

Joint Committee on the National Security Strategy

Oral evidence: Espionage cases and the Official Secrets Acts

Wednesday 29 October 2025

9.45 am

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Members present: Matt Western (The Chair); Lord Boateng; Sarah Champion; Baroness Fall; Lord Hutton of Furness; Baroness Kidron; Mike Martin; Edward Morello; Lord Robathan; Lord Sedwill; Andy Slaughter; Emily Thornberry; Lord Tunncliffe; Baroness Tyler of Enfield; Lord Watts; Sir Gavin Williamson.

Evidence Session No. 3

Heard in Public

Questions 30 - 54

Witnesses

I: The Rt Hon. the Lord Hermer KC, Attorney-General; Rt Hon. Darren Jones MP, Chancellor of the Duchy of Lancaster.

Examination of witnesses

Lord Hermer and Darren Jones.

Q30 **The Chair:** Order, order. Welcome to today's meeting of the Joint Committee on the National Security Strategy. This is the third evidence session of our inquiry into espionage cases and the Official Secrets Act following the collapse of the case involving the alleged spying activity for China. Our objective is to bring clarity to questions that have arisen in recent weeks, to ensure proper accountability and to review the adequacy of processes and decision-making. It is unusual for us to examine the details of such a case, but it is warranted given the scale of public concern. We heard on Monday from the Director of Public Prosecutions and government officials, and today we are hearing from Ministers. I would like to remind witnesses of their obligations to Parliament and the expectation of providing as complete answers as possible—and pithy, I would add to that as well. Can I first ask our panel of witnesses to introduce themselves from my left?

Lord Hermer: I am the Attorney-General.

Darren Jones: I am Chief Secretary to the Prime Minister and Chancellor of the Duchy of Lancaster.

The Chair: Perhaps I could start with you, Lord Hermer. I appreciate that you were not the Attorney-General at the time when the charges were first pressed in April 2024, but how might things have been done differently, assuming you wanted to prosecute?

Lord Hermer: Thank you. Chair. I am mindful that you asked for pithy answers. Could I just give a little background to the framework, because that will help contextualise the direct answer to a direct question? There are two frameworks to bear in mind. The first is the Code for Crown Prosecutors, and that is a code that governs all prosecutors when they are deciding whether or not to bring charges. There are two material elements to the code. The first is that a prosecutor has to consider an evidential test—whether the evidence that the police or others have provided them gives rise to a realistic prospect of securing a conviction, the evidential threshold. The second, once you have carried that out, is the public interest: is the public interest met in bringing the prosecution forward? Those are decisions that, except where Parliament has said otherwise, are solely for independent prosecutors.

Now, there are some instances—there are about 50 offences on the statute book—in which law officers, the Attorney-General or the Solicitor-General, have to consent to the prosecution, and that includes prosecutions under the Official Secrets Act 1911. The law officer considers whether or not to grant consent to a prosecution. The prosecutors would already have looked at it and carried out their own assessment, but the law officer has to carry out their own independent assessment, again asking whether the evidential test has been satisfied and, if so, whether the public interest merits prosecution. In this case, under the previous Government, a law officer considered the materials provided to him by the Crown Prosecution Service and reached the decision to consent to the prosecution going ahead. That is the end of a law officer's engagement in a prosecution.

Quite rightly, under our constitutional framework, politicians do not, save where expressly mandated by Parliament, get involved in prosecution decisions. That is formalised in the framework agreement between the Attorney-General's Office and the Crown Prosecution Service. The current version is one that was signed in 2020 by the then Attorney-General, Suella Braverman, and that makes plain that the CPS is an independent prosecution service and that there are very limited circumstances in which law officers will even be consulted or informed about prosecution decisions. Most relevant to this case are the circumstances in which an Attorney-General or Solicitor-General will be approached about a decision to drop a prosecution where that prosecution started with Attorney-General consent.

The framework agreement makes a very clear distinction. Where a prosecution in those circumstances is to be dropped because it is no longer considered to be in the public interest to prosecute—that second limb of the code—law officers must be consulted. However, where a decision is taken on evidential grounds not to proceed with a prosecution,

then the obligation is to inform, not consult, law officers after the decision has been taken. That is what occurred here.

Chair, I hope that is helpful in kind of setting out the framework. It leads to my answer to your question: that on the materials that I have seen, I do not think that the law officer who made the decision to consent at the time of this prosecution reached in any sense an erroneous decision.

- Q31 **The Chair:** I think many—certainly the public—struggle with this, because if it had gone to jury, the common-sense application would have been “Are they an active threat?”, and many of us would assume that they may have come to that conclusion. Ken McCallum and Chris Wray—the directors, of course, of our MI5 and the FBI—were saying back in 2022 that the attacks on our economy were multiple. In terms of espionage, you look at the attacks on our institutions; this is allegedly part of that. You look at the attacks on our democracy and the hack into the Electoral Commission. This is systemic. When you hear Ken McCallum describing the CCP as “the most game-changing challenge we face” from all nations, then you think, “How on earth is it that we have got to this situation?” So I guess my question is that the DNSA was describing China as presenting a range of threats, but the DPP was concerned about being able to present a case of an active threat. Why is there such a difference?

Lord Hermer: Can I answer that question in two parts? The first part is that obviously the best evidence for you as to the CPS decision-making and the rationale for that decision-making is the evidence that you received from the director and from Mr Little. Everything that I have seen shows me that this was a prosecution service working hard to try and secure a conviction. They had an array of evidence. They were disappointed that the prosecution could not proceed.

The Chair: Were you disappointed?

Lord Hermer: Yes, absolutely—of course. They were disappointed that the prosecution could not proceed. It was not just a decision of one individual. It was a team of experienced prosecutors. You had evidence from Mr Little, the senior Treasury Counsel. He is the most experienced KC we use in criminal cases, and I use him in our most important criminal cases.

The Chair: But they say that they struggled to get evidence—that there was no evidence forthcoming.

Lord Hermer: My first point on this, Chair, is that these are people who are working in good faith to try and get this case into court. The second is, standing back in this case, where is the problem? What is it? We should all be concerned to try and identify what lessons can be learned. Wherein lies the problem? I am clear in my mind that certainly one very significant problem here was the Act. The Act was not fit for purpose. It was out of date. The Act under which this prosecution proceeded was the 1911 Official Secrets Act. That was an Act introduced into the House in July 1911, and it received Royal Assent a few weeks later in August.

During its passage there was lots of concern raised that it was not properly scrutinised.

In 2017, the Law Commission flagged that “enemy” was deeply problematic and would give rise to difficulties in future prosecutions, and what has played out during this prosecution exemplifies and highlights the difficulties with that term. That is why Parliament was right to pass the National Security Act 2023, which takes away the problems that were faced by the CPS in this case. You no longer have to prove evidence. You merely have to prove that information was being passed to a foreign power. Speaking frankly, I do not understand why it took Parliament so long to pass that. Had that Act been in force at the relevant time to this case—between 2021 and 2023—I have no doubt that the prosecution would have proceeded to trial.

Q32 Lord Sedwill: Thank you, Attorney, for being with us today. I am very conscious of the law officer conventions and so on, so I recognise that you will have to be careful in some of your answers. I really just want to get to the simple point of law on which this case failed. We heard a lot of evidence from Mr Collins about the nature of the threat and the series of threats from China. We heard from the DPP about the test they set and colleagues will dig into those in more detail. But at the heart of this is a very simple question. The Government believed on the legal advice that they had that the witness statements Mr Collins had provided passed the appeal court threshold, and the CPS concluded that they did not. Who was correct?

Lord Hermer: I will answer that question directly, but could I again just take a step back? It is important to remind ourselves that the test that needs to be met under the 1911 Act is “enemy”. The jury needs to be convinced on the criminal standard beyond reasonable doubt, in this case, that China was an enemy. The Court of Appeal, in the *Roussev* case, which I know you were discussing on Monday, said that you can satisfy that test as a matter of principle if you can show that a country is a threat to national security, but—and this is an important “but”—it is a matter of fact and degree. The court said that it does not mean that you can ignore the test of “enemy”, but the jury still needs to be satisfied that as a matter of fact and degree the threat was such that China was an enemy. The difficulty in this case was, and would remain if we were still governed by this statute, that it was not simply a case that the Government were neutral on the question as to whether or not the threats meant that China amounted to an enemy. The Government’s position was that it was not.

I anticipate that if this case had proceeded to trial in the hands of a skilful defence advocate—let us say it would be Dame Emily back in the day—in court, she would start her cross-examination by asking, “The test here, is it not, Mr Collins, is that you have to be satisfied that China was an enemy?”, to which he is going to, of course, say yes. “Shall we look at what the Foreign Secretary at the time said in his Mansion House speech, where he sets out the Government’s position and says, ‘You cannot call China a threat?’” I am not making a political point here. These are the

statements at the relevant time. "Let us look at what Ms Badenoch said, when Secretary of State—that she would not call China a foe." That is where you are going to start off, I anticipate, with a cross-examination. Of course Mr Collins is going to have to accept that, and when it would be put to him, "You're not saying China is an enemy", he is obviously going to have to answer in accordance with the Government's position. He will have to answer no.

That is the problem with a statute designed for the world in 1911 but wholly unfit for the world and the threats that this country faces in this century. That is why Parliament was right—but, I am afraid, late—in passing the 2023 Act. Those are the type of problems that I anticipate would have given rise to the problems that the prosecution would have faced in this case. But as to the actual thinking and rationale, then obviously you have the DPP, whose evidence on that you have had. That is my take on what the real difficulties are here.

Lord Sedwill: I do understand that, Attorney, and I am sure the government lawyers understood all that as well. Indeed, it should have been apparent to everyone from the start that this definition of "enemy", as you set out very cogently, is a real challenge. By the way, I suppose I should declare an interest, as I was the National Security Adviser who began the process of crafting the legislation that became the 2023 Act. The reason Parliament was late on it was that we could never get parliamentary time beforehand. I am pleased you think that the 2023 Act passes that test.

My question, again, is simple. We heard from Mr Collins, both in written and oral evidence, that the Government—the Cabinet Office—were surprised that the DPP and the CPS decided to drop the case because they concluded, for the reasons you just set out, that the threshold set by the Court of Appeal had not been met. Notwithstanding the language around national security threat and so on, which I am sure colleagues will want to come to with you in a moment and interrogate in more detail, the Government clearly believed, on the legal advice they had, that the threshold was met, and the CPS concluded that not only was it not met but the case fell so far short of it that they could not even put it to a judge, let alone a jury, and therefore had to drop the prosecution. Those two interpretations of the law cannot both be correct. I am asking you, as Attorney, the senior law officer, as a matter of law—you have set out that you understand why they got to those conclusions—which one of those two interpretations is correct?

Lord Hermer: If we are talking about the Government's position, I do not think that that is the legal position that the Government are advancing. Mr Collins is being asked to give evidence, not provide a legal analysis. He is giving witness statements at the request of counterterrorism police, and he is giving the answers as best he can within the four squares of the government policy at the time. So it is not as if you have on one side a government legal analysis. You have the evidence from Mr Collins, and you have had his evidence as to how he

thought that was sufficient. He was answering everything and all the questions as best he could. That is not a legal analysis. It is not a conflict between two legal analyses. You then have, on the other hand, the CPS, which considers at the outset of the case that there is sufficient evidence. Then, as they approach the trial and as you would expect—not least through the same prosecution team’s own experience of having to fight another very rare case under the Official Secrets Act in Roussev—they are looking again at the evidence, testing it and assessing how it is going to play out in court. They reach a conclusion for the reasons the director has given you that the evidential test is no longer met, and therefore they are bound to offer no evidence.

So I am not sure, Lord Sedwill, that I accept the premise that we have two conflicting views of the law. That is not how I see the Government’s position. What I can say, both from the perspective as Attorney-General and somebody who also sits on the National Security Council, is that you have this tension about, on the one hand, the National Security Secretariat’s evidence as to what occurred. You have then got a bit of tension as regards the CPS. What I see on both sides are quite extraordinary public servants doing their absolute best. You have Matt Collins, who I know very well and is a superb—I repeat, superb—public servant. You have the CPS staffed with dedicated people. They are all trying to do their best but they are coming from different angles. It is not unusual in a prosecution, per se, to have everybody trying to do their absolute best but nevertheless you cannot get a prosecution over the line.

Lord Sedwill: I have one further point. I think we will want to explore all that because we explored in some detail—Dame Emily did this the other day—whether the raft of evidence Mr Collins produced on the range of threats that China poses, including espionage, cyber, democratic and economic security, did actually cross that Appeal Court threshold. Clearly, the Government believed that it did because they were surprised when the prosecution was dropped. But I take your point that that, in the end, this is fundamentally—

The Chair: We lost you momentarily, but I think your point was understood.

Lord Sedwill: I have one final point but I think others will want to explore this in more detail, Attorney. Would it have been appropriate for your advice to have been sought, as the senior law officer superintending the CPS, and as a member of the Government and the National Security Council, on that question? Was there some other mechanism by which the Government might have provided additional evidence to satisfy the threshold that the Appeal Court had set?

Lord Hermer: I do not think there is a role for an Attorney-General when it comes to the evidential threshold on a prosecution because that creates a real danger of interference in operational decisions. I do not think that a request for me to lean into the case,

either on the CPS or the government side, would have been appropriate here.

Lord Sedwill: Okay. If we had more time, I would have liked to explore some of that in more detail, but others will want to come in.

Q33 **Lord Hutton of Furness:** I have one question for you, Lord Hermer, on a matter that I am struggling to understand. Matthew Collins made it clear to us in his evidence that in his first witness statement he would not describe China as an enemy. But you were very confident in saying, at that point, that the law officers concluded that there was sufficient evidence to bring a prosecution under the Official Secrets Act. That cannot be right. If he is not going to say they are an enemy, why, at that point did you think that there was enough evidence to prosecute?

Lord Hermer: At that stage, when the law officers were asked to consent, they were provided with the witness statements of Mr Collins. At that stage, I do not think there was anything to indicate that he would not say that China was not an enemy.

Lord Hutton of Furness: He was very clear; he was not going to say that China was an enemy. That is very clear in his statement.

Lord Hermer: To be fair, Lord Hutton, I do not think that he is clear in his statement that he would not say that China is an enemy. In those statements, he sets out the range of threats that China poses. On that basis, the law officers' decision to consent was not unreasonable.

Lord Hutton of Furness: I think we need to check that again, because it was very clear to us that he was not going to call China an enemy.

Lord Hermer: He was very clear about that in his evidence to you. The evidence that was available to the law officers at the time consists of his witness statement.

Lord Hutton of Furness: But it was also clear from what we heard that Matthew Collins—who no one on this committee is impugning, at all; he is an outstanding public servant—was clearly being advised by departmental lawyers that what he was saying was enough to get over the evidential threshold. But that turned out not to be the case.

Lord Hermer: I am afraid I do not know the advice that departmental lawyers would have given to Mr Collins. Although Mr Collins was in a slightly unusual position for a witness in a criminal trial, as he was effectively giving corporate evidence, he is not doing so for the purposes of expressly seeking to meet a legal requirement; he is giving the evidence that a jury could then consider to see whether the legal requirements are met.

Lord Hutton of Furness: That would not really explain why he was surprised when the case collapsed.

Lord Hermer: He has given you your evidence on that and I do not seek to second-guess or question that for a moment.

- Q34 **Mike Martin:** Attorney-General, from listening to your evidence and the evidence that we heard on Monday, I am struck by us having a bit of an apples-and-oranges situation. The Crown Prosecution Service quite rightly requires statements of fact in order to meet its evidential threshold, and the deputy national security adviser, as a civil servant, clearly can only give evidence within the bounds of government policy. He was clear to us that he was clear, right at the beginning of the process when he was asked to give evidence, that he could give evidence only within the bounds of government policy.

He said that, in August 2023, when he was approached by the counterterrorism police and asked to be a witness, he said at that time, "I can give evidence only within government policy". Is there a case to be answered that the DNSA, as a civil servant, was the wrong witness to speak to the fact that China is an active national security threat or otherwise? For example, could the counterterrorism police or the CPS—I am interested in whether you think one or the other is responsible for this—have called retired directors-general of MI5, the director of Chatham House or a range of witnesses that could speak factually to whether China is an active national security threat? Was the problem here that either the CTP—the counterterrorism police—or the CPS may, in fact, have selected the wrong witness at the start of this process?

Lord Hermer: The short answer is that I do not think that there was anything inappropriate in asking the deputy national security adviser to give evidence on the nature of the threat posed by China between 2021 and 2023. I, like all of us, am grateful that he was, in effect, prepared to stand up and expose himself to the prospect of cross-examination in court. He is a perfectly appropriate witness from whom to get evidence.

- Q35 **Sarah Champion:** Attorney-General, I am struggling with two things. One is why it was so late in the day when the CPS decided that the evidence that Mr Collins was going to give would not be appropriate for the case. The other is why these people could be charged with only one thing. My experience is child protection, and the police and the CPS work hand in hand; they tend to have a range of things that they can charge with as the evidence starts unfolding. Was there nothing else that these two could have been charged on?

Lord Hermer: Again, I think you are probably going to get much more direct evidence on these questions from the CPS, which made the decisions. It is its thought process, not mine. I can comment as a matter of generality.

Sarah Champion: What is your experience?

Lord Hermer: There is nothing unusual, per se, as you come up to a trial, in carefully checking your evidence again and making sure that you have everything in place that you want to have in place. That is my experience of 30 years at the Bar, but I am answering as a matter of

generality. The evidence of the thought process is the evidence of the CPS, not of me. Again, I cannot answer for the CPS on their thinking about which charge to prefer and which not.

Again, as a matter of generality and of my experience—I practised in crime at the beginning of my career, but not throughout—you generally try to go with the most significant and the most serious, but not always. I am afraid that those are really questions that the director and Mr Little will be best able to address.

Sarah Champion: But is it unusual not to have a backup?

Lord Hermer: It depends on the nature of the impugned conduct. Some type of conduct is covered by a host of crimes. You may want to think about that there. There may be others in which the conduct is fairly unusual, for which there is only one crime or a small number of crimes. So it really depends upon the nature of the allegations.

Q36 **Andy Slaughter:** We seem to be establishing, particularly in the evidence that we heard from the DNSA the other day, and that from the DPP, that there was a disagreement. There was a difference of opinion here, but I am not entirely clear whether that was a fundamental difference between what was in the witness statement and what was sufficient for the DPP or whether it was almost there but did not quite get where it wanted to go.

There also appears to be an absolute breakdown in communications here—a misunderstanding—such that several attempts are made by the Government to provide evidence, and they are then not considered sufficient and more evidence is provided. But at no stage is it clear what should be happening here. That seems a pretty fundamental, almost farcical, breakdown of the way that the system ought to work. Are you happy that the system worked as it should? This might be a question for both witnesses. Do you think that this is something which, to say the least, does not show it working? It is not their finest hour for either part of the equation.

Lord Hermer: I would just caution against rushing to categorise this process in those sorts of terms. I happened to have had the advantage of looking through some of the case papers on this. There will be voluminous case papers, an array of evidence. I have not reviewed every page of it; I have not reviewed every contact between counterterrorism police and the CPS or every contact between the counterterrorism police and the Cabinet Office. It is easy, particularly when we are all so disappointed about the outcome of this case, to jump to conclusions that may prove to be unfair.

What is the case here is that there are communications between CTP—the counterterrorism police—the CPS, the Cabinet Office and the NSS. Those conversations are going on. You have Matt Collins giving the evidence absolutely as strongly as he feels rightly able to do so; you also have the CPS, which is taking advice at the highest levels on what it feels

it needs, in a courtroom, to get this prosecution home; and there is a mismatch. I do not think that mismatch needs to be categorised as a mistake or farcical. You are absolutely right to be looking at it, but I would not rush to say that. These are all people working incredibly hard to try to get this prosecution over the line.

Andy Slaughter: That does sound like you are saying that things worked as they should have worked, in this case.

Lord Hermer: No, I am not saying that. I am saying that we need to look it at really carefully to see if there are lessons that could be learned. That is why I welcome this committee investigation. What I am saying is that it is unwise to rush and say that this is farcical or a catastrophic failure. At the moment, I see people on both sides doing their best within their lanes. You have the DNSA providing the evidence that he feels, rightly, that he is able to give. You have the Crown Prosecution Service working, rightly, within their Code for Crown Prosecutors. Sometimes there are going to be tensions and conflicts between those.

Andy Slaughter: Can I ask the Chancellor if that is also your view?

Darren Jones: It is for the Attorney-General, as the superintendent of the CPS, to give his view. I have nothing further to add.

Andy Slaughter: You have nothing in relation to the way that the DNSA prepared or created the evidence, at this stage.

Darren Jones: No—the Attorney-General has answered that question.

Q37 **Emily Thornberry:** We have heard evidence that the witness made a statement, his first statement. Then he says in the joint letter that he gave from the Cabinet Office—this is to the Chair and it is from the National Security Adviser and the deputy national security Adviser—on point 3 in answer to question 7, at page 4, that the “drafting process took place between August and December 2023”. At paragraph 4, near the bottom, he says, “Drafts of a statement provided to DNSA included the term ‘enemy’ but he removed this term from the final draft as it did not reflect government policy”.

This is before charge. Between August and December 2023, we have a statement being made before anyone is charged with anything, and he has taken out the word “enemy”. You have put great faith in “enemy” as what this is all about and you have your witness taking out the word “enemy”. Surely any prosecutor thinking the way that you are thinking would think, “That’s a bit of a red flag”, at that stage. Indeed, when it was given to the Solicitor-General, who was the one who made the decision, that was presumably pointed out to him. It would have been said, “We’ve got this statement and a bit of a problem: the witness has taken out the word ‘enemy’ and it appears in the legislation”.

Lord Hermer: As I understand it, and I have not reviewed the full papers that were before the then Solicitor-General, they were provided with the signed statement of Mr Collins. I return to the fact that, when we

look back at this episode, the real mismatch that we are going to see is the statutory definition of “enemy” as opposed to the Government’s actual position between 2021 and 2023, which was that it was not an enemy.

Emily Thornberry: There is no statutory definition of “enemy”.

Lord Hermer: There is. Well—I am so sorry—there is a statutory test of “enemy” in the Official Secrets Act.

Emily Thornberry: Tell me what that is.

Lord Hermer: To get a prosecution home, you need to prove that China was an enemy at the relevant time when the information was provided. That is the statutory test of “enemy”, which you have to satisfy on the criminal standard.

Emily Thornberry: I see; it is no more than that. Then we also heard from Tom Little, the senior lawyer, who, at page 3 of the transcript, in answer to question 1—the top paragraph—says, “I also want to make it clear that I was not concerned if the witness did not use the word “enemy”—that would be a matter for the jury—but I needed to have the evidence to support the submission to the jury, and the witness was clear to me” and so on. So he is saying that he does not mind the word “enemy” not being in the witness statements.

On the face of it, we have a bit of a difference here. We can go through the various statements, but in essence they were relying on highlights from the statements such as, “The Chinese intelligence services are highly capable and conduct large scale espionage operations against the UK and other international partners to advance China’s state interests and harm the interests and security of the UK”. That is from the first statement. In the second statement, we have: “China also presents the biggest state-based threat to the UK’s economic security”. In the third statement, we have: “China’s espionage operations threaten the UK’s economic prosperity and resilience, and the integrity of our democratic institutions”.

So we have a witness taking out the word “enemy” and we have senior counsel saying, “I do not mind about ‘enemy’; what I care about is the evidence”. Then we have this case called *Roussev* coming along which, people are trying to persuade us, absolutely threw the table over and changed everything. Suddenly we have this case and we have to look at it all differently now. The trouble with *Roussev*, although it talks about a current threat to national security, is that it does not say, “That is the new definition of ‘enemy’”. It says, “This is an example. It includes a threat”.

Then it boils down to this. I am sorry that this is a long question, but I am trying to take you through what we have been wrestling with. We end up with the DPP saying that he had to drop the case because the witness was not prepared to say that China was a current active threat. But,

when I asked him a question, he said that China was a range of current active threats. If that is the reason that this case fell, it is no wonder we need juries, because juries have a bit of common sense where all these lawyers do not. Do you not agree?

Lord Hermer: The problem with having a binary question at the end of a very long question is that I cannot be sure what I am agreeing or not agreeing to.

Emily Thornberry: I tried to do it simply.

Lord Hermer: Look, to my mind, the problem here is that, for 110 years, we have had a statute that creates an unrealistic test for prosecuting those who engage in espionage contrary to the national security interests of this country. This whole discussion demonstrates that it simply was not fit for purpose. Had we had the 2023 Act in place by 2021, this prosecution would be starting in a few days' time. I have absolutely no doubt about that.

The Chair: But would China not need to be on the enhanced tier of FIRS?

Lord Hermer: No, I do not think there would be a difficulty in prosecuting, in this case. I think you would show, on this evidence, that you could get in under the foreign powers provision. This whole debate demonstrates that you can have people such as the prosecution team here, which was an absolutely first-rate team with the most senior prosecutors at the CPS, including those in counterterrorism, the DPP and First Treasury Counsel. They are taking great care with it. Mr Little explained that he took the unusual step of speaking to a witness ahead of trial to try to make an assessment of where it goes himself. You have various legal commentators talking about what Roussev means or does not mean. To my mind, stepping back, it shows that the 1911 Act was fundamentally unfit for purpose. The new Act should have been brought on to the statute book far sooner than it was.

Q38 **Edward Morello:** To that point, Lord Hermer, if a 110 year-old piece of legislation is not fit to prosecute people in 2023, it begs the question of why the CPS decided that it was the correct law to apply in this case. It links up Sarah Champion's and Mike Martin's questions: the CPS seems to have gone down a route with a single law under which to prosecute, while also relying on a single witness. Does that not, objectively, from the outside, look like you are creating a single point of failure?

Lord Hermer: There is nothing unusual in the criminal justice context in having to rely on key witnesses, and the success or failure of a prosecution depending on individual witnesses. That is obviously not unique in our adversarial criminal justice process. Again, to go back to Mr Slaughter's question, I am loth at this juncture, not having lived and breathed the case—not having seen every relevant scrap of documentation—to effectively second-guess. What I can say is that, from everything that I have seen, this was a team who were trying their best to get this prosecution up in light of what we will all agree were

immensely troubling and serious allegations.

Edward Morello: No one doubts the best efforts of those public servants involved. I guess the point of having an inquiry is to find out what lessons should have been learned and what recommendations should be made differently. We can definitely put on the record that we all agree that hard-working people were doing the best that they possibly could. I guess what I am trying to establish is, given your experience and looking back at this case—one in which right now we should be looking at the prosecution going ahead, as you said, of two Chinese spies—where did things go wrong? If, objectively, you are looking back and going, “At some point during this process, it was decided to go down a route in which we only had a single law under which we were going to prosecute, relying entirely on a single witness in order to bring around that prosecution”, if you were not setting yourself up for failure, then certainly were you creating circumstances in which failure becomes probable with only one thing going wrong?

Lord Hermer: I really do not want to second-guess what was the anxious consideration given by the Crown Prosecution Service to this case. However, I do keep coming back to the fact that, if one wants to look at the kind of obvious fault-line in this case, it is not to my mind necessarily in prosecution decision-making. It is in the Act that set a test that might have been fit but probably was not that fit in 1911, and certainly was not a fit in 2021 for prosecuting those alleged to be acting against the interests of this country.

Q39 **Lord Boateng:** You were informed that the case was to be dropped for evidential reasons. When you were so informed, you have told us you were disappointed. Were you surprised?

Lord Hermer: Yes. I obviously knew the case was proceeding. I knew it was coming up in the autumn. So I was both surprised and disappointed, yes.

Lord Boateng: And you asked, presumably, why.

Lord Hermer: Yes.

Lord Boateng: You were told. Did it then occur to you that it would have been possible to have made additions to the indictment—to have added attempt or conspiracy? Did you suggest that to those who advised you that they were about to drop the prosecution?

Lord Hermer: No, and let me explain why. I am informed after the decision has been made by the director in accordance with the framework agreement. As you can imagine, I want to understand the rationale for that. That does not allow me to say, “Right. I want to see all the case papers. I want to call in the witnesses. I want to test it for myself”, because that would be interfering with the prosecution decision, and it would be seeking to interfere in the prosecution, and I believe that would be contrary not only to the framework but actually basic constitutional principle.

I was provided with a rationale that I obviously tested through questions as to the CPS decision-making from their perspective. Obviously, if I thought at that stage that it was just a completely irrational decision that was not, for example, based on evidence or had only been a decision made by one person of a junior rank, I would have asked even more questions that I asked, but I was satisfied that care and attention had gone into the decision. I was reassured by the fact that it was not just the decision of the CPS, but they had had the most experienced external counsel consider it. It was obviously an information-only meeting in accordance with the framework, so I did not think it appropriate for me to roll up my sleeves and tuck into the prosecution case.

Lord Boateng: No, indeed, I do not think anyone would ask you to roll up your sleeves. But you are lawyers around the table—we have all been lawyers around the table—and you are all very experienced. Everyone wants to do their best. Would it not have been natural to say, “What about conspiracy? What about attempt?” You and I have been in many cases, have we not, when we have arrived at court and found that there is an application to add to the indictment? It is not unusual, and it is not unusual for lawyers sitting around a table to ask themselves questions about that. Did it not occur to you to ask that question?

Lord Hermer: There is a very careful constitutional line. I am not just there as a lawyer.

Lord Boateng: We understand the constitutional line, of course, but was there any discussion at all that you are aware of about alternative charges?

Lord Hermer: Without going into the details of that discussion, I was satisfied that proper consideration had been given by the CPS to the evidence and to the charges that could be brought. You have also heard on Monday from Mr Little as to consideration of other charges that could be brought and his evidence on that, and that is obviously the first-hand evidence of most relevance to this committee.

Lord Boateng: You have told us you were disappointed and surprised. If you were disappointed and surprised, then imagine the scale of disappointment and surprise on the part of the general public. You were aware when you were informed of this decision that it would cause the general public really to question the whole system of investigating and prosecuting espionage cases of this sort. Did you express to anybody concern about the impact on public confidence in the whole system of justice in relation to espionage and in the security of this country? Did you express that concern to those who are bringing you this information?

Lord Hermer: My role at that meeting would not be to use public interest grounds to try and persuade the Director of Public Prosecutions to—

Lord Boateng: There is no question of that, Attorney. No one is saying for one moment that you were in the business of persuading anyone of

anything. But did it not occur to you, and did you not express concern, that this decision would impact on public confidence in the whole system of justice in relation to espionage cases?

Lord Hermer: I have no doubt, when I am in a meeting in which I am being informed of that decision, that nobody could have left that meeting with a sense that I was anything other than disappointed at the decision that was being reached. I am extremely concerned about the impact that this case has on public faith in our national security structures and in our criminal justice system, so far as it intersects with that. That is why I welcome the work of this committee. That is why I welcome parliamentary scrutiny.

It is also, if I may say, why I deprecate some of the baseless accusations that were levelled against the Prime Minister and against our National Security Adviser, Mr Powell, when the decision of the prosecution was announced that seek to suggest that politicians had somehow improperly interfered in this case to stop a prosecution—effectively, allegations that they were perverting the course of justice against the national security interests of this country. Those were disgraceful allegations to make without evidence. They were baseless, as the evidence of the DPP and the Cabinet Secretary has made plain. That I was very concerned about and, again, it is why I welcome this process, because it allows us to shine a light, to see that we might not be happy with the decision—we might be disappointed with the decision that is reached at the end of the day—but these are decisions that are made through independent parts of our state, independent of politicians, and that is for the benefit of us all.

Lord Boateng: And you felt at the time there was nothing you could do about it.

Lord Hermer: Yes.

Q40 **Lord Watts:** Attorney-General, you will understand how the public see this. They see spies being let off scot free and no one protecting the state. We have heard evidence that the people who made the decisions were—I think you said—first-class people, good people, working hard, but there is no accountability in this system for the failure to prosecute spies that are damaging the UK. We heard already that there were alternative ways that prosecutions could have taken place, but they were missed at some time. What the public would want is some indication that there is some accountability in the system and someone will accept responsibility for it.

Going back to the “enemy” issue, the previous Government and this Government are all trying to get trade ties with China and improve relationships. They are never going to call someone an enemy when they are trying to negotiate trade deals with them. The bottom line is that it should have been understood, at the heart of government, that that was a test that was never going to be followed. So my question to you is: why is there no accountability in the system?

Lord Hermer: All of this would have been avoided if Parliament had heeded the call of the Law Commission to amend the law earlier than it did. The Law Commission raises precisely the point that you raise. It is very difficult for Governments to call people enemies in the world in which we live, for all sorts of reasons raised by the Law Commission. That was a consultation that was published in 2017. It produced a full report in 2020, but you did not need to wait until the full report to see the problem that it identified. It is a matter of regret that Parliament missed an opportunity to get that on the statute books earlier than it did, because it would have avoided the very problems that the Law Commission flagged up so many years ago.

In terms of other charges that might be available, again Mr Little explained that they did give consideration to other charges, and I hope I get his evidence accurately when I say that his view was that they would all have required addressing the “enemy” test, whether you did it through the route of an attempt or through a route of conspiracy. I understand that that was his evidence, but I can see some shaking of heads, so if I have got that wrong, I have got that wrong. But I think his evidence was that consideration was given to other charges.

Lord Watts: Can I just make that clear? The committee has heard evidence that that was not the case, that a case could have been mounted, and that there was credible evidence that would have convinced a jury. I think we accept that the Government of the day should have acted in a swifter way—they should have seen that there was a problem and taken the appropriate action—but the people who you are talking about as first class should have known that that reality was there anyway, and they should have taken the appropriate action to create a case in a different way.

Lord Hermer: Out of fairness to those witnesses, those are points that the committee may want to make, either in writing or in a further session, to the people who were the relevant decision-makers. But I understood that Mr Little gave evidence to you on Monday that consideration was given to other charges.

Q41 **Lord Robathan:** There is a certain amount of confusion about this, I think we can agree. I am reading the integrated review refresh, published in March 2023, which was while these two were operating, I believe. It says: “We have created and used new powers under the National Security and Investment Act”—I believe that to be the case. It then says that the DG of MI5 said China was “engaged in both espionage and interference in the UK”. That was in 2022. Finally, it says that, “wherever the CCP’s actions and stated intent threaten the UK’s interests, we will take swift and robust action to protect them”. But these two, in their rather hopeless attempts at spying, said they were taking money and talked about spying. So it seems to me they were talking about spying, but what happened to “swift and robust action” to protect our country?

Lord Hermer: The problem was that we were hamstrung by a 1911 Act that required—

Lord Robathan: When was the new Act implemented?

Lord Hermer: In 2023, so after the period—you could not charge under the new Act. You could only charge under the 1911 Act here. The relevant period for determining whether or not China is an enemy is the period in which the offences were alleged to have been committed, which is 2021 to 2023. So you get a difficulty. Of course, as Mr Collins's statements make plain, you can absolutely build a case on a threat to national security—that is what his statements plainly say—but you still face the test of "enemy". Of course, there will be, as you have alluded to, lots of evidence that you can put in the "threat to national security amounting to enemy" pile, but then you also have the point where the witness is, quite rightly, going to say, "No, not an enemy". Indeed, the defence can rely on a host of statements from the Government at the time saying, "Not an enemy".

Lord Robathan: You will know much more about this than I do, but was there not a case in 1913 under the Official Secrets Act? We were not at war with Germany, so we did not call them an enemy, but someone was prosecuted under the Official Secrets Act for exactly this.

Lord Hermer: That is a 1913 case called Parrott.

Lord Robathan: But they were employing this from 1911.

Lord Hermer: The Act is 1911. I am sorry but, if you want pithy answers, you are making a big mistake asking a lawyer to talk about a case. It is a 1913 case in which the argument was: to bring a prosecution, do you have to show that we are actually at war? Is an enemy is defined as somebody we are actually at war with? It might be thought, unsurprisingly, in 1913, on the eve of war—where the allegations included spying on the British fleet up on the Firth of Forth—that the courts concluded that you did not technically have to be at war to be an enemy, but you could be somebody whom potentially we would go to war with. That was the decision in 1913 in the case of Parrott, and then we do not really get any consideration of the meaning of "enemy" by our appeal courts, which set the law, until we get to Roussev, which is the recent decision that I know you have been looking at carefully.

Q42 **Lord Sedwill:** I have two quick questions. You keep using, correctly, the word "enemy"—that is the word in the legislation—but the Appeal Court, as Dame Emily pointed out, essentially redefined that to talk about a threat to national security. Had Mr Collins been on the witness stand, he would have been able to demonstrate, as he has in his witness statement, that there is a whole raft of ways in which China was and is a threat to national security. So, although he would not have used the word "enemy" because it was not government policy—and that would never have been the case, as Lord Watts pointed out—he could have demonstrated China being a threat to national security, and therefore the jury could have reached a conclusion on whether that amounted to the "enemy" test, as you set out. That is what we are struggling with—namely, why was that possibility not pursued to allow a jury to make that

judgment? You may want to come back to that point again, but that is what I have been listening very carefully to.

I want to come back to this point about 3 September and thereafter, which Lord Boateng was pursuing with you. You correctly said that, constitutionally, you are there only to be informed. You obviously interrogated the decision in the way that you have set out, but it was a decision that had already been taken. However, we heard evidence that, in effect, that was not a final decision because there was then a period of reflection of five or six days, where the DPP essentially allowed the possibility for Government to consider whether more could be provided and whether that might get across the threshold that the Government clearly thought they had passed but the DPP had concluded they had not. Can you explain to us what your role was during that period for reflection and what you think should, or could, have happened during that period that might have brought us to a different conclusion?

Lord Hermer: I will deal with both of those points. When I come back to Roussev and the 1911 Act, I am giving it to you from my perspective, standing back and trying to understand not least what lessons can be learned here. In terms of the actual decision-making that took place, you have the evidence of the DPP and Mr Little.

The Roussev case did not redefine the statutory test. What Roussev said is that it is not just “at war or about to go to war”, as per Parrott; you can look at other factors, such as whether it—the country concerned—is a threat to national security. But it is not suggesting that you do not still have to satisfy the “enemy” test. What the Court of Appeal is saying is that you can build your case on “enemy”, subject to fact and degree, on the basis that this country is a threat to national security, but the jury still have to be satisfied—and will be directed that they have to be satisfied—that it is such a threat to national security that it amounts to an enemy. The difficulty that I anticipate and the fault with the 1911 Act is that it requires you to say that. The difficulty in prosecutions—it would have been a difficulty here—is not simply where the Government of the day are neutral on that issue, as it is not a question of just leaving it to the jury unencumbered by the views of the Government of the day on the question of enemy. The view of the Government of the day is that China was not an enemy. I have no doubt that there would have been plenty of reference to where the Government of the day were saying it was too simplistic to call China even a threat or an adversary.

Emily Thornberry: But it did also say that the term “enemy” should be approached in a common-sense way. The bastions of common sense are a jury, who would have looked at the overall evidence and decided whether or not it amounted to “enemy”, whatever the Government’s view.

The Chair: The point is that it was not an exhaustive test, was it?

Lord Hermer: It is not an exhaustive test. Again, I stress that you have had the evidence of the actual decision-making in this case and the

factors that were brought to bear by the director. This committee will no doubt want to look at the 1911 Act and consider the difficulties that it generally gives—or gave; fortunately, it is no longer relevant.

“Enemy” was still a test that the jury had to be satisfied was met beyond a reasonable doubt. It is inevitable, I anticipate, that defence counsel would have been repeatedly making the point not simply that the Government of the day were neutral on whether China was an enemy but that China was not an enemy. So they would say that that threshold, in fact and degree, was not met. That is the type of problem that the Law Commission identified with the Act. It is again why, to my mind, it was so imperative for Parliament to have acted sooner than it did to bring into effect the National Security Act, which would have obviated all these difficulties. We would now be looking forward to that prosecution commencing.

I am sorry; there was a second part to Lord Sedwill’s question. When I am informed, which was in the late morning of 3 September, it is conveyed to me as “A decision has been taken”. I am told that the DPP would also inform the Cabinet Secretary that day. I am asked to keep that information confidential; there is nothing unusual in that, in terms of information that is provided to me by the DPP, and obviously I respected that.

The next day, I am told that, as a result of the conversation with the Cabinet Secretary, there is going to be a further discussion with the witness, Mr Collins. A few days after that, I am told that that had taken place but that the decision remained. I did not consider it appropriate constitutionally or permitted by my role as defined within the framework to be anything other than informed at that stage. I was heartened to hear that a further attempt was going to be taken and was disappointed again that it did not lead to the prosecution continuing.

Lord Sedwill: We might put some of those points to the CDL because, if it was not appropriate for you, that further consideration was obviously happening within the Cabinet Office.

Darren Jones: The evidence that the deputy national security adviser gave on this question is, in effect, what happened. I do not think that there is anything further to add beyond the testimony that he has already given.

Lord Tunnicliffe: Can you help me with the evidential test that the Crown Prosecution Service must take? I understand that it is conditioned but I have forgotten the condition. It might be “reasonable chance” or something like that. Does that mean that, if there is only a 10% chance, it will not be taken forward? Does it mean that, if there is a 50% chance, it may be taken forward? Is it clear that a 70% chance means that it definitely would be taken forward?

Lord Hermer: For accuracy, I will read you the relevant bit of the Code for Crown Prosecutors on the evidential test. It says this: “It means that

an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty". So, in effect, the prosecutor has to apply a balance of probabilities-type assessment, whereas the jury has to apply the beyond-reasonable-doubt assessment.

Q43 The Chair: I want to move us on. Why is it, Lord Hermer, that in certain cases the Attorney-General is consulted before the case is dropped, say, on public interest grounds but, when it comes to evidential reasons, he is only informed? What is the difference?

Lord Hermer: The consultation on public interest grounds arises only where the Attorney-General has given consent previously, so it is not a general consultation on public interest grounds for all prosecutions. I anticipate that one of the purposes of Parliament giving to law officers the obligation to consent to certain types of prosecutions is that it is felt appropriate, not least because there is real consideration given by law officers to the public interest in that prosecution, because they often fall in the national security realm in which broad considerations of public interest may be appropriate to take into account. I anticipate that the distinction that you see in the framework agreement is between consultation, where a director is minded to drop a prosecution on public interest grounds, and merely informing after the decision on evidential grounds and for that reason. It would be particularly dangerous for politicians, whether law officers or otherwise, to be getting involved in evidential considerations. That really needs to be left to independent prosecutors. I hope that explains the division there.

Q44 Sir Gavin Williamson: As Attorney-General, you have a statutory duty to superintend the Director of Public Prosecutions. It was interesting to listen to Mr Parkinson and Mr Little the other day, because it was clear from their evidence that they were highly concerned about the evidence that had been provided. They were clear that they were explicit, or as clear as they could be to others, about the need for the evidence.

Your letter states that the CPS could seek assistance from the Attorney-General for "securing evidence or disclosure from other government departments". Can you set out to the committee what actions you took to ensure that the evidence that was required was provided to the CPS?

Lord Hermer: You will have seen from the passage in the framework agreement that it provides a means for the Director of Public Prosecutions to approach me if it is felt that I could be of assistance in unblocking any evidential inquiries. No such approach was made to me.

As I understand it, and you have the evidence, the CPS ultimately received the evidence from the Cabinet Office. It was not a question of not receiving the evidence that led to this prosecution not proceeding; it was the contents of those witness statements that led the CPS to reach

the views that it did. Even if I had been contacted by the director to try and unblock any difficulties in obtaining evidence, I could not possibly have intervened to have any influence over the contents of any witness statements. But in any event, I received no request.

Sir Gavin Williamson: But did you ever check proactively with the CPS as to whether it needed any help.

Lord Hermer: No. It would be, I should imagine, unprecedented for a law officer superintending the CPS to anticipate problems in any given case and say, "What can I do?". The CPS and the director know that I am always available to assist where appropriate.

Sir Gavin Williamson: That is very good. You spoke very warmly of Mr Collins earlier, and I think we all share your view of him being a very committed civil servant. I think you probably agree with me that he is very much an expert in his field; is he not?

Lord Hermer: Yes.

Sir Gavin Williamson: He is very knowledgeable about what he does and the field that he has worked in for a long time. Would you describe him as an expert witness?

Lord Hermer: Is Matt Collins—

Sir Gavin Williamson: Yes or no—is he an expert? Is he an expert witness?

Lord Hermer: It depends.

Sir Gavin Williamson: Can we get to a yes or no? Do you want to give three answers?

Lord Hermer: Forgive me, because there is a difference between an expert and an expert witness. Is Matt Collins an expert on the issues as we all understand its everyday meaning? Is Matt Collins an expert in the national security threats that we face in this country? Absolutely he is and we are lucky to have him.

Is he, for the purposes of a criminal trial—and here is a term of art—an expert witness? In this case, he was not an expert witness; he was what most accurately could be called a corporate witness, giving evidence of the Government's position at the time. I am sorry to be pedantic, but it is quite important from a legal perspective.

Sir Gavin Williamson: I would not expect anything less, but we have established that he is definitely an expert.

Lord Hermer: Yes.

Sir Gavin Williamson: I am afraid to say that, unlike Lord Boateng, I am not a lawyer, so can I ask you, as a lawyer, for a bit of legal advice?

Lord Hermer: I think I am here as Attorney-General to answer evidence.

Sir Gavin Williamson: Do not worry; it is not on my home conveyancing or anything like that.

Lord Hermer: You would be in trouble if you were relying on me for that. Let me be clear, if I may, Sir Gavin: I am here to assist the committee in giving the evidence that I am able to give on what I can from my superintendent's position.

Sir Gavin Williamson: I am sorry; we have quite limited time, if you would not mind pausing for a moment. All the way through the evidence that Mr Collins was giving, he kept falling back on the simple line about the Government's policy position—repeatedly, again and again, "This was the Government's policy". We asked him and he has been asked numerous times what his judgment is, for his assessment as an expert—not what government policy is but for his assessment, as an individual, as an expert, of what we are facing. But he continuously refused to do that.

With your great legal mind, you know that, under Criminal Procedure Rule 35.3, experts' "overriding duty to the court" is: "(1) It is the duty of experts to help the court on matters within their expertise. (2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid". I am not a lawyer but, from looking at that, it says to me that he should have been willing to give his judgment of his assessment, not purely what government policy is. Is that correct?

Lord Hermer: No. I am sure I will be corrected if I am wrong, but I do not think what you are quoting from is how you described it. I think you are quoting from the Civil Procedure Rules, and Part 35 governs the conduct of experts instructed by one party or another in a civil case, not a criminal case. I will be corrected if I am wrong.

To give you the answer to the question that you asked, with respect, I think you are quoting rules that are inapplicable to criminal proceedings. They govern civil proceedings with very different considerations about experts who are instructed by one party. Here, Mr Collins is asked—he is contacted and his evidence is obtained by the counterterrorism police—to give the evidence that he gave. I do not think that we can criticise Mr Collins or the counterterrorism police for doing that. It would not have prevented the defence cross-examining him more widely, but there was nothing inappropriate or improper in asking Mr Collins to give the evidence that he did. I really do not think you get much help from the provisions that you have just quoted at me.

Sir Gavin Williamson: Is it usual, Lord Hermer, for there to be very senior meetings on cases, held within No. 10, between charge and trial? Is that something that you usually see happen? How many instances are you aware of, other than this one on 1 September? How many times have you heard this happening in relation to other prosecutions—10 times, 20 times, 30 times or just once?

Lord Hermer: Let me be really clear, Sir Gavin.

Sir Gavin Williamson: Just do a number; you do not have to do lots of words, just a number. How many times? How many times, Lord Hermer? How many times? Just out of curiosity, was it once, twice or three times?

Lord Hermer: Sir Gavin, we are discussing grave matters of national security. We are discussing a trial—

Sir Gavin Williamson: Yes, and how many times do you have a meeting of senior civil servants, between charge and trial, to discuss a case? How many times? You have been Attorney-General for over a year; how many times has that happened while you have been Attorney-General?

The Chair: Sir Gavin, please try to keep a degree of respect in your tone.

Sir Gavin Williamson: Well, if you would just give us an answer, Lord Hermer, it would be very helpful. Is it once, twice or three times?

Lord Hermer: It is very hard to get an answer in, if I may say so, when I am given no opportunity to reply.

Sir Gavin Williamson: Just give a number.

Lord Hermer: I have never been, and I suspect I will never be, in a meeting at Downing Street to discuss details of the evidence of a case that is about to proceed to trial.

Sir Gavin Williamson: Your Permanent Secretary was there; how many times has such a meeting happened?

Lord Hermer: No, no.

Sir Gavin Williamson: Has it happened before? Are you aware of any? You have been Attorney-General for over a year; has it happened on any cases, between charge and trial, in your time as Attorney-General?

Lord Hermer: Sir Gavin, this committee is rightly concerned about this prosecution and national security.

Sir Gavin Williamson: We are just interested in an answer, Lord Hermer.

Lord Hermer: We can either treat this—

Sir Gavin Williamson: Would you just answer the question?

Emily Thornberry: Answer which question? You have asked about seven questions.

Lord Hermer: I am going to answer.

Sir Gavin Williamson: I asked how many times a meeting has taken place between charge and trial to discuss a prosecution, which he is

aware of?

Lord Hermer: I anticipate and I certainly hope—

Sir Gavin Williamson: Zero other times.

Lord Hermer: There has never been a meeting to discuss the evidence in a forthcoming trial.

Sir Gavin Williamson: So what happened was quite exceptional.

Lord Hermer: That certainly did not take place here. What happened on 1 September is that there was a meeting that, among other things, considered the handling of a trial. Everybody at that meeting proceeded on the basis that that trial was going to commence in December. You would expect a responsible system to anticipate the handling questions in a case such as this. There is nothing improper about that.

If I may say so, trying to insinuate bad faith into our national security-making decisions does nothing to increase public confidence in it. It seeks simply to undermine and that is very dangerous where, as here, it is baseless. It simultaneously undermines confidence and trust in our criminal justice system and all politicians, not least privy counsellors, should be mindful of that, I respectfully say.

The Chair: I want to move us on because we are going to run out of time and there is a lot of ground to cover. Baroness Tyler wants to come in on the same point.

Q45 **Baroness Tyler of Enfield:** There is one specific point about the involvement of your office in this case. I am sure you will remember that, yesterday, you answered on a repeat Question in the House of Lords. Lord Keen asked you a number of questions and he ended up by asking whether the Attorney-General could confirm that his office reviewed the witness statement submitted on behalf of the Government. You gave a comprehensive answer to that, because he had asked a range of questions, but I did not see the specific answer to whether your office had actually reviewed the witness statement submitted. Could you help on that point?

Lord Hermer: Other than by the Solicitor-General at the time the consent was granted, there would have been no reviews of the witness statements themselves. I would not have expected that to have taken place.

Q46 **Baroness Fall:** I want to turn to you, Mr Jones. You entered Downing Street literally in the middle of the fray, as it were. Your role at No. 10 started on 1 September, if I am correct, then you became CDL on 5 September. Were you aware of the Cabinet Office Ministers being briefed on the case as it progressed? It would have been before your time.

Darren Jones: No, I was not.

Baroness Fall: You were not aware. When were you briefed on the case?

Darren Jones: On 15 September, when the CPS confirmed publicly its decision not to proceed with the case, and I was read in on the detailed briefing that the Prime Minister received on the same day.

Baroness Fall: So in in your time at No. 10 and then your time in the Cabinet Office, you were not briefed on it until then?

Darren Jones: No.

Baroness Fall: Not at all. So you did not attend this meeting that we have just been talking about on 1 September?

Darren Jones: No.

Baroness Fall: Did any of your special advisers or officials?

Darren Jones: No.

Baroness Fall: So you had no report of that meeting whatsoever?

Darren Jones: No.

The Chair: Did your predecessor?

Darren Jones: I do not think so. You would have to ask—

The Chair: You would know that, though, would you not?

Darren Jones: I do not know the diary of my predecessor, with respect, Chair. You might be able to ask him that question, but my understanding is there were no politicians in that meeting on 1 September. I think it was just officials.

Baroness Fall: And no special advisers—

Darren Jones: I do not think so, no.

Baroness Fall: —of your predecessor?

Darren Jones: I do not know about my predecessor, but my understanding is that there were no politicians or special advisers in that meeting. It was officials.

Baroness Fall: You were told when the case dropped—

Darren Jones: Sorry, I have just been informed, Baroness Fall, that Jonathan Powell, as the National Security Adviser—he, of course, is a special adviser—was in that meeting. But my predecessor's special advisers at CDL were not.

Baroness Fall: Thank you, we were aware of that. You were aware that the case dropped on 15 September, you just said. At that time, did you discuss pursuing any alternative options?

Darren Jones: No, because it was too late. The decision had been taken and had been announced.

Baroness Fall: So you did not pursue the idea of having some sort of confidential closed statement?

Darren Jones: I did not, no.

Baroness Fall: The same question to you, Lord Hermer: did you ever discuss the possibility of a confidential closed statement to support the case?

Lord Hermer: No. I really do not think it would have been appropriate for me to be diving in and directing this prosecution.

Q47 **Lord Robathan:** I want to come in on a wider issue. We were told that, on 10 July, the Cabinet Office was told by email that the wording "active espionage threat", did not go far enough to meet the prosecution's need. I cannot find exactly who sent it; perhaps you might know who sent this email. Were you aware of this issue as early as 10 July, and do you know who sent the email?

Lord Hermer: I am afraid I do not know who sent the email. I was aware that the case was proceeding. I receive a list of the most serious cases from the CPS on a monthly basis—for information, that is normally just a few lines about each of the top cases—so I knew about this case proceeding. It had been brought to my attention that there had been some historical difficulties in getting timely witness evidence but, at the time of each of those reviews, steps were under way, either with assurances it was about to come or that it had been received.

Lord Robathan: I am sorry, can I clarify? Darren Jones was not of course there, but the Cabinet Office were told by email, so I do not know if he knows anything about that, but did you know, Attorney-General, on 10 July or not?

Lord Hermer: No.

Q48 **Mike Martin:** Just briefly, I want to pick up some of these threads about who knew what when. As this case progressed, to the best of your knowledge, Mr Jones, were any other Government Ministers informed of its progress or lack of progress?

Darren Jones: No, I do not think so.

Mike Martin: Obviously I understand that it is difficult for you to know exactly what your predecessor knew, but hopefully you did a sort of a handover/takeover on 1 September. But were you aware before you came into post that they were meeting on 1 September to discuss the case? Did you hear anything about it at that point in time?

Darren Jones: No.

Mike Martin: Okay. When did you hear that the Government's evidence

was insufficient to put the case to trial?

Darren Jones: On 15 September, when the CPS confirmed that they were not proceeding with the trial.

Mike Martin: Okay, so right at the end of the process. Then who informed the Prime Minister? When was he informed? Was any further action taken by the Government after that point?

Darren Jones: You will have had evidence from Matt Collins and the Cabinet Secretary on Monday on that point. My understanding from their answers was that Matt Collins had informed the Prime Minister verbally a number of days before it was made public on the 15th. The Prime Minister received some further information but at a lower level of classification when he was at Chequers on the preceding Friday. He was then fully read in on the detail on the same day that I was, Monday 15 September.

Q49 **Edward Morello:** Going back to the earlier point of lessons learned and thinking about the future, you mentioned already that the current National Security Adviser is a political appointee, which creates a number of issues, not least of which we have had trying to get him to appear in front of this committee. I am just wondering whether or not the fact that he is a political appointee creates any difficulties in oversight. We had the Cabinet Secretary note himself in his evidence that he does not have a deep background in security matters, so are there any issues around going forward with cases such as these and oversight with having a political appointee in this role?

Darren Jones: I do not think so. If you think about Jonathan Powell, I think everybody would say he is one of the best people we have in our country to perform this role, so the Prime Minister wanted to appoint him to do it. We are very grateful to have Jonathan's expertise and skills available to us as a Government and he has added enormous value to our work. As an appointment of the Prime Minister, he was not a civil servant. Previously, he has been appointed as a special adviser. But you will have seen in the deputy national security adviser, who is the Civil Service head of the National Security Secretariat, that we have an equally experienced civil servant with a whole team of people who perform their roles very well indeed. Cabinet Secretaries, of course, may come from different backgrounds all of the time, but that is why the National Security Secretariat is housed with that expertise in the Cabinet Office. So I do not think there is any suggestion here that Jonathan Powell's appointment as the National Security Adviser, or the Cabinet Secretary not coming from the national security background, is an inherent problem in this case and that therefore should be considered differently in the future.

Edward Morello: I do not think there is any suggestion of any issue with the credentials of the NSA, but we do have now a situation which makes it very difficult for this committee to give scrutiny to a spad. You cannot have the DNSA reporting into a spad, so you have got them reporting

into a Cabinet Secretary—again, by his own admission, his background is not necessarily around national security. I guess what we are trying to talk about here, if we are being positive is, lessons from this. So have you, as a result of this, created a reporting line that will create problems down the line?

Darren Jones: I do not think so, and my understanding is that Jonathan Powell is coming to give evidence to Parliament; I think he is appearing before the Intelligence and Security Committee. Of course, he has co-signed written evidence to the committee as part of your question.

Edward Morello: I would like to go back to the evidence provided by the DNSA for this case in which, the use of “enemy” aside, he does outline that China is a threat to national security—that it is an advanced, persistent threat, that it is continuous. Lord Hermer, you have been very clear that the Official Secrets Act was rightly superseded by the National Security Act because it was redundant. But if we are facing a threat to our national security—one that is continuous, that is greater than just this case alone—is it not right that China should be on the enhanced tier of FIRS?

Darren Jones: There are two questions there, one of policy and one on the FIRS question. On policy, I think it is plain for everybody to see from the evidence that it can be true that China poses a series of threats to the country but also a series of opportunities. Both of those things are true. That is why our previous Foreign Secretary and why this Government have made it clear that on issues where we seek to collaborate—whether on climate change or through international fora—we will do so. Where we can improve trade while being mindful of national security threats, we will do so as well. China is the second-largest economy in the world and our third-largest export partner. But it is also then true that we need to have the appropriate toolkits in place to manage those national security threats.

The National Security and Investment Act, which the previous Government legislated for, and which I am now the quasi-judicial decision-maker for, works in my view very well on questions of economic issues—buying companies or assets, different changes in financial structure, shareholdings, equity and those types of issues. That works well. It is good that that legislation is on the books but, as the Attorney-General has made clear, the problem really at the base of all of these questions is that the National Security Act 2023 came a bit late in the day. As we have heard from Lord Sedwill, if the previous Conservative Government had granted time for the last Government to bring that legislation forward, that would have made it much easier.

Edward Morello: I fully accept that but, going forward, if we accept the evidence submitted by the DNSA that there is a continuous spying threat from China, should we not—to protect ourselves in the future cases that will undoubtedly arise from a persistent, continuous threat—have China on the enhanced tier of FIRS, which means that any future case is guaranteed and we do not have this issue of “enemy”?

Darren Jones: I think the legislation we now have on the books is sufficient, whether it is the National Security Act or the National Security and Investment Act. We have the provisions in place now to be able to deal with these issues, when we had not in the past in relation to this particular case. Your question on FIRS is something that the Government obviously consider in the proper way. It is a new framework that has been introduced. It came into effect only at the start of July this year, and the Government will need to come to Parliament with any consideration on that. We will therefore do that process in a proper way. As the Attorney said earlier, whether China is on the FIRS list or not, I do not think that would have undermined a successful case being brought forward under the new National Security Act. Our view is that that would have been okay.

Q50 **Emily Thornberry:** On lessons learned, one of the few positives—there are not many—to come out of the collapse of this case is that it highlights and it begins to inform the public that the world's second-biggest economy, from whom we get all our stuff, or most of it, also poses a considerable security threat to our country. Do you agree that there should be more public discussion about this and more understanding by the public of this?

Darren Jones: This case has made this a public conversation. We have been very clear as a Government about our assessment of those threats and about the opportunities. Other officials in government have as well—the head of MI5, with his annual speech, for example. Thinking about my constituents and the public, what would they want to be reassured of? They would want to be reassured that we have the powers and the tools in place to deal with and manage those risks and to robustly make the case when our Foreign Secretary or the Prime Minister is meeting with their counterparts in China—but also to have a grown-up relationship with China on issues where we need to collaborate in the world, such as climate change. My point is that, now, with the National Security Act and the National Security Investment Act—plus the additional work that is being done through the Defending Democracy Taskforce, working in partnership with Parliament to ensure not just that Members of the Houses here in Parliament but mayors, councillors and other politicians across the country are given the support and the advice to be able to spot and deal with potential attempts of phishing, cyber espionage or people trying to influence their decision-making—we are doing everything we can in a robust way to manage and deal with those risks, while also having a grown-up relationship with an important country in the world.

The Chair: We are really tight on time, so I call Andy Slaughter.

Emily Thornberry: Do you mind if I ask one more question? I wanted to ask about something that my committee has been quite focused on. I hear what you are saying, but do you not also think that, in those circumstances, it would not be to the good of this country to publish the China audit and the strategy attached to that audit, so that we have a proper structural understanding of what the threat is with China? I hear what you say about filtering it through to councillors, but why can we not

be trusted with a document that has properly studied and considered the positives and the negatives when it comes to our relationship with China?

Darren Jones: The national security strategy is a public document that explains the Government's assessment and position on those questions. The China audit itself obviously had a level of information and collaboration that was at different levels of classification, so you would naturally not publish it in a document for the whole world to see because you would be going into more secret information. So the national security strategy does do that, but it would be improper for us to suggest that we should publish information at high levels of classification into the public domain.

Q51 **Andy Slaughter:** In the light of the importance and rarity of this case, do you think there should be any further legal or administrative review of the decisions that were made? Clearly, we have heard strong evidence on both sides as to what their evidence was to proceed in the case and, if that was in doubt, whether that evidence should have been tested in court and whether more evidence should have been sought if the DNSA's evidence was not sufficient. So there is that whole package, if you like.

There is also the issue of the misunderstanding: the fact that the DNSA clearly thought he had done enough and the DPP thought they had not but that they had communicated that they had not. Yet those messages were never linked up, and that seems to be quite a serious failing. The potential of that happening again means that we really have to get this right and find out what went wrong from a legal and an administrative point of view.

Lord Hermer: Any good Government want to learn lessons from episodes, whether happy ones or unhappy ones. I will look forward to consideration of the conclusions that this committee reaches, and I know that the ISC is also looking at the matter. Obviously, I will keep thinking, as I do across a range of issues, about how we can do things better. It is our obligation, in government, to do that, and I do not think this case is any different.

Darren Jones: I will add, from an administration perspective as opposed to a legal perspective, that the accusations that have been made of the Government, predominantly by the Conservatives but also by others, were that there was political interference in a criminal process, which is a grave accusation. That has been proven to not be the case, which means that the process has worked in the way it should work. It is a bit odd, if I might say, that the Conservatives have then said, "Why did you not politically interfere in the case?" Well, that is because that is not how we do things in this country. So, at the administrative level, the independence of the CPS, the role of Ministers and the role of the Attorney have all worked as they should, and really the questions are of law, which has largely been dealt with by the introduction of the new Act.

Q52 **Baroness Tyler of Enfield:** This is for the Chancellor of the Duchy. Can we go back to the point about how the Government are reconciling their

ambitions to pursue economic opportunities and, at the same time, not compromise national security. What lessons have you learned, or how have you looked at how other countries have approach this? I understand that, as commentators have suggested, Australia is quite ahead of the curve in what it does: I think China is its largest trading partner, but it has taken robust steps to try to tackle any Chinese covert influence at home. Chatham House recently suggested that the Government should do more to boost resilience against espionage threats. Do you agree with that line of argumentation?

Darren Jones: Evidently, there is more that needed to be done through the Defending Democracy Taskforce, because a lot of these attempts can be quite subtle. Lots of people have been subject to phishing exercises—I think they are called that—and all these types of things. That is why the work here in Parliament has been really important. There is now enhanced security provision for Members of both Houses, as well as enhanced advice and enhanced cyber advice services that have been made available to us. As I said to Dame Emily, the recent decision to extend that beyond Parliament to other political decision-makers across the country is the right one.

Baroness Tyler of Enfield: To pursue that again, have you looked at how other countries have handled this issue and seen whether any lessons can be drawn?

Darren Jones: The Defending Democracy Taskforce will have done, yes. More related to my work in respect of the National Security and Investment Act, there are definitely comparisons to how different countries around the world work, including with Five Eyes partners and others. Our regime is seen as being internationally robust and good, and it also makes it very clear on the face of the Bill, to China or any other country or investor, which sectors we consider critically important to our national infrastructure and resilience—and which transactions, therefore, we reserve the right to look at in detail and stop if we need to do so.

The Chair: Lord Hutton, did you want to come in?

Q53 **Lord Hutton of Furness:** Yes, very briefly. To go back to what you said a second ago Mr Jones, I think I heard you right when you said that you think the system had worked well in this case. That is probably not how many members of the public view this. It looks like a car crash, does it not? We have espionage activity that goes unpunished. We certainly have a loss of public confidence in the criminal justice system because wrongdoing has escaped any kind of accountability, as it were, yet I do not really hear either of you saying that there is anything further that we should think of doing to prevent this kind of thing happening again. I am not entirely sure that the Government will not find themselves in a similar situation, even under the national security legislation that was passed a couple of years ago, if they cannot identify and commit to saying that China poses a threat to our national security.

The Chair: Perhaps it will be a loss not just of public confidence but of

confidence among the CTP, all those investigators and maybe our security services.

Darren Jones: My point is that the root cause of the problem here is that the case in question was charged under very old legislation, which the Attorney-General has already talked about in detail. Had the new National Security Act been implemented sooner, following the advice from the Law Commission, we would not be having this conversation today. The point I made was in response to questions from colleagues about whether the process of the constitutional separation of politicians and the Government from the independent decisions of the CPS and the role of the Attorney had worked well. The answer is yes, because everything was done properly, which was very different to the allegations that were being made by political parties.

Lord Hutton of Furness: I absolutely understand that point and we have not heard any evidence to imply there was any political interference in this process and that has been very welcome. However, I still get a sense of concern, maybe, about some inherent complacency here—that the lessons were learned before this case came to trial, because the legislation was changed in 2023. I am perhaps not as confident as either of you that we might not find ourselves in the same position again in the future, because of this inherent reticence on the part of the Government to call out the dangerous nature of Chinese espionage activity.

Lord Hermer: Let me try to dispel any notion of complacency. As you know, the first duty of this Government, as it is of any Government, is to protect the national security of this country. Every arm of the state—counterterrorism police, politicians and the independent Crown Prosecution Service—will work night and day to ensure that those people who harm the national security of this country are held to account.

We were hamstrung in this case by an outdated bit of legislation. We now have legislation that is fit for purpose and we will use that legislation whenever there is credible evidence that people are seeking to damage the national interest of this country. There is not a jot of complacency; there is only determination.

Q54 **The Chair:** Lord Hermer, perhaps we could write to you about how things could have worked better, because there has clearly been frustration in the short session that we have had that things have not worked well. In fact, someone used the term “car crash” and I think that is the wider public perception.

One point you made on a couple of occasions was that you have not reviewed the full set of papers that were left by the previous AG. Given the real seriousness of this espionage case—they do not come along like London buses—why have you not?

Lord Hermer: The question has to be: for what purpose? The only purpose of reviewing absolutely every last scrap of paper would, in effect, be to second-guess a decision of whether or not to prosecute. If the

question is whether I am ensuring that I am seeing everything that I need to see so that I, as superintendent, can be reassured that all lessons have been learned, the answer is yes. In so far as there is further material for me to see that will help me in that task, not least the conclusions of this committee, I will of course consider it very carefully.

The Chair: I finally return to the point about confidence and what this says about us. Baroness Tyler was right when she was asking about how other countries may do this. She cited Australia, quite rightly, and some of the challenges that it has faced in recent years, with which you may be familiar. Something like 32% of its exports go to China, so it is very dependent on its economic relationship with China, but it has demonstrated a much more muscular approach to that relationship. The public perception is that we are kowtowing to China in our approach. What do you say to that, Lord Hermer?

Lord Hermer: I absolutely reassure this committee—and, through this committee, the public—that this prosecution failed not because anybody in government kowtows to any foreign power; it fell down for the reasons given about a conclusion reached by the independent Crown Prosecution Service that the evidential test was not met. What is more, this process has exposed the allegations, which are both baseless and dangerous, that somehow politicians intervened in a prosecution to stop it because of fears about a foreign power. Those allegations are baseless and, I suggest, cause the longest-lasting damage to both our national security reputation and criminal justice reputation.

The Chair: Chancellor, what is your view?

Darren Jones: I do not agree with the sentiment in the question. I would contrast it to recent foreign policy. Under the previous Government, the position was not to talk to China at all. I am not sure that that is very muscular either. It is right that we have a working relationship with the Chinese Government and their officials, and it is right that we are robust in dealing with these issues and being very clear about that. We do that now because we are having conversations with counterparts in China. If we were in a world where we continued the policy of the previous Government and just do not interact at all, it would not stop anything from happening.

So, as the Attorney said, we are robust where we need to be. We are very clear about that. The powers that we have now are sufficient and they are in public legislation for everyone to see. We exercise those powers routinely in, for example, the National Security and Investment Act. That is a much better way to conduct business than has been done in the past.

The Chair: Would you accept that, for whatever reason, this committee has not had access to the entire China audit document?

Emily Thornberry: Nor has the Foreign Affairs Committee.

The Chair: There is a real sense of opacity at the heart of this Government; they do not want us or the public to know. Therefore, there is a perception of concern about how the Government are operating in their relationship with China.

Darren Jones: I am sorry that the committee feels that way. That is certainly not the case. We have been very clear, whether you look at the witness statements that would have been made in open court on behalf of the Government had the case proceeded, or the evidence that we or our civil service counterparts gave to Parliament this week, that we do not shy away from the series of threats that China poses to the UK, either in public or in conversation with our Chinese counterparts.

The Chair: We are there, more or less. I thank our witnesses, Lord Hermer and CDL, for your time today. We may have further questions; we may come back to you in writing or we may ask you back for another session. But that concludes our session for today.