



Guidance

SFO Corporate Guidance

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Applies to England, Northern Ireland and Wales

Contents

1. SFO External Guidance on Corporate Co-Operation and Enforcement in relation to Corporate Criminal Offending



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1. SFO External Guidance on Corporate Co-Operation and Enforcement in relation to Corporate Criminal Offending

Overview

1. This guidance outlines the SFO's key considerations under the public interest stage of the Full Code Test for Crown Prosecutors when deciding whether or not to charge a corporate or invite it to Deferred Prosecution Agreement (“**DPA**”) negotiations.[\[1\]](#)
2. Each case will turn on its own facts, but a factor which always weighs heavily in favour of a DPA over prosecution is a prompt self-report. **If a corporate self-reports promptly to the SFO and co-operates fully we will invite it to negotiate a DPA rather than prosecute unless exceptional circumstances apply.**
3. We will consider inviting to DPA negotiations a corporate that has not self-reported if it has provided exemplary co-operation with our investigation (see examples at paragraph 22).
4. We will seek to:
 - Contact a self-reporting corporate within 48 business hours of a self-report or other initial contact.
 - Regularly update a self-reporting corporate throughout the process.
 - Decide whether or not to open an investigation within six months of a self-report.
 - Conclude our investigation within a reasonably prompt time frame.
 - Conclude DPA negotiations within six months of sending an invite.

The Decision to Self-Report

5. Whether, when and how a corporate self-reports suspected offending is a key consideration when assessing the public interest in favour of a DPA[\[2\]](#).
6. We consider self-reporting suspected corporate criminal conduct to be a mark of a responsible organisation. A knowing failure to promptly self-report such conduct impacts our assessment of co-operation and any mitigation. Failure to notify the suspected offending within a reasonable time of it coming to light is a specific public interest factor in favour of prosecution.[\[3\]](#) What amounts to a

reasonable time will depend on the circumstances. We recognise that responsible corporates may consider it necessary to investigate suspicions of suspected offending before a self-report in order to understand the nature and extent of any offending.

7. We do not expect a corporate to fully investigate the matter before self-reporting. If there is direct evidence of corporate offending, we would expect a corporate to self-report soon after learning of that evidence. If the position is less clear-cut we recognise that some further investigation may be necessary.
8. Where a corporate has not self-reported, we will have regard to whether it was aware of the offending before our investigation began.

How to Self-Report

9. A corporate self-report should be made directly to the Intelligence Division.^[4] Initial contact can be made through the [secure reporting form \(https://sforeporting.egressforms.com\)](https://sforeporting.egressforms.com).
10. Intelligence Division personnel include a legal team, headed by a senior lawyer, who will manage initial engagement with the corporate and/or their legal representatives. Corporates or their legal representatives can discuss the reporting process with an Intelligence Division representative before making a portal submission.
11. A self-report should identify all relevant known facts and evidence concerning the suspected offences, the individual(s) involved (both those inside and outside the organisation), and the relevant jurisdiction(s). The information provided to us should enable us to understand the nature and extent of the suspected offending.
12. We also expect at this stage to be told about the whereabouts of key material and any risks associated with the destruction of key evidence or the dissipation of relevant assets.
13. **Before** any digital material is provided, a corporate should agree with us on the correct digital format for such material to be received.
14. Reporting offending through a Suspicious Activity Report or to another agency, whether domestic or foreign, is not considered a self-report to the SFO unless the offending is also reported to us simultaneously or immediately thereafter.^[5]
15. Intelligence Division personnel will seek to establish contact within 48 business hours of a self-report or other initial contact and provide regular updates to the corporate on the status of its self-report. A decision on whether or not to open an investigation will ordinarily be taken within six months. If we open an

investigation, we will seek to conclude it within a reasonably prompt time frame. The time required will be impacted by the level of proactive co-operation we receive from the corporate as well as other factors such as the existence of relevant material held in other jurisdictions.

16. The Intelligence Division will seek to regularly update a self-reporting corporate on the status of the self-report.
17. We will aim to conclude DPA negotiations within six months of sending an invitation.

Co-operation

18. The degree to which a corporate co-operates with our investigation is a key factor when deciding how a case is resolved and the level of penalty.[\[6\]](#) Only a genuinely co-operative corporate will be invited to engage in DPA negotiations.
19. A prompt self-report is a strong factor indicating co-operation but having self-reported and being cooperative are not one and the same:
 - A self-reporting corporate must go on to provide genuine co-operation to be eligible be invited to negotiate a DPA.
 - Conversely, a corporate which does not self-report can provide exemplary co-operation with our investigation to become eligible to be invited to negotiate a DPA.
20. A corporate which maintains a valid claim of legal professional privilege (“LPP”) over relevant material will not be penalised for doing so.[\[7\]](#) However, we consider a waiver of LPP to be a significant co-operative act and it can help expedite matters.
21. Co-operation during the course of our investigation means providing assistance to us that goes above and beyond what the law requires.[\[8\]](#)
22. The following examples are a non-exhaustive list of co-operative conduct. Corporates which take all these steps are likely to be assessed as providing exemplary co-operation:
 - Proactively and promptly preserving all digital and hard copy material likely to be relevant to our investigation.
 - Collecting and identifying to us documents and information likely to be relevant to the investigation. This includes but is not limited to:

- Providing a list of relevant document custodians and the location of material (whether hardcopy or digital)
- Identifying and/or producing relevant overseas documents within their control
- Identifying potentially relevant third-party material
- Providing translations of relevant foreign language documents
- Presenting the facts on the suspected criminal conduct, including identifying all persons involved, both inside and outside of the organisation.
- If the corporate undertakes an internal investigation:[\[9\]](#)
 - Early engagement with us as to the parameters of the investigation.
 - Informing us in advance of proposed steps on any ongoing investigation and not taking any step which might prejudice our investigation. This is particularly relevant to internal interviews.[\[10\]](#)
 - Providing timely updates on any ongoing investigation including any key findings.
 - Providing the facts gathered during that investigation.
 - Providing non-privileged records of interviews. If the interview records are subject to LPP,[\[11\]](#) a voluntary waiver of privilege over such records will weigh strongly in favour of co-operation.
 - Refraining from interviewing employees at our request.
 - Notifying us of any other regulator, law enforcement or prosecutor involvement or interest.
- Informing us of any previous relevant corporate criminal conduct and how it was resolved.
- Providing information on any disciplinary action taken and changes to personnel made as a result of the offending.
- Providing financial information regarding the benefit and/or harm the offending has caused.
- Presenting a thorough analysis of the corporate's compliance programme and procedures in place at the time of offending and how the corporate has remediated, or plans to remediate, any ongoing deficiencies.
- Assisting us with provision of access to employees for the purposes of facilitating any interviews and ensuring, where appropriate, independent legal advice is made available to employees.

23. We consider the following conduct to be unco-operative:

*A corporate “forum shopping” by unreasonably reporting offending to another jurisdiction for strategic reasons.

*Seeking to exploit differences between international law enforcement agencies or legal systems. If there are legitimate reasons for differences of approach (e.g. a “blocking statute”) they should be communicated to us.

- Attempts to obfuscate the involvement of individuals, minimise and/or withhold the full extent of the suspected offending.
- Tactically delaying providing information or material.

*Seeking to overload our investigation by providing unnecessarily large amounts of material that may hinder the effectiveness of the investigation. A corporate should inform us beforehand of its proposals for providing material and the expected volume of material.

24. The nature and extent of the organisation’s co-operation is one of many factors which we will take into consideration when determining an appropriate resolution alongside those detailed in the [Code for Crown Prosecutors](https://www.cps.gov.uk/publication/code-crown-prosecutors) (<https://www.cps.gov.uk/publication/code-crown-prosecutors>), the [Corporate Prosecutions Guidance](https://www.cps.gov.uk/legal-guidance/corporate-prosecutions) (<https://www.cps.gov.uk/legal-guidance/corporate-prosecutions>) and the [DPA Code](https://www.cps.gov.uk/sites/default/files/documents/publications/DPA-COP.pdf) (<https://www.cps.gov.uk/sites/default/files/documents/publications/DPA-COP.pdf>).

25. As noted in the overview, we anticipate that it will only be in exceptional cases that the combination of a prompt self-report and full co-operation will result in prosecution rather than an invitation to discuss a DPA.

[1] The level of co-operation may also be relevant to early guilty plea discussions, pursuant to the Attorney General’s Guidelines on [Plea Discussions in Cases of Serious or Complex Fraud](https://www.gov.uk/guidance/plea-discussions-in-cases-of-serious-or-complex-fraud--8) (<https://www.gov.uk/guidance/plea-discussions-in-cases-of-serious-or-complex-fraud--8>).

[2] See DPA Code 2.8.2 and 2.9.1.

[3] See DPA Code 2.8.1.v.

[4] Individuals reporting fraud are directed to Action Fraud but we still accept reports of fraud made by corporates or their legal representatives. We also accept reports of bribery and corruption from corporates, their legal representatives and from individuals.

[5] For example, a PRIN 11 Report to the FCA would not constitute a self-report to the SFO but if the corporate reported to us at the same time it would be likely to gain credit for a self-report.

[6] See 2.8.2.i. and 8.1-8.5 of the DPA Code.

[7] See 3.3 of the DPA Code.

[8] What the law requires includes complying with section 2 notices. We understand that, for a number of reasons, production of materials may require a section 2 notice and we do not consider a request for a section 2 notice to signal a lack of co-operation.

[9] 2.9.3 DPA Code: The prosecutor will consider whether any actions taken by P by not self-reporting earlier may have prejudiced the investigation into P or the individuals that incriminate P. In particular the prosecutor will critically assess the manner of any internal investigation to determine whether its conduct could have led to material being destroyed or the gathering of first accounts from suspects being delayed to the extent that the opportunity for fabrication has been afforded. Internal investigations which lead to such adverse consequences may militate against the use of DPAs.

[10] It is often helpful to discuss from the outset which steps we would like to be consulted and updated on and for which steps that is unnecessary.

[11] Where accounts of individuals taken by a corporate (or on its behalf) may be relevant, any claim to LPP concerning them will be scrutinised and recorded, so that our disclosure duties under the Criminal Procedure and Investigations Act 1996 can be discharged.

