



HOUSE OF COMMONS

Justice Select Committee

Oral evidence: [Work of the Attorney General and the Solicitor General](#), HC 1151

Tuesday 21 February 2023

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Members present: Sir Robert Neill (Chair); Janet Daby; James Daly; Maria Eagle; Edward Timpson.

Questions 1 - 84

Witnesses

I: Rt Hon Victoria Prentis KC MP, Attorney General, Attorney General's Office; and Michael Tomlinson KC MP, Solicitor General, Attorney General's Office.



Examination of witnesses

Witnesses: Victoria Prentis and Michael Tomlinson.

Chair: Welcome to this session of the Justice Committee. It is a particular pleasure to welcome the two Law Officers: Madam Attorney, Mr Solicitor, it is good to see you both.

We will get to the evidence shortly, but first we must make our declarations of interest. I am a non-practising barrister and formerly a consultant to a law firm.

Maria Eagle: I am a non-practising solicitor.

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

Edward Timpson: I am a former Solicitor General with a practising certificate but I am not currently undertaking any court work.

Q1 **Chair:** Our witnesses today are His Majesty's Attorney General; it is good to see you.

Victoria Prentis: It is lovely to be here, Sir Bob.

Q2 **Chair:** It is not unfamiliar territory for you.

Victoria Prentis: No, that is probably fair. Some of my most rewarding experiences in this building have been on this Committee.

Q3 **Chair:** We shall take the compliment and bank it.

Welcome to the Solicitor General, Michael Tomlinson KC MP.

Michael Tomlinson: Thank you very much, and thanks for welcoming me to the Committee.

Q4 **Chair:** I am conscious of the fact that you, Attorney, have a bit of a deadline, so if it is all right with you, Mr Solicitor General, we might leave some of the issues that you deal with until a little later.

Victoria Prentis: I think that I will probably be able to stay.

Q5 **Chair:** We will be flexible in how we deal with topics. There is quite a bit to get through.

Madam Attorney, one of your predecessors, Jeremy Wright, talked—accurately, I think—about your role, and that of the Solicitor as your deputy, being uniquely at the intersection of law and politics. You are in that different position because of the need to exercise some functions that are not political but legal. How do you manage that balance?

Victoria Prentis: The aim of the role, as you know, is to make politics and law work together. You know my background in Government legal work, so you will know that it is something I have struggled to do throughout my career. This is a slightly new perspective on that struggle, but it is nevertheless—for me, at least—an evolution of my legal work.



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It is really important that the Attorney General is a lawyer who understands that their first duty is as an officer of the court, as all lawyers are, but it is quite important that we have political skills and understanding as well.

I am fortunate to attend every Cabinet. I am very aware of what is being discussed and of what pressures my departmental colleagues are under. That definitely informs my legal advice, but my legal advice is that of a lawyer: it is independent of Government.

Q6 **Chair:** We have asked all your predecessors: when the chips are down, are you, on balance, a politician or a lawyer?

Victoria Prentis: I am an officer of the court first. I am here to represent my constituents, as we all are, and that is an important part of what makes me, if you like. When I give legal advice, I give it as a lawyer. I give it, I hope, as an informed member of the Government, but I am a lawyer.

Q7 **Chair:** Your predecessor gave evidence to the Committee and used the phrase that a trend had emerged over recent years whereby the constitutional orthodoxy had been disturbed by, I suspect, some judgments of the Supreme Court and other courts. Do you feel that the constitutional orthodoxy has been disturbed?

Victoria Prentis: I am very conscious that there has been an Attorney General—not necessarily in front of the Justice Committee, which is a relatively new institution—since 1243. I suspect that over the course of time there have been ups and downs in the constitution, but I am very confident that the independence of the judiciary is a fundamental part of the rule of law. It is important that I, as Attorney General, don't comment on individual cases.

Q8 **Chair:** One unusual thing under you and your predecessor is the use of a special adviser. Why does an Attorney General need a special adviser? Sir Geoffrey Cox, at a time of great pressure, did not.

Victoria Prentis: He had an excellent PPS, if I may say so—well, certainly for part of the time. That was me. Before you look askance, that was a joke.

Q9 **Chair:** It is a serious point. It is an unusual position.

Victoria Prentis: We share the services of two half special advisers, and that is for a good reason. We share one with Downing Street. He very much acts as a liaison between our work and that of Downing Street and other Government Departments. He is able to flag with us issues that are affecting other Government Departments and explain why matters are difficult or under pressure, and vice versa. That is a really useful role.

The other person we have half time is a comms Spad. She spends quite a lot of her time enabling public understanding of the role of the AG and explaining in background terms the role of the Law Officers and



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Government lawyers generally to the press and how that fits—why, for example, we do not routinely publish our legal advice.

Q10 **Chair:** There was concern that it might be seen as a move towards greater politicisation of the role.

Victoria Prentis: Not at all. I think they are useful. It is useful to have somebody to help with the more political aspects of the role—to organise them and ensure civil servants are not asked to do that.

I view both as quite useful for the workings of government generally rather than trying to court a media presence or politicise the role. I am, I think, a quite traditional Attorney General in my approach.

Q11 **Chair:** Would you say that you are a traditional Solicitor General, Mr Tomlinson?

Michael Tomlinson: I certainly hope to be, yes, indeed.

We may come on to communications as I think you have questions on unduly lenient sentences, and it might be helpful to deal with that at that stage.

Q12 **Chair:** It might be helpful to explain how you split the work of the Law Officers' Department between you.

Victoria Prentis: I tend to do the main legal advice—the bulk of my role—often in conjunction with Michael and, indeed, our colleague from Scotland. We work closely together. We have a collegiate atmosphere down the Law Officers' corridor. The doors are open and we discuss things, much as you would working as a team of lawyers in chambers or in a firm.

Michael tends to focus—well, you can speak for yourself.

Michael Tomlinson: You, Sir Bob, and Mr Timpson will know well that lots of the casework—unduly lenient sentences, consents to prosecute—falls on my desk. There is a significant burden and it is a great help to have the Attorney General and Solicitor General share that work.

There is also an important constituency point. Whenever there is a potential clash or conflict of interest because a case might affect the Attorney General's constituency or my constituency, it is helpful that there are the two of us. We divide the work in that way, but the bulk of it inevitably ends up on my desk—for obvious reasons.

Victoria Prentis: We share the supervisory work and superintendence work. We are both going to the ministerial board with the SFO tomorrow—that is quite normal.

We undertake different visits.

Q13 **Chair:** Superintendence of the prosecuting agencies.



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Victoria Prentis: Yes, absolutely. It is useful that there are two of us to go on different visits and meet different parts of our worlds, if you like.

The final piece of work that I probably ought to talk about is the Ukraine war crimes work, which I tend to focus on but we bring you in whenever you need to be in the loop.

Q14 **Chair:** I am conscious of the fact that that is an important piece of work.

Victoria Prentis: Quite a significant amount of time is taken up by that work at the moment.

Q15 **Chair:** I know that Mr Daly wants to come in, but it might be convenient to deal with one broader point.

Going back to the way in which you approach the task, you made the point that perhaps your key role is as the Government's principal legal adviser—the person at that interface to give advice in Cabinet, if necessary.

Your predecessor took the view that Government lawyers are too cautious in their approach. You came from the Government Legal Service. Sir Jonathan Jones, the former head of the Government Legal Service, said that was not a phrase he recognised. Do you recognise “too cautious”?

Victoria Prentis: I joined the Government Legal Service in 1997. In my experience, Government lawyers are a very dedicated, motivated, hard-working and creative bunch of people, who are very familiar with working within the rule of law. They have extra ethical duties.

Lawyers all work to their legal responsibilities, but Government lawyers have extra duties—the duty of candour, for example. It is particularly important that they work to keep the Government acting properly and within the rule of law. In my experience, they are very good at coming up with solutions, along the lines of: “The way you suggest doesn't quite work, Minister, but have you thought of this? Perhaps we could do it this way. If we lose this litigation, you might want to think about this solution.”

In my experience, Government lawyers are very good at making that sort of suggestion.

I do think—I would say this, wouldn't I?—that Government lawyers are integral to the way in which the whole of Government and Whitehall function. They are a really important part of the system. I very much view it as my role, as a former Government lawyer, to ensure that we big them up, explain their successes and the importance of their work, and that I do everything I can to make sure it is seen as an attractive and useful place to work for those who have legal ambitions.

Q16 **Chair:** That is helpful, and we may come back to it.

When you are giving advice—equally, when Government lawyers give



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legal advice—on whether a proposed policy might be unlawful, the classic test seems to be: if there is a respectable legal argument you can put to the court, then, yes, you can advise that they go ahead; it is lawful.

Victoria Prentis: There has been quite a lot of discussion recently, not least in the excellent House of Lords report, about what the test should be. It has been codified as respectable legal argument. It is important that that should be a meaningful test. It is important that we act as Government within the rule of law and act properly. I don't know that we should be pushing against the test.

However, as a former litigator, I would say that there are times where there is genuine legal uncertainty when it is perfectly proper—indeed, when it might be appropriate—to take a test case and argue something before the court and find out what the law is. I don't view those two streams as incompatible. It is much higher than, for example, a test of striking out would be before a court. It is not a test that has no meaning.

Q17 **Chair:** Is it a test that you can quantify in percentage terms, or is that too blunt an instrument?

Victoria Prentis: I think that is a very bald way of doing it. It varies from situation to situation. I genuinely think there are situations where it is proper for the Government to test something that is arguable but not necessarily where you would want the percentage to be.

Q18 **Chair:** It comes back to the key point that it is arguable in legal terms.

Victoria Prentis: I think we want the test to be meaningful. I think we want the Government to act within the rule of law, but it is very difficult to give you a percentage.

Q19 **James Daly:** I have a few questions developing the point the Chair has made. I will refer to a case, as I think it is important to highlight it.

As you know, I am a practising lawyer; I am a solicitor, not a barrister, so we are from different branches of the profession. Are you bound by the same professional duties as I am to my clients? The Government are, in effect, your client. You are a politician, but is your legal duty the same as the one your fellow barristers have to their clients?

Victoria Prentis: It is very similar. Government lawyers have even higher duties—to the public purse, for example. The duty of candour is a formal extra duty for those who work for the Government.

Broadly, the relationship is similar. You are there to give legal advice—frank, clear legal advice—to your client, and that is one of the reasons why we can't always talk about our legal advice, which always make situations like this a little awkward. The client retains the confidentiality that they always do.

Q20 **James Daly:** May I develop that point in respect of the Supreme Court's recent ruling on the Northern Ireland protocol? I am not asking what your



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advice is or has been to the Government. The question that arises for the scrutiny Committee and MPs is how we develop our understanding of Supreme Court judgments. Is it that MPs should find eminent lawyers and ask their opinions, or is there a parliamentary mechanism whereby we can ask you and the Solicitor General about it?

The judgment on the Northern Ireland protocol is one of the most significant constitutional judgments of the past 300 years. The Act of Union 1800 states that each part of the United Kingdom must be treated equally in trade matters. The Supreme Court's judgment is that the Northern Ireland protocol has suspended parts of the Act of Union, the constitutional significance of which cannot be understated.

I am not asking what your advice was. I am asking a simple question. What parts of the Act of Union have been suspended?

Victoria Prentis: I really don't think that I'm able, within the convention, to answer that question. As you say, rightly, the matter has recently been decided by the Supreme Court. I thought it gave a very clear judgment, for what it's worth. Given where we are with this topic, I don't think I am able to say whether I advised or, indeed, tell you what the flavour of that advice would be.

Q21 **James Daly:** I am sorry to ask a very naive question, but I think it is important. Whether it is that case or any other case such as that one, it is the role of individual MPs to seek their own advice or viewpoint on significant judgments. You would advise people such as me and other MPs to take advice from somebody else on what the Supreme Court has said.

Victoria Prentis: The judgment is very clear. I am always happy to discuss judgments with colleagues in general terms, on a one-to-one basis, if they find that helpful.

I am sorry, but I am not quite sure what you are getting at.

Q22 **James Daly:** I am not trying to labour the point and I am not saying that lawyers understand things differently, but there is an interesting question regarding the role of the Attorney General and of legal advice within Government—how, on a significant legal principle affecting parliamentary sovereignty, MPs are advised or told of the nature of the judgment and what it means.

From my perspective, all MPs need a deep understanding of the judgment I refer to. At the moment, I don't think we have it across this Parliament. That is the point I make.

Victoria Prentis: I am with you. I definitely think that all lawyers in Parliament have a role in promoting the law—how important it is, and the importance of the rule of law and of the independent judiciary.

I absolutely agree with you on that, but it is quite difficult, where we are politically, to start to comment on the details of the judgment in public,



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because, as you say, I advise the Government on these issues and may be asked to do so in the future. If it is all right, Chair, we will leave it there.

Chair: Understood.

Q23 **Maria Eagle:** I shall not ask you about specific advice as I understand your position, but during the internal market Bill, in answer to a question from our Chairman—in public and on the record—the then Secretary of State for Northern Ireland said that the legislation broke international law in a very specific and limited way. That was what he said. He was a Cabinet Minister, so we were entitled to take what he said seriously.

I am not asking about that Bill, but, in those circumstances, if you considered it highly likely, in your current role, that a court would find that a policy or Bill was in breach of, say, the European convention on human rights, would you advise against the policy being pursued, or would you seek to find a way through? You have already talked about the creativity of the Government Legal Service, where you had a role.

Would you see it as your role to be very definite—“We cannot do that; it is against the law”—or to try to find a way around it? This is in an instance where the Cabinet Minister himself thought the policy or Bill broke the law.

Victoria Prentis: Let us discuss UKIMB, as you have raised it, although I cannot, as you know, discuss it in any detail.

A Government legal statement—position statement—was published at the time, so I would refer to that. The Act was passed without the contentious clauses.

Of course my role is to uphold the rule of law. I said that in addition to my oath when I was sworn in, and I feel that very strongly.

I look very carefully when I am asked to give advice and I take into account not only domestic but international law, where that is relevant.

I cannot answer your question specifically, I am afraid.

Q24 **Maria Eagle:** I understand that, and I wouldn't ask you to do so.

I am not asking about a specific example, but if someone brought to you not a Bill but perhaps a policy that you thought might be in breach of the European convention, would your advice be to say, “We can't do this,” or would it be to try to find a way around it?

Victoria Prentis: As I said earlier, there is not really a black-and-white answer to that question. Some things will be possible within the law, and some things won't. My role as Government legal adviser is to explain where the law is and what it says—again, often that is not completely clear—and, where necessary, to suggest alternatives.

Maria Eagle: I get the sense that you are very much leading on the idea



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that it is the law that matters, which I don't think we've always had from your predecessors. That's my opinion.

Chair: It is more a comment than a question.

Q25 **Maria Eagle:** One of the things that seems to have changed in the current Government's approach to the European convention on human rights is whether we should still be members of it. I know that this is a matter of controversy in the Government. The Justice Secretary has told the Committee that his policy is that we should remain members of the convention, but there have been press statements from spokesmen on behalf of the Prime Minister that he is open to the idea of reconsidering our membership. Do you have a position?

Victoria Prentis: The Government's position is that the Government are committed to remaining a member of the ECHR. I had a really useful trip to Strasbourg last week—the last time I went was with this Committee—and it was made very clear to me that we are a country that is highly valued as part of the Court and that we have the fewest infractions against us of any nation. Our human rights lawyers are very valued and are part of the tradition in Strasbourg. So, yes, the Government remain committed to the ECHR.

There has been press speculation. We have a specific issue with migration that is very much top of the agenda. I have heard the Prime Minister say that other nations within the ECHR are able to deal with their migration issues and that we should be able to do so, too, within the ECHR.

Q26 **Maria Eagle:** The other policy on which this touches is what is happening within Northern Ireland. Were the speculation about the Prime Minister to prove to be true, do you think that leaving the convention would breach the Good Friday agreement?

Victoria Prentis: The ECHR is embedded into the Good Friday agreement, as it stands. If necessary, work could be done to look at that, but certainly the Government's position is that we are committed to remaining within the ECHR. I don't think that that is something we even need to consider at the moment.

I know that the position of successive Attorneys General has been that the ECHR is very much part of the Belfast Good Friday agreement.

Q27 **Chair:** Perhaps we may deal with one or two of the international aspects of your trip to Strasbourg.

You talked about what is happening in Ukraine.

Victoria Prentis: Yes.

Q28 **Chair:** Perhaps that is a convenient point to move on and talk about the work you have been doing. I know you have Sir Howard Morrison as your independent adviser.



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Victoria Prentis: Well, he's not mine—

Q29 **Chair:** To the Prosecutor General.

Victoria Prentis: Yes, far more importantly.

Q30 **Chair:** How does that work?

Victoria Prentis: We have given him—poor Sir Howard—to the Prosecutor General of Ukraine, who has become a colleague I am close to: Andriy Kostin. We have been working closely together. I had not anticipated, before taking on this role, quite what a large part of the role the pursuit of accountability had become.

We are very involved in the general discussion. Most of the war crimes—70,000 live cases are open—are being tried in Ukraine. They are cases that are happening. The courts are operational. We were fortunate enough to have the president of the Ukraine supreme court in this building a few weeks ago to discuss how on earth you run cases in the ghastly situation they find themselves in.

My friend Andriy Kostin is prosecuting these cases right now. They have had convictions and they have people in prison as a result of those convictions.

We are very keen to help in every way we can. One of the ways we can do that is through the loan of Sir Howard Morrison, one of our most senior judges with experience of war crimes all over the world. He has trained nearly 100 Ukrainian judges in the region on a significant, detailed course covering all the nuts and bolts of how you run a war crimes tribunal. It is really significant, and I am told it is really helpful.

We have given money, people and help in every way we can to Andriy Kostin to help with his prosecutions.

At the same time we are working up what I am sure will one day be a moment of international accountability. We are building up our support even more than usual to the ICC. The Lord Chancellor will run a conference in London with the Dutch in the next couple of months to discuss what more the ICC can do, which will be useful.

I have been to The Hague, as my predecessors have. There is a great deal of evidence-gathering work going on. We continue to support and play a full part in Eurojust, which is doing a great deal of that work. I am sure that when the time comes we will play our full role in whatever that tribunal looks like.

We have joined the core group of states looking at what that tribunal will look like, but it is too early to say.

Q31 **Chair:** There is talk of a special tribunal.

Victoria Prentis: Some people talk of special; some people talk of



hybrid. They mean slightly different things. It is a conversation that lawyers like to have, but what is important is that there will be accountability for what is going on in Ukraine. It is important that there will be seen to be international accountability.

Quite what the mechanics of that tribunal are, I think, is still to be decided, and it is probably too early to make a lot of those decisions; but I want to make sure that we are helping in every way we can in that conversation, and helping in a very practical way to make sure that the evidence and the witnesses are protected, so that, when it comes, that court can be as good as possible.

Chair: That is very helpful. I am grateful. We now return to some other domestic specifics: Mr Timpson.

Q32 **Edward Timpson:** Can I take us back to our evolving relationship with the European Union, if I can put it that way, and, specifically, the Retained EU Law (Revocation and Reform) Bill? Some have argued that provisions in it create a certain level of legal uncertainty—the broad base of provisions, the moveable sunset clause, and so on.

As Attorney General, to what extent does that concern you, and how do you work within Government to ensure that Bills such as this do not create unnecessary legal uncertainty?

Victoria Prentis: I think it is fair to say that we take concerns about legal certainty very seriously. The Bill, as you know, is at Committee stage in the House of Lords and the Committee may be interested to know, if you do not already, that the Government have tabled an amendment, which has not yet been voted on, that will make it clear that tertiary legislation such as licences is not included in the sunset—*or* licences are not automatically sunsetted; at least, if the Bill passes.

I think that that form of amendment is useful for legal certainty. We will continue to work with all Government Departments to make sure that concerns such as those can be properly addressed.

Q33 **Edward Timpson:** It is helpful to hear about the amendments being tabled, but does that resolve all the issues about legal uncertainty? Do you anticipate that there is further work to do?

Victoria Prentis: I think the Department that leads on this Bill, BEIS—or BEIS as was—is committed to making sure that the dashboard continues to be updated. The best way to ensure that there is legal certainty is to make it clear what is in and what is out of the sunset. I stand ready to work with all my colleagues, across Government, to help them do that, where I can.

Q34 **Edward Timpson:** We have until the end of this year, so do you have any insight into when there will be a full remit, setting out what aspects of retained EU law we intend to keep, and those we do not?



Victoria Prentis: I think it is worth looking hard at the dashboard produced by the Department, which is fairly regularly updated. The amendment that I just spoke about has not yet been voted on, so it is not yet part of the Bill, but I anticipate that the Lords will be interested in it.

Q35 **Edward Timpson:** Can I ask you, then, about legislation more generally—the process, and the involvement of the Attorney General’s office in making sure there is legal certainty and that the type of law that is being introduced is fit for purpose? The Brexit and covid Bills were major pieces of legislation where we saw rapid movement—or, as it is sometimes called, these days, “at pace”—through both Houses. Often that can leave little time for proper legal scrutiny. Again, are you concerned about that, and how can you ensure that you are able to effect the passage of the Bill, to satisfy yourself that you have the correct content, from a legal perspective?

Victoria Prentis: When I was a DEFRA Minister I was responsible for taking through the Ag Act and the Fisheries Act.

Edward Timpson: I remember it well.

Victoria Prentis: I remember speaking to you about it at the time—and your farmers. I also took through the gene editing Bill, which is almost an Act; it is currently finalising its way through both Houses of Parliament. That gave me a unique perspective on some of the Brexit legislation that we did have to pass at pace, because it was necessary to get the new rules in place as we left the common agricultural policy, for example, and the common fisheries policy.

I feel that those Bills were properly scrutinised. If you remember, there was a great deal of scrutiny from colleagues and stakeholders generally, and I certainly felt challenged at almost every clause by those who had an interest in these matters, in a way that I think was ultimately productive. I think that we passed some very good legislation.

I was, at the same time, involved in the passage of about 150 Brexit SIs. They required a great deal of work with different Committees within this House, the JCSI, the House of Lords and the devolved Administrations. Teams of lawyers and policy workers worked together to make sure that we could pass good legislation in a timely way.

It is possible. I think it is happening and we have seen it happen. In covid, of course, we saw some of that happen very quickly. I am very interested in how legislation works, and how it is passed and scrutinised, and I will continue to be so in my new role as Attorney General.

Q36 **Edward Timpson:** Are you saying that the way in which Brexit and covid forced the need for speed in legislation coming on to the statute book has improved some of the mechanisms available to scrutinise it before it reaches Parliament; or do you think that there is a risk that some of that learned behaviour around the rapid turnover of legislation means that we



could end up with insufficient time for you and Government lawyers properly to scrutinise legislation so that it is the best that it can be for the policy it is trying to enact?

Victoria Prentis: I think that is a fair challenge. Speaking from my own experience, I think a good job was done on the legislation I have just been talking about. I was very impressed by the work of Government lawyers and, indeed, policy officials who have to inform every single piece of law that we make, and often hold consultations and do the work behind whatever piece of regulation we are working on. I was very impressed and I know we have learned new ways of working.

One example is that with the SI programme I was talking about we learned how to group SIs, in the Brexit legislation. That was also used to manage some of that covid SI work. I felt that that was proper. It was carefully looked at by the authorities in this House. I remember having a meeting with the Chairmen of some of the secondary legislation Committees to discuss how best that would happen. It was discussed very carefully with both Houses of Parliament. I think that is a proper and useful way to proceed, where appropriate.

Q37 **Maria Eagle:** I remember being in a ridiculous position in doing some of the covid legislation—SIs. This happened more than once: we were considering a piece of secondary legislation that had been introduced and superseded by a different piece of covid legislation. There we were, in the Committee, considering the original SI—a piece of legislation that had already been removed and superseded. I consider that to be absurd. Presumably it is not something that you would support.

Victoria Prentis: It is not an experience I had. I was not involved directly in much of that covid legislation and I do respect what you have to say about it. I think they were fairly extraordinary times and some of the decisions that had to be made, and the speed they had to be made at to keep people safe, led to practices that this House would not normally wish to engage in.

Maria Eagle: It was not scrutiny.

Q38 **Chair:** May I come on to the superintendence roles? I know you share that between you. Let me start with the Serious Fraud Office—obviously an important piece of the jigsaw. It has resourcing constraints, hasn't it? I do not know who is going to pick up this one. We heard evidence not that long ago from Sir David Calvert-Smith and Mr Altman KC, who I should say is joint head of my old chambers, by way of a declaration of interest. Both of them highlighted the pressures on the SFO in terms of the resource constraints that it works under. There is a vacancy rate of 20% or 25%. That is not sustainable, is it?

Michael Tomlinson: There is no doubt, Sir Bob, that there are constraints. It is obviously good news that there has been an uplift in the core budget. I saw the transcripts and I know that you scrutinised the area carefully in your last session and the one before that.



I accept that there is a tremendous amount of pressure, but, that said, there have also been some successes and good results, and that should be acknowledged. I do not know whether we are going to come on to the detail of Sir David Calvert-Smith's recommendations in due course.

Q39 Chair: We will in a moment. I particularly wanted to raise this broad point, though. The point was made in the reports that because of the successes that it has had—such as the amount of funds that are illicit gains confiscated, and what is accrued under the DPAs, and so on—the SFO returns about four times what it costs the Exchequer, actually making a profit. What arguments have you been making as the superintending Ministers to Treasury to say that a comparatively small part of that will go a long way to remove those resourcing and other pressures?

Michael Tomlinson: I think the latest figures are actually five times, so it is a significant amount. You were right to mention DPAs, as well, which I support, and those successes. We may as well mention one of them—the conviction of Glencore: £280 million was the largest single result and it is worth commending the SFO for that. I have seen the suggestion that there should be a proportion or percentage of the DPAs, or of the confiscation, and that that should be retained by the SFO.

The challenge and difficulty is that it is not easy to predict how many cases are going to come before the courts in any one year. As the Committee knows, a relatively small number of serious and complex fraud cases each year reach the court stage, so it is not possible to predict precisely when these large and frankly very welcome results are going to come in. It would be difficult to predict.

Instead, the mechanism is that a small amount is given back to the SFO regularly each year, effectively in lieu of that. It is a different funding mechanism from other agencies.

Q40 Chair: One of Mr Altman's specific recommendations was that the pay of disclosure officers—disclosure counsel, basically—should be increased, because he took the view that disclosure reviewers were out of line with and below equivalent organisations. Similarly, I think he took the view that the rates offered by SFO to junior counsel who act as disclosure reviewers were frankly not competitive with the other types of work that people of that competence might do. Those are specifics that could be undertaken. What steps have been taken to meet those recommendations in Mr Altman's review?

Michael Tomlinson: It is not just Mr Altman's review but Sir David's as well. There are 29 recommendations in total. The Attorney General has committed to updating the House regularly. The last update was in November. There will be another update by the end of May.

Q41 Chair: Can you give us an interim update now?



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Michael Tomlinson: I can give an update that we are making very good progress against those recommendations.

Q42 **Chair:** How many have been implemented in full so far?

Michael Tomlinson: In terms of Sir David's, nine out of the 11. I would have to check in relation to Mr Altman's but it is in the order of 25 out of the 29; but it is important that it is not just, "Right, that has been done." It is a long-term implementation of those recommendations, as well. I am very keen to see that, as a superintending Law Officer—that it is not just, "Right, those are the recommendations; they are done. Tick. Over," but this is part of a long-term sustained reform in the way the SFO works. I think both reports were very constructive. They have been received and accepted.

Q43 **Chair:** All 29, as I recall.

Michael Tomlinson: Exactly right. I saw the transcripts of the evidence that the director gave. She was very candid and frank about the recommendations and said that it is a fact that each and every one had been accepted.

Q44 **Chair:** You have talked about long-term change in that regard. One of the concerns that Sir David in particular raised was that difficulties in relation to particular high-profile cases arose because of the gap between the departure of the previous director and the arrival of the current director, who has now said she is not going to seek an extension of her contract. What is being done to make sure that that gap does not arise? It seems to have been at the root of some of the difficulties that arose.

Michael Tomlinson: I think it was described as an interregnum, and interregnums were not to be encouraged. I know that the Attorney General and I completely agree with that. The Attorney General may address some of the recruiting in that respect, but it is certainly a recommendation that has been accepted and agreed—at least the timetable as to when the director will step down. So that helps, from the outset.

Q45 **Chair:** What is the position?

Victoria Prentis: If I can jump in, the current director is stepping down at the end of August. In the next few weeks, we are about to launch a recruitment campaign for a new director. We have done a lot of the preparatory work and explained the role and found people to help us with that recruitment campaign, and we are confident—

Q46 **Chair:** You are using executive search people.

Victoria Prentis: We are using executive search people; we have decided the final composition of the panel; we have gone a long way in organising this recruitment, and we are pretty confident that we will have some very good applicants for what is a challenging but good role.



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The other thing I would say, talking about interregnums, is that the current director has indicated that she will stay on for a matter of months, if that helps, if our chosen new candidate is not able to start by the end of August. At the moment we are anticipating, as it is only February, that we will probably find a candidate who is.

Q47 **Chair:** You should be able to do that.

Both the reports suggested a broader point around the particular care that has to be taken when dealing, for example, with intermediaries or those who might be able to provide information. What do you, as the supervising Ministers, take to be the lessons that need to be learned so as not to get into such an unfortunate difficulty, which got in the way of doing much good work?

Michael Tomlinson: We need to be frank; it was, Sir Bob, exactly as you describe it, an unfortunate difficulty, and the director herself wisely and rightly acknowledged and accepted that.

Part of our superintending duties is to look at a detailed list of cases that the SFO has on at any one time. That was one of the recommendations that was made. That change has already been implemented. One criticism was that some of the detail is—or historically was—a little bit light. That change has been made.

As the Attorney General said, we have a strategic board meeting tomorrow, and it is on those occasions that you can go into some detail on some of these issues.

Q48 **Chair:** Both the SFO itself and our Committee have suggested that the Government ought to look at introducing specific guidelines for disclosure in relation to fraud cases, because of the large quantities of digital material, going well beyond those seen hitherto. What is the Government's stance on that?

Michael Tomlinson: This is an absolute priority. Disclosure is a large subject, but, specifically in relation to fraud, there is no doubt that there is a huge amount of evidence. The CPIA, the 1996 Act: the smartphone was not even invented back then. We are now dealing with terabytes of data and huge amounts of documents that disclosure officers or, frankly, AI machines, have to look at and go through.

This is an absolute priority. The Attorney General's guidelines have already been changed. There has been evidence, for example, in relation to block listing. I know that this Committee looked at and encouraged that, and it is in the new iteration of the Attorney General's disclosure guidelines; but it is no secret that those guidelines are constantly under review and that we are looking at that again. We are looking at all the recommendations and seeing how, for example, we can make sure that where it says "block listing" there are good examples of best practice on how to deal with the machines. If you seize five, six or seven computers, laptops or iPads, it is a huge amount of data.



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I know that you and the Committee have had a chance to visit the SFO. The Attorney General and I have, as well. We have been down in the bunker and seen the machines, and the data that is being dealt with. I am very keen to see a practical solution.

Victoria Prentis: Truthfully, these are very difficult issues. As technology continues to evolve, disclosure will have to continue to evolve to match it, as it were, and we genuinely welcome the views of the Committee, for example, in this continued struggle.

Q49 **Chair:** Do you also think there is learning to be gained from talking to lawyers in the commercial world? For example, the use of AI machines and so on has proved very effective in relation to voluminous commercial contracts—

Michael Tomlinson: Yes, definitely. There is learning across the board. An example that we saw, in discussions of some SFO cases, was about disclosure and some of the terms: in my view, greater, better and earlier engagement is needed from the defence community. What search terms should we be looking for? What are the agreed terms for looking at all this bulk data? Otherwise, cases simply become far too unwieldy and unmanageable. Timeliness—ensuring that cases are heard in a reasonable period of time—becomes impossible the more data we need to plough through.

Q50 **Chair:** And the same with section 8 CPIA.

Michael Tomlinson: Exactly right. This is a discussion that needs to be had. I know we have discussed this before, Sir Bob, and the Attorney General agrees that we would welcome the thinking of this Committee not just on the narrow issue of disclosure in relation to fraud, but on disclosure more widely. The issue has been looked at. There have been changes, but more are needed.

Q51 **Chair:** We will take you up on that.

Victoria Prentis: To go back to the war crimes context, not only are we prosecuting during the war, in real time, which I think is incredibly useful in putting a chilling effect—or a good effect, we hope—on the behaviour of soldiers on the battlefield; but it is a war where there will be an extraordinary quantity of video evidence.

One of the useful pieces of work that Eurojust has been able to do is to set up a cloud to capture that evidence from witnesses who are now spread all over the world, and to find new ways of marshalling that evidence, making it fit round dates and places and be interrogated, in a way that is useful and that will, I hope, help with the course of justice in due course.

Q52 **Chair:** That is helpful. The final thing I was going to raise in relation to fraud generally is that pretty much everyone who deals with this field says that we need to deal with the “failure to prevent” offence in relation



to fraud. When Sir Robert Buckland, the former Lord Chancellor, moved an amendment that I think I was a signatory to, during the Report stage of the economic crimes Bill, the Minister responding said he could assure Sir Robert that the Government intended to address the need for a “failure to prevent” offence, in the other place, the Lords. What is the position on that? Does that mean we are going to get it in the Lords?

Michael Tomlinson: The commitment has been given. It is in the Economic Crime and Corporate Transparency Bill, so you are absolutely right; that commitment has been given and it is being drafted. The commitment is there; it will appear. I know that you discussed this with the director of the SFO as to the precise form and the shape that the amendment will take. I cannot confirm the precise form but I can confirm that it is being looked at. The commitment has been given, and it will materialise.

Chair: That will be welcomed, I am sure, by many. We will move on to the Crown Prosecution Service and Mr Daly.

Q53 **James Daly:** Thank you very much, Chair.

When the DPP appeared before this Committee in November, he expressed concerns over the workload of staff. I suppose the question that arises from that is what resources are being put into the CPS to address that, if it is indeed a need you recognise.

To give my personal experience, a number of months ago I was speaking to my local head of the Crown Prosecution Service. There were either 25 or 35 legal vacancies within the Greater Manchester area. I am, as you know, the MP for Bury North. The CPS could not recruit lawyers, which in my experience is unheard of. Certainly when I was practising in the criminal courts that was not the case. Will you comment on whether we have a huge problem with legal vacancies in the CPS?

Michael Tomlinson: Mr Daly, first, thank you for engaging with your local CPS. I know that the Committee as a whole has done that. Most local CPS heads have invited local Members of Parliament to engage, and not everyone has yet done so, but through this Committee, with your permission, Sir Bob, I encourage them to do so. It is invaluable. You do not need to be a lawyer to value the work of the CPS and a greater understanding of how it works locally.

The Attorney General and I have visited local centres. I went to Bristol and the Attorney General has been to Leeds, and elsewhere here in London. I am due to go to Portsmouth and south Wales. It is crucially important.

Directly in relation to your question, and the workload, let us acknowledge that, yes, there is a significant workload. The director, of course, is absolutely right. There have been results on recruitment. There were about 5,500 staff in 2017-18, and there are now over 7,000. I have



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the latest headcount here. The headcount for the end of last year was 7,390, so that is an increase. More still needs to be done; that is right.

Q54 **James Daly:** Define what more still needs to be done. What does that mean?

Michael Tomlinson: Let us take RASSO, which is a priority for the Government. The Government have committed to recruiting another 194 RASSO specialists, but you are right; it is not easy or fast work. First, recruiting in the first place is difficult; and, secondly, there is the question of ensuring that there is adequate experience and specialisation.

Can I just give one more number, because it is relevant? In the first six months of this year, 562 staff have been recruited by the CPS. So I do acknowledge the difficulty, but there have been successes. This is on the back of a very supportive and favourable spending review last time round.

Q55 **James Daly:** Obviously—and I think you have identified this—there are pressures on CPS staff to clear the backlog. That is absolutely clear, but from conversations that I have, and that I suspect colleagues may also have, the relationship between the police and the CPS is crucial to addressing the backlog not only in the court system but prior to cases getting into court. I know that that is not necessarily always within your remit, but senior police officers have expressed concern to me that the CPS—I will try to describe this as articulately as possible—uses an abundance of caution when it comes to the charging standard. There is a pedantic nature to the amount of evidence that the police are being asked to provide for very straightforward cases, before matters proceed to a potential charge, or a decision on charging. That in itself, and the difficulties in the relationship between the CPS and the police, cause additional issues with respect to the backlog. Is that something that you recognise?

Michael Tomlinson: You identify the challenge very well. May I break it down in this way? The relationship between the police and the CPS is absolutely crucial. When I stepped into this role I took a lot of advice, but one of the things I was determined about was that we are one team. It is one prosecution team. It should not be the CPS pointing the finger at the police, or the police pointing the finger at the CPS. It should be one team.

Let us go back to RASSO, which the Government are focusing on. More and increased early advice is crucial. What does that mean? It means more picking up the phone, frankly, and more of the police speaking to the CPS and the CPS speaking to the police, in a constructive fashion—not in the way you have highlighted, with the potential for antagonism or friction.

With the philosophy of one team we have the same aim, and the Attorney General and I have both seen that. For example, in Operation Soteria areas, where the police and CPS are working more closely together, there



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are results and dividends not only in conviction rates but, importantly, in the willingness of victims to see things through the criminal justice system.

Let me give one more fact—one more stat—about independent sexual violence advisers. Victims with an ISVA, which is integral to part of Operation Soteria, are 50% more likely to stick with the criminal justice system than those without one. This is a team ethos—a team spirit—with the police, the CPS and ISVAs working incredibly closely together.

Q56 James Daly: My final question, which you have touched on already, but which I think is important, is about the application of the charging standard, which is fundamental to everything that happens, whether cases go before the court or not. Do you think that it is being applied correctly by the CPS? That is a generalisation in a sense; I am just asking whether the general way it is being applied concerns you.

Michael Tomlinson: It concerns me. It is difficult to give a—

Q57 James Daly: Can I give you an example?

Michael Tomlinson: Yes. Please do.

Q58 James Daly: One of the things that concerns me regarding, say, rape cases, is that the CPS takes the view—I am sorry to use this phrase, but I think it is appropriate—that unless you have a slam-dunk case, or, shall we say, evidence that it considers points overwhelmingly to guilt, a charge will not emanate from the evidence. Most cases are not at that stage, or incredibly strong. Some cases are weaker than that. It seems to me that the CPS takes the view, particularly in rape cases, but also in others, that unless it is, in another phrase I used to use, absolutely nailed on that the evidence is there, we are not going to charge.

Michael Tomlinson: There is an element of truth in what you say, but I do not think we are quite there. I know that you have raised this in the Chamber as well.

If you look at the charge rate and the number of cases presented to the CPS for legal decision, in terms of all crime it is 79%. Out of every 100 cases presented to the CPS for a charge in all cases of crime, 79 are charged. If you look at rape cases, it is 72%; if you look at domestic abuse, it is 77%.

The figures are higher than would be assumed from your question. You raise a really important point. This is something the inspectorate has picked up in terms of case file quality, so clearly we are keeping an eye on it, as is the inspectorate. It is important, but we should not lose sight of the fact that in nearly eight out of every 10 cases presented for a legal decision the decision is to charge.

Q59 James Daly: I will not go back to the figures because obviously I accept what you say in respect of that, but one of the major concerns of this



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Committee in respect of rape in particular has been the lack of referral by the police to the Crown Prosecution Service, which has been the main problem. What you are talking about are the cases that are referred. If cases are not referred they do not come within those figures. Clearly, the police are not your direct responsibility, but in terms of cross-governmental discussions regarding how we get more cases from the police to the CPS on the basis of what you say, we may get more charges because more cases come from the police to the CPS. How do we do that?

Michael Tomlinson: That comes back to early advice. Specifically in relation to RASSO cases, that is why it is crucial that in Operation Soteria areas you have that early advice and close communication and working between the police and CPS. I have been fortunate enough to see that in Bristol, and I am hoping to see that when I go to Portsmouth later this month and early next month, but that is absolutely crucial.

I add a word of caution on early advice. It does two things: it adds to the workload because it means there is a lot of what we might refer to as ping pong—it is different from parliamentary ping pong—between the police and CPS. That may also affect timeliness. If it takes a little bit more time in making sure you have the evidence right and, therefore, are more likely to secure a prosecution, that is not a bad place to be in or not a bad direction of travel.

Victoria Prentis: If I may add one point, there is a group of individual police officers called gatekeepers. In my view, that is not a very helpful description of what these brilliant people do, which is more interpretation. They are police officers who sit with the CPS in their offices—I have seen them in Leeds—and aid the liaison between the two parts of the organisation to make sure it is joined up.

We have together seen some really excellent examples of joint working. We have been to committees where both sides—it should be viewed not as sides but as one team—are absolutely committed to making sure that as soon as a complainant comes through the door they work as a team to ensure that the case is progressed.

It has not been where we wanted it to be, but we now want the message to go out loud and clear that it is worth reporting if you are the victim of rape or sexual violence. We will take it seriously as a team and make sure the system works together.

Q60 **Janet Daby:** Attorney General, it is good to see you, but in a different way.

My question is about stalking. The National Stalking Consortium has raised many issues of concern, one of which is that where stalking has been identified the police are too often not investigating the crime appropriately and erroneously dropping cases due to perceived lack of evidence. I just highlight a bit of its areas of concern. It has submitted a



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super-complaint on the criminal justice system's response to stalking. Can you say what you are doing to improve prosecution rates for stalking offences?

Michael Tomlinson: Thank you for raising this. The shadow Attorney General also raised it either during the last question session or the one before. It is important, and thank you for raising it.

In terms of context—I will come back to the specific question you ask—it is right to say that the super-complaint came in as a result of it being 10 years since this legislation came into force in 2012. It is worth saying we strengthened sentencing in 2017. The maximum sentence was increased for an either-way offence from five to 10 years, so there is progress there, but you are right that the complaint was put in.

The complaint was on the police's response to stalking. I think it is worth emphasising that, Sir Bob, but the College of Policing has accepted the complaint and said that it will respond in due course, but it is worth emphasising that this will be a response from the College of Policing.

As for the rates for stalking and the volumes, we are seeing an increase in the volumes of both convictions and prosecutions. That is good news. I want to ensure that that trend continues, but specifically the super-complaint will be one for the College of Policing, which has said it accepts it and will respond to it.

Q61 **Janet Daby:** The consortium has called for a unified recording system for stalking to allow the journey of a victim through the criminal justice system to be followed and attrition rates from the reporting stage through to conviction to be tracked, including sentencing. Will the Government implement such a system?

Michael Tomlinson: Can I say at the outset that that sounds like a very sensible suggestion? I am not saying it is going to be easy and I am certainly not committing to doing that because it is not for me; it is for the College of Policing to respond to it.

At the moment, what we are dealing with, as the Committee knows very well, is that you have Home Office statistics for the policing aspects; you have CPS statistics for the prosecution aspect; and you have the Ministry of Justice statistics for when it gets to court. There is a lot of sense in the question and the way it is put.

Because almost all these statistics are published and publicised, you can navigate and find out the latest statistics for all sorts of criminal offences. I may as well plug the criminal justice data dashboard tool. There is a new one on the gov.uk website. It is a particularly useful tool when looking at RASSO cases because you can compare rape and serious sexual offences against all crime as well.



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I am afraid that I cannot commit to it at this session, but I can understand why it has been asked for, and the College of Policing will respond in due course.

Q62 **Janet Daby:** You would respond, depending on what the College of Policing says and its recommendations.

Michael Tomlinson: The CPS philosophy and my philosophy is that we need to work together with the police. You have heard my “team” analogy. I think that is absolutely right. Whatever we are asked to do by the College of Policing in working with it and supporting it, I can absolutely give that commitment.

Q63 **Janet Daby:** How much funding have you secured to fund three increases for prosecutors, and when will it be available to them?

Michael Tomlinson: This is a really important question. I am sorry that I cannot give you a precise figure because one simply has not been provided. That is for the Treasury and the CPS to work out. Personally, I was very pleased, as I know this Committee was. Perhaps we should pay tribute to the Committee because it was rather a pincer movement.

Chair, I think you asked a question first and then Mr Timpson and others on the Committee raised the very serious point about inequality of arms. It is a fairly basic concept and one that the Committee dealt with very skilfully, if I may say so.

I cannot give you a “when”, but the commitment has been given and the precise figure will be released in due course in the usual way by the Treasury working closely with the CPS.

Q64 **Janet Daby:** In the same vein, is it now Government policy that there should always be parity in fees for defence and prosecution counsel?

Michael Tomlinson: In terms of prosecution and defence, the equality of arms was argued very powerfully by the prosecution, I think.

Q65 **Chair:** It might have been a hard prosecutor. I have never been quite that hard.

Michael Tomlinson: Or very hard and very robust. That is right, but it is a concept that has been lobbied and argued for very powerfully by the Committee, and the Government have listened and responded accordingly.

Q66 **Janet Daby:** Are you concerned that a lack of similar support for fees for criminal solicitors may adversely impact the work of the CPS?

Michael Tomlinson: I know this was asked directly of the Minister responsible in relation to solicitors’ fees. The Ministry of Justice Minister was specifically asked this question. He is working with the Lord Chancellor and the Law Society. That work is ongoing and it would not be appropriate for me to cut across that, but I know that the question was put to the appropriate Minister and that they are looking at it.



Q67 **Chair:** We all know that the Attorney General and yourself made a great deal of effort to make sure we got the right outcome on prosecution fees.

Victoria Prentis: We are equally grateful to you, Sir Bob.

Chair: I think it is welcomed all round.

Q68 **James Daly:** The Attorney General's office published revised disclosure guidelines in May 2022. What are you doing to monitor the effectiveness of the guidelines in respect of accessing the therapy notes and other third-party material by the police?

Michael Tomlinson: This is a crucial question in terms of not just third-party material but the disclosure guidelines more generally. We touched earlier on disclosure in relation to fraud. I know that there is more work to be done, but I think we need to acknowledge that there have been quite significant changes in the recent disclosure guidelines. You are right that it came in in May, but it came into force on 25 July. They are still fairly recent. I know that they are being implemented, but certain training has to be done.

Can I give two concrete examples of where we are monitoring it? First, as part of our superintending role, at all our meetings with the directors, whether of the SFO or DPP, we raise the issue of disclosure. It will not surprise you to hear that disclosure is a hot topic.

Secondly, the joint operational implementation board, chaired jointly by the director of the DPP and Nick Ephgrave, looks at the operational side of disclosure. That is very much where you can monitor precisely how these are being implemented.

Q69 **James Daly:** I appreciate that it is somewhat early days, but has there been a notable reduction in requests for such materials since the publication of the revised guidelines?

Michael Tomlinson: I cannot give you any hard data; I can give you anecdotal evidence. When I was in Bristol and Exeter—there is a south-west theme, but other areas are available—speaking to the independent sexual violence adviser about this specifically, the answer was yes. There has been a reduction in requests. I cannot give you a firm number.

Q70 **James Daly:** We may be about to vote and I am trying to get through the questions.

Michael Tomlinson: I will try to be less long-winded.

Q71 **James Daly:** It is extremely helpful. One of the things the police have had to have in their possession for a long time is a black marker pen to redact lots of information in disclosure material. What impact have the revised disclosure guidelines had on the time spent by police officers redacting information to comply with data protection law before it is shared with the CPS? I think that is a very important question.



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Michael Tomlinson: The short answer is that it is too soon to say. The slightly longer answer is that it came into force at the end of July. We are monitoring it very closely, not least because I am very keen that if we are to revise the guidelines again I want to ensure that what is already there has been implemented. I am a great believer in making sure that what has already been changed is properly implemented before looking at rewriting the rules again. It may well be that further clarification is required, but the short answer to the question is that it is too soon to say.

Q72 **James Daly:** I do not know whether you have seen that the Police Federation has called for the Data Protection Act to be amended to address this issue. Have you put your mind to that or considered it?

Michael Tomlinson: I am considering all options. Nothing is off the table. This is a hugely important point. It is not just the SFO; it is the CPS and across the board, but it is a big job of work. As far as I am concerned, nothing is off the table and it is one of my priorities.

Q73 **Edward Timpson:** In whatever time we have left can I take us finally to unduly lenient sentences, which I know you have spent a lot of time considering in your role? It is very important work.

To what extent does the number of referrals received from the public—the fact that it is from the public—influence your decision on whether to refer, or is it based purely on legal reasons?

Michael Tomlinson: The very easy answer is that it is based purely on legal reasons. Mr Timpson, you know the scheme incredibly well; in part, you talked me through the scheme. It is a question that I am asked a lot. Are you looking at this as a politician or as a lawyer? It is very straightforward: you are looking at it as a lawyer. It is almost like going back into chambers. You are opening up a file and your brain has switched into legal mode and you are given advice.

To me, it does not matter whether the complaint or referral came from the victim, a member of the family or a Member of Parliament. What matters is whether it is unduly lenient and is an appropriate case to refer to the Court of Appeal. That is the test as far as I am concerned.

The Committee may be interested to know that referrals from victims have risen significantly. There is no doubt that there is greater awareness of the scheme. Last year, 684 referrals came from members of the public, compared with 431 back in 2020, so there is a significant increase. I think that shows greater awareness of the scheme.

Q74 **Edward Timpson:** I do not think I will be betraying any confidence if I probe that a little bit and ask how many of those relate to individual members of the public, as opposed to the number of cases that have been put forward by members of the public? It may be something to which you want to return, because a member of the public can refer more than one case.



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Michael Tomlinson: Exactly. It is difficult to answer that because a number of members of the public could refer a single case and one member of the public could refer a number of different cases. It is a good question, but I do not have the precise breakdown or answer to that.

It is important that more members of the public in general are referring these cases. I think that shows greater awareness of the scheme and, frankly, that the scheme is working. The latest rate is about 70%. Seven out of every 10 cases brought to the Court of Appeal are successful; in eight out of 10 cases leave is given by the Court of Appeal to refer the case. Those are good statistics. Frankly, I would not want to see those statistics being 100%. I do not think that would be right; about 70% is about right.

Q75 **Chair:** If you do have more figures, perhaps you can write to us.

Michael Tomlinson: I am not sure I will have more figures in terms of individuals writing in or anything like that.

Q76 **Edward Timpson:** Looking at it again from the perspective of the victim, I think the victims code came in last April. That brought in a right for victims to be told about the existence of the ULS scheme. It may be too early in that new process to come to a final view, but do you think this is a gateway into a statutory duty being placed upon the CPS to inform victims of the existence of the scheme?

Michael Tomlinson: I think it is too early to say that. It has been a successful part of it, and perhaps we will see that when we look back and see how many members of the public refer cases this year and next year. Perhaps we will get a better gauge. The period between April and now is probably too short a space of time, but the victims code is certainly something I have welcomed and will look at.

Q77 **Edward Timpson:** It has been pointed out to the Committee that offenders can appeal their sentence after 28 days, in exceptional circumstances, but victims of crime, who may be unaware of the scheme or who, for other reasons, have been unable to put in an application within 28 days, do not have that similar exceptional circumstance available to them. Is this something you are prepared to have a look at?

Michael Tomlinson: If I can be very straightforward about that, I am not especially keen to change the 28-day deadline. It is really important for defendants as well as victims to have certainty and closure. There is a greater awareness of the scheme as a whole. As you know, Mr Timpson, there is Twitter and local media. These sorts of cases resonate with local and regional media outlets, so awareness as a whole has been increased. I would need to be persuaded with strong evidence as to why I should extend the 28 days. At the moment, 28 days is about right. You will know that the slip rule can be used and there are 56 days for that, but at the moment I am not persuaded that the 28-day period needs to be altered.

Q78 **Edward Timpson:** Broadening this out a little, in relation to the public's



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understanding of ULS, the Committee is doing a wider inquiry into the public understanding and their opinion on sentencing. What messages do you think the current ULS scheme sends to the public about sentencing?

Michael Tomlinson: I hope it sends a reassuring message that in the vast majority of cases the judiciary gets it right. About 90,000 cases appear in the Crown court in any given year. A very small percentage are brought before the Court of Appeal and 70% are successful. I hope the message is that the scheme is successful and that the judiciary on the whole gets it right, but this is an important safety valve.

Even in those cases that are not referred, the existence of the scheme should provide some reassurance that the judiciary is aware that if a sentence it passes is unduly lenient there is a mechanism for the case to be referred. Even for those cases that do not get to the Court of Appeal, I think it still has an impact on them as well.

Q79 **Edward Timpson:** One of the most revealing pieces of evidence received in the inquiry into public opinion and understanding of sentencing is the mismatch between what is actually happening in sentencing—for example, longer custodial sentences for serious crime, and the public’s perception that it is going down. What more do you think the Government can do to try to improve the public’s legal education, for want of a better expression, maybe starting even in schools?

Michael Tomlinson: It is a really important aspect of the Law Officers’ work. I know that a number of my predecessors, yourself included, were particularly involved in the legal education side of the Law Officer role. We have all had constituents who have come to us and asked us to explain a sentence, a judgment or decision. Exactly as you are implying, when you sit down and go through it line by line the headline may not seem to make sense, but the detail—mitigation, reduction for a guilty plea, etc.—has a logic and coherence to it and, therefore, there is greater understanding, but your point is valid and very well made.

I go back to my previous point about the scheme as a whole. I think it does provide a deterrent and ensures that judges get it right more often than not. I think we see that on the evidence. Perhaps we all have a role to play, not least this Committee, in ensuring that the full facts are out there and not just the headline but the details behind it are important as well.

Q80 **James Daly:** Can I just go back to Ms Daby’s very important point? One of the suggestions put before this Committee by various people is that in effect we do not have enough prosecutors or counsel to prosecute cases of serious sexual offending. Is that a statement you recognise? Is a worryingly high number of cases not able to proceed because we just do not have enough barristers or solicitors to prosecute or even defend them?

Michael Tomlinson: Maybe the Attorney General will want to come in, but that was one of the concerns. That was the risk for as long as there



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was not equality or parity of arms between defence and prosecution fees. There was a risk and concern about prosecutors.

Q81 **James Daly:** I am not asking about risk. We are talking about the backlog, which will continue to grow if cases are adjourned because there is nobody to prosecute them.

Michael Tomlinson: I do not want to betray confidences, but I know that the director and others did present evidence that supported the fact that prosecutors were more reluctant than defence while there was not equality of arms, if I can put it that way. I do not have the figures off the top of my head and I do not want to betray confidences by saying anything further than that, but the director was concerned that if the situation continued for much longer there would be real difficulties in courts with a lack of prosecution counsel attending.

Q82 **James Daly:** It is quite a significant point. I do not want to labour the point, but it is not about numbers of lawyers; it is about lawyers refusing to take briefs because of their perception of the fees being paid. Is my interpretation right?

Michael Tomlinson: Your interpretation is correct. Anecdotally, I attend Bar Council meetings, as many solicitors and attorneys do, and that was certainly the message I was receiving loud and clear.

Victoria Prentis: We all need to do everything we can to ensure that the pipeline for the legal profession continues to be a strong one and encourage young people as well as older people entering the profession to understand that criminal work can be very rewarding in financial terms as well as in other ways, and that it is a career worth having.

I very much view it as part of my role as a former Government lawyer to big up the role of the Government Legal Service, the CPS and SFO because that comes very naturally to me, but there are other roles, in criminal defence work, for example, which are just as important. To go back to Mr Timpson's question, it is key that we make this point in schools. There are fabulous and useful careers in law, and people need to feel they are part of the public good in a wider system.

Q83 **Chair:** We talked about recruitment into defence advocacy, for example. What about recruitment into the Government Legal Service?

Victoria Prentis: I am concerned about both recruitment and retention and I very much want to look at ways, not just the financial package but other matters, to make sure that those in the Government Legal Service can progress their careers. To try to put it politely, many of them are not motivated by money in the way some other lawyers are. They have chosen a path which is possibly more academic in some ways. They have chosen the giving of legal advice, which can be very academic, where the law is changing. Many are attracted by the quality of the work rather than the quality of the remuneration, if I can put it that way. I want to make



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sure that once we have got them we keep them and enable them to progress in their careers in ways that perhaps we have not always.

Q84 **Chair:** That is helpful and perhaps something we can return to at a future date.

Victoria Prentis: I would be delighted. It is one of my favourite subjects.

Chair: Madam Attorney General and Mr Solicitor General, thank you very much for your time and evidence today. It has been very helpful.