HOUSE OF COMMONS

Justice Committee

Oral evidence: The work of the Serious Fraud Office, HC 664

Wednesday 19 October 2022

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Watch the meeting

Members present: Sir Robert Neill (Chair); James Daly; Laura Farris; Dr Kieran Mullan.

Questions 1 - 79

Witnesses

I: Brian Altman KC; Sir David Calvert-Smith KC; Anthony Rogers, Deputy Chief Inspector, His Majesty's Crown Prosecution Service.

II: Lisa Osofsky, Director, Serious Fraud Office; and Michelle Crotty, Chief Capability Officer, Serious Fraud Office.

Examination of witnesses

Witnesses: Brian Altman, Sir David Calvert-Smith and Anthony Rogers.

Q1 **Chair:** Welcome to this session of the Justice Committee and welcome to our witnesses, whom I will come to in a moment. First, Members always have to declare their interests at the start of every meeting. I will start off by saying that I am a non-practising barrister, but I ought specifically to declare that both Sir David and Mr Altman are old professional friends and colleagues going back a number of years. Indeed, Mr Altman is the joint head of the chambers of which I am still an associate tenant. We have known each other probably for the whole of our professional lives.

Brian Altman: That is about right.

Chair: Very good to see all of you. Mr Daly?

James Daly: I am a practising solicitor and partner in a firm of solicitors.

Chair: Nothing from Dr Mullan. If anybody else joins later on, we will go through that. Would the three witnesses like to introduce themselves for the record, please?

Sir David Calvert-Smith: I am Sir David Calvert-Smith. I am a retired High Court judge but for five years, in the latter years of the 20th century and the first of this century, I was the Director of Public Prosecutions, which may explain why I was asked to do this report.

Brian Altman: Brian Altman, King's Counsel, joint head of chambers at 2 Bedford Row in London, and a criminal barrister practising in crime as well as public inquiry and other such work.

Anthony Rogers: I am Anthony Rogers. I am deputy chief inspector in His Majesty's Crown Prosecution Service. I was seconded from February to July this year to work with Sir David, but in the inspectorate I hold the portfolio for the Serious Fraud Office.

Q2 **Chair:** Thank you very much for that introduction, gentleman. You have both been commissioned to undertake reports, which you have completed and published, in relation to particular cases in relation to the Serious Fraud Office. Can I start with a general view of what you both found, and then we will come to the specifics of the individual cases?

What has seemed pretty clear is that both cases—both Serco and Unaoil—collapsed as a result of significant disclosure failures, it is probably fair to say. Do you think that the leadership of the Serious Fraud Office took disclosure seriously enough? Both of you talked—Sir David in particular, and Mr Altman—about systemic problems in relation to disclosure. Is that because that was not taken seriously enough.

Brian Altman: I will start. Obviously, my remarks are limited to the review I conducted, together with Rebecca Chalkley, on the collapse of the—we call it the Serco case but it is the case of Mr Woods and Mr

Marshall. I have no reason to think that the leadership of the SFO did not take issues of disclosure seriously. By leadership, I include not only the director of the Serious Fraud Office but also general counsel, Sara Lawson and Michelle Crotty, whom I know you are going to hear from in the next panel session.

Every dealing I had with Michelle Crotty and Sara Lawson, as well as John Caroll—who was the former chief operating officer, now retired—impressed on me the seriousness with which they took issues of disclosure, realising that it was one of the core, if not the core, feature of what they do. Certainly, as the Serco case demonstrates, without getting disclosure right—I am not going to make any judgment about it—what could be a good case none the less collapses.

As for the director, I did not speak to her during the course of my review. There was no need to do so. I cannot speak for her or gain any impression from her but, from my review of the Serco case, it would be a remarkable proposition if the director of the SFO did not take issues of disclosure seriously. Nothing I have seen in this case suggests to me otherwise.

Sir David Calvert-Smith: That is a good note to finish on for me. First, there is an endemic lack of resources in cases as large as the one that I was looking at—and, it looks to me, as large as the one that Brian Altman was looking at—to deal with the cases as they should be dealt with.

A number of particular events in our case conspired together to mean that by the time the current director took office, in September 2018, the case was well behind in many respects, and always the one at the end of that queue is disclosure: "We'll get the evidence and then we'll deal with what we need to disclose," obviously. Therefore, it started at a significant disadvantage.

Then, in our particular case, came the question of the arrival of David Tinsley—the "fixer" from the US—operating on behalf of defendants who were then in the US awaiting trial and had been, until recently, awaiting trial in this country. The feeling within the case team was that disclosure around Mr Tinsley was an extremely sensitive topic that needed to be handled with inordinate care, in order not to possibly embarrass the boss, who had facilitated the introduction of Mr Tinsley into the case, having been approached by him in the first place.

Having led an organisation myself, I know that junior staff tend to think, "Well, the boss thinks this so we'd better not act in this way," when there is no evidence one way or the other. A rumour gets around that, "If we do this it might offend the boss." That also affected the very slow and in the end unsatisfactory disclosure.

Again and again, slightly more was disclosed: slightly more up until the trial; slightly more after trial and before appeal; even more again before the appeal. Even by the time they got to the appeal, they were still on

the back foot, as it were, at least in part because of those sorts of concerns.

To echo what Brian has said, our case has a lot of one-off features to it, but the basic feature is that disclosure is always at the back of the queue. The SFO is under huge pressure and it is facing defendants sometimes who are better resourced than it is.

Q3 **Chair:** Mr Rogers, as someone who is experienced as an inspector, what is your assessment? Is it something that has become endemic, or is it the particular facts of these two tough cases?

Anthony Rogers: What is noticeable in these cases is that the amount of digital material is now of such a degree that disclosure is always going to be a difficult subject. There will always be, for the defence, a chink in the armour, given the process that disclosure holds in the process. I do not think that I could say that the SFO does not take that seriously. It does. The point Sir David makes around resources plays in this very, very clearly. What we find is that, before the case gets to trial, the case is handled and investigated on slow time. However, once the trial date starts, the disclosure process with the section 8 applications from the defence put pressures into an organisation that is under a great deal of pressure.

Q4 **Chair:** The director, both in evidence to us and in some of her public speeches, including one at Cambridge where I was present, has criticised the disclosure rules and said that they are not fit for the digital age. That follows on from what has just been said. Gentlemen, you are both experienced as prosecutors and defenders, dealing with digital material in these types of cases. Is it the rules that are the problem? Should there be changes to the rules, or is it the resourcing and the way that they have been applied in this and other cases? Would you advocate changing the rules to any degree?

Brian Altman: There are a number of issues. The rules themselves are good and they remain applicable. It is the application of the kind of digital material that the SFO, in particular, has to deal with in terms of sifting through it, reviewing it for relevance, reviewing it for disclosability and disclosing it, engagement with the defence, and, ultimately, as Sir David said, resourcing—all of that—that is the fundamental issue. Therefore, as such I do not think the rules are wrong.

The approach may have to be slightly different going forward with these big digital cases. One view that is often discussed or expressed is whether the time has now come to open the warehouse door. We might be some way away from that, and I have to say that I have some sympathy with that view.

However, there is perhaps a lot of work and discussion that ought to be done between now and then, before we ever get to that point, as to whether there should be more defence engagement, bringing the defence on board much more quickly and perhaps relaxing the idea that the defence should not state their case until the defence statement period

has arrived. That might improve the position, but, looking as closely as I did at what happened in this case, I do fear that the resource issue is the fundamental problem.

Sir David Calvert-Smith: I do not agree that the principles need restating. They strike pretty well the right balance between the duties of the Crown and the degree of relevance that the material has to reach in order for it to require disclosure.

However, to pick up on what I said earlier, once you are caught on the back foot during a case, where it is perfectly clear that there is material that you had that you must have been aware of—Mr Tinsley was not centre stage, but he was well on the scene. He was not something parked in a 6 million pile of documents. Once you are caught on the back foot, you have simply to apply that test extremely generously to the defence, whether it means opening a particular door of a particular warehouse, so that everything word for word that passed between the SFO and Mr Tinsley is disclosed, whether or not it was, "What a nice day it was yesterday," or, "I am so glad Arsenal won," or whatever it is. You just disclose the lot so as to erase the suspicion that you are concealing stuff.

Chair: Yes. That was the concern here.

Sir David Calvert-Smith: It was, yes. That was the Court of Appeal's concern.

Q5 **Dr Kieran Mullan:** I want to pick up on the specifics in relation to the information on Kevin Davis's phone, who was previously chief investigator. I was due to ask about this later, but it seems to be appropriate in the context of talking about how seriously the organisation takes it. Keep it in mind that this is an organisation that spends a lot of its time trying to ensure that people who want to hide things are unable to hide things, because people try to delete things and make it difficult for prosecutions to come forward. Do you think that it is credible that the senior investigator of an organisation that spends its time doing that happened to mistakenly wipe potentially relevant data from his phone?

Sir David Calvert-Smith: I do believe it is credible, partly because I am quite absentminded myself. It is not impossible, but I cannot say that it is totally credible. We did not come to a firm conclusion. We could not really on the evidence that we had. It may be that Mr Rogers will be able to come in on this, but I could not examine in detail quite how convoluted and difficult it is to get into the SFO. We normally have a four-digit code on our mobiles. That ought to be easy enough to remember, one would have thought, but I suspect it is rather more complicated in Kevin's case. Was it five times or six?

Dr Kieran Mullan: And after it happened, importantly—

Sir David Calvert-Smith: Yes, once was after; you are absolutely right, it was. Put it this way: the two of us used to be prosecution counsel at the Old Bailey and I don't think that we would have thought there was

sufficient evidence to bring a charge, even if there may be some suspicion.

Chair: I take your point.

Anthony Rogers: Kevin is not unique in the SFO. If you look at the SFO, which we did do when we did the review, and whether it was a common occurrence, the answer is, yes, it was.

Dr Kieran Mullan: To wipe data from phones?

Anthony Rogers: To wipe data; to require your phone to be reset and rebuilt. I recently had to have my SFO laptop reset because the password issue had happened to me. It was not unique to Kevin Davis. The timing was very unfortunate, and looks very unfortunate, but it is not absolutely unique that the chief investigator—like others in that organisation—had trouble accessing IT, which is very, very difficult to negotiate for security reasons, which is the right reason.

Dr Kieran Mullan: Therefore you are saying that the settings on their devices are not as ours would be?

Anthony Rogers: No, it is much, much more complex than the norm. I have an HMCPSI laptop, which when I open it I am straight onto by facial recognition. The SFO is nothing like that. It is much more complex and convoluted.

Q6 **Chair:** Are there things that ought to be done to improve that situation, to try to rectify that?

Anthony Rogers: That may be a question for Michelle Crotty when you see her in the next session.

Q7 **James Daly:** Thank you very much indeed, gentlemen. Since I became an MP in 2019, every single panel that has ever appeared in front of me, when asked what the problem is, whether it is in law or anything else like that, resourcing is always universally the answer that is given.

On reading the findings of both reports and the recommendations—you may be more forgiving than I—there are some basic procedures as well within the system that are not acceptable and that contributed on top of the resourcing. Sir David, for instance, you said that the case team was insufficiently staffed. I assume that is a resourcing issue. Could all three of you elaborate on what you mean by resourcing? Is it the case that the SFO does not have enough money, or is it that the resources are being used in an inefficient manner?

Sir David Calvert-Smith: I will start but I certainly will not finish on this. Having once headed an organisation that had the same pressures, I know what it is to have finite resources but to have no idea of what is going to come your way in terms of work. That is a given, isn't it, not just in the criminal justice sphere but all over? Therefore, when things happen within the course of a year in which you have a finite amount of money to spend, you are going to have to make decisions on priorities.

One thing I would say about the SFO—I do not know whether you would want to take this up or not, and it is not something in our report—is that the SFO has more choice than the CPS about the cases it takes. We had a committee when I was at the CPS where we discussed with the SFO who, if anybody, was going to take a particular prosecution—whether it measured up to the SFO's high level or whether we could deal with it, and so on. The SFO does have a certain amount of leeway—I would not like to expand on that because I do not know now, because this is 2022 and I am talking about a long time ago—about what work it takes.

Q8 **James Daly:** Sorry to interrupt, Sir David. The point I am making is that if you are paying out £2.7 million in costs, it suggests an organisation that has funds within it. Unless there is a pot of cash there for the rainy day when we have to pay out costs in those circumstances, it does not suggest under-resourcing to me. But I am sure I am wrong in that.

Sir David Calvert-Smith: Again, others will be more up to date and I am sure Anthony will be. If you have to pay costs, they will be found. If they are not in your purse, they will have to come out of some other part of another public purse, I am pretty sure, if you are suddenly faced with a bill that you cannot pay at the bank, as it were.

Anthony Rogers: On the issue of resources, it was very obvious in the evidence that we saw in the Unaoil case that the case team were working until well past midnight most days, certainly up to and leading to the Court of Appeal. At one point, there was advice from counsel asking for 17 associate counsel to come in to look at the legal privileged material that they needed, because that material was yet to be looked at and we were months before the trial.

It also may be helpful for the Committee to know that most people who were working on this case in the Serious Fraud Office would also be working on other cases. They do not just carry a case, even though there are only 90 to 100 cases at any one time in the office. The pressure of resources is a very obvious issue in all case teams at most times. Sir David is quite right that the Serious Fraud Office has a route for cases that are accepted by the director that do not get immediately allocated.

We talked about that in a 2019 inspection the inspectorate did on case progression. You are right in also saying that there are a number of recommendations where processes and systems, if improved, would make resources stretch further, quality assurance being one of the obvious ones.

Q9 **James Daly:** I don't know if this is a staffing issue and, Mr Altman, you could comment on this. You get the impression that the people who are dealing with these cases at the SFO—some of them, I am sure through no fault of their own—are either too inexperienced or do not have the correct skillset to deal with some of the issues that these cases throw up.

Brian Altman: As far as the Serco case was concerned, one of the more serious systemic failings was the appointment of this particular disclosure officer, who had been experienced as an employee at the SFO but who

had never before performed the role of disclosure officer. This was a complex, sizeable case by any standard. You will have read in the report what we had to say about his complaints about how he was dealt with, how he felt marginalised, undermined. We took very seriously what he said, without coming to any concluded view about the particular complaints that he made.

For us, when we looked at this particular issue—which is a resource issue after all—we asked the case controller what he had to say about it. The problem seemed to be that, first, he said that there was a reluctance for individuals who had performed the role of disclosure officer to do it again. He said a disclosure officer was a "rare and sought-after resource" and they were appointed from the available resource. What we did not take very kindly to was that this particular disclosure officer learnt the role on the job, "with appropriate training and support".

We deliberately said that that was a wrongheaded approach because it is, especially in the sort of cases that the SFO has to deal with. It seemed to us that it was real source of problem in this particular case. In October 2019 through to March 2020, because of the issues with disclosure—and perhaps picking up from what Sir David said about the Unaoil case—the SFO case team were clearly on the back foot as well in the Serco case.

It brought in an experienced deputy disclosure officer. When he left in March 2020—as well as having given certain instructions about the process going forward and quality assurance in e-mails in January and on his departure in March—he had a meeting with the case controller and his line manager, who was a principal investigator, and made his concerns very clear about this particular disclosure officer: that, if the problem was not grappled with, the case was going to regress.

The case controller was alive to it because, as we point out in the report, he took on a grade 7 lawyer to try to fill the gap. However, the gap was never filled because this particular individual who came in did not have the sufficient skillset to plug the gap that was unhappily left behind. There were other problems, with a very experienced disclosure counsel having left the case. For me, when you talk about resource, it does not just mean money, although money is ordinarily equated with the concept of resource here. I am talking about people.

Q10 **James Daly:** Mr Altman, in respect of that, in your recommendation—and this is something the Committee can take forward—you ask for the director to "consider ways in which staff may be incentivised to take on" the role of disclosure officer. You have explained certain parts of that but, in terms of incentivising, what thoughts did you have when you were making that recommendation, regarding the use of that phrase?

Brian Altman: You have to go back to what we said: that it was not sufficient for the SFO just to pluck from the available resource somebody who clearly was not happy and was reluctant to take the role. You have to make the role interesting. The way you make the role interesting, which is also part of our suite of recommendations, is that you make sure

that people are sufficiently trained and supported before they are appointed, so that they feel comfortable taking the role, rather than thinking, "No, this is not for me. I've never done it before and I don't want to do it now."

My own view, looking from the outside in and limited to this case, is that somehow the SFO has to make the role of disclosure officer—which is a central role to any prosecution case—one that people are willing to take on and are not fearful of. The only way that you do that is by offering people training all the way through, not just train them up the moment they are given the job. It seems to me that that is going the wrong way around things.

Q11 **Chair:** In the context of other cases, not SFO prosecutions, we have heard comments that quite often the disclosure officer is the most junior member of the team. It is the job that nobody wants to have. It is the add-on that comes at the end of the process. Should we be looking for specialist disclosure officers to deal with large fraud prosecutions, and should that be mainstreamed as part of the evidence-gathering process?

Sir David Calvert-Smith: Absolutely, in my opinion. The issue is that peripheral evidence that may or may not fall for disclosure can often in the end influence the decision whether to charge in the first place. You don't then have the embarrassment two months down the line of, "Oops, we've just found something that means that you have a complete defence." It should start at once.

Chair: That is very helpful. Mr Rogers?

Anthony Rogers: I would agree. Dedicated disclosure officers may be something that the SFO needs to consider.

Q12 **Chair:** That is very helpful. Mr Altman, you looked specifically at one case. The suggestion that I get from you is that there were warning signals and there were attempts made to react to the warning signals, but not successfully, for the reasons you set out. Do either of you get the sense that that is a wider problem beyond the cases that you looked at?

Brian Altman: It is difficult to answer a question like that, Sir Bob. In my case, as with David, I only looked at this particular case. It has to be said in the Serco case, if my memory serves me well, that this particular disclosure officer was not appointed until October 2017. This case had been running for several years up to that point. He had come on board late as disclosure officer.

One of the fundamentals that struck us is that this case suffered from the throughput of people. One person in particular, who had left the team and was very good, had sought in a very detailed handover note to hand over everything to the new team. It just did not work. That is a problem, because the longer the case, you are bound to get a throughput of people. There is nothing much that you can do about it. The quality of the handover is important, but in this case this particular disclosure officer—

who I think would agree if he were sitting here—was not equipped for the job.

Q13 **James Daly:** I want to ask one further question. Forgive me if I have misunderstood. I was a criminal solicitor and dealt with far less complex matters in general than we are talking about and the level of material we are talking about. One of the things that struck me from time to time regarding the general prosecution attitude to disclosure—I used to say to them all the time that they had nothing to fear from disclosing everything they had, unless there was something extremely sensitive that did not have to be disclosed—was that there was always a marked reluctance for reasons, or suspicions, on disclosing a certain amount of documentation.

Sir David, it might be you who touched on this point. I wonder whether, in terms of the general attitude of prosecuting authorities to disclosure, a more open approach would help in cases like this and be more efficient?

Sir David Calvert-Smith: I am quite sure it would. Brain Altman has raised the open door of the warehouse issue. This debate has gone hither and yon. In Sir Bob's time and ours, I can remember following several very high-profile disasters at the hands of the then DPP or some county prosecuting solicitor before the CPS even existed, where disclosure had not been done and they had gone wrong.

I was then a junior counsel in quite a serious alleged case of terrorism. I effectively operated an open-door policy in reaction. The High Court judge trying the case kicked me all around the court, saying, "You're disclosing stuff that's got nothing to do with anything. You're just wasting my time." We had gone too far the other way.

In the end what happened, as a result of that sort of decision from the Court of Appeal and that sort of reaction from trial judges who needed to get on with cases—the judge in my case said, forgive my French, "Are you going to disclose the fact that your cat pissed in my backyard?" I think that is on the transcript at the Old Bailey now. The debate went backwards and forwards, and it resulted in this medium solution within the Criminal Procedure and Investigations Act.

Q14 **James Daly:** There is a lot of time. If you have huge amounts of evidence, there is a lot of time taken to go through that. It is a matter of common sense that I obviously understand, but I do feel that the inefficiencies within that could be something that could be looked at. Mr Rogers, do you agree with that? Is that a fair point for me to make?

Anthony Rogers: The director will be able to talk to you about the efficiencies around IT and accelerating the new system, with word searches and so on. When you are talking about 6 million or 7 million documents in a case, there are efficiencies there. However, for the disclosure test to be met properly, somebody has to review what then is deemed appropriate in those cases. That then requires the intervention of a human being with a legal background. My normal job is CPS land, and getting my head around the SFO is very, very complex. It does always

amaze me, what we are talking about, and the difference, even in the most complex CPS cases.

Brian Altman: The is reality is that at the end—and the law requires this—a person has to make a decision on disclosure. However much technical innovation you can chuck at SFO cases of the size of these cases, in the end a person has make the decision on whether the material is disclosed to the other side. There is no getting away from that; that is the law.

Q15 **Dr Kieran Mullan:** You made several observations about senior staff, including the director, not complying with policies. There was particular mention of the use of a personal mobile phone. I take it that, from being in there, it is against policy. You have obviously looked at it in this case, but were you in a position to ask people whether it was occurring in other cases and did you talk to the director herself about these issues? Was that part of the review?

Sir David Calvert-Smith: We did ask the director about the use of her personal phone to text back and forward with Mr Tinsley, which we suggested was a foolish idea. In retrospect, she frankly agreed with us. In particular, when she first met him there were no notes taken, yet he was clearly going to be interested in some case. It was not just meeting and greeting a fellow professional. He was there for a purpose and was no doubt being paid large sums of money by the defendants in the US who had hired him.

You would have hoped that anybody would have made sure that the private secretary or somebody was there to note down what was being said, even if this was just a "get to know you" type affair. Even "get to know you" type affairs can sometimes reveal things that need to be disclosed or taken into account later. She has conceded that she should have done that.

I was a new person on the block once, and this was her second or third day in office. She needed to have people around her who were there and able to say, "Hang on, don't go there," or, "Don't go there without great care," or whatever. Frankly, her predecessor having gone many months before, and general counsel effectively in the process of packing his bags and moving on, she did not have the kind of backup that one would have hoped she would have had. On the other hand—you may want to ask her yourself—I think she realises in retrospect that was not a good move to see Tinsley un-noted just like that.

Q16 **Dr Kieran Mullan:** On the other elements that you picked up in terms of the chief investigator not maintaining proper records, the head of division not undertaking formal assurance, the case team not maintaining an up-to-date disclosure strategy document—and there are other examples—what is your assessment of why there is such widespread failure?

Sir David Calvert-Smith: If one can grade them, this is the worst of the failings that we identified. My guess is that there has always been a gap between the investigator who likes to know stuff and is able to hint

sometimes to the lawyer, as I said a bit earlier, that, "I know a bit more than you know from the papers and I know he's been well at it." The general feeling is that investigators like to keep stuff that they can, in case it becomes useful to them later, rather than letting it out to the lawyers and the lawyers saying, "Well, we'll need to tell the defence about this," or whatever it is.

At least in the first few weeks of the relationship with Tinsley, probably the idea was that Tinsley was going through his clients to supply information that might give rise to other proceedings with different defendants not directly related to this. Then the Ahsani brothers and their father could say, "What's more, we've helped the SFO investigate new cases, and possibly bring new defendants to trial." One can see why that is an investigator's thing and it was not directly to do with anything that might affect Mr Akle or the other co-accused. However, the moment he started talking about other defendants, and for months after that—and we criticise it quite strongly—he still kept it to himself or kept it within the investigation division and that should never have happened.

Q17 **Dr Kieran Mullan:** Are you confident, or are you not in a position to say, that this does not extend to other cases?

Sir David Calvert-Smith: Mr Rogers may have a better handle on this than I do. I have just focused on this case.

Anthony Rogers: In 2019, the inspector published a report on SFO leadership. Lisa Osofsky had been in role for about six weeks when we concluded that inspection. Historically, in the SFO we found a culture of non-compliance—people who thought they knew better. There is a cultural organisational problem that predates the current director. When I saw in the Unaoil case what we found with Sir David, it did not surprise me because it was not an uncommon culture, that, "I know better. I won't do want I'm asked to do."

We are back inspecting the Serious Fraud Office at the moment. I commissioned an inspection last week and we are currently in there. Since the appointment of general counsel, it appears that culturally the organisation has changed. It is very, very early days and we will not publish that report until April next year. We would be very happy to come back to the Committee and talk about that report if required. What the Unaoil case found, and the Altman review found in Serco, points to the culture that existed in the organisation and is long-standing.

Chair: That is helpful. We will take you up on your offer—I suspect in April—to see how that culture has changed, because that is important.

Q18 **Dr Kieran Mullan:** The internal tensions within the organisation, which are perhaps related to what you said but may be different—

Anthony Rogers: The 2019 inspection report talked about bullying, inappropriate behaviour, bullying between colleagues; not management-to-staff, but between colleagues. The inappropriate behaviour was something that I had not seen or heard of in my civil service career, from

the early days when I first joined the Revenue in 1989. We looked at the Unaoil case in detail and saw some real tensions and some problems, but it was not unique. I don't think that it would be a unique position to say that is what was happening in case teams and the SFO at the time the Unaoil case was happening.

Q19 **Dr Kieran Mullan:** One of the things that strikes me—and MPs are all employers, either as MPs or in their previous lives—is that we have heard that the people there could be working somewhere else for a lot more money. From a performance management point of view, it perhaps makes it difficult to say, "That's not acceptable. Off you go," if you know that a big organisation would collapse if you took that approach too rigorously. Is there any sense of that as a reason or not?

Anthony Rogers: Having done it myself in the civil service, it is very difficult to manage more than one person properly at a time, given the processes and procedures that you have to go through. On a team, you would tackle your worst offender. You would lead by a culture of behaviour that you would expect to see. I don't think that the SFO had that culture when I first started inspecting the Serious Fraud Office in 2018. More latterly, the director and the senior team have developed a culture change programme, which she will talk about if you ask her. That is starting to signpost the right behaviours. Organisationally, with 500 or 600 people, it is difficult but, in my view, there was not a culture of effective performance management in 2019.

Chair: Mr Altman, did you discern anything along those lines?

Brian Altman: At a lesser scale, in one sense. We looked at performance management but only of the process that was supposed to have been applied to counsel, which occupies a part of our report. We looked at all of the performance management reports. We found that, in effect, these had been delegated to this disclosure officer and they had not been completed accurately or at all. Several of them had been backdated.

When Sara Lawson came in in May 2019, she started housekeeping, which included performance management and training the senior teams or senior members of the team on various things, including performance management. She insisted that performance management forms were completed on the counsel that they were using. On the Serco case, so many had not been completed for so long that this particular disclosure officer created some, which we discovered were backdated. All of this is set out at great length in the report. That was also a system that had failed.

One of the recommendations that we made was that this was something that the SFO had to look at and get performance monitoring on a proper footing. Otherwise, you do not know whether the counsel that you repeatedly use are performing or not. If you do not have a proper audit trail and the sorts of meetings that they were supposed to undertake before performance monitoring of each individual counsel, you do not

know whether they are performing in the way that you expect them to do. We made some recommendations about that as well.

Q20 **Chair:** Are you satisfied that those have been taken on board?

Brian Altman: Yes, I am. One of the problems—and I do not criticise Ms Lawson for this—is that when she came on board, realising that performance monitoring had fallen by the wayside, she insisted on it happening. Because all teams were sending back performance monitoring forms into her office, they were being backdated. We inquired about that and we understood from the commercial section that it was endemic that they were backdating these forms.

However, they were meaningless if they were backdated. They have to be completed accurately and they have to be completed contemporaneously. There is no point to them otherwise because you are employing counsel within the organisation. If you are completing these forms three years out of date, for example, you may be employing counsel who are not up to the job but the organisation does not know.

Insofar as the three disclosure review counsel who missed the catalytic document in this case that led to the collapse, we made it clear that we do not know whether accurate and contemporaneous performance monitoring would have made a difference. The fact is, that is the point: we do not know. From our point of view, looking at this sort of situation that confronted itself on the Serco case, I am satisfied that Ms Lawson and her team are taking the matter forward appropriately.

Q21 **Chair:** You get the sense that backdating does not just make it meaningless; it is deliberately misleading.

Brian Altman: We were careful not to say that in our report because there was a risk that we were slightly entering outside our remit. However, we were concerned. The obvious question is: what notes were they relying on to say that disclosure review counsel X, on a particular date as it happens in history, had been performing accurately? If you look at them, some of the boxes in the form were not completed and those that were were repeated.

Anthony Rogers: It would point to endemic non-compliance, which we see on inspection.

Brian Altman: Yes, backdating is naughty, to say the least, and it was perfectly clear that it was a valueless exercise and perfunctory.

Q22 **Laura Farris:** I am sorry if my question covers ground that you have already covered—I was at another meeting. The most striking feature of the various difficulties the SFO has had is how fundamental the failings have been—really fundamental failures of disclosure and obviously inappropriate relationships happening in very high-profile cases. The disclosure issue is the Serco issue, but in Unaoil and ENRC, it is sort of the same thing. The question that comes out of that is: in its current incarnation, do you think the SFO is fit for purpose?

Sir David Calvert-Smith: I am quite sure that a body, which does effectively combine the functions of investigation and prosecution in a specific type of case around fraud and corruption, with carefully granted extra powers to compel people to comply under section whatever it is, and so on, which are not available to the CPS or the police, must be the right answer.

I am quite sure that Roskill back in the 1980s was right that there should be an organisation to deal with fraud on the scale and international corruption, and so on, that we dealt with in Unaoil. It has to be dealt with by an organisation with particular competencies within it and particular powers that it may need to exercise, which in the terms of ordinary crime—even extending to terrorist crime sometimes or murder, whatever—are not appropriate. That is my starting point from having come all the way through to today.

However, the problems that both Brian and we have identified are not new, in my experience. I have some knowledge of the ENRC saga but I go back a lot further than that as well. This is by no means the first time—as I am sure Sir Bob will know—where the culture clash between investigator and lawyer, with the attitude of, "I will keep my cards close to my chest in case I might want to play them in some other game," seems to have remained.

One big positive, and it is great that Anthony is with me here today, is that since 2019—

Anthony Rogers: We had statutory duty in 2014, but we started inspection in 2017.

Sir David Calvert-Smith: Since 2017, the same kind of oversight provided by the CPSI to the CPS and its various branches and functions is now being applied to the SFO. One can only be cautiously optimistic that the idea that they will get a public savaging from the CPSI when it publishes its report every three or four years will be enormously helpful in focusing the minds of the senior management of the SFO, and hopefully the troops on the ground, on the need to perform their duties conscientiously and, if necessary, under quite close examination afterwards—leaving aside the examination by the court system, including the Court of Appeal.

This is a recurring theme and the sorts of things that went wrong in these cases have gone wrong before. It is a great shame that some of the same cultural and other issues seem to be almost endemic. However, there is a cautious optimism that recent events will mean that they will at least become rarer, if not quite extinct.

Q23 **Laura Farris:** Mr Altman, can I ask about your conclusions in the Serco report? At paragraph 11 in your executive summary you say, "We conclude that their failures had nothing to do with their ability, far less their use or understanding of Autonomy DRS"—presumably, that is the disclosure tech that they were using—"or the relevance or disclosure

tests. Each had identified the material as relevant", and yet it had not been disclosed until the very end.

Can I ask you to comment on something that Lisa Osofsky said to the House's Procedure Committee some time ago. This is exactly what she said: "There came a point in time when we were asked for a document and we realised, 'Oh, my goodness. They do not have that document. We had better check and see, and give it to them.'" Therefore, she is talking about this. I am sure you are aware of this.

Peters & Peters said that that was a false statement and they said that they had written to the SFO in 2016 highlighting repeatedly the importance of board meetings in the case. They said they made repeated and early requests for disclosure before the trial. Does that correspond with your conclusions? Essentially, what I am asking you: was it not just a big disclosure error? Were they essentially blocking Peters & Peters when they were making those requests? Do you accept that?

Brian Altman: No. With respect, I think that would be an over-simplistic view of what happened. The letter Peters & Peters were complaining about or saying that the director had misrepresented, or having misrepresented the position, was a letter dated 9 November 2016. You will find it referred to in my report at paragraph 83. It was a letter that set out very early on in the process of this particular case the following, "We have no doubt that you will have made extensive document requests of Serco, and so as well as emails will have had sight of all material prepared for and after Board Meetings of the Serco Civil Government Executive Management Team, Serco Technology and Business Group, and Home Affairs Group. Whilst these were not included in Mr Marshall's bundle, he cannot think of any specific documents that you are unlikely to have already, and as such has nothing which might assist you at present."

Therefore, although it does not seem to me that that was a disclosure request, it highlighted the importance not just of material from Serco Ltd, the overarching company, but of all divisional board material and that sort of thing. However, as I see it, it was not a direct disclosure request.

The case controller admitted to us, and this also appears in the report, that he did not think, in terms of disclosure, that divisional board disclosure was the key element of disclosure, in any event.

Laura Farris: However, he had identified it as relevant.

Brian Altman: Yes, but at the same time, what was perfectly clear is that you have to understand that this disclosure exercise had been going on for years. What happened in the middle of April was that the defence had alighted on the fact that this particular Home Affairs managing director's board minute had not been revealed to them.

One of the fundamental problems was that it was not obvious, from the relevant material that had been scheduled on an Excel spreadsheet dated 31 July 2020, that the board minute was sitting there as a relevant document—I think in three places—because there were different

iterations of it. Part of the fundamental problem was that, although it was relevant, the defence never asked for it because the description that had been applied to it was not good enough to highlight what it was.

Long story short, the defence had highlighted very early on their interest—I think one cannot put it much higher than that—in even divisional board minutes. The case controller during our review accepted that he had been in error in perhaps not looking at that material more closely, rather than being perhaps more overly concerned about the overarching company's—Serco Ltd—board minutes.

However, coming back to your original question. I don't think that there was any obfuscation. There was no design. There was no intention or purpose here in the non-disclosure. It was inadvertent. It was in error. The great misfortune here was that three reviewers—in fact two, in particular—had tagged it as relevant on the tagging panel, which they use for document review, but they had not tagged it as potentially disclosable because they told us that they did not understand it was their role to do so. We set this all out in the report. We were not clear about whether that was right or wrong, but if it was, it meant that their training, the guidance and communication had completely failed. It is a far more complicated story.

Chair: It was a pretty basic error at the end of the day.

Q24 **Laura Farris:** You talk about how complicated all the different guidance is and that it did not enhance understanding, but it probably obfuscated.

Brian Altman: Yes, but the problem always is, with hindsight, focusing in on one category of one kind of document. We can all be clever after all these years with hindsight looking back, but the fact is the reviewers did look at the relevant documents. What they tell us they did not realise was that they ought also to have tagged it for potential disclosability. One reviewer, the more inexperienced of all of them, did tag it correctly but she came back to review it—this was April/May 2020—and she untagged the potential disclosability for reasons we will never understand, which I am not going to go into but are obvious in the report. However, it is simply inexplicable.

Laura Farris: I did have one more question, but I can see we have reached time.

Chair: There are a couple of things I want to pick up. Dr Mullan, and then I can wrap up.

Q25 **Dr Kieran Mullan:** I want to follow up on my colleague's question to Sir David to Mr Rogers. Would you share Sir David's optimism about the certain recognition that there had been problems that are longstanding but are on a trajectory as well?

Anthony Rogers: I would.

Q26 **Chair:** A couple of final things, perhaps specifically for Sir David, but the other witnesses may have views as well. You found that some key players

have been talking about SFO guidance not being followed. Some key players saw themselves as being "above the guidance". Who were those key players?

Sir David Calvert-Smith: We have named one of them, Kevin Davis. To an extent Mark Thompson, I would say. The others we have not named because of their ranking within the civil service, and I gather it is policy not to.

Chair: Are they comparatively junior?

Sir David Calvert-Smith: Junior enough for, apparently, there to be a convention that you do not name them. We are talking about the investigative or management side of the organisation, rather than the legal side. The legal side chafed under what it considered to be the restrictions that were being placed on it, or the fact that they were not being kept fully in the picture by various things. As Brian Altman has already said and I would like to repeat, the arrival of Sara Lawson, for one reason or another, after getting on for a year without an effective general counsel, has had a hugely positive effect.

She now has three assistant general counsel who hopefully will be laying down the law and doing something about it if the law has not been obeyed, when they have laid it down, which was not happening during the period when some people, as we have said, considered themselves to be above the guidance. There was really nobody to come down on them and say, "Come on, this is what you are supposed to do. Do it." They just did what they considered for—no doubt, as they thought of it—good reasons what they wanted.

Q27 **Chair:** Do you think, in the Unaoil case, that the desire to improve relations with the American authorities got in the way of objectivity?

Sir David Calvert-Smith: I do.

Chair: Why do you think that was?

Sir David Calvert-Smith: Clearly, the US is probably our biggest criminal justice partner in this particular field, and there are so many companies with branches in both countries and so many opportunities, therefore, for corruption to take place involving both sides of the Atlantic, for instance as allegedly occurred in the Unaoil case.

The history you will have read in the report. We have summarised how the Ahsanis were going to be tried here and then all of a sudden they were in the States, having been extradited without apparently any notice or much notice being given to the UK authorities, which obviously tore an enormous hole in the case that the SFO thought it was going to be presenting in due course, and so on. That led to a very low point in the relationship and, clearly, the need to mend the fences there, because there are going to be other cases and the fences needed to be mended. It may be that the whole Tinsley saga owes a little to the general desire to mending fences with the US.

If the Tinsleys of this world are operating in the US, is there no way of incorporating some form of Tinsley-ite way of operating here? We have no system here for that sort of thing. The last time it was tried was in a case called Gohil, which went to the Court of Appeal, where a retired police inspector set himself up in a way as a bit of a fixer in a very minor and personal capacity because he had friends who were still in the force. However, it is the same sort of principle: somebody acting for a defendant who is not their solicitor or barrister.

I can see why, with the desire to mend fences, that was thought to be an opportunity to start mending them, but of course in the end, for the reasons that the Court of Appeal has identified, it went badly wrong.

Q28 **Dr Kieran Mullan:** In your view, was what has gone on positively motivated? It was motivated for a noble outcome; an attempt to achieve something positive.

Sir David Calvert-Smith: I think that part of it was certainly legitimate. Anything that could be done to make sure that—for instance, there are the the problems over the Ahsanis, who were on their way to trial in the UK, and all of a sudden they were in Chicago or wherever they went to. The central defendants in the case were suddenly not within your jurisdiction, and then there was the question of, "Will they come here to give evidence, having pleaded guilty?" All those sorts of issues are terribly important. The chances of it happening again are now much reduced under the current management.

Chair: That is helpful. You did say that part of it was properly motivated. Were there bits that were not properly motivated? I assume you are investigating the handling of the intermediary and other matters?

Sir David Calvert-Smith: What I meant was that there was a clear failure, as I have said earlier. Once Tinsley started what he described as "farming chickens", that is approaching other defendants, that was totally—

Chair: I fully understand.

Sir David Calvert-Smith: We are not going to mend relationships with the US by doing that.

Q29 **Chair:** Precisely. Mr Altman, any observation on that question of objectivity being lost sometimes in these matter?

Brian Altman: I don't think in Serco there was any real evidence of that. David's review on Unaoil and what happened in that was unique, or certainly separate and entirely different to what we had to look at, so no.

Chair: Any view about that?

Anthony Rogers: I have no different view to Sir David.

Q30 **Chair:** A final thing, Sir David. I am given to understand that in the end, of course, the SFO paid significant costs to Mr Akle. Are you aware of that or not?

Anthony Rogers: I think that it is a question you may need to ask the director.

Sir David Calvert-Smith: They would certainly have had to pay the costs of appeal, but what I don't know is what has happened since.

Q31 **Chair:** We will ask the director. Can I ask both of you gentlemen, as experienced prosecutors, have you ever asked for the costs paid to a defendant to be kept confidential?

Sir David Calvert-Smith: No, I don't think so. We have never asked for it. I don't think it is for us when we are prosecuting to get involved.

Chair: No, I just wondered. It may become apparent later on in the afternoon as to why I asked that question. I just wanted your assistance on it.

Sir David Calvert-Smith: As Mr Altman quite rightly said, we would have got our juniors to answer that question.

Chair: Quite right too.

Brian Altman: With enough costs to them.

Chair: It is when you find your juniors are giving evidence to you or they are on the High Court bench that you begin to realise time has flown by. Gentlemen, very good to see all three of you, and thank you very much for your evidence. It has been extremely helpful to us. We are most grateful to you.

Examination of witnesses

Witnesses: Lisa Osofsky and Michelle Crotty.

Q32 **Chair:** Welcome, director, and Ms Crotty—good to see you both. Thanks for coming back to see us. If you could just introduce yourselves for the record.

Lisa Osofsky: Thank you for inviting us. I am Lisa Osofsky, director of the Serious Fraud Office.

Michelle Crotty: Michelle Crotty, chief capability officer at the Serious Fraud Office.

Q33 **Chair:** Before we get on to some more specific questions about some cases we touched upon last time you gave evidence to us, I just wondered if you could update us on SFO cases progressing to court in the coming year?

Lisa Osofsky: If I could start with the summer, we had a remarkable summer. We had three convictions in three out of three of the cases that we brought to trial. These were all fraud cases. In one case, we had two defendants who defrauded upwards of 2,000 victims. They each received

sentences of 11 years and there was £37 million at stake in that case in terms of loss.

In the second case, we had a persona called David Ames, who was running a business called Harlequin. He defrauded 8,000 victims, all relating to off-plan purchases of homes in the Caribbean. He got a 12-year sentence. In a final case, a former—now struck-off—solicitor ran a litigation funding investment. At stake, there was £107 million and victims upwards above 500. What we end up with is some very significant results in terms of individuals convicted of fraud.

We also delivered the Glencore conviction. Glencore was going to be, as you know, one of the mighty commodities power houses. That was a case that I opened and it was brought to conviction within three years. That company is going to be sentenced on 2 November. It involved bribery and corruption. Our portion of the case involved five different African nations.

That is what we have been up to lately. We also, as we sit here, have a case in court where five individuals have been charged. Again, it is a fraud case. It is a trade finance case; it involved £300 million in loss and multiple victims. On 24 November, we start another case. Again, five individuals have been charged and will go to trial. Those charges revolve around corruption, bribery and money laundering. We have had a very busy and a very successful time.

In Q1 upcoming, we have three cases going to trial. We have a lot in the court system now and we have delivered what I consider great results, especially when you think about over 10,500 victims getting justice, just through those three cases this summer.

Q34 **Chair:** Have you been able to recruit additional staff to deal with the case load?

Lisa Osofsky: We do get very talented people who are often taking significant pay cuts to join us, because of the kind of work we do and the sort of role they are going to have in the case. They are not the third junior twice removed writing a memo in a library. We need them. We are not staffed so that there is a lot of wasted time.

We have done well in some recruiting. We just were able to announce the addition of a new chief operating officer. We had 84 people apply for that job, proving that people do want to work with us, and we hired someone who is excellent. We are looking forward to her joining.

Do we retain them as readily these days? We do not. I think that is a feature of many things, including the cost of living challenge that we are facing. Michelle Crotty specifically handles that side of the house, so if I can ask her to please give you further details.

Michelle Crotty: To answer your question, Sir Bob, if we recruited people additionally for additional cases, the answer is no. We are trying to recruit. We have a vacancy gap. We are running at a permanent

vacancy of between 20% and 25%. We are able to backfill some of that with temporary staff—the kind of staff that you have read about in the Brian Altman review: disclosure reviewers, disclosure counsel.

However, we have a gap. That is not just across lawyers; it is also across our technical teams, our forensics teams, and our investigators. We are looking at doing what we can but, as the director has said, like all public sector organisations, with the growing cost of living, the salaries that we offer are becoming an increasing challenge for us. Although we do see people taking significant pay cuts to come and join us, as the Director has said, keeping people engaged and retained, particularly where our cases are so lengthy, is becoming an increasing challenge for us.

Q35 **Dr Kieran Mullan:** We may come on to talk about some of the issues to do with performance management in the broader sense. Do those two factors interplay, if you are managing a team and you know that replacing someone is going to be difficult, if at all possible?

Michelle Crotty: It is difficult to say. I do not think we have any evidence that says people do not do it because of that, but I would say it is clearly a factor sometimes that a person is better than having a vacancy. If you can get a person working to do something rather than an already burdened team having to take on more work, I would not rule that out.

Q36 **Chair:** Both Mr Altman and Sir David Calvert-Smith agreed with us that there was merit in the idea of specialist disclosure officers being developed and trained up within the SFO. That is a real specialism. Is that part of your workforce planning?

Lisa Osofsky: Absolutely. We have taken every and all of the 29 recommendations that we heard about earlier today, and that you read about in the report. We have a plan to either implement or we already are implementing them. However, we did not wait for those reviews to land to know that we needed to make some changes. It is part of our workforce planning to shore up that absolutely critical function in all of our cases.

We need good disclosure officers. We need to be able to hire good disclosure counsel. What we have done internally to do that is to develop very bespoke and advanced training programmes for the folks who do that critical function. We have re-energised a disclosure working group. We have disclosure champions and we evaluate disclosure risk every time we look at quarterly reviews of our cases.

We are trying, to the best of our abilities, to create a culture of best practice and an ability to talk about disclosure issues within the office, and to surface them before they might lead to a bad result in terms of our cases. Michelle, I think I cut across you, sorry.

Michelle Crotty: In terms of specialist disclosure officers, it is something that we are looking at and we know that some organisations are looking to implement it. Part of the challenge across law enforcement generally

is—you referred to it earlier, Sir Bob—that the role of a disclosure officer is a difficult job. It is a very responsible job, as you have seen from both the reviews. Keeping people engaged and motivated where there are huge pressures on them and particularly over the length of our cases—that is not to say that we are stepping away from that; we absolutely see some merit in it.

Do we think there is a pool of experienced disclosure officers out there that we are not accessing? I think the answer is no. We are looking at every option to try to incentivise staff and also develop staff to see that a key part of their learning in becoming an experienced investigator and prosecutor is taking on the role of a disclosure officer.

Q37 **Chair:** That is helpful. Have you been impacted at all in the cases by the action that the CBA took? I imagine a lot of the defendants are probably privately represented, so I do not suppose it has had much of an impact on you.

Lisa Osofsky: Exactly right. In the one exception where it looked like there might be a severance, the strike ended before that happened.

Q38 **Chair:** One other thing to pick up on: are you carrying out any investigations in relation to suspected fraud around the Covid-related support schemes or the PPE contracts?

Lisa Osofsky: You will appreciate that we have a certain threshold with our cases, so, while there is widespread report about crime related to Covid, not all of it, by any means, reaches our threshold. We have worked very hard across Government. We are in groups that have met regularly to determine which organisation is best able to cope with which case. That being said, we are investigating a small number of cases that touch on Covid.

Chair: That would cross your threshold?

Lisa Osofsky: That would potentially cross our threshold. We are just in the investigation stage, so I don't know that for certain yet.

Chair: Therefore, you cannot give me the quantum as to how much is involved as yet?

Lisa Osofsky: Correct.

Q39 **Chair:** I understand. If we can then come on to the reviews that were carried out in relation to the Serco and Unaoil cases. How much of the costs has the SFO paid on the Unaoil case?

Lisa Osofsky: Michelle Crotty handles that area of the house and I am going to let her answer.

Michelle Crotty: On Unaoil, we have paid £2.15 million out to date. That is in relation to Mr Akle. We are still in negotiations with Mr Whiteley. The third defendant was legally-aided, so we await to see if there is an issue in relation to that. Obviously we have the costs of the review as well.

Q40 **Chair:** I am given to understand that an application was made to keep the costs awarded to Mr Akle confidential; is that right?

Michelle Crotty: An application to?

Chair: To keep the sum of the costs awarded to Mr Akle against the SFO confidential, I have been told.

Michelle Crotty: It is not familiar to me.

Chair: Have you not come across that?

Michelle Crotty: Was it made to the court?

Chair: That is my understanding. Is that right or not?

Michelle Crotty: I certainly know in some cases there are discussions with legal teams who do not want the quantum of their costs in the public domain. However, we are always clear that the costs are disclosable in our annual report and accounts. This is public funding.

Chair: It might be the defendants' legal teams not wanting the sum to be disclosed, but that is not something you are prepared to do?

Michelle Crotty: No.

Chair: That is helpful, thank you very much. That is useful.

Q41 **Dr Kieran Mullan:** On the issue of costs, when you pay out costs, are you insured against that in some way or does it just come out of your core budget?

Michelle Crotty: It comes out of core budget, if it is available. Our budget is very tight, so we do not have a fixed amount set aside, because we do not take cases on the basis that we think we are going to lose. Some of the costs may come from our budget, so come out of the operational work available, or otherwise we have to discuss it with the Treasury and the money will come from public funding in that way. *[Interruption.]*

Q42 **Chair:** We need not worry about the Division bell, because none of the members of the Committee are going to take part in this Division, so we can carry on. Can you just help me about one other thing in relation to Unaoil? Thinking about it now, you have accepted the recommendations very candidly.

Lisa Osofsky: 100%—we have accepted all the recommendations and we either are implementing them or in some cases have already implemented them.

Q43 **Chair:** Do you accept Sir David Calvert-Smith's conclusion that it may well be that the desire to improve relations with the United States authorities got in the way of the objectivity that you had to show as prosecuting authority in that case?

Lisa Osofsky: I do not want to get behind what David Calvert-Smith said. We accept all of his recommendations and I accept his observations.

If you are asking me whether that impacted—I do not know if you are asking me specifically. I knew that the US could be an important ally of ours, and I do not think it got in the way of my objectivity. I think I had a personal reason for accepting the meeting with him through a former professional colleague who recommended that he was someone who had made a lot of cases in the US and was in a position to offer the SFO information that was not in our possession at the time.

I was day three in the job, so I talked to our senior team, and the team dispensed advice to me. They said, "You should take the meeting and then pass him over to the investigators." I took their advice. I did it. Do I regret that I did that? Absolutely. Do I wish I had done things differently? I do. I see the impact on our office and on victims. You know at the time, of course, my superintending law officer also took a meeting with him, so I thought that the advice that I had been given was the right advice, as it were. I took it and regret the fact that I did that.

Chair: You accept now that you would do things differently?

Lisa Osofsky: Yes, absolutely.

Chair: The importance of having general counsel available in continuity I think is something you specifically recognised.

Lisa Osofsky: Absolutely. You will know of course that we changed our policy in May 2020. We did not wait for reviews to tell us to do that. We changed our policy and now no longer meet with third parties who are not lawyers. We even expanded that policy to include all third parties. Notes are taken at those meetings and given to case teams. We have made efforts to make the changes where we felt we fell down.

Q44 **Chair:** Did you regard David Tinsley as a reliable person, somebody who could be trusted?

Lisa Osofsky: Remember, I had a brief introductory meeting with him and did not get to know him well, but he came highly recommended by the FBI and the United States Department of Justice. We did our due diligence to that extent. We reached out to our colleagues in law enforcement and asked whether he had been reliable, whether he had delivered information. The answer was he absolutely had and that we could rely on him. They had relied on him. Do I now rely on him? Do I now consider him reliable? I do not.

Q45 **Chair:** That is very clear. Did you dig down any further as to how it was that those text messages that the senior investigator had somehow got irretrievably lost?

Lisa Osofsky: Sir David certainly dug into that with great energy and passion, as we saw in him through his testimony. I do not know anything further than what he did. We accept that that was the fact.

Q46 **Chair:** Have you taken steps to try to prevent that sort of loss occurring in future?

Michelle Crotty: Can I deal with the issue that Sir David touched on, which is around security? Dr Mullan, you noted it. It is not just the normal kind of phone that we all have. We have very high levels of encryption on our phones and our laptops, with a series of access. We keep security under constant review. It is a frustration for staff. It is not unusual for people to lock themselves out; I have certainly done it. It is balancing the security requirements with the frustrations of staff and being able to do that.

To that extent, we are keeping it under review. We are reviewing the technology that we have available. However, I do not think we are ever going to get to a space where we do not have that level of security and, if it did fall into improper hands, the number of attempts would wipe the phone.

Q47 **Dr Kieran Mullan:** If I could follow up on that, obviously we have the opportunity to have a detailed discussion and explanation. In public bodies it is not that you just have to do the right thing; you have to be seen to be doing the right thing. It does strike me, on the face of it, as extraordinarily concerning. If you were just to see it in the summary that the organisation whose main role—not main role, but one of its key functions—is to make sure people do not hide stuff and cannot delete stuff and you delete stuff, that is concerning from a public perception point of view.

I understand up until now you have not been able to find a solution, but I struggle to think that across the west and our allies there are not technologies that are both secure and do not regularly lead to devices having to be wiped. I do not think that is a credible explanation of the situation you find yourselves in. There must be ways in which you can both be secure and not have people regularly wiping their data.

Michelle Crotty: I am not saying people are regularly wiping their data; it is the potential.

Dr Kieran Mullan: It has happened to such an extent that that was your credible explanation for what went on: "This happens." I do not think that can be a sustainable explanation in another case for your data being wiped: "This just happens in our organisation."

Michelle Crotty: I am not blasé about it. However, we follow security guidance from Government for the levels of material that we deal with. It does happen in other organisations. I will absolutely say to you we will keep it under review. I do not want anybody to be in this position again. I can understand the concerns, but what we have to do is balance the security issues with keeping material safe. As I say, this is something that security services have for certain types of CPS material.

Q48 **Dr Kieran Mullan:** This is curiosity not a challenge, but you would say that if we spoke to other similar organisations they would say, "Yes, our devices get wiped."?

Michelle Crotty: Yes.

Dr Kieran Mullan: It is something that just happens and you cannot really avoid it?

Michelle Crotty: I think there is an issue about the frequency and I think there is an issue about what you do when you get to attempt number 3 and you do not keep going and you go, "I really do need to go and speak to IT now," but those are behavioural issues, not security issues. I definitely agree with that and an information campaign to reinforce to people that it is a very serious consequence to have the information wiped completely, as opposed to potentially 24 hours' worth of frustration or a weekend's worth of frustration if you cannot access your phone. Absolutely, I am not saying we should not try to change the behaviour. We will do that. This has been a real lesson for people about the impact that can have, if that does happen, and what it may look like to the outside world.

Q49 **Chair:** Can you help me about one other thing? Why was it, in relation to Unaoil, that the SFO did not proceed against the Ahsani family?

Lisa Osofsky: When I came to the SFO, the Ahsanis were already in the United States. They had been extradited from Italy—they had not been extradited. They were moved from Italy to the US. They went co-operatively to the United States rather than to our jurisdiction. They were co-operating with US authorities. They were admitting to the full extent of their crime and they were willing to admit in a US court everything they had done in our jurisdiction.

In that situation, I made a judgment call that we were not going to get them back. They were already in the US. To try to extradite them from the US would have been a very unusual set of circumstances when they were fully co-operative in the United States and they were willing to come back and testify. This is according to our US counterparts. This is not from David Tinsley. This is straight from the United States Department of Justice. They were willing to come back and testify in our jurisdiction. They were also willing to offer information about new cases; cases about which we were unaware.

What we had was co-operating individuals willing to accept guilt for their conduct, including the conduct that they had committed in our jurisdiction, and willing to bring us additional information.

Q50 **Chair:** How significant was the fact that they were likely to bring you new cases? Was that in your thinking?

Lisa Osofsky: It was significant.

Chair: Have any cases been brought on the back of it?

Lisa Osofsky: It did not develop the way I had hoped it might, so we have—as you will know, I did not have extended contact with the case. I turned him over to the chief investigator who worked with them but, to the best of my knowledge, we did not get what we thought we might get from either David Tinsley or those individuals.

Q51 **Chair:** Were you had over by David Tinsley, do you think now?

Lisa Osofsky: When I look at all the facts of the case—and remember, hindsight is a wonderful thing. Frankly, I was involved in two other matters. I thought the chief investigator is dealing with this according to our policy and procedure. I cut off all substantive contact with this person. I think he went in a direction that I never would have anticipated and I was surprised to learn exactly where he went by reading the reports. Therefore, I would say that in some way we were.

Q52 **Laura Farris:** Just picking up on that, one of the striking things about this is that the blunder is so basic. You are meeting a representative of this family. There is such an obvious conflict of interest or potential conflict of interest that develops, and yet there is no involvement from any lawyer or from counsel. In Sir David Calvert-Smith's report he says, "While there may have been an understandable reluctance on the part of the DSFO to consult General Counsel for various reasons…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". Then he found fault on your part—really sensitive relationships that you formed without involving your legal team. Are these not basic errors that have exposed the taxpayer to huge liabilities as a result?

Lisa Osofsky: I understand your question and, as I have explained, in hindsight I would not have done that. Remember, that was a basic meeting. I held a meeting that was eventually held in—let me back up. The way that meeting took place was in my office and it was followed, by design, by an in-depth meeting with the chief investigator and the chief operating officer, who minuted that meeting in full. The way the advice was dispensed to me was, "This is the way the SFO does things." Remember, I am three days in.

Q53 **Laura Farris:** I understand that, but even if you have a legitimate explanation because you are three days in, isn't it alarming for members of the public to hear that the protocols that apply at the SFO were so loose, so frankly improper, that something like this could ever have happened in the first place? It seems so obvious—I am a reasonably experienced lawyer—that at that point you would have your legal team closely monitoring, present and advising, because this is highly sensitive and the case collapsed as a consequence. More than collapsed—you are now on the hook for very, very substantial costs to multiple people because their convictions have been overturned.

Lisa Osofsky: I disagree with your premise. We have heard, even from David Calvert-Smith, the reason this case collapsed was due to disclosure failures. It was not the actual meeting. Indeed, if you read his report, he will say that there was no one—

Q54 **Laura Farris:** But that improper relationship was highly damaging to the SFO. The David Tinsley relationship has been highly damaging.

Lisa Osofsky: It was a damaging relationship. I appreciate and apologise for the fact that we had that meeting. You will recall that at the same

time, the Attorney General of this country also had that meeting with David Tinsley. Therefore, it was not an automatic red flag that something had gone wrong here. When I looked around in Government, it did not appear to be completely out of the ordinary that I was told, "Yes, it is appropriate to take an initial meeting and then turn him over to investigators." That is precisely what I did.

Q55 **Laura Farris:** I do not mean to rudely look at my phone; I just wanted to raise the fact that there is another recent serious finding of an improper relationship, which is in the ENRC decision of Mr Justice Waksman. I am reading the summary of this. "In a near 400-page judgment"—

Chair: Is the case ongoing?

Lisa Osofsky: Yes, it is.

Laura Farris: Can I read a newspaper report?

Chair: Is it not caught by sub judice?

Laura Farris: This is in the legal gazette and Reuters. The judgment is in the public domain.

Lisa Osofsky: We have a private session on that afterwards, specifically, because that hearing that you are referring to only deals with part of the issue. We have a follow-up hearing concerning loss and damages in March of 2023, and we are happy to answer any questions that we can—

Chair: We will return to it later for that reason.

Q56 **Laura Farris:** My question was going to be about other improper relationships, but can I follow up on one point that the Chair made? He asked you a few questions and I want to complete the question about compensation.

I think you said, Ms Crotty, that you paid Ziad Akle £2.15 million and you do not yet know the quantum for Whiteley and Bond, but would it be a fair assumption that it will be something similar—that it is going to be in the millions?

Michelle Crotty: It is going to be significant, yes.

Q57 **Laura Farris:** Let's just say that if it was, we would be talking about £6 million and then there will be the legal costs and the compensatory award that was given to Tom Martin from his employment tribunal proceedings. Do you know how much that was?

Michelle Crotty: We are still in litigation in relation to that.

Q58 **Laura Farris:** The case has not been resolved?

Michelle Crotty: The case has not been finished.

Q59 **Laura Farris:** Is that because it is going through an appeal process?

Michelle Crotty: It has been to the Employment Appeal Tribunal. It has been remitted to the Employment Tribunal.

Q60 **Laura Farris:** So he succeeded on appeal, just on quantum—it is remitted on quantum?

Michelle Crotty: It has been remitted on quantum. The original finding of the Employment Tribunal still stands. We do not have a date yet for when the quantum of costs will be dealt with.

Q61 **Laura Farris:** At the moment, some of the cost to the taxpayer of that case is likely to be around £6 million as a starting point.

Michelle Crotty: I think that is on the high side. I do not think the other two defendants are likely to be in the same region as the £2.15 million, but it is difficult to say because we are still working through that.

Q62 **Laura Farris:** With the employment stuff on top, if you are unsuccessful in the end—or you will be, but it is disputed how much you will end up having to pay him.

Michelle Crotty: Yes, although I would say—without getting into the details of the Tom Martin case—that is not, from our perspective, part of Unaoil; that is an employment issue with a former member of staff.

Laura Farris: It has a causal connection.

Michelle Crotty: That has been Mr Martin's case.

Q63 **Laura Farris:** What was the cause of action in his claim in the Employment Tribunal?

Michelle Crotty: He alleged, I believe, wrongful dismissal by the SFO.

Q64 **Laura Farris:** Is that a whistleblowing claim as well?

Michelle Crotty: Not as far as I am aware.

Q65 **Laura Farris:** Just a wrongful dismissal or an unfair dismissal?

Michelle Crotty: It may be an unfair dismissal. It was a dismissal claim.

Q66 **Chair:** Perhaps you could check that out for us.

Michelle Crotty: I can certainly come back on that.

Q67 **Chair:** Perhaps you could also check one other costs matter, Ms Crotty. Could you check the court records, both in the lower court and the Court of Appeal, as to precisely who it was who asked—did or did not ask—for costs to be kept confidential?

Michelle Crotty: I certainly will.

Chair: My understanding is that it was the Serious Fraud Office that made an application for the costs awarded to Akle to be kept confidential, but I would like to check the record as to whether that is right or wrong.

Michelle Crotty: I will check.

Chair: I will be very grateful to you. Thank you.

Q68 **Dr Kieran Mullan:** I believe you heard the evidence from our earlier witnesses. I touched on some examples of people, some of them quite senior, not following procedures. We have discussed the issue of the meeting and you have given evidence about the change of policy.

I would like you to articulate why you think you are in a better place now and how you have done that. Can I also get your sense of the impression you think people like us might have of the organisation? I feel that if it were not for the positive account given by the earlier witnesses on the trajectory, I would have come away with a seriously negative view of the organisation on the back of these reviews. Do you think you are in a position to recover that, and how will you set about it?

Lisa Osofsky: I appreciate the question. We do think we are in a better place. For example, there are the results we have been able to bring on this summer, and the fact that we have 10,500 victims who have found justice in a time when we know that fraud is on the rise. This Committee came out with very stark figures on that in your report yesterday and we know from the 25% over the past two years, the fact that we have been able to meet the needs of some of those victims is very gratifying to us.

We are in a better place because I think we are a learning organisation. Remember, I asked Brian Altman to come in. I commissioned that report and I made the report public as soon as I could. We take our responsibilities to victims and the public seriously and we want to learn. We want to get better. That is why we accepted all 29 of those recommendations. That is why we have a plan against every one of those recommendations and we have either implemented or are in the process of implementing all the controls that we hope and believe will lead—have already led, frankly—to a better place. I did not wait for those reviews to land.

You heard about the long-term culture issues that led to the 2019 report from the HMCPSI. I came in six weeks before that report became public and I instituted a programme of culture change. I went to the board and said we needed to make longstanding change here, and we were given board approval and we hired a deputy director in charge of change. We knew that we had to get better at our job and the reviews made it clear that there were ways we could do it. One point that we heard from the previous panel is that resourcing is a challenge. It is a challenge we face and it does make for some difficult circumstances. We are an operational Department. We have to make decisions about where we spend our money.

The reviews tell us the ways we can change. You have heard about the ways we have changed. We can walk you through each and every recommendation if it would help, but I think one thing speaks for itself. Our amazing results this summer tell you that we are moving along in the right direction and we continue to be very impressed with what our talented and hardworking staff do and deliver day after day.

Q69 **Dr Kieran Mullan:** You mentioned difficulties with retention and you have made a reasonable case that they are about things such as the cost of living and the competitiveness of salaries. Another explanation might be that the culture is still not what it should be and that people leave because there are issues of conflict within the team. How assured are you that that is not why they are leaving? Do you do exit surveys? Do you have data to explain objectively why people are leaving?

Lisa Osofsky: I will address that briefly, but Michelle Crotty is the expert. We have exit interviews with everyone who is willing to be interviewed by us and give us the information. We know the top reason that exitees are giving has to do with job progression and number two is salary. That is what we hear from those who exit. The reason I think there might be some good cultural roots in the organisation is that 87% of our staff have said that when things get tough, they can count on their colleagues to be there for them. That sounds to me like a very good, positive culture statement.

Q70 **Dr Kieran Mullan:** What do they say about whether the senior leadership would be there for them? Do you ask a similar question about that? What do they say about that?

Lisa Osofsky: I will turn it over to Michelle for further detail about the exit survey.

Michelle Crotty: As the director says, the main reason people give for leaving is career progression. We are an organisation of 600 people and ambitious people hit a limit; unless somebody leaves, it is difficult to progress. In bigger organisations, it is easier for people to progress.

Regarding more senior leadership, I think it is fair to say that from our staff survey, we have more to do on staff relationships and trust between senior leadership and members of teams—it varies, as you would expect in an organisation of our size or any size—and we are having conversations with our staff about how we do that and being more transparent with staff about decision-making.

Trust is also bound up in some of the recommendations from the review, around what levels of assurance we as the senior team need about what is happening and when it is happening. One feature that we have taken on is that there was a lot of trust and things were sometimes possibly taken at face value—yes, everything is fine—without looking for evidence about what was being done about things.

That is something that we take very seriously as an organisation. We are ramping up our assurance processes, which is feeling difficult for some of our staff because there is a level of demand for, "Don't just tell me, show me," involved in that. However, the primary reason for people leaving is career progression, followed by pay.

Q71 **Dr Kieran Mullan:** On pay, you said the last time you were before the Committee, in March, that you were talking to the Treasury about rates of pay. Can you update us on any negotiations?

Michelle Crotty: Yes, there are two parts to that, which I think I also said last time. There is this year's pay award, which we are working through with the Attorney's office within the 3% that we are permitted by Treasury, and we are looking to allocate that as best we can in year. We are still working towards an overall pay case across the board next year. We recognise that the fiscal situation is difficult, but equally we believe that we need to reform pay in order to keep the good staff we have and attract new recruits.

Q72 **Chair:** What steps have you taken to improve performance management and oversight?

Michelle Crotty: Performance management is an issue for most organisations. We are putting in further training and support for our managers. It might have been Brian Altman, or possibly Anthony Rogers, who mentioned the processes that we go through. Obviously, there is an issue of fairness both to the staff being managed and the line managers, but trying to support our managers is a focus for us. It is sometimes not easy. New programmes are in place and we will be monitoring what impact they are having, so it is not just about the activity; it is about whether they are making a difference.

Lisa Osofsky: One of the features of our work—and this is true of all Government Departments—is that people may be promoted because they are good at their job as a lawyer or as an investigator, and we may need to give them tools to be a good manager. We recognise that we have been trying to make sure that our special learning and development chief is making sure that people get the development tools they need to do their jobs appropriately.

Q73 **Chair:** What about the system that Sir David Calvert-Smith referred to, whereby staff can raise concerns about cases?

Lisa Osofsky: One of the members of the general counsel's team serves as the freedom to speak up champion. We also have an anonymous line that goes directly to the chief capability officer. If for some reason people are not satisfied with that, they can also raise a concern to the general counsel or to the non-executive director we have designated if all other avenues fail or are unsatisfactory.

Q74 **Chair:** Moving on a little, one of the issues that came from both of these cases related to disclosure; that was the key thing. I know you have raised the possibility of a specific CPIA code of practice for serious and complex fraud, bribery and corruption cases. Have you been able to discuss that with the Attorney General and what progress have you made with it?

Lisa Osofsky: We have addressed what we might call quick wins with the Attorney General. Those would be in relation to the Attorney General guidelines—an area you and your Committee spoke on as recently as yesterday. Block listing was included in the recent guidelines, but without a definition of what effective block listing means, so the courts, the defence and we have been loth to use it. We need a little more

information. We have brought that to the Law Officers and they seemed quite supportive.

I think there is another quick win on another area that you discussed: redaction. Under the GDPR rules, we think the CPIA covers that sufficiently in terms of what you disclose in court being used in that case. From section 17, it appears that you might be okay with assuming that you have an exemption, but we think it would be even clearer if it was advertised as such. You will have heard testimony about how challenging redactions can be. We have cases where, you can imagine, if we have only one defendant's bank statements that should only bear the defendant's name, it has meant that in some cases we will have someone redacting for 18 months.

I am perhaps giving you too much information, but I know you also asked about the CPIA and we think it would be helpful to have a law enforcement discussion about ways that it could be revised. Remember, it predates the smartphone; it predates the data explosion we have seen. A small example for us would be a practice note in section 23 that would discuss document-heavy cases like ours and would give more clarity so that the courts, the defence and the prosecution all felt that they could take advantage of it.

Q75 **Chair:** I understand. That is very helpful. You say you have raised those issues with the Attorney General?

Lisa Osofsky: We have raised some of those issues with the Attorney General. We focused on the quick wins and the immediate issues and we are in the process of discussing other matters. Remember, we have a new Attorney General and a new Solicitor General. We have had an initial meeting, where we did raise the two quick-win points and we will be taking them up at our ministerial steering board meetings.

Q76 **Chair:** That is very helpful. Thank you. Do you think that the proposals in the Economic Crime and Corporate Transparency Bill will assist you in dealing with the sorts of cases you prosecute? Are there any other things that you would like to see in the Bill?

Lisa Osofsky: We have a comparator because we see what has been done in the bribery area, so we know that "failure to prevent" works. It makes sure that companies sit up and take notice and make sure that they have their houses in order. We see, for example, in the Barclays case that the identification principle has made it very difficult for us to prosecute in the fraud area. I know I am pushing on an open door in this, because you too have mentioned the need to have "failure to prevent" in the area of economic crime and fraud. We certainly feel we need that. We see how well it works in the bribery area. That's all we need to do, to look at what we could do.

We think having additional investigative powers under section 2A, where we can do a quick look in terms of our fraud and economic crime cases, would be an extremely helpful tool, again looking to the bribery and corruption area where we already have it. It would allow us to make

quicker decisions about our cases. We heard from the reviewers and countless others who have appeared before you that a case that draws out longer than it needs to is not a case where we have delivered justice as effectively as we possibly could.

Finally, we would ask for a proper searching look at disclosure, because we are finding that the manual element of disclosure will inevitably lead to human error. We heard about it from our former panellists and we need to make it as error-free as we possibly can so that we bring justice to as many victims as we possibly can.

Q77 **Dr Kieran Mullan:** There is some suggestion that more work needs to be done to understand exactly what "failure to prevent" legislation would look like for fraud. Do you think it is complicated? Is a lot of work needed to understand what it might look like and any inadvertent impact there might be?

Lisa Osofsky: I think it is straightforward. All we need to do is look at the UK Bribery Act and put that in place for fraud and economic crime. I think it is that simple.

Michelle Crotty: At the point that the Bribery Act was being introduced and the section 7 offence was being introduced, there were a lot of concerns about how much it would be used by prosecutors. I think there has been evidence since 2010 that the use of it has been proportionate and that it is not being substituted unreasonably. I understand some of the concerns, but I think "failure to prevent" in the area of bribery has a good track record that would apply equally to the area of fraud and economic crime.

Q78 **Chair:** Finally, for the record, Ms Farris asked Ms Crotty about the quantum of some of the costs. There was some evidence given to the Public Accounts Committee rather than to us that some £3 million was reserved in relation to the co-defendant, Bond, in the Akle case. We will add those in.

Michelle Crotty: We will add those in. We will make sure that you have all the details. The negotiations are ongoing. That is why I am being reluctant to provide further information.

Chair: I understand, but if you would update us once you are able to, that would be helpful.

Q79 **Dr Kieran Mullan:** Could I finish by saying we have visited and met with your staff and I want to recognise that we do appreciate—certainly I do—that you have people who are very dedicated to this work and put their hearts and souls into it? We heard evidence about the hours people were working. I want to emphasise that I recognise that even if things are not done perfectly, a lot of effort and dedication is going into this work at your organisation.

Lisa Osofsky: We appreciate that and know that they will appreciate it. I know your appearing in our office to interact with them showed a level of

commitment and dedication that they were very grateful for, so thank you for that.

Chair: Director, Ms Crotty, we have covered a good deal of ground and we are grateful to you for your time and your evidence in the public session. We will have a private session shortly, but thank you for coming to give evidence to us on the record today.

Michelle Crotty: Thank you.

Lisa Osofsky: Thank you for having us.

Chair: Not at all; thank you very much.