

UK Serious Fraud Office Issues New Corporate Co-Operation Guidance

May 28, 2025

On 24 April, the UK's Serious Fraud Office (SFO) published updated 'Corporate Co-Operation Guidance'. The intention of the guidance is to state clearly the SFO's expectations for corporate organisations undertaking internal investigations to explore suspicions of criminality and considering self-reporting. The new guidance outlines, perhaps most importantly, how the SFO will assess co-operation when determining whether to bring a prosecution (and, if so, the size of any penalty to be levied) and whether to invite a company to negotiate a deferred prosecution agreement (DPA), a noncriminal sanction.

Co-operation

The SFO guidance defines co-operation as providing assistance that goes 'above and beyond what the law requires'. Some of the key factors that the SFO will be looking for include:

- Promptly reporting suspected wrongdoing to the SFO.
- Identifying those individuals responsible both inside and outside of the organisation (regardless of their position).
- Preserving and providing all digital and hard-copy evidence in an evidentially sound format.
- Presenting a thorough analysis of the organisation's compliance programme and procedures in place at the time of the offence and how the organisation intends to remediate those policies.

The guidance clarifies that co-operation does not involve actions such as:

- 'Forum shopping' by reporting alleged criminality to another (perhaps more favourable) jurisdiction.
- Protecting specific individuals unjustifiably.
- Tactically delaying the provision of information or overloading the SFO with extraneous information.

None of these guidance points will be particularly surprising, and they align the SFO both with industry best practice and the expectations of international regulatory partners. However, we can reasonably expect much closer scrutiny on these issues by the SFO now that the points have been formally crystallised into guidance. The guidance outlines several best practices for corporate organisations which will need to be carefully considered:

- Engage with the SFO early as to the parameters of any internal investigation, and provide timely updates on key findings and proposed investigative steps (to avoid taking steps which could prejudice a future investigation by the SFO).
- Maintain a structured and organised record of evidence.
- Make personnel available for interviews and provide them with independent legal advice.
- Assist in identifying all relevant evidence.

Prompt self-reporting

The SFO guidance also offers further insight into the question of self-reporting. Prompt self-reporting will likely be the most significant factor in favour of the SFO offering an organisation the opportunity to negotiate a DPA. The SFO is not prescriptive as to the time by which organisations must self-report, and acknowledges that each fact pattern will require a different level of internal scrutiny. Nonetheless, self-reports should, in any event, be made within a 'reasonable time' after discovery of the alleged criminality.

Waiving legal privilege

An interesting aspect of the guidance is the emphasis on waiving legal privilege. The SFO does not expect companies to waive privilege as a matter of course, but indicates several times that the voluntary waiver of privilege will weigh strongly in an assessment of co-operation 'above and beyond what the law requires'. The decision to waive privilege is not a light one and could cause serious problems for a corporate organisation further down the line once that particular decision has been taken. Close consideration should be given to this question at the start of any internal investigation so that the organisation can best position itself to demonstrate this sort of exemplary co-operation.

Takeaways

Corporate organisations should carefully consider this new guidance when undertaking an internal investigation into alleged criminality and deciding whether to self-report to the SFO. While exemplary co-operation can favourably influence the SFO's charging decisions, it does not guarantee a specific outcome and will need to be carefully balanced against other possible routes to resolution. The SFO's guidance is timely given the introduction on September 1, 2025, of the 'failure to prevent fraud' offence under the Economic Crime and Corporate Transparency Act 2023. No doubt the SFO is looking to encourage companies to come forward and co-operate with it at an early stage if they find direct evidence of such corporate offending.

If you would like to discuss any issues arising from this guidance, or how the guidance may apply in a real-world scenario, please don't hesitate to [get in touch with Tom Epps](#).

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