



The National Crime Agency: a British FBI?

Introduction

As of October 2013, the Serious Organised Crime Agency has been replaced by a brand new institution, the National Crime Agency as the UK's national crime fighting agency targeting serious organised crime.

In many ways, the NCA will carry out the same role as SOCA, and, like its predecessor, sits in a multi-agency system which includes the Serious Fraud Office and Financial Conduct Authority. However, the birth of the NCA is far from a mere re-branding exercise. The NCA it has greater responsibilities and (crucially) powers than its predecessor. The media have described the new agency as the "British FBI" and Director General Keith Bristow does not appear to have denied the comparison. On the contrary, he is keen to emphasise a tough new approach to fighting serious and organised crime.

This briefing will focus on the NCA's role in investigating and preventing economic crime which is of course of most relevance to our clients.

Responsibilities

Expanded role

The NCA has a broader range of responsibilities than SOCA. In addition to having taken on the previous agency's role, it has also absorbed certain of the functions of the Border Agency and the Police Training College, and it also takes over from the National Online Child Abuse Unit. The core responsibilities of the NCA are:

- Border security and cross-border organised crime;
- Economic crime;
- Organised crime;
- Cyber-crime;
- CEOP (sexual abuse and exploitation of young people); and
- Specialist capability teams tackling areas such as human trafficking, missing persons, and money laundering.

However, none of these additional roles are either likely to affect large businesses, or are designed to target economic crime.

Economic Crime Command

The Economic Crime Command is the division of the NCA responsible for investigating and preventing crimes such as:

- Fraud;
- Money Laundering;
- Intellectual property crime;
- Identity crime; and
- Counterfeit currency.

However it is not limited to those categories. It has the broad mandate under the Crime and Courts Act 2013 of "securing that efficient and effective activities to combat organised crime and serious crime are carried out (whether by the NCA, other law enforcement agencies, or other persons)." Therefore, any other types of crime that fall under the economic or financial classifications may also be investigated by the Economic Crime Command, even if it ends up working together with other bodies.

Money Laundering

In the context of money laundering it seems that no major change in approach is planned. The Suspicious Activity Reports (SARs) regime for reporting suspicious behaviour will operate in the same way, though reports will now be made to the NCA.

However, as is discussed below, the NCA hopes to build stronger relationships with banks and other institutions to encourage more reporting of suspicious behaviour that may point to money laundering or fraud.

The establishment of a "specialist capability team" to investigate money laundering is also an indication that the NCA has targeted it as one of the key stages at which organised crime can be detected and disrupted. **It is therefore more important than ever that businesses take the requirements of the money laundering legislation seriously, and promote the culture of self-reporting that it demands.**

Bribery Act 2010

The Serious Fraud Office (SFO) is responsible for carrying out investigations and bringing prosecutions under the Bribery Act 2010.

However, it seems that the NCA will work together with the SFO and assist it in the investigatory side of its role, drawing on its policy of working closely with other agencies to fight serious organised crime. In a recent speech, Mr Bristow identified bribery as an area the NCA would focus on:

“It’s a threat we are increasingly starting to understand and we have got a key role in ensuring that we develop that understanding and take appropriate, proportionate action.”

Since the Bribery Act 2010 was introduced there has been only one prosecution brought by the SFO, with its limited budget widely thought to be limiting enforcement. However, the NCA has a considerably larger budget, and if it assumes a serious role in investigating infringements of the 2010 Act, it is possible to envisage a greater number of prosecutions by the SFO in the future. **It is therefore extremely important that businesses do not, in light of the lack of prosecutions up to this point, relax the policies put in place when the Act was introduced, or neglect to review and amend them appropriately as risks of exposure to bribery change.**

Strategy

Co-operation

The NCA’s strategy towards the gathering and utilisation of intelligence is different in approach to its predecessor.

Mr Bristow has promised a much greater focus on collaboration with other police forces and agencies, both in gathering and sharing intelligence. This approach is enshrined in the Crime and Courts Act 2013 which created the NCA and which contains a statutory duty of co-operation.

Continuing this theme, the NCA hopes to build new relationships with the private sector, particularly to combat white-collar crime. According to Mr Bristow this will include creating a new culture of encouraging reporting of financial crimes, particularly among banks:

“Banks, for instance, are aware of fraud ... and for a variety of reasons may or may not report that to law enforcement. There’s a good example of where we need to work differently with the banks.”

The Specials

The agency will also look to recruit “NCA Specials”: volunteers who will work in a similar way to “Special Constables” in the police, but will have skills in particular areas. For example, the NCA hopes to bring on board NCA Specials from the banking and accounting sectors to forge the closer relationships with banks described above, and use their experience to help investigate money laundering and fraud.

Powers

The NCA has been portrayed as having significantly more powers at its disposal in fighting serious organised crime than its predecessor. As such, it has been described by the media as the “British FBI.”

First, like SOCA officers, NCA officers are said to be “triple warranted”, meaning that they may be designated with the powers and privileges of a constable, powers of a customs officer, and powers of an immigration officer. These obviously

include the ability to, with appropriate warrants, make arrests and carry out searches of business and residential premises in connection with NCA investigations.

Second, a significant additional power granted to the NCA is the ability to instruct police forces and other agencies to carry out specific tasks or operations. Interestingly, the SFO is among the list of bodies in the Crime and Courts Act 2013 which the NCA can direct to provide it with assistance, although the consent of the Secretary of State and the Attorney General is required.

This could conceivably involve the NCA encouraging, and ultimately requiring, the SFO to bring prosecutions against companies or individuals under the Bribery Act 2010 following its investigations, which again emphasises the need for companies to maintain proper anti-bribery policies and procedures and keep them under review.

Comparisons with the FBI

The FBI is the US agency responsible for fighting serious organised crime at a national level. In principle, then, it is similar to the NCA. However, there are significant differences between the two agencies.

First, the FBI has wider responsibilities, particularly in respect of internal aspects of national security including counter-espionage and counter-terrorism.

Second, while the NCA has taken on new responsibilities in relation to cyber-crime and cross-border organised crime, unlike the FBI, it is still forced to work in collaboration with other agencies with which it shares jurisdiction for certain offences. An example in the context of economic crime is the existence of the SFO, a body with responsibility for serious fraud and bribery. Despite the NCA’s ability to direct the SFO, given that this would require consent from the Secretary of State and Attorney General, and the SFO’s responsibilities have not been reduced, the NCA is more likely to play a supporting role in investigating fraud and bribery and cooperate with the pre-existing body.

Third, while the new powers of the NCA to direct regional police forces to assist in and dedicate resources to its investigations have been key factors contributing to the FBI comparison, the FBI itself does not itself enjoy such wide powers. Where matters fall under both state and federal jurisdiction, the state police are not subordinate to the FBI, which cannot supervise or take over their investigations. Instead, the pooling of resources is likely to occur, as is also encouraged under the Crime and Courts Act 2013 in relation to the NCA. However, it is clear that the ability to direct other forces which means the new agency enjoys more power than its predecessor.

The final and perhaps greatest reason for the comparison between the NCA and the FBI is the high profile culture the former is adopting compared to the more discrete operations

of SOCA. The description of the NCA as the “British FBI” is not without its merits. With its extended responsibilities, enhanced powers, and high-profile approach, the new agency is certainly a step in the direction of its American counterpart.

Funding

Despite the promises of a more powerful organisation with wider powers which will be better equipped to tackle serious organised crime, much of the press coverage surrounding the introduction of the NCA has focused on whether it will receive the same level of funding as SOCA.

The Home Affairs Select Committee has fuelled much of the debate by stating that:

“The organisations going into the NCA have a combined budget of £812m, yet the new agency will only have £473.9m next year.”

The Home Office hit back strongly to such claims, stating that:

“This is an inaccurate comparison and there is no budget cut. The National Crime Agency will have a budget of over £460m, employing over 4,500 staff. The Home Office funding for the NCA is in line with the amount previously allocated to the separate bodies within it.”

It is certainly clear that the NCA will not, for now at least, see an increase in funding. However, the Home Office claims that by “amalgamating resources” and cooperating with other agencies, the NCA will be able to achieve more with the same level of funding.

Furthermore, the introduction of the NCA gives a clear message that the government is committed to fighting serious organised crime, and increased funding in the future is a possibility.

Summary

The NCA has wider responsibilities and more powers than its predecessor SOCA. While there has been debate over the comparisons to the FBI, the power to direct police forces and other agencies to assist it in its operations, and its high profile “tough” image, creates for the NCA a new role as a national agency with potential supremacy over other agencies and

regional forces. However, equally as important is a change in culture towards unity and cooperation between crime fighting bodies, enshrined in a statutory duty of cooperation.

The introduction of the NCA could prove to be very significant in the context of economic and financial crime which businesses may inadvertently become involved in. While the new body enjoys a broad jurisdiction in relation to serious organised crime, there have been strong indications that economic crime has been identified as a key area in which it can be effective. Collaboration with other agencies, including the FCA in relation to money laundering and the SFO in relation to bribery, should lead to a pooling of resources that has previously been absent, and may, for example, finally lead to an increase in prosecutions under the Bribery Act.

It is therefore more important than ever for businesses to promote a culture of reporting money laundering, and to ensure that their procedures for detecting and preventing money laundering, bribery and fraud are sufficient and regularly reviewed.

Thomas Webb specialises in advising businesses on all issues connected with the impact and prevention of Fraud and White Collar Crime as part of Burges Salmon’s Fraud and White Collar Crime team led by David Hall.

Contacts

For further information please contact:



David Hall
Partner
+44 (0) 117 902 2798
david.hall@burges-salmon.com



Thomas Webb
Senior Associate
+44 (0) 117 307 6976
thomas.webb@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

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