas may have been brought about by pressure and inducements from Tinsley, acting together with senior managers of the SFO. This material included a tape recording of BAJ saying he had to go along with Tinsley's plan as it was "*the only way*", and that Tinsley had also told him "*not to tell his lawyers.*"[62] The SFO would no doubt have answered that argument by reference to the fact that BAJ, in the end at least, had been legally advised before entering the guilty plea. The determination of its merits therefore should have been a matter for the jury.

65. The judge ruled on 22 January 2020[63] (giving reasons on 19 February 2020) that evidence of Tinsley's overtures to BAJ were *irrelevant* and could not be admitted before the jury on that question of fact. The defence would not be permitted to seek to 'prove the contrary'. As a result, the jury did not hear any evidence that was capable of explaining why BAJ might have pleaded guilty to Counts 1 and 2, if the payments made were legitimate, as the Applicant contended. Given that BAJ had played the main role in interacting with Oday, absent evidence of pressure and inducements from Tinsley, it was simply *impossible* for the defence to do so. Realistically, that left the jury with no alternative but to accept the existence of the conspiracies to which the Applicant was said to have been a part and they were directed accordingly:

> *The fact that Mr Al Jarah has pleaded guilty to those four counts is evidence, firstly, that there were, as far as each of those four counts*[64] *is concerned, there were the*

[62] Transcript of BAJ call, 1 February 2019 [CACD Bundle Tab B4c, pp.304-307] – BAJ reports "*I can't tell my lawyer what I'm doing…they say don't tell anybody...*" Up to 3 June 2019, DT was still telling the SFO he was seeking to arrange new lawyers for BAJ and that BAJ would "get rid" of his previous solicitors (see B1, p.367).
[63] Ruling on the defence application to introduce evidence relating to the activities of Tinsley and others, 19 February 2020 [CACD Bundle Tab A10].
[64] The judge referred here to *four* counts because, although BAJ had pleaded guilty to all counts on a five-count indictment, no defendant at trial was charged on the fifth count which BAJ had faced.

> *conspiracies identified in those counts. And secondly, as far as each of those four conspiracies is concerned, that Mr Al Jarah is party to them*[65].

66. Although the expression used was that the conviction was "evidence" of the fact of the conspiracies and BAJ's participation in them, the effect of the direction was that it was conclusive proof of those facts. There was simply no possible room for argument.

***'Proving the Contrary'***

67. The language of section 74(2) is clear. However, in case it may assist, of section 74(3), which deals with prior convictions of the accused in the same terms, was considered in *R v C* ([2010] EWCA Crim 2971). This Court noted (§**9**, emphasis added):

> *"... The evidential presumption is that the conviction truthfully reflects the fact that the defendant committed the offence. Equally, however, it is clear that the defendant cannot be prevented from seeking to demonstrate that he did not in fact commit the offence and therefore, that the jury in the current trial should disregard the conviction. If so, it follows that he should be entitled to deploy all the ordinary processes of the court for this purpose, and in particular to adduce evidence that will enable him to prove, whether by cross-examination of prosecution witnesses or calling evidence of his own that he was not guilty and that the conviction was wrong..."*

68. The ordinary processes of the court include the right of the defence to adduce any evidence which is legally relevant to the fact in issue. There is in this context, no exclusionary principle that the evidence must be the best available, or that it must first persuade the judge. The correctness of BAJ's convictions was simply a factual issue, in respect of which the prosecution enjoyed an evidential presumption. The defence were entitled to rely upon and place before the jury any evidence which was relevant to that issue. The ruling on the Tinsley material deprived the Applicant of the right to adduce evidence going to a vital factual issue in dispute. The approach taken to *disclosure* of Tinsley material deprived the defence of any access to such evidence in any event.

69. The now-disclosed material reveals the extent to which the SFO worked with and through Tinsley, not merely to encourage BAJ to plead guilty, but acted through Tinsley to incentivise BAJ to plead guilty to the counts in which co-defendants featured. This is

[65] Transcript 13 May 2020 at 13D. This part of the summing-up is set out in full at Appendix A.

covered in Narrative Chronology A.[66] In short, that was done by offering the inducement to BAJ of avoiding prosecution for the significantly more serious counts which eventually formed the basis of the offences taken into consideration. In essence, the SFO had traded the possibility of prosecuting the Ahsanis - all three of whom could in law have been prosecuted in this jurisdiction - for intelligence in other cases and the prospect of evidence to be used against BAJ and the Applicant. Thereafter, the SFO traded the possibility of prosecuting BAJ for a series of *more serious offences* under investigation, for pleas of guilty from him which could be used against the Applicant. Part of Tinsley's pitch to the SFO, which the SFO readily understood, was just how powerful evidence of BAJ's conviction might be in a trial of the Applicant. It would, as was noted at the time, leave the Applicant with "*without many options*".[67] Thus, in a remarkable distortion of the usual position, the SFO's priority appears to have been to ensure that the lenient treatment of the major players would not in any way impair their ability to advance the most powerful case against those less culpable.[68]

70. Given the history, and assuming that BAJ was guilty of the wrongdoing reflected in the TICs, he had every incentive to plead guilty to any lesser offence which might suit the SFO's purposes, if doing so could avoid prosecution for those matters. In the absence of any of the underlying material which revealed what had occurred, the defence were unaware of the deal which had been offered by SFO, and indeed were unaware of the fact or nature of those "other matters" which became the TICs.[69] It was therefore not possible for the Applicant to advance that argument either to the judge or, thereafter to the jury. In the event, the trial judge ruled that no argument could be advanced, even on any basis of the material which the defence then had, to the effect that BAJ may have pleaded guilty for reasons unconnected to his guilt.[70]

[66] §32, §46, §47
[67] B1, pp.335-338
[68] See the discussion when considering SA's position on 22 November 2018 (B1, p.120) and Narrative Chronology A §22-23.
[69] The trial judge referred to the SPM contract (of which the Applicant was convicted) as "*somewhat puny in comparison"* to the pipelay charge (of which the applicant was not convicted) [BAJ sentencing remarks, §27, 8 October 2020], which was miniscule by comparison to the totality of the TICs.
[70] Ruling on the defence application to introduce evidence relating to the activities of Tinsley and others, 19 February 2020 [CACD Bundle Tab A10].

***Note: Ruling Admitting the Convictions***

71. The ruling admitting BAJ's convictions was not challenged as part of this application, although as a matter of fact the flaws in the disclosure exercise inevitably meant that it was decided without the "whole picture". Given what is now known of the background to those convictions, we have anxiously considered the proper approach to that decision, and in particular if leave should be sought to challenge it directly as part of this appeal. However, it appears to the Applicant that in fact, the grounds now before the Court remain sufficient. Actual evidence is now before the Court which reveals the SFO using Tinsley *in order to* achieve a conviction which could then be used against the Applicant; and then withholding the unused material which revealed what had been done. Indeed, withholding it not just in relation to the abuse argument, but for all trial purposes, including the two section 74 arguments, challenging the admission of, and later the effect of BAJ's convictions. If that conduct - whether as to Tinsley, disclosure or both - was improper as alleged, such deliberate consequent handicapping of the defence is certainly sufficient to render the trial unfair and to render conviction unsafe.

**Conclusion**

72. Where the conduct of the State is such that it amounts to "*an affront to the public conscience*" or "*offends the court's sense of justice and propriety*" the Court has a power to stay the prosecution as an abuse of process, notwithstanding a fair trial is possible: *Latif*[71] and *R v. Horseferry Road Magistrates' Court, ex parte Bennett*.[72] This integrity principle has been described as "*settled law*" by Lord Dyson in the Supreme Court in *R v Paul Maxwell*[73] and by the *Privy Council in Warren v the AG for Jersey.*[74] The factors that go into the balance in considering whether there has been an abuse are less well articulated. The categories of case are not fixed and are not limited to abduction cases or entrapment cases. The courts have recognised that circumstances amounting to an abuse can arise in an infinite variety of cases. Such a course is exceptional.

[71] [1996] 2 Cr App R 92 at 101.
[72] [1994] 1 AC 42.
[73] [2011] 1 WLR 1837 at 45.
[74] [2012] 1 AC 22 (at 21 et seq.).

73. The Court will not stay a prosecution simply because a guideline has been breached, or even because the state has been complicit in breaches of civil or criminal law. The ultimate question for this Court is not a narrow one of whether in fact the specific heads set out above are made out, but whether the conduct revealed, judged in its entirety on the material before the Court, establishes misconduct of a kind which threatens the integrity of the criminal justice process. In making that assessment, the fact of breaches of internal and external guidance, of good practice and of the law, are all powerful indicators that something has gone seriously wrong. Even more so where such breaches are deliberate, sustained and go directly to the fairness of the trial.

74. It is submitted that that is indeed what occurred in this case. The facts of this case are exceptional. There is surely no another English case in which senior figures in a major prosecuting agency have positively encouraged a non-lawyer, acting for those at the head of a conspiracy it is prosecuting, to approach other defendants with whom his clients are in conflict behind the backs of their lawyers, in an effort to displace their not guilty pleas. That the agency hoped thereby to achieve the dividend of a conviction which would be used in evidence against a co-accused simply aggravates the impropriety. That such conduct should be followed by a policy-based decision to avoid the consequences of strict compliance with the basic requirements of the criminal disclosure regime, something fundamental to the fairness of *any* trial, is capable of elevating the conduct into that exceptional category of case in which the Court is driven to intervene.

75. This was, as a consequence, one of those exceptional instances when the Court is necessarily driven to the conclusion that this conduct cannot simply be overlooked. It is respectfully submitted that, if an investigating and prosecuting authority conducts itself in this unconscionable way in conducting a prosecution, there is no alternative: the ultimate sanction of staying those proceedings is required.

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**30 September 2021**

**APPENDIX A: SUMMING UP – 13 May 2020**

*[Word version at **12H**-]*

*"Right, one final matter for the moment before we break for lunch, ladies and gentlemen, and it relates to the pleas of guilty of Mr Al Jarah. Can I invite you, if you could manage it easily, to go to the jury bundle annexe, to go to agreed facts, which is the link to B and in the agreed facts, to click on defendants and others and you should end up with paragraph 43 of that document which tells you of the matters to which Mr Al Jarah has previously pleaded guilty. Everybody got that. A brilliant exercise in just familiarising yourselves with getting together with the facts. So, everybody there? Yes?*

*I am not going to read through those, but you can take it from me that A to D reflect pleas of guilty, as the agreed facts say, at the bottom of each A, B and C etc, count one, count two, count three, count four. In fact, Al Jarah pleaded guilty to five counts, but count five is an entirely separate matter, not against any of the participants in the case. But Mr Al Jarah, which is relevant to this case, pleaded guilty to all four counts on the indictment which you are considering.* ***The fact that Mr Al Jarah has pleaded guilty to those four counts is evidence, firstly, that there were, as far as each of those four counts is concerned, there were the conspiracies identified in those counts. And secondly, as far as each of those four conspiracies is concerned, that Mr Al Jarah is party to them****. But that is the extent of it, and it is not evidence that any defendant took part in any of the offences to which Mr Al Jarah pleaded guilty. Whether or not a defendant was a party to the offence is to be decided only on all the other evidence given in the trial of which the proven participation of Mr Al Jarah in that offence is but a part and a part of the circumstances to which I have referred.*

*The point here being made is of course that no one is guilty simply by association, however the circumstances of someone's association with another and the extent of that association, particularly if that person can be shown to be in the know about something, he may, but not necessarily will, support an inference that that other person is also in the know about it. But it does not necessarily do so, and you have to be very careful about this.*

*You have had an admission read to you relating to the Ahsanis, back to the handout, which is here, yes? As with any of those other persons not before the court but mentioned in one*

*or more counts on the indictment, consideration of the roles that they played and the way in which they played them, as with the evidence which you do have, would of course be relevant to your consideration of the cases of each of the three present defendants. It is all part of that circumstantial evidence to which I have referred."*

# Exhibit C

**IN THE CROWN COURT AT SOUTHWARK**

**Before: HH Judge Beddoe**

**BETWEEN**

**REGINA**

**-v-**

**ZIAD AKLE**

**STEPHEN WHITELEY**

**PAUL BOND**

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**PROSECUTION RESPONSE TO DEFENCE APPLICATION**

**TO STAY FOR AN ABUSE OF PROCESS**

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**Introduction**

1. On 15 January 2020, the defence on behalf of Mr. Akle served a skeleton argument entitled 'Application to stay for an abuse of process' (hereinafter referred to as "the Application"). This is the first time the defence has indicated that such an argument is to be advanced.

2. For the remedy of a stay to be granted, it requires *"very exceptional circumstances"* (*DPP v. B* [2008] EWHC 201 – paragraph 10).

3. In *R. v. Crawley* [2014] EWCA Crim 1028 the scope of abuse of process was described by Sir Brian Leveson thus:

> *"18. There are two categories of case in which the court has the power to stay proceedings for abuse of process. These are, first, where the court concludes that the accused can no longer receive a fair hearing; and, second, where it would otherwise be unfair to try the accused or, put another way, where a stay is necessary to protect the integrity of the criminal justice system. The first limb focuses on the trial process and where the court concludes that the accused would not receive a fair hearing it will stay the proceedings; no balancing exercise is*

*required. The second limb concerns the integrity of the criminal justice system and applies where the Court considers that the accused should not be standing trial at all, irrespective of the potential fairness of the trial itself…There is a strong public interest in the prosecution of crime and in ensuring that those charged with serious criminal offences are tried. Ordering a stay of proceedings, which in criminal law is effectively a permanent remedy, is thus a remedy of last resort.*

4. The defence bear the burden of establishing abuse on the balance of probabilities. As *per* Rix LJ in *R. v. E* [2012] EWCA Crim 791, *"the burden of proof or persuasion lies on the defendant"* to show that a fair trial is no longer possible.

5. At times the Application appears to conflate the two limbs of abuse of process. The distinction between the two limbs is an important one; as Lord Davis observed in *D Ltd v. A & Others* [2017] EWCA Crim 1172 at paragraphs 34 and 35:

*"As is well - established, there are two bases, or limbs, for such an application. The first, put shortly, is that in view of what has happened the defendant cannot have a fair trial. We will call that "limb one". The second, again put shortly, is that it would not be fair for the defendant to be tried (or, putting it in other words, that it would offend the court's sense of justice to permit the prosecution to proceed). We will call that "limb two". On either approach, it is established that it will be an exceptional course for a stay to be granted. As it has been put, a stay of criminal proceedings is a remedy of last resort.*

*It is important to bear in mind that the two limbs to the exercise of this jurisdiction to stay are legally distinct and have to be considered separately: considerations that may be relevant to the first limb may not be relevant to the second limb and vice versa. Moreover, the second limb requires a balance of the competing interests, whereas the first limb does not. "*

6. The Court is invited to approach the determination of the Application by looking at each of the two limbs separately.

7. The prosecution response to the application is addressed in three sections:

(i) Timing of the Application;

(ii) Abuse Limb 1 – Is it impossible for Mr. Akle to receive a fair trial?

(iii) Abuse Limb 2 - Is a stay necessary to protect the integrity of the criminal justice system?

8. References in square brackets are to the relevant paragraph of the Application.

**(i) Timing of the Application**

9. The Criminal Procedure Rule 3.20 provides:

*"**Application to stay case for abuse of process***

*3.20—(1) This rule applies where a defendant wants the Crown Court to stay the case on the grounds that the proceedings are an abuse of the court, or otherwise unfair.*

*(2) Such a defendant must—*

*(a) apply in writing—*

*(i) as soon as practicable after becoming aware of the grounds for doing so,*

*(ii) at a pre-trial hearing, unless the grounds for the application do not arise until trial, and*

*(iii) in any event, before the defendant pleads guilty or the jury (if there is one) retires to consider its verdict at trial;*

*(b) serve the application on—*

*(i) the court officer, and*

*(ii) each other party; and*

*(c) in the application—*

*(i) explain the grounds on which it is made,*

*(ii) include, attach or identify all supporting material,*

*(iii) specify relevant events, dates and propositions of law, and*

*(iv) identify any witness the applicant wants to call to give evidence in person.*

*(3) A party who wants to make representations in response to the application must serve the representations on—*

*(a) the court officer; and*

*(b) each other party, not more than 14 days after service of the application".*

10. The Criminal Practice Direction 2015 Division I (General Matters) provides:

***"CPD I General matters 3C: ABUSE OF PROCESS STAY APPLICATIONS***

*3C.1 In all cases where a defendant in the Crown Court proposes to make an application to stay an indictment on the grounds of abuse of process, written notice of such application must be given to the prosecuting authority and to any co-defendant as soon as practicable after the defendant becomes aware of the grounds for doing so and not later than 14 days before the date fixed or warned for trial ("the relevant date"). Such notice must:*

*(a) give the name of the case and the indictment number;*

*(b) state the fixed date or the warned date as appropriate;*

*(c) specify the nature of the application;*

*(d) set out in numbered sub-paragraphs the grounds upon which the application is to be made;*

*(e) be copied to the chief listing officer at the court centre where the case is due to be heard.*

*3C.2 Any co-defendant who wishes to make a like application must give a like notice not later than seven days before the relevant date, setting out any additional grounds* relied upon."

11. The Application was served 3 working days before trial. It is 34 pages long and accompanied by 9 appendices 170 pages in length. Mr. Akle also seeks wide ranging

disclosure [see paras. 113-120] including, but not limited to: billing records, prosecution decision logs, audio recordings of interviews and witness statements.

12. The matters relied upon in support of the Application, relate to the role of David Tinsley ("Mr. Tinsley") and his interaction with Mr. Al Jarah and the Serious Fraud Office ("SFO"). On 24 September 2019 Mr. Akle in a further s.8 application provided an analysis of Mr. Tinsley's role and sought further disclosure. On 31 October 2019 a non-sensitive unused schedule (Tranche 5) was provided, describing on the face of the schedule, contact between the SFO and Mr. Tinsley. On 8 November 2019 the Court heard and rejected Mr. Akle's application for disclosure pursuant to s.8 CPIA. Much of the disclosure now sought was part of the defence further s.8 application, which was refused.

13. A further case management hearing was listed on 16 December 2019 to deal (amongst other matters) with remaining legal arguments. No mention was made at that hearing that Mr. Akle intended to apply to stay the proceedings. Mr. Akle would have been aware of the grounds of this application, at the very latest, in early November 2019. He was required as soon as practicable after that to provide the Court, the prosecution and his co-defendants with written notice of any application. In any event, he was required to provide notice no later than 14 days before the start of the trial. Not only did he fail to do so, he has offered no explanation to the Court or prosecution why it has arrived only 3 days before trial.

14. Applications to stay the proceedings, regardless of their merits, take time and effort to respond to. CPR 3.20 and CPD 3C impose obligations on the defence to ensure that trials are not delayed or derailed, and the prosecution is not ambushed at the last minute by such arguments. The failure to comply with the CPR in a case of this seriousness and complexity calls for an explanation, in the absence of which we question the true purpose of the Application.

**(ii) Limb 1 – Is it impossible for Mr. Akle to receive a fair trial?**

15. It is difficult to discern from the Application the precise grounds upon which it is said that it is impossible for Mr. Akle to receive a fair trial. The central premise appears to be that Mr. Al Jarah has been forced against his will to plead guilty to offences of which he is innocent [para. 98] and that inadequate records have been kept of how his will was overborne [para. 100]. What is unclear is how this renders any trial of Mr. Akle unfair or why the trial process is inadequate to remedy any potential for unfairness.

16. If there were substance to the proposition that Mr. Al Jarah's guilty pleas were not freely made, it would be open to the Court not to accede to the prosecution's application to adduce his pleas and to exclude them. Therefore, the obvious remedy would be the exercise of the Court's exclusionary discretion, not a stay of the proceedings.

17. There is, however, no substance to the proposition that Mr. Al Jarah's guilty pleas are anything other than a true acknowledgment of his guilt. Mr. Al Jarah's guilty pleas are consistent with numerous emails sent and received by him in which the indicted conspiracies are described and actioned. Mr. Al Jarah was at the centre of each conspiracy directing, liaising and acting as Unaoil's man in Iraq. His guilty pleas are consistent with the detailed admissions he subsequently made during lengthy interviews pursuant to the SOCPA agreement into which he entered with the SFO. It is apparent from those interviews and indeed from Mr. Al Jarah's email correspondence contained within the SOE that he is a strong willed and intelligent man, quite capable of making up his own mind.

18. Mr. Al Jarah is in a far better position to determine his own guilt than Mr. Akle. He does not support Mr. Akle's submissions nor does he seek to reopen the pleas he entered in July 2019. To the contrary, Mr. Al Jarah when interviewed as part of the SOCPA process in July and September 2019, made full admissions as to his guilt. He was represented at those interviews by his UK solicitor Mr. Milner. Mr. Tinsley was not present nor was he part of that process. At the start of his preliminary co-

operation/scoping interview held on 29 July 2019 Mr. Al Jarah confirmed that he had received a letter from the SFO via his lawyer Mr. Milner dated 24 July 2019. The letter set out the SOCPA process (contents of letter read out in full during the interview), ensuring that Mr. Al Jarah understood the process and that no understandings, promises or inducements had been made with him in respect of any future disposal of any matters to which he had pleaded guilty or charges pending against him. He had then signed the following declaration:

> *"I Basil Al-Jarah have read the letter dated 24th of July 2019 from Elizabeth Collery of the Serious Fraud Office to my legal advisor John Milner of IBB Solicitors and I confirm that I fully understand its contents. No other promises, understandings, or inducements have been made to me other than those contained or referenced in that letter"* [Transcript pg. 4 of 21].

19. Mr. Al Jarah went on to volunteer the following:

> *"Well, I have pleaded guilty to five charges, obviously I have paid bribes, I made a mistake and I regret that but the fact is bribes were paid, even though that was an environment I was in, any way for anything to develop or move forward in that country. There is no other way. Maybe I should have refrained or sought some alternative employment somewhere else, but for Iraq there was no other way"* [Transcript pg. 6 of 21].

20. There is no doubt that at the time that Mr. Al Jarah entered his pleas, he was fully aware of the nature of the prosecution case and of the evidence supporting it. A full joinder case summary had been served, along with the joinder indictment, 9 months before. He was no doubt advised by his solicitor Mr. Milner of IBB Solicitors and counsel Mr. Alex Cameron QC, who represent him in these proceedings (and continue to do so) and in whose presence his guilty pleas were entered. Whilst reference is made in the Application to suggestions by Mr. Tinsley that he replace his solicitors, Mr. Al Jarah did not do so, suggesting that his will was not been overborne; the same UK lawyers remain instructed. Moreover, Mr. Al Jarah has not indicated to the SFO or

the Court that he wishes to vacate his pleas of guilty or that they were false, unreliable or otherwise inappropriate; to the contrary, since his guilty pleas, as set out above, he has been co-operating with the SFO and has been further interviewed during which he has admitted his guilt.

21. Therefore, if the Court accepts that Mr. Al Jarah's guilty pleas are a true acknowledgment of his guilt, then any argument as to unfairness to Mr. Akle can have no basis; still less, that it is impossible for him to receive a fair trial.

22. If Mr. Al Jarah's guilty pleas are admitted it is, of course, open to Mr. Akle to seek to prove through admissible evidence that Mr. Al Jarah did not commit the offences. In due course, Mr. Akle is entitled to give evidence to the effect he did not believe at the material time that Mr. Al Jarah was engaged in criminal behaviour. He is entitled to call Mr. Al Jarah as a witness if he so wishes.

23. Mr. Akle asserts [para. 100] that the defence is left *"in a highly compromised position, unable to point to records that should exist to enable the jury to make a proper assessment of the reliability of Mr. Al Jarah's plea."* It is submitted this is simply not the case. The prosecution has already made clear that it holds no material capable of supporting the proposition that Mr. Al Jarah's pleas of guilty did not amount to a true acknowledgment of his guilt. It is in any event difficult to conceive of a situation where the records of plea discussions with one co-defendant are admissible in the trial of another. Mr. Akle's stated inability to point to such material, does not cause him unfairness because it could not properly be admitted as evidence before the jury.

24. It is submitted, for the reasons set out above, that Mr. Akle has failed to demonstrate, as he must, that he could not have a fair trial.

**(iii) Limb 2 - Is a stay necessary to protect the integrity of the criminal justice system?**

25. The defence alleges that there has been an abuse of executive power such that the Court should stay the case as an abuse of the Court's process. Where such an

allegation is made the hurdle is a high one. A stay will only be granted where the Court concludes that, in all the circumstances, a trial will "*offend the court's sense of justice and propriety"* (per Lord Lowry in *ex parte, Bennett*, at p. 74G) or will *"undermine public confidence in the criminal justice system and bring it into disrepute"* (per Lord Steyn in *Latif*, at p. 112F). In other words, the Court considers that it would be unfair for the accused to be tried. Here the Court has to strike a balance between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute. For a stay to be imposed in such circumstances, there must be a connection between the wrongdoing and the trial, such that not only the wrongdoing but also the trial would be an affront to the public conscience.

26. In *R v Norman* [2016] EWCA Crim 1564 the approach to be taken by the Court in such cases was summarised:

> "*First, it must be determined whether and in what respects the prosecutorial authorities have been guilty of misconduct.*
>
> *Secondly, it must be determined whether such misconduct justifies staying the proceedings as an abuse. This second stage requires an evaluation which weighs in the balance the public interest in ensuring that those charged with crimes should be tried against the competing public interest in maintaining confidence in the criminal justice system and not giving the impression that the end will always be treated as justifying any means. How the discretion will be exercised will depend upon the particular circumstances of each case, each case being fact specific..."*

27. The misconduct alleged against the SFO is that they encouraged Mr. Tinsley to procure guilty pleas from Mr. Al Jarah and Mr. Akle. It is asserted [para. 112] that "*Mr Tinsley and the SFO took a 'justice by broker' approach that undermined the integrity of the criminal justice system. It aimed to isolate defendants from their legal representatives and to pressure them into a guilty plea. It sought to marginalise the roles of lawyers and the court and to replace them with broker led negotiations. Those negotiations*

*took place in a vacuum wholly devoid of regulatory oversight and were punctuated by inducements, misrepresentations and pressure. Ultimately the aim was to present the court with a guilty plea and then ask the court to rubber stamp it with no questions asked. "*

28. The Court has already had the material now relied upon in the Application brought to its attention as part of the defence's s.8 application for disclosure and expanded upon during the course of oral argument at the s.8 hearing in November 2019. The only new material is that which was served by Mr. Akle at 12.37 on Friday 17 January 2020. This consists of transcripts of recorded conversations between Mr. Akle, Mr. Al Jarah and Mr. Tinsley. This material must have been in Mr. Akle's possession for some time. We note that the first transcript dates from December 2018 and that his solicitor has failed to specify in the accompanying witness statement when his client provided the recordings to him. The recordings have not been provided to the SFO. It is not known whether this represents all of the recordings held by Mr. Akle, or whether he has selected what to put before the Court. Nor is it known whether the recordings are selected parts of conversations. What is apparent of course is that Mr. Akle knew that the recording was being made.

29. The prosecution accepts that it appears from the transcripts served that Mr. Tinsley did advise Mr. Al Jarah to plead guilty and to co-operate with the authorities, as Saman and Cyrus Ahsani have done in the US. Advice, even if robust, is not to be confused with "pressure", still less "improper pressure" or deceit. If Mr. Tinsley told Mr. Al Jarah that pleas of guilty, coupled with an agreement to co-operate with the authorities, would result in a significant reduction in sentence, that would have amounted to no more than a statement of fact and not, as is asserted, a misrepresentation or deceit. A defendant may take advice from whomsoever he wishes. Whether he acts on such advice is a matter for him. There is no evidence to support the assertion that the aim of the SFO was to marginalise lawyers and the Court. Mr. Al Jarah was represented throughout the proceedings by an experienced legal team. They have not complained of having been isolated or marginalised by the SFO.

30. As is set out above, there is no evidence from Mr. Al Jarah to support the contention that his plea is anything other than a true acknowledgment of guilt. Likewise, the SOCPA interviews of Mr. Al Jarah do not support the assertions being made by the Mr. Akle in his Application. Nevertheless, it is easy to conclude that Mr. Al Jarah's motive for pleading guilty was an understanding that, come what may, he was very likely to be convicted and that he should do whatever he could by way of mitigation.

31. The suggestion [para. 82] that Mr. Tinsley was *"Reporting back to the SFO and seeking to improve the position of the Ahsanis by sapping the resolve of the co-defendants to maintain not guilty pleas…"* is inaccurate. It was a prerequisite to Mr Tinsley exercising any influence over either Mr. Al Jarah or Mr. Akle that he revealed the fact that he had advised the Ahsanis and had helped secure a favourable outcome for them. It is certainly the case that Mr. Tinsley represented the Ahsanis and that the interests of the Ahsanis did not necessarily coincide with those of Mr. Al Jarah or Mr. Akle, all of which was patently apparent to the defendants. Both Mr. Al Jarah and Mr. Akle knew full well that Mr. Tinsley acted on behalf of the Ahsani family. Likewise, it was in Mr. Tinsley's interests to assert that he had a close relationship with the SFO and was able to exert influence over its decision-making process. Mr. Akle's recently supplied transcripts, if accurate, do not support the contention that anyone's will was being 'sapped' or that Mr. Tinsley was making a secret of his relationship with the Ahsanis or individuals at the SFO. Moreover, the transcripts of conversations between Mr. Akle and Mr Tinsley show Mr. Tinsley to been confident, persuasive and optimistic but not bullying or deceitful.

32. The conversations between Mr. Akle and Mr. Al Jarah, are instructive, in particular that of 31st May 2019. For example:

| | | |
|---|---|---|
| 31 | ZA | Listen, what I'm saying is this, man – if you have something that you… so-th- I've never really understood, we've have discussions with… I have, with them, and I've ne-never been clear that I have to go and admit some guilt of doing something that I don't believe I did in order to what, erm, not be tried here? So if you have to say you've done |

| | | |
|---|---|---|
| | | something wrong, whether you believe you have or not, that's- su-if you believe you're gonna admit something, man, and get- and get a-a deal – fine, but I- I- ha- I can't admit anything that I haven't fucking done. |
| 32 | BAJ | Yeah, with you, it's easy, it's, er, less, er, it's less, erm, you're not in the front line, if you like. I-I am in the front line. |

33. Mr. Akle asserted his innocence. Mr. Al-Jarah made no such assertion in relation to his own position. Each man was making a considered judgment.

The Limb 2 Authorities

34. Examples of cases in which the appellate courts have approved a stay are *Bennet* and *Mullen* (the 'executive kidnapping' cases). In each of those cases, but for the misconduct, the defendant would not have been brought to trial. Examples of cases in which no stay was granted are as follows-

- *Warren v Attorney General of Jersey* [2012] 1 A.C 22*: "... the police officers' conduct had been unlawful and reprehensible, ... they had acted unlawfully in foreign jurisdictions and engaged in deliberate deceit of their French counterparts, ... they had deceived the Attorney General and the Chief Officer of Police, and their conduct had been approved by certain senior officers."*
- *Maxwell* [2011] 1 W.L.R. 1837*: "A large number of police officers involved in the investigation and prosecution of the Smales robbery and murder case, including several of very high rank, engaged in a prolonged, persistent and pervasive conspiracy to pervert the course of justice. They colluded in conferring on Chapman a variety of wholly inappropriate benefits to secure his continuing cooperation in the appellant's prosecution and trial. They then colluded in Chapman's perjury at that trial, intending him throughout his evidence to lie as to how he had been treated and as to what promises he had received. They ensured that Chapman's police custody records and various*

*other official documents presented a false picture of the facts, on one occasion actually forging a custody record when its enforced disclosure to the defence would otherwise have revealed the truth. They lied in their responses to enquiries made of the CPS after the appellant's conviction and, in the case of the two senior officers who gave evidence to the Court of Appeal, perjured themselves so as to ensure that the appellant's application for leave to appeal against his conviction got nowhere. To describe police misconduct on this scale merely as shocking and disgraceful is to understate the gravity of its impact upon the integrity of the prosecution process. It is hard to imagine a worse case of sustained prosecutorial dishonesty designed to secure and hold a conviction at all costs."*

- *Hounsham & Others* [2005] EWCA Crim 1366 "*The prosecution now accept that the police were acting ultra vires their powers when they accepted financial contributions towards the expense of the investigation from three insurance companies. In our judgment, soliciting by the police of funds from potential victims of fraud, or any other crime, quite apart from being ultra vires police powers, is a practice which is fraught with danger. It may compromise the essential independence and objectivity of the police when carrying out a criminal investigation. It might lead to police officers being selective as to which crimes to investigate and which not to investigate. It might lead to victims persuading a police investigating team to act partially. It might also lead to investigating officers carrying out a more thorough preparation of the evidence in a case of a "paying" victim; or a less careful preparation of the evidence in the case of a non-contributing victim. In short, it is a practice which, in our judgment, would soon lead to a loss of confidence in a police force's ability to investigate crime objectively and impartially."*

35. The Court has already observed in its ruling following the s.8 application that some of the SFO's contact with Mr. Tinsley "*might be considered to have been unwise if not, a matter of serious criticism"* [para 15 of Ruling]. The Prosecution does not seek to dissuade the Court from that observation. Nevertheless, however categorised, it falls far short of the threshold for a stay of proceedings.

36. As stated by Lord Kerr in *Warren* "*a stay should not be ordered for the purpose of punishing or disciplining prosecutorial or police misconduct. The focus should always be on whether the stay is required in order to safeguard the integrity of the criminal justice system"* (paragraph 83). In *Warren* the Privy Council said that the decision in *R v Grant* [2005] EWCA Crim 1089 was wrong (paragraph 36). In *Grant* the police had unlawfully recorded privileged conversations between the suspect and his legal adviser and the Court of Appeal held that this rendered the prosecution an abuse. However, the Privy Council rejected the reasoning in *Grant* because it was 'difficult to avoid the conclusion that in *Grant* the proceedings were stayed in order to express the court's disapproval of the police misconduct and to discipline the police', which is an impermissible use of the power to stay proceedings.

37. The Court should evaluate the competing public interests in ensuring that those charged with crimes should be tried against that in maintaining confidence in the criminal justice system. In this case there has been no violation of Mr. Akle's rights (or anyone else's), the prosecution has not acted maliciously, there has been no attempt to mislead the Court or the defence and the alleged abuse of power is not what has brought the defendant before the Court. There is a strong public interest in ensuring that those charged with serious crimes are brought to trial. Mr. Akle is charged with corruption offences of the utmost gravity. They involved high value payments to corrupt officials for contracts worth hundreds of millions of pounds. They took place at a time Iraq was attempting to rebuild after a devastating war. It would not be an affront to the public conscience to try the defendant.

38. For the reasons set out above it is submitted that Mr. Akle's application for a stay of proceedings should be refused.

**Michael Brompton QC**

**Gillian Jones QC**

**Faras Baloch**

**Tom Daniel**

**19 January 2020**

# Exhibit D

# The Unaoil Bribery Scandal

30 March, 2022 | 19 minute read

*R v Basil Al Jarah* (guilty plea)

*R v Ziad Akle, Stephen Whiteley and Paul Bond* (trial court: T20177415; 20187107)

*R v Paul Bond* (retrial: T20177415; 20187107)

*R v Ziad Akle and Paul Bond* (Court of Appeal: 202001870 B1; 202002164 B1; 20210745 B1)

*R v Paul Bond* (Court of Appeal: 202104035)

The Unaoil scandal has been one of the blockbuster bribery cases on the Serious Fraud Office's (SFO) docket in recent years. Although the SFO initially secured a string of successful prosecutions, these early wins have quickly unravelled as the agency's conduct of the case came under sharp scrutiny from the courts. Two convictions have been quashed on the basis of serious disclosure failures and the SFO's handling of the case is now the subject of an independent review by the Attorney General.

The SFO started investigating Unaoil in March 2016 following the publication of journalists' reports, based on leaked emails and documents, which implicated the Monaco-based oil and gas consultancy firm in an international corruption scandal.

Owned and controlled by the Ahsani family, Unaoil allegedly made significant corrupt payments to secure lucrative oil projects in Iraq as the country sought to reconstruct its chief export following the fall of Saddam Hussein.

The SFO subsequently charged four former staff of Unaoil and SBM Offshore, a Dutch energy services company, with conspiracy to make corrupt payments to influence tenders for these infrastructure projects in Iraq's oil industry:

– Ziad Akle, Unaoil's former Iraq territory manager;

– Stephen Whiteley, former vice president of SBM Offshore and subsequently Unaoil's general territories manager;

– Basil Al Jarah, Unaoil's former partner in Iraq; and

– Paul Bond, SBM Offshore's former sales manager.

Summary

In July 2019, Al Jarah, pleaded guilty to five offences of conspiracy to give corrupt payments.

The trial of the other three defendants heard that they conspired with members of the Ahsani family and with others to pay Oday al Quraishi – an official in the state-owned South Oil Company – to influence tenders in favour of their clients, including SBM Offshore. The trial also heard that Unaoil paid officials in the Iraqi Ministry of Oil through another middleman, Ahmed Al Jibouri, in order to get projects approved for its clients. The SFO said that corrupt payments worth $5.4 million went to senior figures in the Iraqi Ministry of Oil to secure approval for construction projects, including two pipelines worth $800 million.

In July 2020, Ziad Akle was found guilty of two counts of conspiracy to give corrupt payments and Stephen Whiteley was found guilty of one count to give corrupt payments. The jury could not reach a verdict on the case of Paul Bond but, following a retrial in February 2021, Bond was found guilty of two counts of conspiracy to give corrupt payments.

The prosecutions were a much-needed win for the SFO, but the success was short-lived. In December 2021, the Court of Appeal overturned Ziad Akle's conviction and

denied the SFO an all-important re-trial. The judgment criticised the SFO's conduct in the case, finding that the refusal to disclose documents requested by the defence was a "*serious failure by the SFO to comply with their duty*". The court described this disclosure failure as "*particularly regrettable given that some of the documents had a clear potential to embarrass the SFO*".

This stinging defeat for the SFO has left the entire Unaoil case on shaky ground. Akle's success on appeal prompted Paul Bond to challenge his own conviction, arguing that the SFO's disclosure failures equally denied him a fair trial. The Court of Appeal upheld Bond's appeal in March 2022 and the SFO has not sought a retrial.

These quashed convictions have left the SFO with significant costs orders only months after the failed prosecution of two Serco executives caused the agency to exceed its annual spending limit by £2.55 million.

Yet the fallout from the quashing of Akle and Bond's convictions extends far beyond the legal fate of the Unaoil case. The SFO's conduct in the case bears a number a concerning features which will be subject to independent scrutiny of the agency's modus operandi – including unusual contact between the SFO's director and a private investigator, and serious disclosure failings about this contact that led to the quashed conviction.

In December 2021, the Attorney General announced an independent review into the SFO's handling of the Unaoil case. Retired High Court judge and former Director of Public Prosecutions, Sir David Calvert-Smith, has been tasked to get to the bottom of why the disclosure failings in the Unaoil case happened and what its implications are for "*the policies, practices, procedures and related culture of the SFO*". This independent review, which is due to report by the end of May 2022, will be closely watched to see what impact it may have on the future direction of the SFO.

It is not yet clear whether other controversial aspects of the case will be examined during the review. These include the behaviour of the US authorities in relation to the SFO's investigation, and the unfair and wrongful dismissal of the SFO's senior investigator overseeing the case which the employment tribunal found was done at the behest of US authorities.

**Why does this case matter?**

1. The SFO's serious disclosure failures led to two quashed convictions only months after the trial of former Serco executives collapsed because the SFO failed to disclose evidence to the defence. These botched disclosures raise concerns about whether there are more systemic problems in the SFO's strategy and conduct of high-stakes cases. It is critical that lessons are learned from the Attorney General's independent review in order to restore confidence in the SFO's capacity to bring home successful prosecutions.

2. Unaoil was a key test of whether the SFO can successfully prosecute employees of an intermediary company charged with paying bribes overseas on behalf of large western corporations. The case also shone a light on how the US-trained Director of the SFO, Lisa Osofsky, hoped to bring US-style tactics to the UK, particularly the significant discretion afforded to prosecutors in how they act and broad powers to negotiate sentences for cooperating witnesses.

3. The case exposed counter-productive competition between global enforcement agencies. The US Department of Justice (DOJ) sought to undermine the SFO's investigation and to interfere with who was in charge of the investigation, culminating in the unfair and wrongful dismissal of Tom Martin, the case controller overseeing the SFO case. While the SFO's relationship with the DOJ dramatically improved after Osofsky took over leadership of the SFO, it is not yet clear what tangible benefit the SFO has derived from this new inter-agency dynamic.

4. A key question left at the end of the trial is why the victims of corruption in Iraq did not get more of a hearing in court. The focus throughout was on those implicated in bribery allegations while the harms of their corruption were left unaddressed. Yet the Unaoil scandal forms part of a toxic legacy in which pervasive corruption has destabilised efforts to secure peace in Iraq and contributed to the rise of ISIS in the country. This untold story reflects a wider problem with the way that corruption cases are prosecuted, as the voices of victims and an assessment of the harms of corruption are usually absent from the courtroom.

5. Serious concerns remain about the absence of senior executive accountability in this case. The bosses of those prosecuted, who cut a deal with the DOJ, look set to get off more lightly than their employees. While these US deals do not preclude the prosecution of Ata Ahsani in the UK, we have raised concern with the SFO that no enforcement action appears to have been taken by the SFO against him or any

assets in the UK potentially bought with Unaoil earnings. This case highlights the importance of the Law Commission's ongoing review which is also looking at how senior executives are held criminally liable. Urgent reforms are needed to ensure that individuals who are the driving force behind corporate wrongdoing can be brought to justice.

## Cooperating witnesses and the Tinsley affair

At the heart of the SFO's troubles in the Unaoil case is the contact between senior individuals at the agency and a US-based agent or "fixer". Ahead of the trial, the SFO disclosed a series of schedules that alluded to contact between the SFO and David Tinsley, the American director of "the world's first and only Judaeo-Christian due diligence agency" called 5 Stones Intelligence. Tinsley acted on behalf of the Ahsani family and presented himself as a "deal maker" in backroom negotiations between prosecutors and those under investigation in the US and UK.

During the trial it emerged that Tinsley, who was not a lawyer, approached Akle and Al Jarah directly, claiming he could have off the record contact with the SFO's Director, Lisa Osofsky, and that he was in a position "*to stop everything in the UK and move the case to the US*". Tinsley developed direct communications with Osofsky, who is said to have described Tinsley as "*a gift from god.*"

Eventually, Basil Al Jarah pleaded guilty to five counts of conspiracy to give corrupt payments, while Zaid Akle did not. Although more serious offences were taken into consideration at Al Jarah's sentencing, his term of imprisonment was reduced from 10 to 3 ½ years due to his early guilty plea and co-operation. In June 2021, the SFO secured a £402,465 confiscation order by consent against Al Jarah.

Akle's defence claimed that Tinsley was instrumental in Al Jarah's guilty plea and sought to have the case thrown out on the grounds that the SFO's relationship with Tinsley flouted legal and regulatory standards and breached his right to a fair trial. Rejecting the defence's argument, the trial court found that Al Jarah pleaded guilty on his own accord and not as a result of Tinsley's involvement. However, it was scathing of Osofsky's dialogue with Tinsley, and declared that the agency's contacts with Tinsley should be "*comprehensively reviewed to see what lessons can be learned from it*".

# Exhibit E

# Independent Review into the Serious Fraud Office's handling of the Unaoil Case – R v Akle & Anor

Sir David Calvert-Smith

Delivered to Attorney General June 2022, published in July 2022

# Contents

# Chapter 1 – Introduction

1. On 10th December 2021 the Court of Appeal (Criminal Division) (CACD) delivered judgment in the case of Ziad Akle (ZA) and Paul Bond (PB) v The Crown.[1] It allowed ZA's appeal against conviction on two grounds and dismissed Bond's appeal against sentence.

2. In its judgment the CACD accepted the submissions of ZA on two grounds:

    a. That the Serious Fraud Office (SFO) failed to comply with its disclosure obligations and that the judge had wrongly refused to order further disclosure – in particular with regard to the extent of the SFO's contact with David Tinsley (DT), a 'non-legal representative' or 'fixer' hired by alleged co-conspirators of ZA who had been extradited to the USA and had entered into a plea arrangement with the US authorities.

    b. That the SFO's failure to comply with its disclosure obligations resulted in ZA being unable to adduce evidence to show that a co-accused, Basil Al Jarah, who had pleaded guilty to the two counts on which ZA was subsequently convicted and whose pleas of guilty were admitted in evidence by the trial judge after argument, was not in fact guilty and had/may have pleaded guilty after improper pressure had been exerted on him by DT.

3. The court echoed critical comments which had been made at trial by the judge concerning the contact between SFO personnel, from the Director of the SFO (the DSFO) downwards, and DT; and went on to criticise the way in which the SFO had handled its disclosure obligations in that respect under the Criminal Procedure and Investigations Act 1996 (CPIA). In giving his ruling at the trial the judge had suggested that following the trial

[1] [2021] EWCA Crim 1879

a review of the practice of dealing with 'non-legal representatives' or 'fixers' at the SFO should be carried out.

4. In October 2019 General Counsel for the SFO issued guidance effectively banning such contact in future and by May 2020 the SFO had issued a formal protocol to its staff effectively prohibiting such contact save with the express agreement of General Counsel for the SFO.

5. Following the CACD decision I was approached in late January 2022 and asked if I would conduct a review of the SFO under terms of reference derived from the findings of the CACD. In February 2022 Terms of Reference for my Review were finalised.

6. During the course of this Review the CACD heard and allowed an appeal by PB against his conviction. The CACD's reasoning broadly echoed that set out above as it related to ZA. That judgment, though considered by the Review, did not change the Terms of Reference nor the evidence sought.

7. The immediate reaction to the announcement of a review of this kind following a decision of the CACD might be to wonder why – when the CACD has so clearly set out why the conduct of the SFO had been such as to require the quashing of ZA's convictions – any further inquiry into the case was necessary. The Terms of Reference do however go considerably wider than the terms of the CACD decision – in particular asking the Review to consider other matters *"including as to the SFO's policies, practices, procedures, and related culture"*.

8. It is right to emphasise at the outset that it is not the purpose of this Review to comment upon or reach conclusions upon the structure, conduct or culture within the SFO more broadly than that which is relevant to the Unaoil case, and the failures identified by the CACD in the conduct of that case.

9. In the conduct of this Review, I have been greatly assisted by both the Attorney General's Office (AGO) and the SFO in the provision of documents, in the facilitation of access to members of staff and in answering my questions. Both the AGO and the SFO have cooperated fully with this Review. I am also grateful to the individuals who gave up their time to provide me with written submissions or evidence.

**The Review team**

10. I have also been enormously assisted by Nikita McNeill of counsel and Anthony Rogers of the Crown Prosecution Service Inspectorate. Nikita McNeill is a barrister and member of the Attorney General's civil panel. She has practised in crime, including financial crime, and specialises in inquiry law. Anthony Rogers is the Deputy Chief Inspector of Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI). He has previously taken part in inspections of the SFO by HMCPSI and attended meetings of the Management Strategic Board (see Chapter 6 paragraph 7) between the DSFO and the Law Officers.

**Evidence gathering**

11. We asked for and received:

    a. All material available to and prepared for the CACD;

    b. The disclosure schedules prepared for trial;

    c. Notes of conferences with independent counsel, and advices received from them;

    d. Documents prepared for the trial and for the purpose of responding to defence applications for disclosure;

    e. Internal case documents and communications with the case team;

    f. 'Case Assurance' material;

g. The relevant policies and guidance issued by the SFO before, during and since the trial of ZA;

h. Written answers and documents from individuals within the AGO in relation to the appointment of Lisa Osofsky (LO) as the DSFO and the management of the AGO's superintendence functions, including from former Law Officers;

i. Written answers to questions asked of key personnel at, and counsel instructed by, the SFO, in particular concerning contact with DT and the recording and disclosure of that contact.

12. Detailed questions and the relevant documents required to answer them were sent to individuals whom we identified as relevant to the Terms of Reference. This included current and former SFO employees and individuals working within the AGO.

13. The Review was not able to obtain evidence from the former Director General of the AGO. She has since been appointed to the High Court Bench. As a result, and following consultation, she told the Review that she regretted that she was not *"now in a position to assist [the Review] with written answers as you have requested"*.

14. All written responses were carefully considered and, in some cases, further follow up questions sent until we were satisfied that we had all relevant information from that individual. Everyone to whom we wrote was also offered the opportunity to meet us in person to provide any further evidence they may have, but none chose to take up this opportunity. We did, however, meet and question the DSFO in person following the receipt of all the evidence and prior to the preparation of this report.

15. We also received correspondence from a number of individuals and organisations who believed that they had knowledge or material that would assist the Review. These included:

a. DT;

b. The former Unaoil Case Controller, Tom Martin (TM);

c. Paul Hastings LLP, solicitors who acted for ZA at his trial and appeal;

d. (Jointly) the SFO Departmental Trade Unions (DTUs).

16. It is important to note that it is not the purpose of this Review to comment upon the conduct of DT, or about the use of non-legal representatives in general. The Terms of Reference are clear that it is the SFO's response to, and management of, contact with DT which is the subject of this Review. For that reason, we did not consider it necessary to write to or meet DT. Nonetheless his submission, as with all potentially relevant submissions, was carefully considered.

17. Likewise, it is not the role of this Review to 'retry' the Employment Tribunal case brought against the SFO by Mr Martin, albeit that his involvement, and subsequent removal from, the role of Case Controller does feature in the summary of the events set out below. The letter from Paul Hastings helped to reinforce the conclusions reached by the CACD and followed by this Review. The DTUs' letter has contributed significantly to the findings and recommendations concerning 'culture'.

# Chapter 2 – The Serious Fraud Office

1. The Serious Fraud Office (SFO) was created by the Criminal Justice Act 1987, itself a result of a report by Lord Roskill published in 1985. Its main difference from the Crown Prosecution Service (CPS) (then newly created by the Prosecution of Offences Act 1985 following a Report in 1981 and a White Paper in 1983) is that it combines the investigative and prosecutorial functions within a single organisation. In addition, the SFO was granted powers to require cooperation from potential witnesses in investigations of serious fraud, a power unavailable to the CPS. At any time, the SFO has roughly 140 open cases, including 'proceeds of crime' cases and the provision of international assistance. Their cases are divided roughly equally between fraud and bribery and corruption.

2. It is unnecessary to recite the various high-profile situations which have over the years since then caused the public, the press, the courts and parliament to review or question the operation and structures of the SFO either in general or in connexion with a particular case. These have often been the result of one or more of the following:

    a. The fact that the majority of its cases involve huge sums of money;

    b. The fact that those suspected of or charged with offences often have access to such sums and/or to influential supporters and/or sections of the media;

    c. The fact that its cases are often extremely complex and require the consideration of huge quantities of information, which must be trawled through to extract evidence which may implicate suspects as well as evidence which may assist suspects in their defences and thus require disclosure in the event of a prosecution.

3. In addition to fraud, pure and simple, the SFO has within its remit a subgroup of offences which can loosely be described as fraudulent since they involve attempts to gain or give an unfair advantage in the award of contracts or the like, namely offences under the

Prevention of Corruption Acts 1889, 1906 and 1916, replaced, since the events alleged in the Unaoil (PVT01) case and others, by the Bribery Act 2010.

4. One of the requirements of the regime in place before the enactment of the Bribery Act 2010 was that any prosecution under the 1889, 1906 and 1916 Acts required the consent of the Attorney General or Solicitor General (the Law Officers). Since the 2010 Act the consent requirement now lies with the DSFO or Director of Public Prosecutions as the case may be.

5. SFO officers can compel people and organisations to provide information in relation to a case. SFO officers can also use these powers at a 'pre-investigation' stage in suspected cases of international bribery and corruption.

6. The SFO is also one of only two agencies with the power to seek Deferred Prosecution Agreements, and one of five agencies in England and Wales and Northern Ireland with powers to undertake civil recovery in the High Court.

**SFO governance structures**

7. The SFO is headed by the DSFO. The DSFO is an Accounting Officer. The post carries personal responsibility for the efficient and effective management of the organisation, and for reporting to parliament. Internally the DSFO is responsible for the setting of the organisation's professional standards and for leading the effective discharge of its corporate functions. The DSFO works with, and is responsible for managing, the SFO senior team.

8. The senior staff structure of the SFO includes: General Counsel, the Chief Operating Officer (COO) and, since 2020, a Chief Capability Officer (CCO). There is a range of structures designed to support the governance of the SFO, including the SFO Board, the Executive Committee, and the Audit and Risk Committee.

9. General Counsel is responsible for the legal oversight of all the SFO's work. When Sara Lawson QC (SLQC) began as General Counsel in 2019 there was one Assistant General Counsel. She is now supported by three Assistant General Counsel, with the additional support having been recruited in June 2020 and November 2021.

10. The COO is responsible for the management of five operational divisions – three Casework Divisions, the Intelligence Division and the Proceeds of Crime & International Division.

11. The CCO is responsible for the management of four divisions – the Digital and IT Division including Digital Forensics and E-discovery teams, the Chief Investigator Division, Corporate Services including Commercial, Finance and HR, and the Strategy Group. Prior to the introduction of the post of CCO in August 2020, these responsibilities fell to the COO.

**The role of the SFO investigator**

12. SFO investigators have a broadly comparable role to that of a police officer or a National Crime Agency officer. Their role is to investigate a case, following its acceptance by the DSFO, pursuing all reasonable lines of enquiry, whether these point towards or away from guilt, with a view to developing the evidence necessary for a decision to charge and subsequently prosecute a suspect. They work closely with both investigative lawyers and prosecutors, as well as with partner law enforcement agencies, throughout the investigation and prosecution.

13. SFO investigators report through the line management chain on the case or cases they work on – ultimately to the Case Controller. The Chief Investigator acts as the head of profession for all investigators across the SFO and runs the trainee investigator programme.

14. SFO investigators do not have the same powers as a police officer or National Crime Agency officer. They do have access to powers under section 2 of the Criminal Justice Act 1987, to compel people and organisations to provide information. They do not, however, have the power of arrest under section 24 of the Police and Criminal Evidence Act 1984 and do not have access to the same surveillance powers as some law enforcement agencies. Where these powers are required the SFO works with police forces and/or the National Crime Agency so that they may execute such powers alongside SFO investigators.

15. The SFO also employs financial investigators, who use powers under the Proceeds of Crime Act 2002 to identify proceeds of crime with a view to recovering those proceeds either through post-conviction confiscation or civil recovery orders.

**The role of the Case Controller**

16. SFO case teams are 'multidisciplinary'. A case team is led by a Case Controller (who may be a senior lawyer or investigator) who oversees lawyers, investigators, forensic accountants and other specialists, as well as instructing counsel from the outset.

17. The Case Controller is accountable for the management of cases of serious fraud, bribery and corruption. The Case Controller has the principal case management role, including the oversight of cases with a multi-agency and/or an overseas law enforcement component. Case Controllers plan and define the strategy for investigation, prosecution and asset recovery (including civil asset recovery) at appropriate stages of the case with input from relevant others.

18. During this period Case Controllers were responsible, working with the Head of Division, for 'case strategy', including decisions on which cases should or should not be pursued. Case Controllers are responsible for liaising with their Head of Division to agree the resources required for their case workload – including any specialist or temporary support

– and for keeping case management plans under review to ensure that those resources are deployed to the best effect.

19. The Case Controller is also accountable for ensuring that the staff allocated to the case work together cohesively and professionally, providing them with regular feedback on performance, contributing to their staff appraisals and addressing their development needs.

**Casework assurance**

20. At the time, decisions on individual cases were taken by Case Controllers, supported, challenged and guided by their Head of Division and, where appropriate, General Counsel. To support this process there are a number of casework related committees and groups.

21. The Case Evaluation Board (CEB) is chaired by General Counsel and enables the DSFO to make an informed decision based on its recommendation to initiate or decline an investigation. It meets when necessary and reports to the DSFO. Its 'core members' are General Counsel, the COO, the Chief Investigator and the Chief Intelligence Officer. A number of early CEBs for the Unaoil (PVT01) case took place in 2016 and the case was formally accepted on 22nd March 2016. Once the case was accepted, CEBs cease and assurance meetings take the form of Case Review Panels.

22. The Case Review Panel (CRP) was chaired by General Counsel. The general purpose of the CRP was to ensure that sound judgment and appropriate investigative and legal expertise are being brought to bear on cases, and that they are progressing in an appropriate manner and complying with all relevant legal and operational guidance. Its core membership includes a wider range of key contributors than the CEB and incorporates those with legal and investigative expertise. Since May 2019, following the arrival of SLQC as General Counsel, there has been a refocus of case assurance. The

aim is that all cases will be scrutinised at least twice per calendar year but at a minimum once.

23. The Unaoil case was considered a case of some importance within the SFO. During the tenure of Sir David Green QC as the DSFO, there were, for a time, weekly meetings between the DSFO and the then Case Controller, although those had stopped before he left in April 2018. In addition, in its early days the case was subject to occasional CRPs, chaired by the then General Counsel, Alun Milford (AM). The SFO Operational Handbook sets out that CRPs are only required pre-charge. Thereafter case assurance was the responsibility of the Head of Division and Case Controller.

24. Within the Operational Handbook there are a number of assurance requirements which fall to the Head of Division. A core part of this process is the Casework Assurance Framework. The purpose of the framework is to ensure that, at regular intervals, the Head of Division is provided with assurance that the case is progressing well and that any strategic areas of concern (specifically those identified either by way of a peer review conducted by a member of staff not involved in the case or at the CRP) are being addressed.

25. Broadly stated, the aim of the process is to:

    a. Guard against investigative drift;

    b. Ensure that the investigation is proceeding at a suitable pace;

    c. Ensure that the gathering of evidence is 'front-loaded' as much as possible;

    d. Ensure that, as investigations progress and develop, they do so on the basis of informed hypothesis and admissible evidence;

    e. Ensure that appropriate behaviours are being demonstrated by those charged with the leadership of the case;

f. Ensure adherence to approved professional practice, the standards set out in the Operational Handbook, and any other relevant SFO policies.

26. This is to be achieved by the Head of Division (HoD) undertaking a series of 'gateway reviews' at regular intervals in the life cycle of an investigation. It is suggested that the HoD should undertake a 'gateway review' with the Case Controller at the following times: one month after 'case take-on'; three months after 'case take-on'; and quarterly thereafter (or at such other interval as agreed between them or as directed by the CRP).

27. The matters that should be considered at each review are set out in the Casework Assurance Framework Record.

*"HoDs should themselves periodically examine / challenge the key documents e.g. the decision log / the disclosure strategy document.*"

28. In the Unaoil case, whilst the Review has seen evidence of regular, including up to daily, discussions between the Case Controllers and the Head of Division the notes kept are limited in their value and do not indicate a formal adherence to the expectations or requirements set out in the Casework Assurance Framework throughout. Having requested sight of formal (expected) documents as set out in the Operational Handbook it appears that casework assurance between the Case Controllers and Head of Division was informal as opposed to the formal expectation set out in the Operational Handbook.

29. Additionally, the SFO Operational Handbook also imposes the following requirements on Heads of Division for the management of disclosure in each case:

a. They must ensure that each investigation has an identifiable and sufficiently skilled prosecutor;

b. They must ensure that each investigation keeps proper records and an updated Disclosure Management Document; and

c. They should ensure that proper scheduling has taken place, including confirming that there are both sensitive and non-sensitive schedules of unused material.

30. In the Unaoil case we have found limited formal recording of decisions in line with the requirement set out in the Operational Handbook.

# Chapter 3 – Background to the Unaoil Case (PVT01)

1. The SFO had seven cases that were known as PVT01-PVT07. This Review has focused upon PVT01, referred to by the Review as the Unaoil Case.

2. The Unaoil group of companies was owned and run by the Ahsani family. It was founded in 1991 to provide oil and gas services. At the relevant time those services centred on the Middle East, Central Asia and Africa.

3. The Chairman and founder of the Unaoil Group of companies was Ata Ahsani (AA). He sat on Unaoil's Board of Directors. He is Iranian but holds a British passport and was resident in Monaco.

4. Cyrus Ahsani (CA), AA's eldest son, was the Chief Executive Officer of Unaoil and a Board Member. He is Iranian but holds French and British passports. He was resident in Monaco.

5. Saman Ahsani (SA), AA's second son, was Unaoil's Commercial Director and its Chief Operating Officer. He, like his father and elder brother, was resident in Monaco. He is Iranian but holds a British passport.

6. The allegations are summarised at paragraphs 9-21 of the CACD judgment:

> *"In the years following the fall of Saddam Hussein in 2003, the Government of Iraq sought to rebuild the country's infrastructure. Increasing Iraq's crude oil exports was a key objective and included the Iraq Crude Oil Export Expansion Project ('ICOEEP'). Nine potential projects were conceived, with a value of $1.9 billion.*
>
> *"The first project ('the SPM project') involved the installation in the Persian Gulf of Single Point Moorings. These are floating buoys which allow tankers to load oil*

*offshore. The second project ('the pipeline project') involved the installation and commissioning of two on-shore and off-shore pipelines. In respect of both projects, a competitive tendering process was used to select the companies to which contracts were to be awarded.*

*"The South Oil Company ('SOC'), an Iraqi state-run company which was responsible for oil in the south of Iraq, engaged Foster Wheeler ('FW'), a UK-based global engineering company, to compile a detailed specification for the tenders, evaluate the bids from interested companies on technical and commercial aspects, and then recommend the most technically and commercially compliant bid to SOC. That recommendation would then be passed to Iraq's Ministry of Oil for final approval. The prosecution case against all the accused was that they had been involved in bribing decision-makers in order to win ICOEEP contracts.*

*"Ata Ahsani and his sons Cyrus and Saman Ahsani owned and controlled the Unaoil group of companies. They held the offices of Chairman, Chief Executive Officer and Chief Operating Officer respectively. Both Akle and Whiteley were employed by Unaoil. BAJ, a friend of the Ahsanis, was Unaoil's Iraqi partner based in Iraq. It was alleged that Unaoil paid Oday a total of $608,000 for his personal benefit, in order to influence the terms and allocation of contracts to the advantage of Unaoil and its clients.*

*"Count 1 alleged that Akle, between June 2005 and May 2009, conspired with the Ahsanis, Basil Al Jarah (BAJ) and others, to give corrupt payments to Oday as inducements or rewards in relation to the affairs of the business of Oday's principal, the SOC, namely in obtaining confidential information regarding oil projects to be undertaken for the SOC. From April 2009 Oday was put on a monthly retainer – said to be a bribe – so that he could provide sensitive information about projects to the benefit of Unaoil.*

*"Count 2 concerned the manipulation of the tender process for the SPM project. It was alleged that between March 2009 and February 2010 Akle, Bond and Whiteley conspired with the Ahsanis, BAJ and others to give corrupt payments to Oday in relation to the recommendation and award of the contract for the SPM project to a company called Single Buoy Moorings Inc ('SBM'). Bond was an employee of SBM. BAJ was working to cement relationships and position Unaoil. By April 2009 SBM were expressing an interest in working with Unaoil and thereafter it was agreed that Unaoil would work on SBM's behalf to secure the project in return for a commission. Oday was deployed to obtain confidential information about FW's draft specification. Unaoil then used Oday to influence the specification in favour of their client, SBM. In January 2010 SBM were informed that FW would recommend them to SOC as the only technically and commercially compliant bidder.*

*"Count 4 concerned corruption at the Ministry of Oil in relation to the SPM project between March 2010 and August 2011. It was alleged that, having corruptly secured SOC's recommendation, SBM – through Bond – sought information from Unaoil as to the progress of the bid at the Ministry. Bribes were paid by Unaoil executives to senior officials in the Ministry of Oil in efforts to ensure that the Ministry approved the bid and that the contract was awarded to Unaoil's client SBM."*

7. SA was arrested in Monaco by means of a European Arrest Warrant in March 2016. BAJ was arrested in Manchester in the same month. In October 2016 Ziad Akle and in March 2017 Paul Bond (PB) were arrested in the UK.

8. The CACD judgment sets out, at paragraph 20, what followed.

*"The three Ahsanis were the subject of an SFO investigation. The SFO obtained first instance warrants against all three and sought to extradite Saman Ahsani from Monaco by means of a European Arrest Warrant. That investigation was however abandoned when the case against the Ahsanis was taken over by the US Department of Justice*

*('DOJ') following the extradition of Saman Ahsani from Italy by the US authorities. In due course, a deal was done between the Ahsanis and the DOJ. Ata Ahsani paid a penalty of $2.25 million and faced no further action. His sons Cyrus and Saman Ahsani negotiated plea agreements with the DOJ, under which it is expected they will serve no more than five years' imprisonment. By letter dated 26 April 2019, the SFO informed the lawyer acting for Cyrus and Saman Ahsani that the SFO would discontinue its investigation in respect of matters covered by the US plea agreements they had entered into on 25 March 2019. By letter dated 12 September 2019, the SFO informed the lawyer acting for Ata Ahsani that it was no longer in the public interest for the SFO to proceed with a prosecution of him in light of his agreement with the DOJ. On 15 July 2019 BAJ pleaded guilty to five counts of conspiracy to give corrupt payments. Other offences, involving bribery in relation to other contracts, were taken into consideration. He subsequently entered into an agreement with the SFO pursuant to the Serious Organised Crime and Police Act 2005 ('SOCPA'), and on 8 October 2020 was sentenced to a total term of imprisonment of three years six months, reduced from ten years by reason of his guilty pleas and co-operation."*

9. The taking over of the investigation by the US Department of Justice (DoJ) described by the CACD above was not welcomed by the SFO, which had caused the arrests to be made and had anticipated the return of the Ahsanis to England for trial here. It led to a deterioration in the relationship between the respective law enforcement agencies.

10. Months prior to SA's extradition the SFO was aware that he was in discussions with the US DoJ, although formal cooperation only commenced once he arrived in the US. In September 2018 the SFO was informed that he may also be willing to cooperate with the SFO. In October 2018 the SFO was made aware that CA and AA would also be prepared to cooperate with the UK authorities.

11. In November 2018 the DoJ communicated to the SFO that, having interviewed all three Ahsanis, the DoJ would like to look at a 'global resolution' for AA, CA and SA.

12. In December 2018, following discussions between the SFO and the DoJ, the SFO confirmed that the DoJ should operate on the understanding that the SFO was content for all of the conduct committed by SA and CA to be wrapped up within its proceedings as long as:

    a. *"that is sufficient to cover off the broad conduct that we have included in our indictment; and*

    b. *"any plea agreement reached with the suspects includes an express term requiring them to co-operate with the SFO, including an agreement to testify here if that becomes necessary."*

13. On 25th March 2019 CA and SA entered into plea agreements with the DoJ which involved them admitting their guilt in respect of various matters, including those for which the Attorney General had given his consent for the SFO to prosecute here, and cooperating with US and foreign law enforcement. They await sentence in the US on a date to be fixed. The DoJ also entered into a non-prosecution agreement with AA, which included a financial penalty.

# Chapter 4 – The SFO's relationship with the US Department of Justice

1. The conduct of the US Department of Justice (DoJ) during the Italian extradition proceedings summarised in Chapter 3 had caused serious tension between SFO officials and US Federal Bureau of Investigation (FBI) and DoJ officials. There were some within the SFO who felt that the Ahsanis should have faced justice within the UK and had been 'snatched away' by the US DoJ.

2. Tensions in the relationship between the SFO and the US DoJ during the course of the Unaoil investigation were also bound up with the alleged conduct of the first Case Controller Tom Martin (TM).

3. In June 2018 Mark Thompson (MT), who was the COO of the SFO and acting Director of the SFO (DSFO) following the departure of Sir David Green QC and prior to the appointment of Lisa Osofsky (LO), visited the US in part in an effort to reset and repair the relationship with the US DoJ.

4. Whilst he was there a senior DoJ official complained to him about an incident some two years earlier, in May 2016, in which it was alleged that TM had used insulting words towards an FBI official whilst having drinks with the US DoJ and the FBI. The allegation was first raised, informally, with the SFO some months afterwards but no formal complaint was made. TM denied that he had used the words alleged.

5. On 25th June 2018 a senior US official raised a complaint about the general level of cooperation between the SFO and the US DoJ but also specific issues about the alleged disrespectful conduct of TM.

6. On 17th July the same senior DoJ official sent an email to MT with an attachment from the Ahsani defence team, including a US Attorney called Rachel Talay (RT). The email attachment raised a number of allegations about TM. The following day, 18th July 2018, MT suspended TM and stated that the allegations were of serious misconduct. TM was subsequently dismissed. In due course he appealed against the decision and won his case. The SFO has been given leave to appeal (on all five of its grounds of appeal) and the appeal is due to be heard before the Employment Appeal Tribunal at the end of July 2022.

7. It is not the purpose of this Review to comment upon or make findings about the allegations against TM or his dismissal. The sequence of events serves only to demonstrate that at approximately the same time that LO was appointed and David Tinsley made his first contact with the SFO, senior managers in the SFO were anxious to find ways to work with the US authorities and to re-establish collaborative relationships with them.

# Chapter 5 – The appointment of Lisa Osofsky as the new Director of the SFO

1. On 20th April 2018 the Director of the SFO (DSFO), Sir David Green QC, retired after six years in post. This was a fixed term appointment, which allowed for a campaign for the recruitment of a replacement to commence in good time. In line with usual practice the recruitment exercise was conducted by the Cabinet Office (under Civil Service Commission rules) in conjunction with the Attorney General's Office (AGO). The closing date for the recruitment campaign was 5th February 2018. The COO, Mark Thompson (MT), acted as interim DSFO from 23rd April 2018 to 24th August 2018.

2. Following the Civil Service Commission-led process, including an interview comprising Lord Justice Leveson, the Director General of the AGO and an independent Public Appointments Commissioner, LO was selected as the preferred candidate by the Attorney General (AG). An announcement published on 10th April 2018 set out that the preferred candidate was currently undertaking the final stages of the appointment process and managing their exit from their current position.

3. The formal announcement of the appointment of LO was made on 4th June 2018, with the announcement stating that the new DSFO would take up office on 3rd September for a five-year appointment. Ultimately, LO started a week earlier than had been announced, on 28th August 2018.

4. As part of the recruitment process, and in line with usual practice for senior roles and appointments within the Civil Service, there was a 'fireside chat' between the AG and the preferred candidate(s). This meeting is an opportunity for the Minister to assess the suitability of, and speak with, the candidates who have been assessed by the recruitment panel as suitable for appointment. The 'fireside chat' between the then AG, Jeremy Wright

QC (JWQC), and LO took place in February 2018. The Review was told that there was no discussion of specific casework and the Unaoil case was not raised or discussed by either party.

5. LO is a UK qualified barrister and a qualified US lawyer. Prior to her appointment as the DSFO she had over 30 years' experience of focusing on financial crime in both the UK and US, including as a federal prosecutor. She spent five years as Deputy General Counsel and Ethics Officer at the FBI, three years as Money Laundering Reporting Officer at Goldman Sachs International, and seven years in the Corporate Investigation Division of Control Risks. Immediately before her appointment LO was Regional Chair at Exiger, a global firm dealing with investigative, compliance and assurance activities which include assessing the money laundering and sanctions programmes of global financial institutions under orders imposed by prosecutors and regulators.

6. In light of the background to the Unaoil case and the concerns about the relationship between the SFO and the US authorities, the Review asked JWQC whether LO's status as a US qualified lawyer with previous experience of working at a high level in the FBI played a part in her appointment. JWQC said that while her US background was a relevant part of her application her appointment was simply on the basis that she was the best qualified candidate all round rather than a deliberate decision to begin the process of repairing the damaged relationship between the prosecution authorities of the two countries.

# Chapter 6 – Superintendence of the SFO and Lisa Osofsky's start in post

**Background**

1. The DSFO is an Accounting Officer, which means that *"the post carries personal responsibilities to manage the organisation efficiently and effectively and to report to parliament accurately, meaningfully and without misleading"*.[2] Internally, the DSFO is responsible for the setting of professional standards for the SFO and for leading the effective discharge of the SFO's corporate functions.

2. Under section 1(2) of the Criminal Justice Act 1987, the DSFO discharges their functions under the *"superintendence of the Attorney General"*. There is no statutory definition of *"superintendence"*. In practice, superintendence should involve effective oversight of strategy, risks, performance, resources and reputation as well as the effective delivery of cases. The Law Officers hold the organisation to account, through the DSFO. They provide support and challenge on organisational and operational (casework) issues.

3. At the relevant time, the relationship between the DSFO and the Law Officers was governed by a protocol signed in 2009. In early 2018 the AGO embarked on a programme of work to consider what may be needed to reform superintendence arrangements. This work led in due course to revised individual framework agreements (including one between the AG and the DSFO). The new framework agreement was published in January 2019.

2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486677/AOs_survival_guide__Dec_2015_.pdf

4. While the SFO makes its own decisions whether to charge a person or company there are exceptions, in particular relating to cases where, by statute, such as the Prevention of Corruption Act 1906, the consent of the AG is required to commence a prosecution.

5. Paragraph 13 of the 2019 framework agreement sets out the position:

> *"The Director is responsible for deciding which criminal investigations the SFO should open and of those which should be prosecuted. The Director may from time to time promulgate guidance or principles about how cases are selected for investigation, in consultation with the Attorney General and other law enforcement agencies. The Director exercises independence in individual casework decisions (both investigation and prosecution), in accordance with this agreement."*

6. In line with the framework agreement there are now formal arrangements designed to carry out superintendence. There are also separate and distinct Ministerial Strategic Board (MSB) meetings.

7. MSB meetings take place three times a year. The first was on 21st January 2019. The Board's membership comprises the Law Officers, the DSFO, the Director General of the AGO, the COO and CCO and an appropriate non-executive director of the SFO. Her Majesty's Chief Inspector of the CPS attends by invitation, though in practice the Chief Inspector (or his deputy) has attended every meeting.

8. In summary the role of the MSB is to:

    a. Endorse and oversee the strategic direction of the SFO via an agreed *"multi-year"* strategy which aligns with wider government strategies;

    b. Agree the SFO's priorities for engaging with other government departments, law enforcement agencies, the wider criminal justice system and international partners;

c. Agree and support policy development where it impacts on wider government priorities;

d. Approve the SFO business plan, endorsing the DSFO's annual report and reviewing the budget and financial management, performance, efficiency, effectiveness and reputation of the SFO in year; and

e. Identify and monitor areas of strategic risk which may impact on the SFO's performance and support the SFO in managing them.

9. Superintendence meetings take place three times a year. They are attended by the Law Officers, the DSFO, the Director General of the AGO and the SFO's General Counsel. These meetings typically focus on the SFO's casework and provide an opportunity for a broader discussion of topical issues relating to the wider operation of the SFO's business. In each meeting, the SFO will:

a. Discuss, at a general level, casework – in particular, cases which are sensitive, potentially precedent-setting, or which reveal potentially systemic issues for the framework of the law or the criminal justice system; and

b. Provide assurance to the Law Officers that casework decisions have been properly made, in particular where there has been public or parliamentary scrutiny.

10. As well as the formal MSB and Superintendence meetings there are regular meetings held between the AGO and SFO at official level. These meetings cover day to day business. More informal arrangements operate to ensure that the machinery of government works effectively so that Ministers and officials can share information, that the operation of the SFO is supported, and that Ministers can be briefed and made aware, if necessary, of issues that may arise in the more formal settings of the MSB and Superintendence meetings.

**Oversight of the Unaoil Case**

11. We requested any papers that may have been shared at official level relating to the Unaoil case. Having seen the papers for MSB and Superintendence meetings conducted during the relevant period, it is clear that the meetings took place regularly and generally achieved the aims set out above. The Review accepts that Unaoil was one of many cases being dealt with by the SFO and that, given some of the other high profile and complex cases that the SFO was handling, it is not surprising that that it did not feature in specific discussion at all Superintendence meetings.

12. We have considered the case lists provided by the SFO to the AGO to support Superintendence meetings during the relevant period. The format for the case list was agreed between the SFO and the AGO. However, the Review found that the information included about the Unaoil case was limited and did not cover the issues which the Review has identified. For a number of Superintendence meetings between 2018 and early 2020, the text relating to the Unaoil case did not change even though there had been a number of significant case developments between the meetings.

13. The Review recognises that it is neither possible nor appropriate for the Law Officers to be aware of anything but the limited summaries of case details given the range of high profile and sensitive cases being dealt with at any one time. However, given the range of issues that the Unaoil case raised and the impact that the case had on US/UK relationships, it is somewhat surprising that the information provided was limited to:

> *"Criminal investigation. The Attorney General has given consent in relation to the first strand of the investigation and charges have been brought in relation to several individuals. Monaco recently informed us that they have refused our request to extradite one of our suspects. We are continuing to put together papers with a view to seeking Counsel's advice on a second strand on which consent will be sought thereafter."*

14. Such anodyne details were hardly helpful to allow for a meaningful degree of understanding and challenge.

15. The weaknesses within the contents of the case list summary were more pronounced prior to the arrival of the new General Counsel. Sara Lawson QC (SLQC) has established and developed more appropriate processes to support effective case handling and management of discussions with the Law Officers at Superintendence meetings.

16. Of course it is for the SFO to decide, subject to particular requests from the Law Officers, which cases, and how much information, it chooses to include on the list it shares with them, but this approach does bring with it a degree of risk. Having considered the Unaoil case in detail it strikes the Review that their superintendence role can provide a benefit in individual cases. In this case they were unable to provide any such benefit as a result of the level of detail set out above.

17. We are not recommending that this level of scrutiny should impinge on the independence of the casework decisions of the SFO, but it may be sensible for the AGO and SFO to discuss at official level how there can be more meaningful discussion of detail in cases in which there are obvious risks and issues, as in the Unaoil case. A short summary on a case list does not lend itself to any degree of effective challenge, nor is it likely to provide assurance to the Law Officers that casework decisions have been properly made, particularly where there is public or parliamentary scrutiny, which is one of the aims of Superintendence meetings. This applies with particular force to cases in which the AG's consent is required.

**The arrival of Lisa Osofsky (LO)**

18. Prior to taking up her post LO met the Director General of the AGO. During the conversation she was provided with a list of useful contacts. The list included a number of senior officials across government and other 'stakeholders' who would be able to provide useful insights

into the issues facing the SFO and views on key strategic matters. At the same meeting there was some discussion on matters such as risks and concerns that the AGO had about the SFO and from whom, within the SFO senior leadership team, it would be useful for LO to take advice. The interim DSFO, MT, remained in the organisation and had reverted to his role as COO. LO particularly recalled that he was commended to her as someone she could rely upon.

19. Whilst there was a degree of continuity of experience for the DSFO to call on, and the established Private Office and other members of the senior management team were all available for advice, the DSFO told the Review:

> "*A tailored induction upon arrival to support my understanding of the Civil Service generally and the policies and practices would have helped. Items as basic as the expectation that all meetings would be recorded in writing were not part of any training I received and would have been of great benefit. It would have been helpful to understand the Civil Service recruitment process better. A senior-level Civil Service mentor might have assisted but would not necessarily have had access to the sorts of facts and operational information that confronted me during my early weeks on the job … I am not sure how much assistance support from others outside the SFO would have offered. I did attempt to learn as much as possible about the role from former SFO Directors, a former Attorney General, a former Solicitor General, the then Cabinet Office Head of Propriety and Ethics, the then head of the Government Legal Department, experienced barristers, as well as the President of the Queen's Bench at the time. In retrospect, a senior-level civil servant available for monthly meetings for the first six months would have been a good source of information about joining the Civil Service for the first time.*"

20. LO told the Review that there was nothing offered to her which could be viewed as induction and support for someone like her with no Civil Service experience.

21. The AGO indicated that as the DSFO role is a senior civil service position, being equivalent to the 'Director General level' in the core civil service the nature and level of induction and ongoing support that could reasonably be expected (and required) needed to be calibrated accordingly:

> *"…the SFO Director role is a Senior Civil Service position. It is equivalent to the Director General level in the core Civil Service hierarchy (i.e. SCS pay band 3). The nature and level of induction and ongoing support that could reasonably be expected (and required) has to be calibrated accordingly. Putting this another way, whatever their background, an official as senior as the SFO Director can be expected to operate more autonomously from day one than a recruit at a more junior level. As such, one would generally expect the AGO Director General to have a more 'hands off' role with the SFO Director than would be the case with a more junior official."*

22. LO was offered some support from Cabinet Office. This included a one-to-one conversation with the Cabinet Office talent team and also an invitation to take part in a Director General induction programme; the first such programme that was available for the DSFO to attend was in January 2019.

23. As set out elsewhere in this Review, within a few days of her arrival LO was faced with having to make some sensitive and serious decisions relating to the Unaoil case. On 31st August 2018 she was approached by a former US colleague who recommended a meeting with David Tinsley and soon afterwards she was faced with the decision concerning the dismissal of the former Case Controller.

24. It is clear that LO was faced with a difficult situation very early in her tenure and made a number of mistakes and misjudgments which, with the benefit of hindsight, she now accepts.

25. There is no doubt that LO's experience was extensive, including as it did senior positions in other organisations, and no doubt extremely valuable. However, in future, if an appointee does not have previous experience of working in the Civil Service or the public sector generally, there must be a clear 'personalised' programme of induction which goes beyond the expectations set out in the Civil Service Code or the Civil Service: Values and Standards of Behaviour.

# Chapter 7 – David Tinsley's contact with the SFO

1. The Review has had access to a complete schedule of all contact between David Tinsley (DT) and SFO staff prepared for the Court of Appeal (Criminal Division) (CACD), as well as any underlying documents recording that contact. It is not the purpose of this chapter to list every single incidence of contact but to provide a picture of the frequency and the nature of discussions between DT and SFO staff.

**Initial contact from David Tinsley (August-October 2018)**

2. In late 2017 the Ahsanis engaged DT, a former US Drug Enforcement Agency (DEA) agent, to assist their negotiations with the DoJ and SFO. DT runs 5 Stones Intelligence, which is based in Florida and is described in its published material as *"a leading intelligence and investigative company"*. DT is not a lawyer but worked alongside US lawyer Rachel Talay (RT). DT told this Review that he objects to the description of his role as that of 'fixer' and that he was instructed to *"bring a fresh perspective to resolving the investigation and find a path by which the Ahsanis could cooperate with both the UK and US."*.

3. On 26th July 2018 LO, as the newly appointed DSFO, met the AG, JWQC, for an informal meeting. We have seen the briefing note prepared for the meeting by the AGO. There was no reference to the Unaoil case or to the problems in the DoJ/SFO relationship. JWQC remembers no discussion of individual cases at that meeting.

4. On 10th August 2018 the COO Mark Thompson (MT), who was about to go on leave for two weeks *"until the day you take up office"*, sent LO a File Note concerning the PVT cases. The note attached a peer review of all seven PVT cases (PVT01-PVT07) for which

Tom Martin was Case Controller. The peer review expressed serious concerns about the handling of some of the PVT cases thus far, though it had little focus on the PVT01 case.

5. LO started work on 28th August 2018. On 31st August 2018 a former FBI agent, known to the new DSFO from her previous employment in the UK, contacted LO and advised her to meet DT.

6. In view of the timing of this introduction to DT, the Review was anxious to discover whether the DSFO was aware that DT, or at least someone performing that role, would seek to approach her/the SFO in an attempt to 'sort out' the Unaoil case. The DSFO has assured the Review, both in writing and orally, that she had no such forewarning. She had no idea why her contact had advised her to meet DT and had – until she met him – no idea of what DT did for a living.

7. Before meeting with DT, the DSFO consulted MT and Kevin Davis (KD), Chief Investigator at the SFO, and her Chief of Staff. She was advised by all three that she should meet with him initially but then to hand any further contact over to KD. MT told the Review that the purpose of this first meeting was to hear what DT had to say *"in an open-minded fashion without any fixed ideas as to the outcome"*.

8. On 20th September 2018 DT contacted the DSFO's Chief of Staff and asked to meet the DSFO on the basis that there were *"potential collaboration opportunities"* and that such contact could be *"most beneficial for the SFO"*. The following day he sent a text to the DSFO on her personal telephone asking for a private meeting. She replied saying that she was *"super honoured that you are coming my way"*.

9. SFO policy is clear that individuals should not use their personal devices for official business. DT had, however, obtained the DSFO's personal telephone number from her former colleague. As the DSFO outlined to the CACD, it was usual for her in previous posts to have used a personal mobile on which all work would be conducted. It is therefore not

surprising that when she was contacted by text on 31st August on her personal mobile she answered.

10. The Review can understand why she used and continued to use her personal phone to communicate with DT. It is the view of the Review that there was no bad faith in the way that LO used her personal mobile but, as LO has acknowledged, it was unwise to do so. In this instance it no doubt enabled DT to tell his clients and perhaps others that he had a 'direct line' to the DSFO.

11. On 22nd September 2018 DT asked the DSFO if he could introduce her to RT, who was a lawyer representing the Ahsanis. The DSFO for her part wanted DT to meet KD, the SFO's Chief Investigator, who would be DT's future point of contact at the SFO.

12. A meeting was fixed for 25th September 2018. During the first half an hour the DSFO met with DT alone. They were then joined for half an hour by RT. Following this, DT and RT attended a meeting with KD and MT, without the DFSO.

13. No note was taken of the DSFO's meeting with DT alone or with DT and RT together. It should have been. Although the DSFO says that no reference was made to the Unaoil case and that the discussion was in general terms about the need to create better relations between the SFO and the US DoJ/FBI, the Review is nonetheless surprised that the DSFO's Private Office allowed an un-minuted meeting to take place with the DSFO.

14. The second part of the meeting, between DT, KD and MT, was recorded by MT in a file note dated 4th October 2018, which was shared with the Unaoil Case Controllers. It records that DT explained his background and experience and that he was currently working with Saman Ahsani (SA), with whom there was the potential for cooperation to open up *"very big cases of corruption"* should the SFO wish to engage with them.

15. It is of note that from this very first meeting, the case team, KD and MT were all aware that DT was acting on behalf of SA, who was at that time a defendant in an ongoing SFO

prosecution. In those circumstances, all contact with DT from this point onwards should have recognised that fact and should have:

a. Resulted in a significant level of caution around the nature of the contact; and

b. Kept in mind the CPIA disclosure obligations which would almost certainly arise.

16. The next day, 26th September 2018, DT texted the DSFO asking her to *"…Please look into merging the case into a global plea. (Redacted) are great people and I love working with them"*. He expressed himself to be *"humbled and thrilled"*. The DSFO replied. In her reply she asked: *"Did you see what I sent [former colleague]?"* (The Review has not seen this communication and the DSFO was not able to provide it but thought it was simply an expression of thanks for introducing her to DT.) She went on to say, *"We just need some legal issues tied down"*. The DSFO has explained to the Review that those legal issues related to the pleas and potential means of cooperation of the Ahsanis.

17. Following the initial meeting with DT, MT and KD contacted representatives of the DoJ and FBI in the US to enquire about their experience of DT. Both agencies endorsed DT.

18. The Court of Appeal judgment concerning this period reads:

> *"On 21 September 2018 Tinsley sent a text message to the DSFO in which he introduced himself as a friend of one of her former colleagues in her previous employment and asked to meet her 'privately first to provide some background and follow on with official meeting'. His request was granted: the DSFO replied that she was 'super honoured that you're coming my way' and arrangements were made for them to have "a solid hour together just us". No note was made of that meeting, which it seems was joined after a time by Ms Talay. Tinsley and Ms Talay thereafter met Davis. The DSFO, in response to a request made after directions were given on 1 July 2021, has explained that she knew Tinsley was a former agent of the US DEA and had lectured at the FBI training academy, and she was prepared to meet him because she*

*understood he had evidence of crime in the UK of which the SFO may be unaware. She took no notes of their meeting because it was only a preliminary meeting, and she expected notes to be made when Tinsley subsequently met Davis and Thompson.*

*"The DSFO has also stated that apart from one brief telephone call, in which she told Tinsley that he should deal with Davis rather than her, and one 'courtesy meeting' with Tinsley on 17 January 2019, she had no further telephone contact or meeting with Tinsley."*

19. As the judgment also records, that was not what DT would tell others – in particular the defendant Ziad Akle (ZA). As recorded in the CACD judgment at paragraph 74 he said, on 7th December 2018:

*"I have probably had nine conversations with her and four meetings, one of which went three hours, and I am dealing now with her number 2 and 3 on some things. Collectively, I think it's going to benefit everyone…"*

20. The Review has requested and considered all records of contact between the DSFO and DT, as did the Court of Appeal. The records do not show any more than two in-person meetings between the DSFO and DT. The records received do not show a meeting lasting three hours. The records show a telephone call and some text messages between the DSFO and DT, the most relevant of which are discussed from paragraph 22.

21. No doubt fortified by the reassurance both that the 'boss' and the US authorities had provided references in a sense for DT, contact began DT and the SFO developed, primarily through KD.

22. On 1st October 2018 DT texted the DSFO to say that she was his *"…new most favourite person. Could we speak later today or this evening for 5 mins"*. The DSFO responded with her office number and the two had a discussion, the content of which was not recorded. Again, it should have been. The DSFO's written evidence to the Court of Appeal said that

the conversation lasted 1-2 minutes during which DT was reminded to deal directly with KD. When DT tried to contact the DSFO again on 4th October 2018 by text she asked whether it was an issue that KD could not handle.

23. By 5th October 2018 KD and DT had clearly discussed the case in some detail. RT was pushing the idea that SA and possibly his brother Cyrus Ahsani (CA) would come to the UK and give evidence in the trials of defendants such as ZA and Basil Al Jarah (BAJ). DT had expressed the belief that he could *"bring in"* – i.e. obtain guilty pleas from – BAJ and ZA. KD stressed that the SFO intended to continue with charges against SA and explained the Serious Organised Crime and Police Act 2005 (SOCPA) procedure whereby a defendant such as SA could become a prosecution witness. KD is recorded as saying that *"we would only entertain a contract if he tells us the truth and he comes and pleads to the charges"*. In response, DT is recorded as saying: *"…if he could bring 'Z' and 'Basil' in ahead of time we were hoping it would show what he could do"*.

24. A file note to this effect was sent by the intelligence team to Matthew Wagstaff (MW), 'A' and 'B' of the case team on 9th October 2018.[3] This is the first occasion on which, so far as we are aware, DT discussed the other defendants in the case with KD or anyone at the SFO. It was, or should have been, clear to everyone that any approach by DT to co-defendants would be fraught with risk.

25. On 8th October 2018 KD spoke to DT and emailed the DSFO. The file note records that *"DT says he's looking to flip Peter Willimont. His attorney doesn't know this"*. The news that a non-legal representative was approaching defendants behind their lawyers' back should have provoked immediate action on behalf of KD, at the very least to escalate this concern to the case team. There is a clear risk, as was subsequently discussed at length

[3] Throughout this report, junior SFO officials' names are denoted with the letters 'A' to 'F'.

by the Court of Appeal, that leaving this unchallenged created at least an impression that the SFO encouraged, or acquiesced in, such a course of action.

26. The same day a plan was agreed for KD to travel to the US to 'debrief' SA. KD provided his opinion that the provisions of SOCPA could be circumvented by the use of such meetings as 'intelligence' meetings. The DSFO responded, *"you're a superstar. I really appreciate how you have been handling this. Well done!"*

27. On 9th October 2018 there was a meeting between members of the case team, the DSFO, MT and KD. The deterioration in relations with the US and the possible improvement in those relations following the Head of Division, MW's visit to Washington was discussed.

28. A note taken at the time recorded that:

> *"Everything is on the table, including the sacrificing of PVT01 to secure other convictions given the toxic record of the dealings with the family."*

29. The Case Controllers present expressed their concern about the proposed approach, namely:

> *"That action to interview / debrief SA before seeing whether he would plead in the UK led to potential disclosure implications, particularly if … SA refuses ever to come to the UK."*

30. According to the meeting note, the DSFO responded that the Case Controller *"was a good investigator but he needed 'to see the big picture'"*. The DSFO told the Review that she did not accept the accuracy of this note.

31. In mid-October conversations were recorded between KD, DT and 'C', a senior SFO investigator, concerning, among other topics, the attempts which DT could make to bring about a situation whereby all those alleged to have taken part in the alleged corruption within the Unaoil case might see their way to pleading guilty.

32. 'A' prepared a file note on 22nd November 2018 in which they recorded concerns held by the case team about the plan. They noted that:

> *"Communications with Five Stones Intelligence need to be fully documented and carefully reviewed for disclosure for the following reasons:*
>
> i. *"There is a risk that the withdrawal of the summons against Unaoil Monaco SAM may be erroneously linked to emails and discussions between Kevin Davis and David Tinsley of Five Stones Intelligence on 4 and 5 October 2018…*
>
> ii. *"The suggestion by David Tinsley to Kevin Davis that 'co-operation' by Saman Ahsani might influence some of the charged defendants to reflect on their current status is potentially disclosable but likely wrong. Basil Al Jarah's recent change of representation to a Legal Aid firm is inconsistent with David Tinsley's insinuation that the defendants may plead guilty as a result of influence from Saman Ahsani"*

33. 'A' went on to note that:

> *"The SFO is aware of its initial disclosure obligations under s3 of CPIA and a record will need to be made (if it has not been already) of all communications between Kevin Davis and 'C' with David Tinsley of Five Stones Intelligence and will need to be made available to the Disclosure Officer in the PVT01 as well as the other PVT cases where there are charged defendants."*

34. MT responded on 23rd November 2018. In a case decision log he recorded that he had consulted the DSFO and KD and was of the view that the following actions should take place:

*"Kevin Davis and 'C' to liaise with David Tinsley of Five Stones Intelligence, who represents Saman Ahsani in the US (but not in a legal capacity – this is performed by Rachel Talay of Redmon, Peyton and Braswell LLP).*

*"Kevin Davis and 'C' to conduct an intelligence debrief of Saman Ahsani in Washington DC."*

35. In relation to the decision to task KD to conduct an intelligence debrief of SA, MT noted that:

*"It was always understood at the time that this approach is not without some risk to the existing PVT01 investigation and pending trial … The potential value of the planned intelligence debrief to the SFO is sufficient in my view to accept the various risks that I have been asked to consider."*

36. It is necessary to 'stop the action' at this point to consider the legal application of what had already happened before going on to consider the events which resulted in BAJ's decision to plead guilty and the SFO's decision to seek to rely on that plea in its prosecution of ZA.

37. In hindsight, in particular the hindsight provided by the CACD judgment, it may be too easy to say that the contact with DT was wholly wrong and should never have been entertained by the new DSFO or by the very senior colleagues whom she selected as the initial substantial contacts with him.

38. However, it is clear, even without the benefit of hindsight, that legal advice should have been sought on the propriety of engaging with DT, who did not represent, in the legal sense, any defendant in criminal proceedings in either the US or the UK. He was clearly working for the Ahsanis, SA in particular.

39. The SFO has for many years contained, as one of its most senior employees, a General Counsel. General Counsel would seem to have been the obvious 'port of call' for the

DSFO, or MT or KD, to go to for advice on whether, and if so how, to deal with DT. Unfortunately, the situation was at the relevant time unsatisfactory.

40. Alun Milford (AM) had been aware of the events which had led to the Ahsanis' extradition to the US after the SFO had obtained European Arrest Warrants in the hope that they would in due course be extradited to the UK and tried here. He had expressed strong disapproval of the actions taken by the US authorities. It may be that he was seen more as a potential hindrance than a help in view of his expressed disapproval of those actions. Additionally, he has said that he was, in general, over the last few months of his formal tenure, engaged in *"clearing up"* or *"finishing pieces of work outstanding"* from earlier in his tenure.

41. AM stepped down as General Counsel in November 2018. He told the Review categorically that he was never informed, let alone consulted, about the approach of, and subsequent contact with, DT. There is no sign within the material we have seen that he was. He has also told us that he would have advised strongly against such contact had he been asked.

42. The 'General Counsel issue' does not end there. AM's replacement, Sara Lawson QC (SLQC) did not start at the SFO until May 2019, more than six months after the events just described.

43. SLQC told the Review that she only really 'got her feet under the table' a few months later after the necessary induction into the SFO's structures and a 'tour de l'horizon' of the cases under investigation or prosecution at the moment of her arrival. There was thus a serious gap of a year or so in a key legal resource within the SFO, which should never, barring unavoidable circumstances, be allowed to reoccur. I shall return to this topic as the account develops to the end of 2018 and into 2019.

44. Whilst it is understandable that the DSFO agreed to act as the initial SFO point of contact for DT, in hindsight it was clearly regrettable and had a significant impact on what followed because it set the tone for the entirety of the SFO's contact with DT, which was always perceived as having the blessing of the DSFO. In future, it would clearly be good practice to ensure that the DSFO avoids, and is protected from, any direct contact with an individual linked to an ongoing case.

45. Once a decision had been made to engage with DT and to funnel all contact with him through KD there was an expectation, in fact a legal obligation, for all contact to be properly recorded and promptly shared with the case team to be reviewed for disclosure.

46. The way in which the SFO's relationship with DT developed from these very early communications, in particular discussions about *"bringing in"* other defendants, proved the case team's concerns about possible disclosure difficulties and the potential for conflicts of interest to arise to have been correct.

**Contact with DT and the recording of that contact from October 2018 to October 2019**

<u>The DSFO</u>

47. I have already described the initial contact between DT and the DSFO and the exchanges of text messages in late 2018 before and after she had directed him to contact MT and KD going forward.

48. In January 2019 there was what has been described as a 'courtesy meeting' between the DSFO and DT. DT was attending the SFO to meet with KD, who arranged through Private Office for the DSFO to see DT briefly while he was there *"as a gesture of organisational goodwill"*. The DSFO has said that this meeting lasted less than 20 minutes and was made up of *"pleasantries and kind words rather than discussing anything of substance"*. She told this Review that she agreed to the meeting because, in her previous experience, maintaining cordial relationships was important for the organisations she worked for.

49. The DSFO was not supposed to be personally involved in contact with DT. KD and/or the DSFO's Private Office should not have asked for or allowed this meeting to take place. Whilst we understand her previous experience, LO should not have agreed to this meeting. The effect of a further meeting with DT went to reinforce the view within the SFO and no doubt within DT's own mind, as he was to boast to others, that he enjoyed the endorsement and support of the DSFO.

50. On 4th February 2019 DT sent the DSFO an email with an article attached containing the words *"Mercy means valuing relationships over rules"*. On 18th February 2019 the DSFO's Chief of Staff arranged for any email addressed or copied to the DSFO from DT to be rerouted. The DSFO has told us she was unaware of this decision, clearly made to protect her.

51. On 21st February 2019 DT sent LO a text message to tell her he was soon visiting London and that he would *"love to catch up"*. The DSFO did not respond to this message.

52. On 25th February 2019 DT sent the DSFO another text message enquiring about the health of KD, who was at that time on leave. The DSFO responded to this message solely in relation to KD's health. The same day the DSFO's Chief of Staff spoke with DT to reiterate that there should be no communication with the DSFO on any channel. She noted that DT understood and was grateful for her candour.

53. The Review has not found any evidence of contact between the DSFO and DT after 25th February 2019.

<u>Mark Thompson (MT)</u>

54. MT had occupied senior positions at the SFO since 2012. Before he took over the role of Acting DSFO in April 2018 he had been the COO and reverted to this post on LO's arrival as DSFO. He is an accountant and investigator by background. It was to him that the DSFO turned for advice – in September 2018 – following the approach of a former

colleague on behalf of DT. He advised, and the DSFO agreed, that he and KD should handle any contact with him.

55. In April 2019 MT travelled to New York with the DSFO and 'D'. He and 'D' met DT at a café. DT raised the position of other defendants in the Unaoil case and 'D' advised him that they are charged in the UK and that the DoJ were not pushing for their cooperation as part of the US case.

56. The Review has not seen any other recorded contact between DT and MT. However, MT maintained contact with the Unaoil investigation and was present at relevant meetings up to the time in October 2019 when contact with DT was effectively banned.

Kevin Davis (KD)

57. Most of the contact between DT and the SFO was initially with KD. KD was the SFO's Chief Investigator. As Chief Investigator he was not assigned to any individual case but had a supervisory role in respect of all investigators/investigations. However, in this instance he retained ultimate control over contact with DT.

58. Following the meeting of 25th September 2018 discussed above at paragraphs 12-14, KD's first individual contact with DT (and RT) was on 2nd October 2018, by which time DT had been asked to deal directly with KD. DT said that the DoJ was aware that he was talking directly to the SFO and did not object. There was email correspondence the next day. RT introduced herself and DT as part of the legal team for the Ahsanis.

59. On 29th October 2018 a three-way call (involving another member of the Investigation Division) took place in which the possibility was raised by DT of *"ZA and BAJ coming over"*. DT explained that he expected them to plead guilty in the UK.

60. DT was beginning to discuss with KD the position of other defendants with alarming regularity. KD has accepted that no note of this call was shared with the case team at the time.

61. At the end of November 2018 KD travelled to Washington. There are records of contact with DT while he was there and texts between DT and the DSFO in which she congratulates DT on having KD as a new fan.

62. There were a number of calls between KD and DT in December 2018. A note made following one of them records that DT is hoping to *"flip"* another suspect.

63. KD has told us that in late 2018 or early 2019 he asked to speak privately to Michael Brompton QC (MBQC) and Gillian Jones QC (GJQC) who were instructed to prosecute the Unaoil case. He told them of a complaint made by DT, of whom they had never heard until then, of an alleged leak from the SFO. He gave them to understand that DT was a 'US representative' of the Ahsanis. They were not told anything else about him.

64. In January 2019, in addition to a face-to-face meeting at the SFO between KD and DT (preceded by the 'courtesy meeting' with the DSFO described at paragraph 48 above), there were two calls between them lasting some 15 minutes in total and one further un-noted contact.

65. On 19th January 2019 KD emailed colleagues at the FBI thanking DT for his introduction. At the end of that month KD had to go on leave for health reasons and did not return to work until late March or early April. In the meantime, he briefed 'D' to maintain the lines of communication with DT.

66. In April 2019 KD records two calls totalling 27 minutes with DT to discuss issues relating to the Ahsanis.

67. On 2nd May 2019 KD has a note to the effect that *"DT is trying to flip Willimont"*, another suspect in the case (see paragraph 25 above). On 20th May 2019 he records that DT had mentioned the possibility the previous day of ZA and BAJ pleading guilty.

68. By June 2019 the contact between the SFO and DT was principally with the case team, although there is a note of contact between KD and DT on 3rd June 2019. And on 8th June 2019 there is a note of a conversation between them in which DT says he believes that ZA will probably plead guilty. On 11th and 17th June 2019 there are notes of further contact between KD and DT but no indication of what the conversations were about.

69. In July 2019 there were four contacts by telephone between KD and DT. One was on the 15th, the day on which BAJ entered his pleas of guilty at the Crown Court. On 19th July 2019, DT attended the SFO in person. On 29th July 2019 there was a call between KD and DT lasting more than eight minutes.

70. In August 2019 there were three calls between KD and DT totalling just under an hour.

71. In September 2019 there were two calls lasting nearly 20 minutes in total between KD and DT. Following the last call on 23rd September 2019, on 24th September KD and DT and others had dinner together at a restaurant in Covent Garden. The next day the SFO received a section 8 CPIA application for disclosure from the defence (see Chapter 9) and the following day (26th September 2019) SLQC instructed that there should be no more contact with DT.

<u>'D'</u>

72. 'D' was an investigator at the SFO. At the end of January when KD was about to go on leave (see paragraph 65) he asked 'D' to take over from him as the principal contact with DT.

73. On 7th February 2019 DT outlined to 'D' a *"possible scenario with B, Z … who have indicated a willingness to plead in US"*.

74. At a meeting on 7th February 2019 attended by MT, the DSFO's Chief of Staff MW and the joint Case Controllers, the question of compliance with the SFO's disclosure obligations was raised by the case team. After the Case Controllers were asked to leave the meeting 'D' – rightly – raised the issue of the case team being left 'in the dark' about the dealings with DT/the Ahsanis.

75. On 15th February 2019 DT sent 'D' an email in which he claimed that the DSFO, KD and MT had agreed to the transfer of the Ahsanis to the US on the understanding that they would come to the UK to give evidence. The same email discussed the question of ZA and BAJ pleading guilty but indicated that this still required *"more work"*. The DSFO denies that she had agreed to any such thing.

76. Over the next few days DT asked 'D' if he could be introduced to the case team to *"keep my agreement with Lisa Kevin and yourself"*. 'D's reply was to put him off on the basis that DT was not *"law enforcement"*.

77. On 20th February 2019 there was contact by phone between 'D' and DT. During one conversation DT claimed friendship with a senior FBI official. 'D' kept detailed and near contemporaneous notes of his contact with DT. He would create a typed note and/or send an email soon afterwards.

78. Following a series of texts on 5th March 2019 from DT to 'D' DT requested to be allowed to contact the case team. On 7th March 2019 'D' told DT that the Case Controller 'E' would not talk to him.

79. 'D' recorded a conversation with DT on 27th March 2019 in which DT attempted to gain access to the case team and to discuss the position of BAJ and ZA. 'D' pushed back on both issues:

*"DT asked again to speak directly with case team. I [sic] reiterated that case team content to deal directly with DoJ rather than DT/Rachael. DT queried why they wouldn't want to speak to them as L~ to attorneys in respect of other suspects. I advised Z and B represented by legal reps in UK and its [sic] proper that dealings with other charged suspects goes through them.*

*"DT flagged up previous conversations with SFO members that why not get other suspects to plea in U5. I said I assumed those discussions were being had between case team and DOJ. Reiterated they are charged in UK.*

*"DT concerned that if a trial in the UK may drag up TM issues and wanted DSFO to know he trying to mitigate any risks as well as build up cooperating suspects as promised."*

It may be worth 'stopping the action' again at this point to reflect that the advice of 'D' in the first paragraph of this note, if followed, would have prevented the series of events which eventually resulted in the decision of the CACD in December 2021 and the subsequent decision to commission this Review.

80. On 10th April 2019 'D' was in the party which travelled to New York with MT and the DSFO. 'D' met DT at a café when DT raised the position of the other defendants in the UK. 'D' told him they were not *"up for grabs"*.

81. On 5th May 2019 DT emailed 'D' to arrange a call, which subsequently took place on 7th May 2019 and related to the position of the Ahsanis.

<u>Matthew Wagstaff (MW)</u>

82. MW, as Head of Division, was the line manager of all three Case Controllers in the Unaoil case during 2018 and 2019. He did not have any direct contact with DT.

83. He has told us that he was aware of DT's existence at least from 1st October 2018 but, as with the case team, he was not aware of the nature, regularity or content of KD's contact with DT in the months that followed. In retrospect at least that was an error and left the case team to *"fight its own corner"* with respect to their concerns about DT.

The case team

84. 'B' was involved in the Unaoil case from the outset, initially as its principal investigative lawyer and disclosure officer. From July to September 2018, following the suspension of Tom Martin (TM), she was acting Case Controller and took on the role of Prosecutor. In September 2018 'E' and 'A' were asked to take over as Case Controllers on all PVT cases, including PVT01. At first they both worked across all of the cases. 'B' was promoted to Case Controller on temporary promotion in July 2019 and took responsibility for PVT01 whilst 'A' focused on PVT02 and 'E' on PVT07.

85. 'B''s direct contact with DT was limited and almost entirely confined to being a copied recipient of emails or sitting in on calls which will be summarised below. 'B' shared the concerns of 'E', set out below, concerning the question of the DSFO's involvement – or not – with DT's role. 'E' has repeated what others have said – and the CACD noted in its judgment – that they were *"very uncomfortable"* with the SFO's direct contact with DT. Their reasons were as follows:

> *"i) we were aware that SA had UK representatives and we wanted to make sure they were informed and involved;*
>
> *"ii) we really did not want Senior Management to have anything to do with SA whom we thought should have been prosecuted here and whom we did not believe would provide the assistance it was claimed he could offer or ever be sufficiently credible to call as a witness;*

*"iii) our counterpart in the DoJ FCPA [Foreign Corrupt Practices Act] unit had told us that the quasi-handler role being performed by DT was unusual;*

*"iv) at that time we were trying to deal with the Unaoil companies and were about to change our position in relation to prosecuting them, for legal reasons, and we did not want it thought that DT had anything to do with that;*

*"v) we did not want a third party to play off the two authorities (DoJ and SFO) which is precisely what happened; and*

*"vi) the case team had a real sense at the time that communication by senior management with DT and SA was an ill-advised course."*

86. 'A' has told us that their understanding was that DT and RT were acting as *"authorised representatives"* of the Ahsani family and that 'A' was first aware of DT's existence on 1st October 2018. This is confirmed by an email they sent KD that day which read in part:

*"…Do you know who from the Office, and when, met with Mr Tinsley and Ms Talay. A File Note of what was discussed, and who was present, would be extremely helpful given: (a) the potential disclosure obligations that follow from discussions with a representative of someone who may, eventually, be considered 'a co-operator'; and (b) given the case-specific history of relations with the DoJ, so when we speak the DoJ, or indeed Mr Ashani [sic], in future, there are no misunderstandings as to what has been said / agreed…"*

87. On that day and the next there was an email from the DSFO which suggested that as the result of a phone call with *"DC"* – presumably Washington – a disclosure hearing now set for 15th October 2018 could be delayed. The next day 'A' has noted that they had been informed that DT and RT would now be in touch with the SFO through KD rather than the DSFO. The understanding within the legal team was that this contact was authorised by

the DSFO. Such authorisation would, in their opinion, have over-ridden any policy that may have existed to forbid such contact.

88. On 8th October 2018 'A' emailed fellow members of the Unaoil team concerning the *"material I have been made aware of in the … Saman Ashani [sic] – 5 Stones Investigations."* The same day, presciently, he emailed 'C' (a senior investigator), copied to MT and 'E'. The email contained the words: *"I imagine contact with Tinsley/Talay may well become an issue in subsequent proceedings against the corporate or any of the charged defendants in the UK, irrespective as to whether or not Saman ever comes back to the UK."*

89. 'A' was present at the meeting with the DSFO and others on 9th October 2018, summarised at paragraph 27, at which the plan with DT was set out. 'A' believes that the timing of the meeting was deliberately fixed to exclude MW who was away at a conference. 'A' was concerned at the *"potential risks to the [Unaoil] case in the strategy being proposed by the DSFO"*.

90. The introduction of DT was, as the CACD judgment makes clear, not welcome within the case team working on the case. The potential disclosure issues which might arise further down the line were clearly pointed out. However, the fact that DT's role had been expressly authorised by the DSFO, the COO and the Chief Investigator meant that the misgivings felt at the time and expressed since to me following correspondence with its members had to be put to one side.

91. On 15th and 19th February 2019 'E' spoke to an employee at the DoJ. He indicated that both ZA's and BAJ's lawyers had 'sounded out' the DoJ about the possibility of their entering guilty pleas in the US. The US had pushed back and told them that they must be tried in the UK. On 19th February 2019 after a call between the SFO and the DoJ, the same DoJ employee told 'B' and 'A' that he believed that DT had been *"back-channelling"* to the SFO via KD – and now 'D' – and wanted the case team to know that there was no

question of ZA and BAJ being dealt with in the US. Nonetheless, on 4th March 2019, advice from counsel was obtained about the strength of the case against the remaining defendants in the absence of the Ahsanis.

92. On 27th February 2019 there was an email from MW to 'E' concerning recent conversations between DT and 'D'.

93. Later in March there were calls between 'E' and the DoJ in which the DoJ made it clear that DT's wish for ZA and BAJ to be transferred to the US – no doubt as part of the 'deal' he was trying to obtain for his clients the Ahsanis – was not going to be fulfilled.

94. On 25th March 2019 the Ahsanis entered their pleas of guilty in the US.

95. In early April 2019, following his return to work, KD told the case team they could now deal directly with DT. Since DT would see anything sent to RT, the lawyer, there was no point in not doing so. The Case Controllers told the Review that they felt there was little choice but to begin to speak with DT and RT because, as a result of the Ahsanis' pleas in the US, they needed to make arrangements to interview them.

96. One would expect arrangements concerning the Ahsanis and the possibility of their assisting the SFO in the prosecution of ZA, BAJ and others to be made with those representing them in the UK. The Ahsanis' lawyers had made it clear to the SFO that DT formed part of that team and so it was right for the case team to discuss such arrangements with him. However, the case team's ignorance of DT's previous discussions about *"flipping"* other defendants, including ZA and BAJ, meant that they lacked the necessary background information to manage contact with DT properly.

97. 'E' also expressed an understandable concern that DT was talking to different people at the SFO and there was a danger of mixed messages.

98. 'E' took an *"unexpected"* call from DT on 16th April 2019. DT offered to help *"with the B and Z thing"* – most likely a reference to the possibility that BAJ and ZA might eventually plead guilty in either the UK and/or the US. 'E''s note does not record their response to this comment. However, in preparation for a call planned with DT the following day 'E' noted *"Z and B – represent?"* In a call on 17th April 2019, which primarily related to arrangements to be made for the Ahsanis, 'E' clarified and noted that DT and RT represented *"family only"*, clearly referring to the Ahsanis.

99. It is clear therefore that from this point on, any member of the case team speaking to DT should have been careful to keep in mind that DT did not and could not speak for ZA or BAJ, and that there was a clear potential conflict of interest if he attempted to do so.

100. On 9th May 2019 there is a record of a one-hour telephone call between DT, RT, 'E' and others. During the discussion DT referred to an alleged conversation with the DSFO concerning Ata Ahsani (AA) and the DSFO allegedly saying *"why are we messing with him?"* The DSFO denies ever having such a conversation. DT repeated his belief that the US was still interested in dealing with BAJ and ZA and the logistics of the SFO interviewing SA were discussed.

101. It is of note that the SFO records show that, in discussions between the case team and the US DOJ in February, March and April 2019, the DoJ had repeatedly stated that it was committed to a UK prosecution of ZA and BAJ.

102. On 21st May 2019 KD emailed 'E', 'A' and MW to say that DT had again mentioned to him the possibility that BAJ and ZA may plead guilty and how they *"may help us"*.

103. To their credit, 'E' responded that:

> *"The Z&B information is interesting, however we know that he does not represent them either here or in the US, so I don't think that he can assist us particularly on that matter, and we need to exercise caution that we act properly with Z&B and that there are no*

*actions that could look like an inducement to plead guilty, as you say a guilty plea is a matter for them."*

104. On 22nd May 2019 there was another phone call between 'E' and DT/RT in which DT indicated that he had spoken to ZA and to BAJ, who were represented in the UK, and that there was the potential for both to cooperate. He said that *"hypothetically"* there was an 85-90% possibility that BAJ would change his legal team and approach the SFO on pleas. In those circumstances DT asked whether the SFO would consider *"sharing him over here"*. 'E' gave an *"initial comment"*, namely:

*"If BAJ was to plead here of course there is scope for cooperation here and in US. There would be a lot of potential if he pleaded quickly we would actively promote a delay in his sentencing until that process has taken hold. Can't guarantee anything as it is up to the court, but we would support that."*

105. DT replied that *"We think we can bring this to life. Give us a few days. I just wanted to make sure there was an opportunity for him to come here to cooperate."* The call concluded with 'E' telling DT that they *"look forward to hearing if progress can be made"*.

106. It was clearly unwise of 'E' to engage in the discussion set out above with DT, especially as they had clarified only the day before that DT did not represent and therefore could not speak for BAJ. 'E' told the Review that they did not place any reliance or credence on what DT was saying and took the approach to be polite and answer questions as factually as possible. 'E' told this Review that they did not set out to engage with DT for the purpose of or encouraging a change of plea from BAJ but recognises that lines *"became blurred"*.

107. 'F' was an SFO lawyer and the Unaoil disclosure officer from July 2018. 'F' was part of the calls with DT on 16th April, 9th May and 22nd May 2019. 'F' has told us that it never occurred to them then that DT was *"pulling the strings"* concerning BAJ and ZA. As a

lawyer unfamiliar with the existence or role of persons such as DT, 'F' would have been entitled to assume that decisions whether or not to plead guilty would be taken following discussions and advice from the lawyers representing them rather than anyone else.

108. On 28th May 2019 there was a call between 'E', 'B', 'A' and DT. Extensive notes of the call taken by 'B' and 'E' demonstrate that a number of matters were discussed during this call. This included DT telling them that he had spoken to BAJ and there was 95% chance that BAJ would plead guilty: *"I can get this done"*. He confirmed that he would see BAJ the following week and described BAJ's legal team as *"typical attorney telling him not to speak to anyone"*. 'E' explained that the guilty plea must come from BAJ and that they could not jeopardise the trial. 'B' added that *"we need pleas on both contracts"*. DT concluded the call by saying that he would "*see if we can get things moving w BAJ"*.

109. On 30th May 2019 a note of a telephone call between DT and 'E' recorded that:

*"DT states that 90% chance he can get BAJ in and BAJ is thinking about pleading guilty, 'E' states any deal could potentially include a plea to the indictment and the SFO taking a view on other matters under investigation."*

110. On 31st May 2019 a telephone note reads:

*"Note of telephone call dated 31/05/2019 between DT and 'E'. DT stated that BAJ wants to plead guilty and DT is arranging UK lawyers for him. DT says he doesn't want BAJ to be charged with other matters."*

111. Again, 'E' and 'B' were unwisely drawn into inappropriate discussions with DT about the pleas of other defendants. This is made worse by DT's own admission, noted above, that BAJ's legal team were not supporting his discussions with BAJ. Upon becoming aware of this 'E' and 'B' should have shut down these discussions and, arguably, reported this to BAJ's legal team.

112. 'E', in the very helpful and full submission to the Review, expressed deep regret at these calls and accepts that it took too long for the SFO to *"shut [DT] down"*. 'E' adds that DT would often call *"out of the blue"*. And when dealing with later calls 'E' expressed the same view but *"felt powerless in view of the pressure from above"*.

113. DT told this Review that he did not approach BAJ or ZA. He describes any statement that he operated without the knowledge of the legal teams of BAJ or ZA as "*false"*. He has said that ZA contacted him. He believed that ZA shared any discussions they had with his legal team. DT says he 'joined' BAJ's legal team in June 2019, after the calls described thus far.

114. On 13th June there was a call between 'E', DT and RT. An email from 'E' to DT and RT that day read:

> *"The SFO would like to explore with BA the possibility of formal cooperation with the SFO. This is something we would not explore until approached by BA's lawyers and a plea being formally entered because of the constraints that we are under given BA is charged and arraigned. The consequence of this would be that the SFO itself could be asking the judge for time to enable this to take place. The SFO has to ensure that it is not acting in any way that is or could look to be an inducement to BA to plead guilty. If John Milner was to contact the SFO we would of course communicate this message to him. It is now a matter for Mr Milner and his client to consider their options and how they would wish to proceed."*

This was an entirely correct response.

115. On 2nd July 2019 there was a call between DT and 'E'. He told 'E' *that "BAJ is now in my club"*. In this call 'E' – belatedly as they now concede – 'pushed back'. DT's attitude then changed from *"charm to anger and vitriol"*. By then 'E' had been contacted by the UK solicitor acting for BAJ and it became clear that he had not been kept 'in the loop' with

DT's attempts to influence his client. As above, DT told this Review that he did not contact any defendants without the knowledge of their legal teams and that by June 2019, he formed part of BAJ's team.

116. On 12th September 2019 (the day on which the SFO informed AA that the SFO would not pursue a prosecution of him on public interest grounds) there was another call between DT and the case team. DT claimed that he was:

> *"inches away from getting ZA to come in … and that he thinks Paul Bond and Steve Whitely will follow. 'E' says that we are not counting chickens just yet. DT says we are good at farming this chickens."*

117. 'B' has confirmed to the Review that they understood this to mean getting ZA to come in and plead guilty. 'B' realised that this meant that DT was speaking to ZA and suggesting to him that he should plead and potentially try to cooperate, even though 'B' knew that DT did not act for ZA and acted only for the Ahsanis, whose interests must have been his priority. 'B' now recognises that they should have said firmly to DT that they could not discuss and did not want to hear about matters relating to ZA. 'B' very much wished they had had the presence of mind to respond in a way that made it clear that they did not condone that approach.

118. In addition, 'B' should also have at least considered whether ZA's legal team should have been informed of these approaches and sought advice from trial counsel or General Counsel about what was clearly a very unorthodox position.

119. As already outlined, there were a number of problems with the management of DT. Many of them stem from the fact that all contact was, for most of the period, funnelled through KD only, with very limited involvement by the case team. During that period the nature of the discussions developed in a way which was wholly inappropriate, in so far as it related to other defendants and attempts by DT to contact and/or influence those

defendants, whom he did not work for and with whom there was a clear potential conflict of interest.

120. By the time contact began between the case team and DT, these discussions had been both frequent and unchallenged. As a result, the case team were faced with, and unprepared for, a very difficult situation. Nonetheless, as is clear from comments made above, the case team's response to DT's continued attempts to discuss and potentially to influence other defendants was at times inappropriate.

# Chapter 8 – The disclosure process for the Unaoil Case (PVT01)

**Disclosure policies and guidance**

1. The Criminal Procedure and Investigations Act 1996 (CPIA) and the CPIA Code of Practice (March 2015) placed a positive duty upon investigators to:

    a. Retain and record material obtained in a criminal investigation which may be relevant to an investigation;

    b. Review the material obtained during the course of an investigation;

    c. Reveal to the prosecutor any unused material which may be disclosable to the defence.

2. 'Material' is widely defined by the CPIA Code of Practice and covers:

    a. Objects which come into the physical possession of a case team;

    b. Information of which they become aware;

    c. Material which they generate as a result of their investigation, including documents and information held or generated by other departments within the SFO.

3. The Attorney General's Guidelines on Disclosure (at the relevant time dated December 2013) emphasised that:

    *"There will always be a number of participants in prosecutions and investigations: senior investigation officers, disclosure officers, investigation officers, reviewing prosecutors, leading counsel, junior counsel, and sometimes disclosure counsel. Communication within the 'prosecution team' is vital to ensure that all matters which*

*could have a bearing on disclosure issues are given sufficient attention by the right person."*

4. At the relevant time the SFO's Operational Handbook reflected these responsibilities and provided clarity of responsibility. In particular:

   a. Investigators were responsible for the recording and retention of relevant information obtained, discovered or generated by them during the course of an investigation;

   b. Investigators were responsible for notifying the disclosure officer of the existence and whereabouts of material that had not been retained by them;

   c. Disclosure officers were responsible for examining material, revealing it to the prosecutor and disclosing it to the accused when appropriate;

   d. Case Controllers were responsible for ensuring that proper procedures were in place for the recording and retention of material obtained in the course of the investigation;

   e. Case Controllers were responsible for ensuring that material that may be relevant to an investigation was retained and recorded in a durable and retrievable form;

   f. Case Controllers were responsible for ensuring that all retained material was either made available to the disclosure officer or, in exceptional circumstances, revealed directly to the prosecutor;

   g. Case Controllers were responsible for ensuring that the unused material was properly scheduled as sensitive or non-sensitive material;

   h. Prosecutors were responsible for making proper disclosure in consultation with the disclosure officer;

i. The Head of Division was responsible for ensuring that proper records were kept and that the disclosure management document was up to date;

j. The Head of Division was to ensure that proper scheduling had taken place and that there were both 'sensitive' and 'non-sensitive' schedules at the appropriate stages of the case.

5. Any contact with any person, third party or not, should have been recorded and kept on the case file. All individuals working in an operational capacity for the SFO should have been aware of their obligation to record and retain material, not least because:

a. The SFO provided (and continues to provide) disclosure training to staff when they join the organisation;

b. The SFO's Operational Handbook had (and continues to have) a chapter on disclosure which includes:

i. The roles and responsibilities of investigators, specifically noting the responsibility to record and retain relevant information; and

ii. The identification, retention and recording of material, with additional information on the duty to record and retain information as well as practical examples of the types of material which must be recorded and retained;

iii. Guidance on the use of investigators' notebooks and daybooks as well as a specific 'desk instruction' regarding notebook entries. Both of these specifically refer to the need to record material to comply with the CPIA and both contain the very direct instruction: "if in doubt, record everything".

**SFO arrangements for recording, retaining and reviewing material generated during an investigation**

6. In order to comply with the above, each SFO case has at least one shared network drive which is accessible to case team members. This shared drive should be the primary location for the storage of all documents relevant to the case generated by those conducting the investigation. This includes:

    a. Documentation to do with the administration of the case, such as case opening documents, task lists, work logs, business cases and counsel's fee notes;

    b. Communications with third parties not conducted via email, such as letters, typed notes of meetings and typed notes of telephone calls;

    c. Decision logs;

    d. Documents created by investigators as part of their analyses of the evidence in the case, such as financial analyses, file notes and intelligence analyses;

    e. Material created for the prosecution of the case, such as witness statements, graphics and schedules of events;

    f. Working documents created by case team members; and

    g. Legal documents, such as charge sheets and indictments, warrants, skeleton arguments, written submissions and counsel's advice.

7. In addition, case teams use a shared email mailbox. If emails are 'sensitive', within the meaning of the CPIA, they may not be copied to the shared mailbox, but investigators remain under a duty to retain them either within their own inbox or within the case drive.

8. Where material is generated by other departments in the SFO it should be recorded either in emails, in documents saved on a shared drive, or in hardcopy notebooks. All

communications, in whatever form, which relate to the case should be recorded and considered for disclosure purposes.

a. Where the contact was via email this should be saved to the shared mailbox and/or in the mailbox of individuals from the SFO who sent/received/were copied into the email.

b. Where the contact was face to face or over the phone a note should be kept, whether typed or in hardcopy.

c. Any letters sent or received should be saved on the shared drive and/or in the shared mailbox.

9. A 'daybook' should be used to record case related information which is not duplicated elsewhere (e.g. in emails or file notes). As daybooks are case-specific they should be considered for disclosure purposes in every case. Where it is not possible to record information immediately in a daybook it should be recorded elsewhere and later added to the daybook and made available as part of the disclosure review.

10. Investigators involved in operational activity are provided with a centrally issued pocket notebook. Unlike the daybook, the pocket notebook is not case-specific and so any one notebook may contain information relevant to more than one case. Where an investigator has entries relevant to a particular case, they should make these known to the Disclosure Officer during the disclosure review. Typically, copies of the relevant sections of the notebook will be made with the individual being told to retain the original.

**Record keeping in the Unaoil case (PVT01)**

11. In the main, when they came to be gathered, records did exist of the contact between SFO staff and David Tinsley (DT), either by way of emails, meeting notes or handwritten notes.

However, they were not recorded or stored in a way which would later facilitate an effective disclosure review.

12. In particular, the records of DT's contact with Kevin Davis (KD) were incomplete. KD told the Review that his contact with DT was recorded in his daybook, either contemporaneously or shortly thereafter. There were *"odd occasions"* when he would make a note via email. His daybooks were stored in a locked cabinet at the SFO and the notes therein were *"not necessarily"* shared with anyone else in the SFO. KD said he communicated the contents of those notes to *"a variety of individuals as appropriate"* including 'D', Mark Thompson (MT) or Matthew Wagstaff (MW).

13. Any record made in KD's notebook about an ongoing case, and one which was at this time approaching trial, should have been promptly passed to the case team – in particular, any such record which discussed the position of a defendant in that ongoing case.

14. The case team was informed very early on, on 1st October 2018, of the fact of KD's ongoing contact with DT. Immediately afterwards one of the Case Controllers then in post (see Chapter 7) emailed KD and others to express concerns about the disclosure implications of contact with DT and emphasised that all contact should be recorded for disclosure.

15. The DSFO told this Review that when KD was identified as the main point of contact with DT in September 2018, it was her expectation that he would be keeping the case team informed of anything relevant that arose from that contact.

16. The case team's request for accurate records was repeated on 3rd October 2018 in an email from MW to KD, copying in both the DSFO and MT:

> *"can I ask that any communications include 'A' and 'E' as the assigned case controllers? It is obviously important that they remain sighted on all developments, not*

*least from a disclosure perspective but also to ensure that they are able to make properly informed decisions on the case."*

17. On 17th January 2019 'A' again emailed KD to ask, *"can you please confirm you have a record of all contact / communications with 5 Stones, the DOJ and FBI, with regard to the Ahsanis or other individuals connected with our case, to ensure we can fulfil our CPIA disclosure obligations."* KD responded that *"There are appropriate notes in my possession."*

18. In fact, as the Court of Appeal found, KD did not make notes of many of his conversations with DT. The full and chronological schedule of contact between the SFO and DT prepared for the Court of Appeal includes approximately 27 such examples. Furthermore, such notes that KD did make were not shared with the case team until such time as they contacted him, in May 2019, expressly to request it. 'E' said they found it difficult to obtain material from KD and had to chase him on multiple occasions.

19. KD's explanation for the incomplete records was that the majority of his conversations with DT were *"a very unusual experience"* in that they were vague, repetitious or contained repeated exaggeration on all manner of topics. He said he would not make a note where the conversation included repetition of a previous conversation or included logistics *"or other innocuous matters"*. This is contrary to both the SFO policies and the spirit of CPIA. The need to make a record of every meeting, regardless of its worth, is to allow the disclosure officer and/or the defence to take a view about the value of the contact.

20. The absence of complete records of the contact between KD and DT was exacerbated by the loss of all data from KD's SFO telephone. On 16th July 2019 all the data was 'wiped' from it. As much of KD's contact with DT was conducted by telephone call or by text message, this represented a significant loss of potentially relevant and disclosable material. The Review team has not seen any evidence that the 'wiping' was deliberate. The loss would not have been so great, however, had proper notes and records of all

contacts with DT been retained in KD's daybook and shared with the case team at the time.

**Disclosure management in the Unaoil case (PVT01)**

21. The SFO Operational Handbook was clear that every case should have a Disclosure Strategy Document (DSD), which is distinct from the Disclosure Management Documents (DMDs) produced for trial. The DSD should provide the framework in which the disclosure exercise will be conducted by identifying:

    a. The lines of enquiry to be pursued;

    b. How material would be retained and managed;

    c. The scope of the review of the material;

    d. The matters to be considered as part of that review.

22. The DSD should be drafted at the start of an investigation by the Case Controller in consultation with the disclosure officer. It is a living document and should reflect changes in the disclosure strategy during the lifetime of a case. The DSD should also endeavour to identify the disclosure issues that will arise in relation to the case and identify how those issues will be addressed.

23. A DSD for the Unaoil case was drafted on 1st August 2017 but was never updated. As a result, the DSD never made any mention of DT as a 'line of inquiry' which was being pursued. Nor did it highlight, as it should have done, the importance of ensuring that material generated as part of that line of inquiry was properly retained, recorded and reviewed; or how that would be achieved. Used properly, the DSD should not only have highlighted this issue but should also have been the means by which it was followed up at intervals with the case team and others.

24. A Disclosure Decision Log (DDL) was maintained for Unaoil and, in many instances, was very detailed. It noted on 21st December 2018 that there would be a need to review all case team emails for disclosure prior to trial. That exercise was to start in January 2019. SFO case team emails were extracted for review as of February 2019, including *"all internal communications as well as communications with external parties"*. The SFO case drive was reviewed at the initial disclosure stage and again on 10th May 2019 with relevant items disclosed. The intention was to do both exercises again *"shortly before trial"*. However, that review did not result in any information relating to contact with DT or with 5 Stones Intelligence being disclosed or entered on the schedule of unused material.

**The process of collecting SFO records of contact with DT**

25. In March 2019, the case team began the process of identifying who may have had contact or dealings with anyone relating to the issue of the Ahsanis and their US pleas and asked for all material to be passed to the case team. This exercise continued throughout May to July 2019.

26. On 10th May 2019 the case drive was frozen and disclosure counsel was asked to review it. In the same month the case team contacted KD and others to ask them for all material relating to contacts with DT and 5 Stones Intelligence. On 11th July 2019 'E' contacted KD again to ask specifically for any relevant material which would be needed for consideration for disclosure. In July 2019 the case team also requested such material from Private Office.

27. This exercise still did not provide records of all contacts with DT, perhaps because the initial request made to Private Office – for records of contact with the DSFO or her Chief of Staff, MT or Alun Milford (AM) – asked for *"all matters relating to liaison and negotiations with the US DoJ, 5 Stones Intelligence and any other agency"*. Search terms were agreed but those search terms did not include either the names David Tinsley or Rachel Talay.

28. Screenshots of text messages between the DSFO and DT were not provided until 15th October 2019.

29. The explanation proffered by the case team for the delay in identifying and reviewing records of all contact with DT was that, although the case team recognised the importance of this exercise, they were extremely busy dealing with other disclosure issues in the Unaoil case.

30. The trial was initially due to start in April 2019. It was adjourned, on the SFO's application, for eight months, in part as a result of the quantity of electronic material which still required disclosure review. Counsel advised on 23rd April 2019 and on 22nd May 2019 *"in the strongest terms"* of the urgent need to process disclosure *"immediately"* and urged the SFO to consider outsourcing the disclosure exercise. At that time there were:

    a. Over 8 million documents in the document library and 218,634 documents to review following the application of 'search terms';

    b. A further 1.6 million documents in Legal Privilege Protection (LPP) quarantine, and 207,831 to review following the application of 'search terms';

    c. 17 independent counsel who had been instructed to undertake LPP review;

    d. An additional 1,325,480 documents in bags awaiting processing. At the time no explanation was available to counsel for why that amount of material, in existence since December 2017, had not been processed.

31. The disclosure challenges were, in part, a result of the huge volume of material but also because the case did not, in the view of the disclosure officer, have sufficient staff to prepare for the prosecution. 'F' was also of the view that the case had been charged too soon, motivated in part by the desire to apply for a European Arrest Warrant whilst Saman Ahsani (SA) was in Monaco. By the time 'F' was appointed in August 2018 the progress

of the disclosure review had stalled. Further, the disclosure officer was also the principal investigative lawyer in the case, and so was tied up dealing with other complex legal issues.

32. Ziad Akle (ZA)'s Defence Statement served on 16th April 2019 sought disclosure of:

    a. An explanation for the absence of SA from the proceedings;

    b. Confirmation of whether an Italian order for SA's extradition was withdrawn at the request of or with the consent of the SFO, and on what basis;

    c. An explanation for the SFO's withdrawal of charges against Unaoil SAM and Unaoil Ltd.

33. No disclosure was made by the SFO, either before or after the receipt of the defence statement, of the SFO's contact with DT. The explanation now provided by 'E' and 'B' was that this contact was inextricably linked with the Ahsanis' US pleas, which remained under seal of the US court and could not be released without permission.

34. Permission was granted by the US courts to reveal the fact of the Ahsanis' guilty pleas on 6th August 2019, with permission to reveal their cooperation status granted on 13th September 2019. This was included within the DMD dated 20th September 2019. Yet still no mention was made by the SFO of any contact with DT. Again, although each member of the case team now accepts that *"in an ideal world"* they should have had the material scheduled and reviewed to allow them to manage disclosure at the same time, they were unable to do so as a result of resource limitations.

35. The DSFO accepted that the contact with DT should have been proactively included within the schedules of unused material prior to receipt of the defence section 8 request for disclosure in Autumn 2019. The DSFO had no role in the decision making for the

management of disclosure; that was a matter for the case team, supported by advice from trial counsel and the SFO General Counsel.

**The defence section 8 application**

36. In fact, the process of scheduling the records of contact with DT did not commence until 30th September 2019, after the receipt of an application on behalf of ZA under section 8 of the CPIA.

37. An application under section 8 is the means by which, after the service of a defence statement, the defence can apply to the prosecution for disclosure of material which they have reasonable cause to believe is in the possession of the prosecution and satisfies the disclosure test. Upon receipt of a section 8 application an SFO prosecutor, in consultation with the disclosure officer, should consider, whether afresh or for the first time, the material requested by the defence.

38. On 24th September 2019 ZA's defence team served a section 8 application which asserted that:

> *"It appears that DT has sought to influence and put pressure on defendants in this case, including Mr Al Jarah, and that Mr Al Jarah has entered his pleas as a result of this improper pressure and as a result of being misled. The conduct of DT is such that it renders Mr Al Jarah's plea unreliable evidence of the existence of a conspiracy to make a corrupt payment and its admission unfair."*

39. The section 8 application requested answers to a significant number of questions including:

    a. Whether DT had spoken to DSFO about the case;

    b. Whether DT had ever phoned, emailed or met with the DSFO directly during the case;

c. Whether DT had spoken to or emailed any person employed by the SFO or acting on its behalf in relation to this case;

d. Whether DT had ever spoken to any person employed by the SFO or acting on its behalf about ZA, Basil Al Jarah (BAJ), Stephen Whiteley (SW) or Paul Bond (PB);

e. Whether anyone at the SFO or the DoJ:

i. Knew of DT's intention to speak to BAJ, ZA, PB or SW;

ii. Knew of his intention to speak to them without the presence or knowledge of their lawyers and if so, when;

iii. Approved, encouraged or acquiesced in such an approach.

40. It was only at this point that trial counsel became aware that there was ongoing contact between DT and SFO employees. Their reaction when they became aware of the nature and extent of that contact has been generally described as *"unimpressed"*. They formed a poor opinion of DT's motives and trustworthiness. They were surprised that the SFO was prepared to deal with him at all.

41. The case team denied that they were trying to hide anything from counsel. It is clear from notes of conferences with counsel on 15th and 26th March 2019 that DT's name had been mentioned, as had the existence of material relating to *"correspondence with 5 Stones Intelligence (David Tinsley and Rachel Talay) and any other material whether matters regarding conversations with them are then discussed, e.g. with staff at the SFO"*. The case team believe that this was the stage at which trial counsel became aware of the SFO's contact with DT, though perhaps not the extent of that contact. For counsel the instances above were no more than a *"passing reference"* and not ones either Michael Brompton QC (MBQC) or Gillian Jones QC (GJQC) could recall.

42. Likewise, it was only upon receipt of the section 8 application that Sara Lawson QC (SLQC) appreciated who DT was, or that there had been contact between him and members of staff at the SFO. She considered it unfortunate that she was not made aware of the contact when she started at the SFO in May 2019. Had she known she would have advised against contact, or at least advised checking with those representing the defendants. She would certainly have advised that all meetings and material should be recorded and revealed on the sensitive schedule. She may have advised that disclosure should have happened earlier.

43. Contact with DT was an issue which, as each has made clear to us in their own way, troubled the lawyers in the case team. Even allowing for the need for the new General Counsel to 'settle in', and for the case team's understanding that the direction to deal with him had come 'from the top', it was clear that the previous General Counsel had not been involved in the decision to 'license' contact with him. It is in retrospect regrettable that SLQC was not informed earlier of the issue, before the receipt of the section 8 application. Likewise, it is regrettable that trial counsel were not better informed, or possibly asked for advice about the nature and extent of the ongoing contact with DT, in particular as soon as DT began to express an intention to speak to or on behalf of BAJ or ZA.

44. On 2nd October 2019 GJQC prepared a note on the approach to be taken in response to the section 8 application. This emphasised the need to ensure that *"a full and transparent disclosure process is undertaken"* and that all contact with DT was captured.

45. Until that point there was a single 'rolled up' entry on the sensitive schedule which related to communications with foreign law enforcement agencies and DT. All of this material was to be individually reviewed and scheduled in order to determine which entries should remain on the sensitive schedule and which should be transferred to the non-sensitive schedule. It was noted that this would result in the disclosure of the pertinent parts of the

documents on the schedule: "*this is particularly true of references in the DT correspondence to BAJ and ZA"*.

46. Counsel emphasised, correctly, that material may assist the case for the accused, not only where it could be used to explain the accused's actions or support his substantive case, but also where it might suggest or support submissions that could lead to the exclusion of evidence or a stay of proceedings.

47. At this time GJQC and junior counsel reviewed the material received to date and were of the view that none of the documents fell to be disclosed subject to proper scheduling of the material.

48. There was a conference on 8th October 2019 with all members of the counsel team, the case team and SLQC. The general approach to the section 8 application was set out by MBQC, namely that the requests made by the defence were not relevant to any issue in the case and should therefore be refused.

49. Though at that time they had not seen anything to support the contention that BAJ's pleas were involuntary or as a result of being misled, it was emphasised that the case team must also consider whether the material revealed a procedural irregularity or impropriety that may be capable of supporting an abuse of process argument. MBQC found the communications with DT *"surprising"*. Although he did not consider it inherently wrong for the SFO to discuss suspects in the case with an adviser, even if they were not an accredited lawyer, he would not expect that to extend to strategy or the treatment of persons that he does not represent, particularly where, as with BAJ, there was a potential conflict of interest. The advice from counsel at this time was clear that the case team must make sure that everything relevant was scheduled and then consider whether there was anything that needs to be disclosed.

50. During the course of that conference SLQC raised the question of whether or not they could avoid relying on the plea of BAJ. Counsel and SLQC both denied that doing so was an attempt to avoid making disclosure of the contact with DT, since much of the material would need to be particularised on the non-sensitive schedule in any event. Not relying on BAJ's plea might, however, have been 'tactically' simpler because there was a risk that the SFO's dealings with DT might have had a prejudicial effect on the minds of the jury and created a 'side show' in an otherwise evidentially strong case.

51. SLQC was noted as expressing the opinion that they *"they should be careful with wording of items on the sensitive schedule that include discussion between DT and LO"*. She has told this Review that this was not said in an attempt to protect the DSFO but rather that she wanted them to be careful to get the descriptions correct. In her view the information was being disclosed on the face of the schedule as opposed to the underlying documents.

**Scheduling contact with DT**

52. On 17th October 2019 the DDL recorded a decision to reveal DT matters on the non-sensitive schedule to the defence as 'relevant but not disclosable'. The note reads:

> *"The particular issue is whether the prosecution holds material casting doubt on the reliability of BAJ's plea. We do not. All matters related to DT must be considered as relevant in that context but are not disclosable. Out of caution we will ensure that the descriptions are sufficiently comprehensive that the defence is not misled as to the nature and of the material we hold and the overall tenor of the conversations with DT. Insert emails from the relevant period with SMT."*

53. It was not until 23rd October 2019 that the schedule of contacts with DT was reviewed by the disclosure officer, 'F' and the prosecutor, 'B'. This was the first time that 'F' became aware of the full extent of DT's contact with individuals at the SFO. It is startling that, until

that point, 'F' had been kept completely unaware of the nature and extent of the contact DT had had with the various members of the SFO's senior management team (SMT).

54. Those entries considered to be relevant were extracted to create a *"potentially relevant Tinsley schedule"* and what were described as *"CPIA compliant descriptions"* were prepared for inclusion in an 'MG6C' schedule of non-sensitive material which would become known as "Tranche 5".

55. A draft of the descriptions was shared with MBQC who agreed that the approach was *"entirely correct"*, though he made two suggestions:

    a. That it is important that there be detailed entries in respect of DT's comments on ZA and BAJ and on the conduct of the prosecution case;

    b. He did not think it necessary to quote verbatim from the felicitations passing between DT and the DSFO which could be summarised by using phraseology such as *"expressions of appreciation/warm appreciation"*, etc.

56. As to the latter advice, 'B' took the view that this looked worse and looked as if they were trying to conceal something. It was their preference to keep the entries as full as possible and, when consulted, SLQC agreed. It is not normal practice, nor is it required under the CPIA or the SFO Guidance on its application in individual cases, for General Counsel to sign off a disclosure schedule. In fact, it is unusual for General Counsel to be involved in any case to this level of detail. In a very unusual step, the schedule was also shared with the DSFO for her review, although there is no suggestion that she requested any changes.

57. There was further consultation between 'B' and MBQC which included – prophetically as things turned out – that, *"we think we may well not hold the line on disclosure and so better to put some of the more embarrassing items out there, rather than risk being ordered to and then criticised for a schedule which fails to really give the full import [of the*

*unprofessional texts between the DSFO and DT]"*. MBQC agreed on the basis that *"most of them are close calls"*.

58. MBQC confirmed that neither he nor GJQC saw the underlying material at the time that these schedules and the response to the section 8 application were prepared. They did not, therefore, compare these to the descriptions on the schedule but thought that the entries were very detailed and were impressed that they contained verbatim quotes from the underlying material. Counsel were repeatedly assured that the schedule contained everything of significance and everything that was potentially embarrassing to the SFO. The schedule and the underlying material were both reviewed by junior counsel Tom Daniel who had responsibility for disclosure.

59. Both 'B' and counsel were of the view that whether or not to disclose the underlying documents was *"a finely balanced decision"* and, at the time, they accepted there was a *"reasonable chance"* that they would lose the section 8 application. All those from the SFO involved in responding to the section 8 application have emphasised that they were, throughout, following the advice provided by trial counsel.

60. As a result, this Review heard from a number of sources, including trial counsel, SLQC, the DSFO and members of the case team, that in their opinion the schedules were made sufficiently comprehensive and detailed so as to be *"in all material respects"* akin to full CPIA disclosure. There was an effort to provide the *"essence of the communications"* to allow the defence to advance their section 8 arguments properly and to avoid later allegations of a 'cover up'.

61. The purpose of the non-sensitive schedule (known as an MG6C) is to reveal to the defence the existence of material created and obtained during an investigation, together with the disclosure decision. Therefore, the inclusion of a description of that document on the schedule cannot of itself amount to disclosure. No good reason has been provided as to

why, where so much time and effort was spent to include, in some cases though not all, a near-verbatim summary of the document, the underlying document was not disclosed.

62. The SFO and those involved in responding to the defence section 8 application have repeatedly stated that they were in no way trying to shield either themselves, the SFO or the DSFO from the clear potential for embarrassment that would arise from disclosure of all contact with DT. 'B' did accept that they was also concerned, at the time, with shielding the SFO and the case team from having to reveal internal disagreements and unflattering comments in the internal SFO and case team correspondence, which revealed unattractive tensions and at times direct conflict and a distinct lack of trust between the senior management of the SFO and the case team.

63. 'B' thought that the emails did not show the SFO or senior management in a good light and also revealed issues of both performance and culture within the case team. 'B' was concerned not to *"air the SFO's dirty laundry"* in public. Nonetheless they maintained that had the emails met the disclosure test, they would have been disclosed.

64. There was also, at the time, real concern about the position of the DSFO, in particular about the risk that she may be called to give evidence. On one occasion SLQC voiced the possibility that, should the DSFO be called as a witness, then the case would or may need to be stopped. SLQC denied that it would be her intention to stop the case in order to save the DSFO or the organisation from embarrassment; rather that she was under pressure from the DSFO's Chief of Staff that she not be called as a witness and, had she refused to give evidence, there would have been no choice but to drop the case. However, the DSFO and SLQC both maintained to us that if she had been required to give evidence the DSFO would have done so.

65. MBQC was clear in his view that the case could not be stopped for that reason. He explained that, having required the Attorney General's consent to institute proceedings,

they could not properly drop the case without his consent and, in any event, a case could not properly be dropped simply in order to avoid reputational damage.

66. The Court of Appeal judgment expressly stated at paragraph 97 that it did not suggest that any individual deliberately sought to cover anything up in this case. This Review has not seen any evidence to contradict that finding. However, what we have seen is an unfortunate focus on the effect that disclosure of the documents underlying the schedule might have on the DSFO, the SFO or other individuals. The writer, having once occupied a similar position to the DSFO, can well understand these concerns – in particular, the unease which would be felt by senior employees at the prospect of their 'boss' having to give evidence and be cross-examined on matters which, even if not 'damaging' to the case on trial, were 'embarrassing'. However, the SFO must be, and be seen to be, completely committed to the proper trials of those charged with criminal offences in respect of whom the evidence is sufficient to justify the charges. The embarrassment of a particular public servant, the organisation itself or any employee should never be considered as a justification for not proceeding 'in the public interest'.

**Tranches 5, 5A and 6**

67. Tranche 5 was served on the defence on 31st October 2019 and contained 175 entries setting out contact between members of the SFO and DT.

68. The SFO also served a response to the 'Tinsley' section of the defence section 8 application. The SFO's position was that none of the material gathered as part of this exercise, or held by the case team more generally, revealed that the plea of BAJ was in any way unreliable and therefore the material underlying Tranche 5 was not considered disclosable. Furthermore, rather than answer the questions posed by the defence directly, the SFO said no more than that *"the SFO was not a party to any such discussions DT has had with Mr Al Jarah"*.

69. The defence served a further, consolidated, section 8 application on 5th November 2019 for the purpose of oral argument. On 7th November 2019 an addendum Tranche 5A schedule was served with a further 25 entries covering case team emails relating to contact with DT and Rachel Talay (RT), which the SFO said had been inadvertently omitted from Tranche 5. On 8th November 2019 the trial judge heard oral argument on the section 8 application, which was refused:

> *"I have considered carefully the material disclosed by the SFO on the topic of contact between them and Mr. Tinsley. To some extent I am minded to agree that some of that contact might be considered to have been unwise, if not a matter of serious criticism, but none of it suggests to me any support for the proposition that BAJ, when he entered his plea, represented as he was and remains by UK solicitors and by very experienced counsel, did not understand what he was admitting to or was not making the admissions he did willingly and not for the proper reason that he was guilty of them. Moreover it is clearly the case that what BAJ has admitted to is consistent with the contents of innumerable emails which passed between him and others in this case; and it is not BAJ now making or even supporting (as far as I am presently aware) the claims ZA seeks to advance for him."*

70. An addendum defence statement dated 29th November 2019 asserted that:

    a. BAJ's guilty plea was procured as a consequence of improper pressure and improper inducement put upon BAJ;

    b. The SFO was aware of and either implicitly or explicitly encouraged the pressure and inducements directed at BAJ.

71. On 11th December 2019 the SFO disclosed the fact that BAJ had entered into an agreement under the Serious Organised Crime and Police Act 2005 (SOCPA) to assist the SFO with its investigation by providing information or giving evidence about the

criminal activities of others and had been interviewed on a number of occasions. Following this disclosure the unused schedule was revisited on 6th January 2020 by 'B' to determine whether there was anything further that should be added to the schedule now that BAJ's status was no longer 'sensitive'.

72. On 17th January 2020, Tranche 6 was served. This included a further 19 entries which touched upon the 'Tinsley' issues, including:

    a. Unredacted entries relating to BAJ's SOCPA status;

    b. Expanded descriptions which the prosecutor felt, on reflection, had been overly summarised, particularly in the light of the abuse of process application;

    c. Entries where the Excel cell had not captured the full wording of the description;

    d. Entries relating to contact with DT/RT regarding their representation of the Ahsanis.

73. A further version of Tranche 6 was provided on 24th January 2020 to make *"corrections"*.

74. Despite the service of multiple versions of the schedules, they were, as the Court of Appeal subsequently found, still neither complete nor wholly accurate. There were omissions from the schedules:

    a. Six meetings and calls between KD and DT which did not come to light until the Court of Appeal proceedings or had previously been placed on the sensitive schedule of unused material;

    b. A note of discussions with a member of SFO staff on 8th October 2019 describing attempts by DT and BAJ to approach ZA and try to convince him to plead guilty and cooperate. DT describes using BAJ to call ZA on an almost daily basis but that ZA was resisting. This note had been previously placed on the 'sensitive' schedule of unused material.

75. Furthermore, a number of the descriptions included within the schedules were incomplete and/or inaccurate.

    a. The summary of a telephone call on 28th May 2019 between the Case Controllers and DT was very short and did not include the detail of an express discussion of the possibility that BAJ may plead guilty in which DT said there was *"a 95% chance I can get this done"* to which 'B' stated that they would need *"pleas on both contracts"*.

    b. The summary of a telephone call on 31st May 2019 between DT and the Case Controller records that BAJ wanted to plead followed by *"DT says he doesn't want BAJ to be charged with other matters"*. In fact, the underlying note of that conversation says *"won't charge with other matters"*.

    c. The summary of emails between the Case Controller and DT dated 13th June 2019 did not show that the lengthy correspondence was with the express purpose of updating the SFO and the DoJ of BAJ's intention to plead guilty and the possibility and practicalities of his cooperating with the SFO.

    d. The summary of a telephone call on 12th September 2019 between the case team and DT did not name the members of the case team who were present and was extremely brief despite the fact that DT told them that he was *"inches from getting Ziad to come in, and that he thinks Paul Bond and Steve Whitely will follow"*. One of the Case Controllers responded *"that we are not counting chickens just yet"* to which DT responded that he was *"good at farming chickens"*.

76. The case team have denied that any of the errors and omissions were deliberate and have emphasised that comprehensive notes were taken of every discussion they had with DT and that all of the notes and emails were provided when requested. As stated above, neither this Review nor the Court of Appeal found evidence of deliberate concealment.

77. Though not deliberate, these omissions and errors are all the more significant given their relevance to the express question raised in the section 8 application, namely whether anyone at the SFO or the DoJ knew of DT's intention to speak to BAJ, ZA, PB or SW and whether they approved, encouraged or acquiesced in such an approach.

78. On 14th January 2020, the week before the trial was due to start, the defence served a skeleton argument indicating their intention to apply to stay the trial as an abuse of process. It was submitted – among other submissions – that *"the SFO acted together with DT in a way that has flouted all legal and regulatory safeguards and represents a substantial breach of a defendant's Article 6 right to a fair trial"*.

79. On 20th January 2020 the SFO responded to the abuse of process application, submitting that there was no substance to the proposition that BAJ's guilty pleas were anything other than a true acknowledgement of his guilt, which was supported by the documents disclosed and the admissions he had made.

80. 'B' has now accepted that, although they should have, the case team did not revisit the question of whether any of the items described in Tranches 5 and 6 now fell to be disclosed in light of the issues raised by the defence abuse of process application. The reason proffered is that they were extremely busy in the run up to the trial and did not take the time to stand back and ask themselves whether the receipt of the application should have changed their position on disclosure.

81. Oral argument on the abuse of process application was heard on 21st January 2020. Although the trial judge was provided with Tranches 5 and 6 and the descriptions therein, he was not provided with the underlying communications and was not in a position to assess either their completeness or their accuracy. Though the trial judge refused the application to stay the case as an abuse of process and granted the SFO's application pursuant to section 74 of the Police and Criminal Evidence Act 1984 (PACE) to put BAJ's guilty pleas before the jury, he observed that:

*"[The SFO] should have had nothing to do with someone who had no official status, who was not employed by any US government agency, who was not the Ahsanis' lawyer (not a lawyer, at all), but a freelance agent who was patently acting only in the interests of the Ahsanis (whose interests could obviously potentially conflict with those of BAJ and ZA); and they should not have countenanced, let alone encouraged (if only tacitly) his contact with either BAJ or ZA, who were throughout under investigation by the SFO, represented by UK lawyers, and formal proceedings for the offences set out in this indictment had begun with requisitions issued on the 15th November 2017 which were followed by their first court appearance on the 7th December 2017.*

*"The SFO knew of the contact and of the fruits of Tinsley's efforts. The SFO should have been engaging only with the legal representatives of BAJ and Akle and should have had nothing to do with DT."*

**Disclosure in the Court of Appeal**

82. The Court of Appeal gave directions requiring the SFO to:

a. Disclose the underlying material which was the source of the Tinsley entries in the Tranche 5, 5A and 6 schedules;

b. Make appropriate enquiries in relation to any contact between Tinsley and the SFO in respect of which there was an absence of documentary material; and

c. Provide a chronological schedule of contact with Tinsley.

83. Following those directions the SFO:

a. Obtained the itemised phone bills of KD's SFO mobile to extract all contact with DT's mobile phone;

b. Reviewed the visitor logs for Canada House (the SFO headquarters) from May 2019 and December 2019 to identify occasions on which DT visited the SFO to meet KD or others;

c. Obtained the IT service desk tickets raised by KD.

84. Only when these investigations had been carried out, and the full chronological schedule of contacts with DT prepared, did the full extent of a) the contact with DT and b) the missing records of that contact become apparent. Proper record keeping by KD and Lisa Osofsky (LO) or her Private Office would have allowed for a more structured and detailed investigation in response to the defence disclosure requests, and should have revealed this before the trial.

85. Furthermore, the defence had asked explicit questions about the loss of KD's phone. They had requested, and were denied, a witness statement from KD setting out the reason for the rebuild of his mobile, details of messages and meetings between him and DT, and his understanding of whether DT was communicating with defendants without the knowledge of their lawyers. The defence also requested an independent forensic analysis of KD's handset. All requests were refused and the schedule said no more than:

*"…listing meeting dates for contact with DT and explaining unsuccessful efforts to recover his texts with DT prior to 29/07/2019. Further email in respect of same 21/10/2019. Phone rebuilt and data unobtainable from service provider."*

86. The IT service desk tickets show that KD had a habit of incorrectly entering his password several times. The phone would 'wipe' after five incorrect entries. Users were asked to contact the IT service for assistance before the phones were wiped. KD did not follow this advice and as a result KD's phone had had to be rebuilt on two occasions – 8th October 2018 and 16th July 2019. In addition, a further six tickets were raised for access issues

with KD's laptop or iPad caused by him incorrectly entering passwords. KD's laptop had to be unlocked on four occasions in 2018 and his iPad had to be rebuilt in April 2019.

87. The SFO did not obtain or provide any of this further information at the time of the trial. Those involved say they were following counsel's advice. The CACD agreed with the defence submission that the circumstances in which KD's text message exchanges with DT are said to have been lost was obviously highly relevant to the contacts between DT and the SFO. As the CACD found, if proper disclosure had been made, the defence would have had a basis for requesting that KD be made available for cross-examination so that ZA's case could be presented in its best light.

88. Having been provided with the underlying documents which had been denied to the defence, the CACD found that:

    a. They were plainly highly relevant to the abuse of process argument and to the application to exclude BAJ's guilty plea;

    b. No justification was put forward by the SFO to justify its refusal to provide the underlying documents to the defence;

    c. The underlying documents should have been provided to the defence;

    d. The refusal to provide the underlying documents was a serious failure by the SFO to comply with its duty;

    e. The documents are capable of being viewed as showing an abrupt change from the previous recognition of the need for caution to a recognition that DT would be actively trying to persuade BAJ and ZA to plead guilty, and an acceptance of the advantage that guilty pleas by BAJ would give to the SFO's prosecution of ZA;

    f. The disclosed notes contain nothing to suggest any attempt to discourage DT from interfering in the cases of accused persons for whom he did not act: on the

contrary, Tinsley was certainly enabled, and arguably encouraged, to convey to BAJ – behind the backs of his legal representatives – an indication that if he pleaded guilty to the charges on the indictment the SFO might *"take a view"* about other potential charges.

89. The key lessons emerging from the disclosure process as it is managed in the SFO in general, and as it was applied in this case, can be summarised as follows.

    a. All material obtained during the course of an investigation should be contemporaneously recorded and promptly considered throughout the life of a case so that an informed decision can be made whether to charge a suspect and if so what with. (The SFO has the advantage that, since it combines the functions of investigation and prosecution in one organisation, it has, by definition, all such material within its possession.)

    b. The decision to charge will be made on the basis of all the available material, that which supports the evidence of guilt and that which may point away from it. At that stage, therefore, the latter material should already be being scheduled for disclosure if not part of the evidence served for trial.

    c. After charge the process of gathering or receiving material will continue. The scheduling process begun during the investigation phase must continue so that the process of preparing for the case to go to trial can be properly undertaken and any new material added to it.

    d. It should never be the case that the investigative arm of a prosecution body like the SFO has within its possession material which is potentially relevant and/or disclosable of which the case team is unaware and to which the case team does not have access. The CPIA places upon a prosecution body, including the SFO, a

proactive disclosure duty. The material within the SFO's possession should not first fall to be considered upon receipt of a request from the defence.

# Chapter 9 – The SFO's culture and practices

**The issues of culture, policies and practice**

1. The circumstances in the Unaoil case are unique and the likelihood of similar issues (the dismissal of the Case Controller; a fractured relationship with international 'partners'; an interim, and then a new, Director with limited direct experience of the English and Welsh system; no General Counsel; a third party non-legal representative or 'fixer'; the 'toxic' relationship between the case team and senior management) coming together again in one case are remote. However, the case highlights a significant number of fundamental failures.

Quality assurance

2. No one working on the Unaoil case was in command of all of the moving parts in what was a large and complex case. No one person was able to understand the extent of the different aspects of the case and the risks that these posed. 'Ownership' and accountability were not clear and there was no effective challenge to, or understanding of, the issues.

3. This was exacerbated by the lack of a General Counsel in post but speaks to the point that, at the time of Unaoil case, there was no clear role for 'assurance' – no one person was asking the right questions and there was seemingly no challenge. This was a failure of casework quality assurance.

4. The advices provided by trial counsel in March and April 2019 set out the risk to the case from disclosure – this was of course due in part to the pressure of resources – and pointed to the need for stringent and effective 'assurance'.

5. The case team were working towards being ready for trial, whereas senior management's priority was fixing the damaged relationship with the US DoJ and developing new cases.

At no point, even during the response to the section 8 application, was there anyone with a full understanding of the issues. This lack of effective assurance or understanding led in the end to the CACD decision.

Resources

6. The case team was insufficiently staffed; many of those working on Unaoil had other cases to deal with. Pressure within the team resulted in the prioritisation of some areas to the detriment of others and meant that the case team came to the disclosure process late, resulting – in part – in the preparation of rushed and inadequate summaries. The effects of the early lack of resources became more apparent when dealing with the section 8 application before trial and the Court of Appeal hearing, when resources were more clearly committed and the case was more effectively managed.

7. Our review of the case gave us a clear picture of the level and degree of the resources allocated and of the pressures that resulted. It is noteworthy that many emails were sent and actions taken at hours late into the night, and that key players were working on the case while on annual leave or, in one case, while unwell.

8. All of this highlights the fact that the pressure the team was under required a degree of prioritisation. The extent of the work needed to keep the case on track also meant that the case team were having to work through major issues and deal with legal representations with limited resources.

9. Further pressure was added to the management and handling of the case on receipt of the section 8 application. Thus, the resources then needed to deal with the fallout of the SFO's engagement with DT exacerbated an already difficult situation.

A lack of guidance

10. The Operational Handbook and associated internal guidance did not, until May 2021, have any guidance which could have assisted SFO personnel as to how they should, or should not, deal with non-legal representatives. This meant that the case team could not counter DT's approach or highlight their concerns to senior managers by reference to any guidance or protocol.

11. The lack of such guidance exposed the SFO to the risk of exploitation. It is therefore somewhat surprising that there was no policy in place prior to DT engaging with the SFO. This gap has been closed and the guidance since produced by General Counsel deals clearly with the topic.

Compliance

12. Relevant policies were, however, in place in respect of most aspects of the case, including record keeping, disclosure and the responsibilities of individual employees. Compliance with them, in particular by senior managers, was far from complete or effective.

13. The extent of the policies set out in the SFO Operational Handbook, and the professional obligations which should be clearly understood by all those within the SFO, should not have given rise to what happened in the Unaoil case. There is a question whether, even with guidance, some key players saw themselves as being 'above the guidance'.

14. In this case we have seen:

    a. A DSFO using her personal mobile phone and failing to take contemporaneous notes of meetings and conversations;

    b. A Chief Investigator who failed to maintain complete and proper records of his contact with a third party non-legal representative and promptly share them with the case team;

c. A Head of Division who did not undertake formal case assurance processes;

d. A case team which did not maintain an up-to-date disclosure strategy document.

15. Again, this points to an ineffective assurance process and the fact that there was no one with the authority to challenge what was happening. It was not a lack of policy or guidance which caused the issues that came to the fore in this case, it was the fact that some individuals were willing and able to ignore it.

A lack of trust

16. There developed a damaging culture of distrust between the case team and senior managers. This developed, in part, as a result of the suspension and dismissal of the Case Controller, Tom Martin (TM), and the perception by some within the organisation of a willingness to allow the US DoJ to 'have' the Ahsanis.

17. Some in the case team felt that the DSFO had made the decision to remove TM to improve the relationship with the US; in their view this was not right, and action taken by senior managers was based not on evidence but on the need to be rid of a problem. This created a culture of distrust between the case team and the senior management team (SMT).

18. The contact and relationship between the DSFO, KD and DT clearly exacerbated this level of distrust in the mindset of the case team. There was a clear view from the DSFO, KD and Mark Thompson (MT) that the case team needed to see and understand the 'big picture'. The first engagement of the DSFO with the case team (9th October 2018) during which it is alleged (though denied by her) that the DSFO said to the Case Controller 'A', *"you may be a good investigator but you have to see the big picture"* was not well received by the case team.

19. The mistrust between the case team and SFO senior managers grew, and from what we have seen and been told was mutual:

*"There was a strong growing feeling that the case team were not trusted or were in fact in the wrong for being diligent – being 'difficult'. There were a number of occasions (e.g. the decision for the US interviews of Saman in November 2018; the February 2019 request for Counsel's advice of evidential sufficiency;) where I and my colleagues were left questioning whether decision making by the senior management was in fact principled and justified and we were left with the distinct feeling that we were being perceived as difficult and problematic for checking rationale."*

20. This 'disconnect' bred a degree of confusion about what was the best approach to the case strategy (which the case team thought should be focused on trying to secure the return of the Ahsanis to the UK for trial) and what senior managers were discussing and working towards in ensuring that the relationship with the US was mended and that the Ahsanis faced justice in the US but cooperated with the SFO.

21. The case team were unsupported when they raised their concerns. MT told the Review that he thought the case team showed *"a refusal to accept the reality of the position we then faced with respect to Mr Ahsani … The existing case team members were wedded to the idea that Mr Ahsani should be prosecuted by the SFO and would not have been well placed to make an objective initial assessment of his potential usefulness … The second and perhaps more fundamental issue was the inability to take a wider perspective on the interests of SFO at the time. From a purely pragmatic point of view, there was no prospect of Mr Ahsani returning to the UK to stand trial."*

22. This links to the lack of independence by senior managers, but also to the fact that there was a high level of distrust between the senior team and the case team.

*"My concerns, which I believe were shared by the rest of the case team, remained. I felt, however, I had raised them at the most senior level in the Office but a decision had been made and the full rationale had not been explained."*

23. At no point until the section 8 application was received does it appear that the case team were aware of what that 'bigger picture' might have involved.

> *"There was concern at the time that senior management (by which I mean LO, MT, KD) were not listening to the case team. It was later evident that they were dismissive of our concerns for the case and deemed the interests of a case, which had already been charged and was in court, to be secondary to the wider assistance that DT/SA could give. It was to become a regular topic of conversation in the team that we could not believe that senior management had been so ready to accept the promises offered by DT, who was so obviously given to both flattery and self-importance and that we found it almost inconceivable that they had been so willing to listen to and trust him. To be blunt, we thought that anyone with an ounce of investigative nous would have seen right through him. What I had not appreciated at the time was the very poor view that senior management had of the case team, largely arising as a result of the suspension of TM … LO, MT and KD were more willing to listen to the DoJ, SA and KD than they were to their own case team."*

24. The fact that the Head of Division, Matthew Wagstaff (MW) had a limited knowledge of the nature and extent of the contact between KD and DT highlights the extent of that distrust.

> *"To an extent, I did feel that my ability to support the case team was being undermined by decisions taken elsewhere. There was a sense that the case team were not entirely trusted, that they were too narrowly focused on the specific case (PVT01) and not on the 'bigger picture' and I suspect that I was viewed similarly. At no point did anyone within the SMT ever seek my views on Tinsley and I suspect that is because they did not want to hear my views. I found it deeply troubling that a mind-set had arisen whereby the views of one of the office's most senior and experienced prosecutors was deliberately not sought."*

25. The way that the Unaoil case developed highlights a structural issue potentially extending beyond the particular circumstances and timing of the Unaoil case, which was exacerbated by the fact that there was no level of assurance (made worse by the fact that key players were either 'in transition' or effectively missing).

The DSFO's endorsement of DT

26. DT was given, or was perceived by the case team to have been given, the 'seal of approval' of the DSFO and the whole senior management team.

27. The case team, early on, formed a negative opinion of DT personally and of the part he was playing in the Unaoil case. Nonetheless a Case Controller described feeling that they could not shut off conversations with him.

> *"His relationship with our senior managers (which we knew little about but built over time) was one of the causes of the pressure and expectation to engage with him and the inability to shut him down. The fact that was always looming over us was that it appeared that DT had an ear in KD, and that possibly meant to the Director. From what we could see there was a feeling that DT was speaking to KD a lot regarding the PVT01 (Unaoil) case, particularly before we had any direct contact, but also afterward. I can only describe it as an interference that we could not grip or control."*

28. The fact that DT had also managed to meet the Attorney General (AG) played into a perception that he had a large degree of influence.

29. The case team were clear at the outset that they should not be dealing with DT, as he was not a legal representative. The team set out their position to 'D' (covering for KD) in January 2019 that they thought any contact with DT by the case team was inappropriate, but ultimately the case team felt that they had no alternative but to deal with him. Due to the influence DT had over KD the case team felt that their dealings with him would be reported back and that there would be a degree of pressure applied to them from above.

30. There were no safeguards, and no one in the case team had the authority or seniority to 'call this out'. The fact that the senior team had all been involved in dealing with DT meant there was no one who could be seen as an ally. This changed when Sara Lawson QC, the new General Counsel, began to understand what was happening, but by this time it was effectively too late.

31. There was no independent level of scrutiny or control (all senior managers save MW had had dealings with DT). This made it difficult or impossible for anyone in a position of authority to question the approach being adopted or to carry out effective 'assurance'.

**The future**

32. There are a number of changes required to ensure that this degree of failure does not happen again.

    a. There must be effective case assurance processes.

    b. Clear routes by which the case team may raise concerns about cases must be established. Case teams and Heads of Division should be able to raise concerns without running the risk of being side-lined or excluded.

    c. Case resources need to be clearly determined and regular assessment of, or challenge to, case strategies and action needs to be embedded.

    d. Adherence to the Operational Handbook by all SFO staff needs to be clearly articulated. Any contact or interaction which could affect disclosure obligations must be recorded and shared with the case team. The obligation falls to all, not just those within case teams.

# Chapter 10 – Conclusions

1. Our findings highlight a number of issues that must be addressed if the SFO is to move on and learn from the Unaoil case.

2. We have concluded that some of the events were beyond the control of the SFO or its superintending ministers. However, we also find that some events were caused by failings on the part of particular individuals and/or by 'cultural' issues within the SFO. There is also a category of decisions and events that, in hindsight, can be seen to have caused problems which should be clearly managed and not repeated in the future.

3. Before setting out our conclusions there are a number of recurrent themes within the Unaoil case. Some of these were in our view fundamental to the failures in the case and the decision of the CACD. Our findings are clearly outlined in detail in the preceding chapters, but it is worth repeating here the themes in short form.

    a. Record keeping within the organisation, by individuals and systemically within the senior team, was incompatible with the requirements of the CPIA 1996. There were too many occasions on which those involved in the case directly or indirectly should have promptly passed notes of conversations or other communications to the case team to enable it to consider its disclosure obligations.

    b. There was poor compliance with casework 'assurance'. Fundamental issues in case strategy and progress were not gripped or identified. This weakness resulted in general disclosure failings (backlogs not being addressed) and created unnecessary pressures on 'case progression'.

    c. Inadequate resourcing of the case meant that priorities were not always dealt with as they should have been. This became a major issue in connexion with the

management of disclosure and was partly responsible for the 'drip feed' of disclosure to the defence.

d. There was a lack of understanding between the case team and senior management about the priorities for the management and handling of the case. Senior management was intent on restoring the relationship with the US DoJ and working through cooperation agreements, whereas the case team, who were closer to the detail, were understandably progressing the case within the evidential bounds of the material to which they had access. This resulted in a 'disconnect' and a growing mutual distrust between them.

e. Dealing with a third party who, as the case team were given to understand, had the 'seal of approval' from the DSFO amplified the level of distrust between the case team and senior management. The fact that there was very limited sharing of notes regarding contact with David Tinsley (DT) hampered the ability of the case team to deal with matters relating to disclosure and created additional burdens for an already severely stretched case team.

4. We thought it helpful to categorise the events which led to the eventual decision of the CACD in the case, in an attempt to assist the SFO and its superintending ministers to consider how the mistakes which led to that decision may be avoided in the future.

a. Unavoidable events;

b. Events which, with the benefit of hindsight, should not be repeated, if possible;

c. Events which involved fault on the part of the SFO or particular individuals within it.

5. In summary these were:

a. The significant deterioration in the relationship between the SFO and law enforcement authorities in the US. The SFO had clear grounds for wishing to secure the arrest and extradition to England of the Ahsani brothers. No doubt the US authorities did too. The SFO cannot be blamed for the decision of the US to institute its own extradition requests. *Unavoidable*.

b. The period of four months or so from April to late August 2018 when the SFO was without a DSFO in office, with the Chief Operating Officer (COO) as acting DSFO. This period created something of a 'vacuum' at the top of the organisation (during which – see d. below – the Case Controller was removed from the case and new Case Controllers were appointed.) *An event which, with the benefit of hindsight, should not be repeated if possible.*

c. The absence of General Counsel for a significant period between incumbents*. An event which, with the benefit of hindsight, should not be repeated if possible.*

d. The removal in July 2018, from the Unaoil case, of the Case Controller. *Unavoidable.*

e. The appointment of a new DSFO whose previous employment involved working for the same company as former senior officials of US law enforcement agencies. Clearly the best candidate had to be appointed. *Unavoidable.*

f. More attention should have been paid to the particular needs of the new DSFO for support and guidance, with a 'tailored' induction process being put in place. *An event which, with the benefit of hindsight, should not be repeated if possible.*

g. The introduction to the new DSFO within days of taking up her appointment, by one of her former colleagues, of DT. Clearly the Ahsanis and/or DT thought that

the new appointee might provide them with opportunities to reduce the 'damage' of the pending plea agreement in the US court and increase the opportunities for plea deals or similar to be struck in future. The new DSFO, aware of the damage recently done to DoJ or FBI/SFO relations, could hardly refuse at least an initial approach from a person recommended to her by a former respected colleague. *Unavoidable.*

h. The fact that shortly after she first met and corresponded with DT and set in motion the chain of events which followed, DT met, and the DSFO knew that he had met, her then superintending minister the Attorney General (AG), which no doubt, had she had any doubts about the propriety of contact with such a person, would have allayed those doubts. *Unavoidable.*

i. The decision of the then AG to meet someone of the type described above cannot be criticised. The AG cannot be expected to have known that DT was using his former contacts purely to advance the interests of his clients, the Ahsanis, let alone that in order to do so he planned to persuade co-defendants to plead guilty. *Unavoidable.*

j. The need to 'mend fences' with the US authorities. There was clearly such a need. *Unavoidable*.

k. The opportunity presented by the possibility that the Unaoil case could be 'wrapped up' with pleas from Basil Al Jarah (BAJ), Ziad Akle (ZA) and Paul Bond (PB) either in the US or in the UK without the need for costly trials and presented as a triumph for the new SFO regime, and the start of a new era of transatlantic cooperation with the assistance of DT. Such improvements in UK/US cooperation did not need, and should not have involved, the assistance of a third party 'fixer'. *Events which, with the benefit of hindsight, should not be repeated*.

l. The DSFO's decision not to consult beyond MT and Kevin Davis (KD) and her Private Office as to the wisdom of engaging with DT. While there may have been understandable reluctance on the part of the DSFO to consult General Counsel for various reasons, including his imminent departure, legal advice if taken then would undoubtedly have led to the stance taken a year later by the new General Counsel and counsel instructed in the case as well as the trial judge and the CACD. *Fault on the part of the SFO and the DSFO.*

m. KD should have realised that the idea of getting co-defendants to plead guilty, subsequently described by DT to others as *"farming chickens"*, had potential ramifications for the Unaoil case and for the SFO. KD should have both warned the DSFO, who had given him the responsibility of being the SFO contact with DT, and/or taken legal advice himself on the propriety of further contact with DT when he learned that he was in direct contact with other defendants in the Unaoil case. *Fault on the part of KD.*

n. The decision to confine contact with DT to KD and the exclusion of the relevant Head of Division from discussions concerning the handling of DT. It should have been understood that this would only exacerbate the feeling within the case team and the Head of Division that they were not trusted. *Fault on the part of the SFO or particular individuals within the SFO, in this instance the Senior Management Team.*

o. The fact that the case team, when it learned of the SFO's contact with DT, was clearly uncomfortable with the decision to maintain contact with him but, as a result of the DSFO's personal involvement, understood that the requirement to do so had come from 'the top' and only became aware of the nature and extent of that contact in October 2019 following the receipt of the section 8 CPIA application on behalf of Ziad Akle. All the case team lawyers have, in different ways, indicated that they

had reservations or objections to the contact in the first place. *Fault on the part of the SFO.*

p. At least from the moment that DT's efforts on behalf of his employers were clearly going to involve approaches to Ziad Akle and Basil Al Jarah and maybe others, the SFO case team should have disclosed its knowledge of this development and broken off any contact with DT, let alone indicated, as they did, that they were prepared to go along with the idea. *Fault on the part of the SFO or particular individuals within the case team.*

q. The fact that independent counsel instructed in the case only became aware of the role played by DT after the defendant Basil Al Jarah had entered his pleas of guilty, and even then only as the result of the section 8 CPIA disclosure application on behalf of ZA. It should have been clear to KD from the outset, to the case team when it began to have direct contact with DT, and certainly well in advance of July 2019 when BAJ pleaded guilty, that counsel who were in due course going to have to present the case in court should be aware of it. *Fault on the part of the SFO or particular individuals within the SFO, including KD.*

6. The events which the Review consider to have resulted from *'Fault on the part of the SFO or particular individuals within the SFO'* or were *'Events which, with the benefit of hindsight, should not be repeated if possible'* have given rise to the recommendations in Chapter 11.

7. The Review undertook a representations process. Where we were minded to include any implicit or significant criticism of individuals, groups of individuals whose members were identifiable, or organisations we sent a Warning Letter to afford them a reasonable opportunity to make written representations in response. We considered any such representations before concluding the Independent Review and finalising our Report.

# Chapter 11 – Recommendations

1. Accepting of course that some events cannot be predicted:

    a. There should never be 'interregnum periods' between the departure of one DSFO and the arrival of the next;

    b. An incoming DSFO – whatever their previous career experience – should have any identifiable gaps in their knowledge or experience filled by their superintending ministers and the Attorney General's Office (AGO);

    c. Likewise, there should never be such periods between the departure of General Counsel and the arrival of a successor. On the contrary, there should always be a period when the incoming General Counsel is 'inducted' by the outgoing one in order to ensure the continuity of the role and to maintain the confidence of the staff and the public that there is such a person 'in charge' at all times.

2. The SFO and AGO should urgently develop a revised process to enable the superintendence of sensitive and high-risk cases. This should include:

    a. A case list with sufficient detail to enable such superintendence – the list always to include the cases which may require or have already received the Attorney General's (AG's) consent – even if on a given occasion there is 'nothing to report';

    b. Monthly (at least) conversations at official level before formal superintendence meetings with Law Officers to ensure that there can be effective scrutiny of cases on the list.

3. Because there will always be tensions between the desire of investigators to bring persons to justice whom they believe to have committed offences, and the need of prosecutors to

conduct themselves in such a way as to ensure that those whom they charge have trials which are, and can be proved to be, fair:

a. The relationship between the two functions must be characterised by frankness; and

b. When, as there sometimes will be, there are tensions or disputes between them as to the proper way of dealing with a particular issue, they should take the advice of General Counsel – or, if necessary, because of the absence of General Counsel for any reason, from independent counsel – on the proper course of action.

c. Her Majesty's Crown Prosecution Service Inspectorate, in the course of its regular inspections of the SFO, should pay particular attention to the relationship between the investigative and prosecutorial arms of the service to ensure that the flow of information between them is being appropriately managed.

4. The SFO must immediately communicate – to investigators within guidance and to all staff – that in the event of any information concerning an ongoing investigation or prosecution coming to them from a defendant or suspect, or any representative of either, it must be fully recorded and shared with the case team.

5. Any record of direct contact with the DSFO concerning any current investigation or prosecution should immediately be passed to the case team or Head of Division with responsibility for the case, or a senior management team member as determined by DSFO or General Counsel. The DSFO's Private Office should ensure that any such contact is immediately 'rerouted' and that no further direct access to the DSFO is allowed.

6. The SFO must emphasise and communicate to all members of staff the requirement to comply with all the casework assurance processes set out in the Handbook, with a specific focus on CPIA disclosure obligations. All current case assurance systems should be complied with within three months of the publication of this Review. A regular audit of

compliance against these processes should be carried out by Heads of Division in association with General Counsel and the COO, and all SFO cases should be reviewed at least annually. Formal records of such assurance should be maintained by Case Controllers and Heads of Division and be provided to General Counsel as required and at least once a year for each case.

7. The Heads of Division, with oversight from General Counsel and the COO, should ensure that all cases have regular and effective disclosure strategy and management documents (in line with the requirements of the CPIA and in line with the SFO Operational Handbook). The Case Controller for each case should produce a quarterly update on 'disclosure risks' in line with the case strategy. These should be reviewed and approved by Heads of Division as part of the assurance process, with formal records maintained.

8. The SFO should work with the AGO to consider the requirements set out in the AG disclosure guidelines (reporting within six months of this Report) and, in particular, whether there should be a change in the current approach to the management of disclosure following the receipt of a section 8 CPIA application. The disclosure process, which is necessarily one which often dwarfs the actual gathering of directly relevant evidence, must be kept under constant review. When, as in this case, material which clearly should have been disclosed is only considered for disclosure following the receipt of a section 8 CPIA application, the result should be a much more generous interpretation of relevance than there had been before, instead of the gradual and apparently reluctant 'drip-feed' of disclosure which continued until the CACD hearing and resulted in the appeals of Akle and Bond being allowed. The fact that particular persons may be embarrassed by the disclosure of actions or decisions they may now regret should never stand in the way of proper performance of the CPIA disclosure regime.

9. The SFO must ensure it has an effective system to support and monitor resourcing across all cases. Individual case resources must be clearly determined and subject to regular

review and assessment by Heads of Division and Case Controllers with oversight by General Counsel and the COO. Written detailed case resource plans must be linked to the initial case strategy and updated to accompany significant case developments with a clear understanding from Heads of Division how case priorities and developments may require more or less resource to be allocated during the life cycle of the case. The Chief Capability Officer (CCO) should work with General Counsel, COO and finance to determine the best approach to develop such a system and within 12 months have clear case resource plans on all current SFO casework.

10. With immediate effect the SFO must develop a clear route by which case staff (the case team) can raise concerns about cases. This route should be clearly set out in the Operational Handbook and supported by an independent process.

11. The need for adherence to the Operational Handbook by all SFO staff needs to be clearly articulated and communicated to all staff. Within six months of the publication of this Review a communication campaign should be designed to deliver this message, the reasons for its importance and the consequences of non-compliance, in association with the Departmental Trade Unions and other staff networks, as well as with senior management and the Culture Change Programme. From April 2023 clear responsibility should be set out in annual objectives (for all case staff including Heads of Division, Case Controllers and case team members) to ensure that annual performance assessments can take account of their compliance with them and set out any apparent development needs.

# Exhibit F

GIR Global Investigations Review

JUST ANTI-CORRUPTION

The insider view on the FCPA enforcement landscape

# Divisive, zealous and connected: The investigator behind the Ahsanis' US deal

Adam Dobrik

12 November 2021

Credit: Shutterstock.com/Michal Sanca

In 2016, the Ahsanis, a family that ran Monaco oil consultancy Unaoil, were at the centre of a global corruption scandal for orchestrating bribery schemes across Africa and Asia. With multiple authorities investigating, especially in the US and UK, they quickly found themselves in serious legal jeopardy.

Five-and-a-half years later their legal outlook is much rosier. The father and founder of Unaoil, Ata Ahsani, has struck a non-prosecution agreement with the Department of Justice, according to UK court records.

Meanwhile, his two sons, Cyrus and Saman Ahsani – who ran Unaoil's day-to-day operations – have entered favourable plea deals with the DOJ. While they face a maximum sentence of five years, an adviser to the Ahsanis privately claimed the brothers could end up receiving no prison time, according to documents released in the UK.

Those records shed further light on how the Ahsanis – especially Saman, who spearheaded efforts for a US settlement – have secured the deals they have and the roles played by their advisers, particularly David Tinsley, a for-hire intelligence agent whose work for the Unaoil family has courted controversy in the UK.

### Tinsley enters the fray

After **The Huffington Post and The Age** published their 2016 exposé alleging how Unaoil had paid bribes on behalf of major oil, gas and engineering companies in countries such as Algeria, Iraq and Kazakhstan, enforcement authorities from the US and UK began making public moves. Companies were subpoenaed, offices raided and individuals interviewed. The UK's Serious Fraud Office focused on the Ahsanis and Unaoil, and eventually sought to extradite Saman from his home in Monaco to face bribery charges.

But when the principality **rejected** the request in early 2018, the SFO lost the initiative. Without the imminent threat of a UK prosecution, Saman could choose what to do next. A deal in the US, where the rewards for cooperation can be substantially higher, was a better option. And Saman's insights could be of real value to the authorities there, too. As one former senior US prosecutor put it: "Our criminal justice philosophy is we'd rather stop lots of bad guys rather than just one for a long time."

To get the ball rolling on a potential US deal, Steven Kay QC, a barrister who helped Saman Ahsani beat the SFO's extradition attempts and also runs his own financial intelligence firm, said he put the Unaoil executive in touch with Tinsley, a well-connected private investigator who could help woo the US authorities.

### A "zealous" investigator

Tinsley is a decorated former investigator at the Drug Enforcement Administration (DEA), described in a news article from 2000 as a **"hyperkinetic, dedicated and sometimes zealous agent"**. While at the DEA, Tinsley was unfairly dismissed over allegations he violated certain rules concerning the handling of an informant. In rejecting the allegations the court reportedly said that Tinsley's failures on the case were minor and "the result of an excess of zeal".

Openly religious and conservative, Tinsley has run his investigations business 5 Stones Intelligence since 2008. The firm

website proudly states that staff "are committed to God, Jesus Christ, family, Judeo-Christian principles, country, Clients, our services, and Israel".

Over the years 5 Stones Intelligence has secured eye-catching work. The firm, for example, handles investigations for the DOJ, assisting agencies like the FBI with the recovery of criminal assets. Several years ago it carried out an investigation for the World Anti-Doping Agency into alleged cheating by Russian athletes. More recently, it was hired by a horse racing organisation to investigate doping in the industry, attracting criticism in the process. Those connected to the case said that as well as uncovering misconduct, 5 Stones' government experience meant it can help drum up interest among federal agencies to pursue the wrongdoing, according to one news report. A lawyer for one individual charged last year over horse doping **complained** that 5 Stones "used aggressive, unlawful tactics in an attempt to coerce witnesses into incriminating others in the industry". Tinsley told **The Washington Post** that those allegations are completely false.

### "They love the guy now"

In the Unaoil case, Tinsley's task has been to maximise Saman and his family's cooperation with government investigators to help uncover corporate misconduct and secure them the best US terms possible. Tinsley teamed up with Rachel Talay, a lawyer who focuses on business deals, corporate governance and intellectual property issues. She also represents cooperators in major investigations, according to her online profile, and is the wife of 5 Stones Intelligence's chief operating officer.

Their work for the Ahsanis, naturally, was largely kept under wraps. But their efforts, especially Tinsley's, have caused a high-profile scandal in the UK. There, Ziad Akle, a former Unaoil executive **sentenced to five years** in 2020 for his part in the bribery case complained that he, alongside fellow UK defendant and former Unaoil official Basil Al Jarah, was pressured to plead guilty by Tinsley, and that the SFO supported the investigator's efforts. Akle's legal team said Tinsley approached the two UK

defendants "behind the backs of their own lawyers". Akle's complaints form the basis of his **ongoing appeal** against his conviction. The matter has triggered the release of a large volume of records – including text, email and recorded in-person exchanges involving Tinsley – that provide further details on the Ahsanis' pursuit of a US settlement.

Among those documents is a recorded meeting between Tinsley, Talay and Akle – who joined without his lawyers – at a London restaurant in January 2019.

Talay's presence raises an ethical question because of US restrictions on lawyers directly contacting another party with their own representation. Tinsley noted the issue at the start of the conversation and said he'd be doing the talking. "So, I can sit and not say anything," Talay said.

For Akle, the meeting offered an opportunity to pursue a better deal in the US, but it also carried risks. Anything he told them could be admissible in a US court. And any information he provided could be passed on to US authorities to investigate further. In both scenarios, the Ahsanis could gain cooperation credit as a result. If Akle's lawyer spoke for him instead, he'd have avoided any risk. "What could Ziad Akle tell them that I as the lawyer couldn't?" one US attorney said.

Tinsley told GIR in a statement that Akle reached out to him for assistance on the case, and that he believed Akle's lawyers were made aware of the pair's discussions. "My advice to him was, and remains, that cooperation brings many benefits to both those under investigation as well as law enforcement," he said.

During the early exchanges of the restaurant meeting, the former DEA agent suggested he could help Akle secure a similar plea to Saman Ahsani, who it appeared was doing well after submitting to the US. Tinsley showed Akle a photo of Saman at President George HW Bush's funeral just a month earlier. "So, he's doing OK", one of Tinsley's colleagues at the meeting added.

Over the course of the meal, Tinsley highlighted the benefits of striking a plea deal. According to the investigator, Saman wanted to help Akle, his friend, as he faced a UK trial over bribery charges. If Akle pleaded guilty in the US, the Ahsanis could gain cooperation credit for bringing their former colleague into the fold. Court records show that while Saman did not want to testify against Akle at a potential trial, he was prepared to do so if necessary.

Tinsley told Akle how they illustrated Saman Ahsani's value to the DOJ and FBI. "They love the guy now," he said.

The former agent explained that if Saman and Cyrus, who came to the US after his brother, continued with their "spectacular" level of cooperation, the US "will go to the judge and say, 'We recommend no time for these guys' – if they continue to work."

It's unusual for the DOJ to offer the possibility of no prison time for cooperation because of the risk that such deals will backfire. It gives defence counsel an opportunity to discredit a witness at trial because they can argue that the cooperator might say anything to secure their freedom.

"I think properly demonstrating your capabilities, and how you complement [Saman's], would be... extraordinary," Tinsley told Akle.

The Ahsanis' plea documents don't say whether the brothers could secure no prison time. But they do show that the deal significantly reduced Saman's potential sentence. In 2018, the DOJ filed a string of charges in his case, including one for destruction of evidence, that carried a maximum sentence of 20 years. Prosecutors later bundled all of Saman's – and Cyrus's – conduct under one conspiracy charge that carried a maximum sentence of five years.

At their plea hearing in March 2019, the federal judge warned the brothers that they could be sentenced to up to five years regardless of what they might be told in private, according to a transcript of proceedings released in 2020.

During the restaurant meeting, Tinsley described to Akle what the US was interested in, explaining that the authorities were keen to hear details about the oil industry in certain countries, such as Iran and Iraq. He said the US is "very, very, very interested in Nigeria". He later added that the US is interested in "anywhere the Chinese are trying to go".

The private investigator waxed lyrical about the US investigation. "The Americans have 30 or 40 different guys who've pulled all the intelligence off the phones, pulled all the intelligence off the emails," he said.

"[Saman]'s hugely important to them now, cos he's not only a good guy in helping, he's the star witness if they ever have to go to court," Tinsley told Akle.

**US court documents unsealed** in 2020 show that in March 2019, when the Ahsani brothers pleaded guilty, the DOJ believed Unaoil had paid bribes on behalf of 27 companies, including major US-listed businesses KBR, Honeywell and Halliburton. Some of those 27 companies have settled while others, such as KBR, have since seen their cases closed without an enforcement

action.

Saman and his brother are due to be sentenced in June 2022, although the date has been pushed back several times. That hearing – when it happens – will show whether the DOJ agrees with Tinsley's assessment of his clients' value.

### Cross-border tensions

Saman's pursuit of a US settlement led to a rift between the DOJ and the SFO. Reports in **Tortoise** and **the Guardian** describe the level of distrust between the agencies in 2018 concerning a disagreement over who should prosecute Saman, who by then had traveled to Italy to talk to US government investigators after the UK's failed attempt to extradite him from Monaco.

The SFO was upset because it believed the DOJ went back on an agreement that gave the UK agency primacy over the Ahsanis. The DOJ, meanwhile, complained about the "general level of cooperation" it was receiving from the UK, according to court documents. The US also believed Saman was more likely to be convicted in the US and provide evidence to pursue further prosecutions, according to the Guardian.

A lightning rod in the row was the SFO's lead investigator on the Unaoil case, Tom Martin, who described himself as an immovable object in prosecuting Saman Ahsani in the UK, according to court records. The DOJ and lawyers for the Ahsanis complained about the investigator to the SFO. Among the complaints were allegations that Martin insulted an FBI agent at a pub years earlier, and that he made "the fact of Mr Ahsani's co-operation with the US authorities public".

The SFO fired Martin several months after suspending him in July 2018 but an employment tribunal later ruled that his dismissal had been unfair and wrong. The pub incident in which Martin called an FBI agent a "quisling" in May 2016 was the only complaint that made it to the tribunal – the others were considered "without merit". The employment judge said in his **2021**

ruling that the old pub incident was not a reason to fire Martin, and that the complaint was one of many raised by the DOJ and Saman Ahsani's lawyers in a push to remove Martin from the Unaoil case "so as to prevent difficulty with their joint wish to have Mr Ahsani extradited to the USA".

**"Mercy means valuing relationships over rules"**

The tensions between the DOJ and the SFO presented a potential problem for the Ahsanis in closing out their case favourably. But Tinsley, with his US government connections, hoped he could help repair the damaged relationship.

With Saman nearing a deal with the US, the challenge for the Ahsanis' representatives changed. Pleading guilty in the US rather than the UK is often preferable because the latter prohibits being charged over the same offence twice.

But for the Ahsanis to enjoy the potential benefits of a US plea deal, they needed the SFO's help. They, for example, wanted the SFO to drop its European arrest warrants, which prevented the family from travelling freely and kept open the prospect of a UK prosecution. But even as it became clear that the Ahsanis would strike a deal in the US, the SFO's arrest warrants for the family remained active.

Records show that Tinsley continued to lean on the SFO to drop its case against the Ahsanis in early 2019, periodically reminding the agency of certain allegations against Martin. According to a summary of an email Tinsley sent to an SFO official, the former DEA agent said the warrants must be cancelled. Martin had "made numerous misstatements in support of" the European arrest warrants, Tinsley said.

In another email, Tinsley mentioned how the SFO had agreed to let the Ahsanis settle their cases in the US and that in return the family would cooperate with the UK's pursuit of other Unaoil cases.

At the time, Tinsley was still trying to arrange Akle's and Al Jarah's guilty pleas in the US. He told the SFO that their US prosecution would save the SFO money, according to released records. The former DEA agent warned, in addition, that a UK trial of the pair could cause problems because the defence might try to wield Martin's alleged conduct to help their cause – a potential embarrassment for the UK, he said. Tinsley also expressed concern that a trial might "expose" the Ahsanis as witnesses too early in the global investigation. At the time, the brothers' March 2019 pleas were yet to be made public.

By this point, relations between the US and UK agencies had improved. The SFO had a new director, Lisa Osofsky, a dual US-UK citizen and former senior FBI lawyer who took over in August 2018 from an interim director who had led the agency since April. With the Ahsanis now needing the SFO onside, Tinsley was keen to foster good relations between the US and UK agencies, records show. "I am committed to mending the relationship between sfo/fbi and building something great," Tinsley texted the SFO head in the month she started, according to court documents.

Records show the strength of Tinsley's US government network and how he used it to the Ahsanis' advantage.

Tinsley was able to contact Osofsky directly after being put in touch by one of his contacts, former FBI agent Ren McEachern, an ex-colleague of the SFO director at consultancy Exiger. McEachern, incidentally, had witnessed Martin's alleged "quisling" comment while he was still working in the FBI's international corruption unit in 2016.

Tinsley, meanwhile, tried to put Osofsky in contact with Bill McMurry, a senior FBI official based in New York who oversaw the agents handling the Unaoil probe. McMurry, who led the FBI's international corruption unit between 2019 and 2020, later joined 5 Stones Intelligence.

The former DEA agent was hopeful about what Osofsky's leadership meant for his clients' case, records show. According to a transcript of a call in late 2018 between Tinsley, Saman Ahsani and Akle, the former DEA agent said "if God sent a gift for you guys it was the new director". "She doesn't believe in treating people badly," he said. "She is very fair."

Tinsley appeared to enjoy a good relationship with Osofsky. In one exchange with the SFO director, Tinsley sent an article to Osofsky with the message, "Mercy means valuing relationships over rules". In response, she called Tinsley's messages "inspiring".

The SFO had its own reasons to work with Tinsley. It hoped the private investigator could help arrange a global deal where Saman would plead guilty in both the US and UK. "You are 'that person' who can lead sfo to new unseen levels of success...i would like to make that trip with You.....Pls closely look into merging the case into a global plea...." Tinsley told Osofsky.

The global deal, however, never came to fruition because Saman wouldn't agree to a UK plea and because the US settlement covered his UK exposure, records show. Instead, the SFO dropped the European arrest warrants against the Ahsanis at different points during 2019. In return, they agreed to cooperate with the UK's related investigations into companies that used Unaoil.

The SFO also continued with its pursuit of Akle and Al Jarah – the latter pleaded guilty in the UK in July 2019, while the former

went to trial a year later. Records show Tinsley changed tack during 2019 and became keen to facilitate Al Jarah's guilty plea in the UK. Tinsley wanted to leverage Al Jarah, who could be a significant witness for both the SFO and DOJ, according to a record of a call the private investigator had with the UK agency. If Al Jarah pleaded guilty, Akle would also be under further pressure to admit to his charges, Tinsley believed.

But in October 2019, the SFO got cold feet and told Tinsley it had to stop talking to him – the agency could only talk with the defendants' lawyers, the agency's then-top investigator told the 5 Stones founder. A month earlier, Akle's lawyers had raised concerns about the SFO's relationship with Tinsley, court documents show. The Ahsanis, meanwhile, never testified at Akle's trial in 2020.

### UK controversy

Tinsley's simultaneous dealings with the Ahsanis, the SFO, Akle and Al Jarah caused a storm in the UK.

Akle's lawyers are not only furious that Tinsley, a non-lawyer representing other individuals, met with their client and tried to persuade him and another defendant to plead guilty, but also because of the former DEA agent's simultaneous and regular conversations with officials at the SFO, including its director, about the case.

Akle's lawyers have accused Tinsley of manipulating the SFO and certain defendants behind the scenes, to help the Ahsanis. Tinsley and the SFO "brazenly flouted" UK prosecution guidelines, and their behaviour ultimately tainted his conviction, Akle's lawyers said.

The UK courts, so far, seemed unimpressed with the SFO's interactions with Tinsley. "Much of these exchanges indicate that he [Tinsley], at least, was much more schooled in the art of the deal rather than in a legal process that should concern itself not only with justice being done but being seen to be done," His Honour Judge Martin Beddoe at the Southwark Crown Court wrote in 2020 – he, however, added that he did not have the "whole picture".

Osofsky, in particular, has faced a barrage of criticism in the UK over the matter. Judge Beddoe said she made herself vulnerable to Tinsley's flattery and that the SFO "should have had nothing to do with someone, who had no official status, who was not employed by any US government agency, was not the Ahsanis' lawyer (not a lawyer, at all), but a freelance agent who was patently acting only in the interests of the Ahsanis". Judge Beddoe advised the SFO to review its dealings with Tinsley – the agency said it will once the Unaoil case is over.

Two former US officials who had oversight of the Unaoil probe, McMurry and ex-DOJ prosecutor Fry Wernick, defended Osofsky in a **Financial Times article** earlier this year. They called the criticisms of her interactions with Tinsley "unfair" and said they distracted from what she achieved: She ensured the SFO cooperated with the US by removing roadblocks and sharing critical information, they wrote. The piece **was criticised** for initially omitting McMurry's employment at 5 Stones Intelligence and for seemingly making light of UK judges' criticisms of the SFO's behaviour.

In a recent UK court filing, lawyers for the SFO said the agency regretted its interactions with Tinsley. But it said the significance of the agency's dealings has been vastly overplayed and that the DEA agent exaggerated the extent of his relationship with Osofsky to boost his credibility with the likes of Akle. The SFO's former top investigator believed Tinsley was "prone to exaggeration on all manner of topics", court records show.

Tinsley, meanwhile, has mostly kept quiet. He issued a short statement on 21 October after Akle's appeal hearing in which he said he "acted properly throughout" the case. "Once ongoing legal proceedings are concluded, I look forward to all the facts of this case being made public," he added.

Tinsley's efforts for the Ahsanis have attracted unwanted attention and criticism. But, ultimately, he helped guide his clients to an outcome they could live with. While Cyrus and Saman still await their fate, a five-year prison cap for paying bribes on behalf of over 25 companies is a remarkable outcome regardless of what will come out of the final sentencing. As one US lawyer put it, the Ahsanis "got the deal of the century".

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